

December 11, 2020

VIA E-MAIL & FEDERAL EXPRESS

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

**RE: NuStar Pipeline Operating Partnership L.P.
10" North System Pipeline Relocation – Cass County
Case No. PU-20-381**

Dear Mr. Kahl:

Enclosed for filing in the above-referenced docket are an original and ten (10) copies of NuStar Pipeline Operating Partnership L.P.'s proposed Findings of Fact, Conclusions of Law and Order, along with this filing letter. Electronic versions of the enclosures are being filed with the Commission today via e-mail, and a Word version of the proposed Findings of Fact, Conclusions of Law and Order will be e-mailed to Mr. Johnson and Mr. Renfandt.

If you have any questions, please let me know.

Sincerely,



MOLLIE M. SMITH

MMS/71683191
Enclosures

cc: Judge Dawson (via e-mail, e/ encl.)
Brian Johnson (via e-mail, w/ encl.)
Adam Renfandt (via e-mail, w/ encl.)
Dale Smith (via e-mail, w/ encl.)
Matt McGee (via e-mail, w/ encl.)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**NuStar Pipeline Operating Partnership L.P.
10" North System Pipeline Relocation – Cass County
Siting Application**

Case No. PU-20-381

Proposed FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

January ____, 2021

Appearances

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann.

Mollie M. Smith, Attorney at Law, Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402, on behalf of NuStar Pipeline Operating Partnership L.P.

Brian L. Johnson, Special Assistant Attorney General, as Counsel for the North Dakota Public Service Commission, 600 E. Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505.

Timothy Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503.

Preliminary Statement

On August 28, 2020, NuStar Pipeline Operating Partnership L.P. (NuStar) filed with the North Dakota Public Service Commission (Commission) a consolidated application for a certificate of corridor compatibility and route permit (Application) concerning the location of approximately 2.21 miles of 10-inch inside diameter refined petroleum products pipeline in Cass County, North Dakota (Project).

On September 18, 2020, the Commission provided notification of the Application to the townships with retained zoning authority, cities, and counties in which any part of the proposed pipeline corridor would be located.

In response to requests for additional information submitted to NuStar by the Commission, NuStar filed supplemental documents with the Commission on September 17, 2020, September 24, 2020, and September 29, 2020.

On October 6, 2020, NuStar filed updated Corridor Exclusion and Avoidance Area Maps for Appendix A to the Application.

On October 7, 2020, the Commission deemed NuStar's Application complete, conditional on receiving the Stormwater Pollution Prevention Plan thirty days prior to the hearing, and issued a Notice of Filing and Public Hearing (Notice) scheduling a hearing for November 23, 2020 starting at 9:00 a.m. Central Time, to be held remotely due the state emergency.

The Notice identified the following issues to be considered with respect to the Application:

1. Will construction, operation, and maintenance of the facilities at the proposed locations 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 construction, operation, and maintenance of the facilities at the proposed 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 October 8, 2020, the City of West Fargo filed a letter providing links to its zoning regulations and ordinances.

On October 22, 2020, NuStar filed the Stormwater Pollution Prevention Plan for the Project.

On November 10, 2020, the North Dakota Department of Environmental Quality filed comments.

On November 18, 2020, NuStar filed prefiled proposed Hearing Exhibits 1 through 12.

On November 23, 2020, the North Dakota Parks & Recreation Department filed comments.

On November 23, 2020, the hearing was held as scheduled via live, remote communication, allowing any interested parties to present testimony via telephone. Hearing Exhibits 1 through 12 were admitted at the hearing.

The opportunity for public comment remained open until November 30, 2020, and no comments were filed.

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

Findings of Fact

1. NuStar Pipeline Operating Partnership L.P. is a Delaware limited partnership authorized to do business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission on August 28, 2020, in Case No. PU-15-673.

Size, Type, and Preferred Location of Facility

2. The Project involves relocating the portion of NuStar's existing North System Pipeline that will be impacted by construction of the Fargo-Moorhead Diversion Channel in Cass County, North Dakota. The Project will involve installation of approximately 2.21 miles of approximately 10-inch inside diameter welded steel refined petroleum pipeline located in Cass County, North Dakota. The Project will facilitate continued transport of refined petroleum products from the existing Tesoro Refinery in Mandan, North Dakota to terminals in Jamestown, North Dakota and Moorhead, Minnesota, as well as to locations further east. The proposed facility Corridor and pipeline Route are identified on Hearing Exhibit 4.

3. The Project will be installed using the horizontal directional drilling (HDD) method where it crosses Drain No. 14, a tributary of the Sheyenne River, 166th Avenue SE, the FM Diversion Channel, and 38th Street W. Conventional installation will be used for the remainder of the Route.

4. The conventionally-installed pipe will have the following specifications: 10.750-inch outside diameter, 0.250-inch nominal wall thickness (10.25-inch inside diameter), American Petroleum Institute (API) 5LX-52 Electric Resistance Welded (ERW) Steel line pipe with 14 – 16 mils fusion bonded epoxy (FBE) coating.

5. The proposed HDD installed pipe will have the following specifications: 10.750-inch outside diameter, 0.250 nominal wall thickness (10.25-inch inside diameter), API 5LX52 ERW Steel line pipe with 14 –16 mils FBE and 30 mils of abrasion resistant overcoat (ARO). The maximum anticipated operating pressure of the entire North System Pipeline, including the Project, is 1,440 pounds per square inch, with a maximum operating temperature of 100 degrees Fahrenheit.

6. The maximum design flow rate for the NuStar North System Pipeline is 3,000 barrels per hour (3,024,000 gallons per day).

7. Aboveground facilities for the Project will be limited to installation of pipeline markers. No new pump stations are required for the relocation Project. The existing Sheyenne Block Valve will be modified to provide for remote monitoring and operations from NuStar's Pipeline Control Center.
8. The estimated preliminary cost for construction of the Project is \$4.1 million.
9. NuStar expects to commence operations of the Project in Third Quarter 2021.

Study of Preferred Location

10. NuStar's Project Study Area was 1.0-mile wide (0.5 mile on either side of the proposed pipeline centerline) between the starting point of where the pipeline relocation Route leaves the existing North System Pipeline to where it reconnects to the existing North System Pipeline in Cass County, North Dakota.
11. NuStar is seeking approval of a 200-foot-wide pipeline corridor (Corridor) centered on the proposed alignment (Route). The Corridor is the same as the environmental field survey corridor and encompasses the temporary workspace for the Project.
12. NuStar conducted a Class I background search of archaeological and historical literature and records for the Project Study Area and surrounding 1.0-mile-wide survey area on April 7, 2020. NuStar conducted a desktop review of the Study Area for wetlands, woodlands, and wooded areas.
13. NuStar conducted field surveys for wetlands, waterbodies, wildlife (including threatened and endangered species, critical habitats, and raptor nests), noxious weeds, and trees/saplings/shrubs.
14. NuStar conducted a Class III cultural resource inventory of the 200-foot-wide survey Corridor. The Class III report was submitted to the State Historical Society of North Dakota (SHSND). In a response dated July 23, 2020, SHSND concurred with a determination of "No Significant Sites Affected" for the Project.
15. NuStar initiated correspondence seeking comments from the following federal, state and local agencies and entities as follows:
 - a. Federal: (1) Federal Aviation Commission; (2) U.S. Army Corps of Engineers; (3) U.S. Department of Defense; (4) U.S. Fish and Wildlife Service; (5) U.S. National Park Service; and (6) U.S. Bureau of Reclamation, Great Plains Region;
 - b. State: (1) North Dakota Aeronautics Commission; (2) North Dakota Attorney General; (3) North Dakota Department of Agriculture; (4) North Dakota Department of Career and Technical Education; (5)

Job Service of North Dakota; (6) North Dakota Department of Environmental Quality; (7) North Dakota Department of Human Services; (8) North Dakota Department of Transportation; (9) North Dakota Department of Trust Lands; (10) North Dakota Energy Infrastructure and Impact Office; (11) North Dakota Game and Fish Department; (12) North Dakota Indian Affairs Commission; (13) North Dakota Industrial Commission; (14) North Dakota Department of Labor; (15) North Dakota Parks and Recreation Department; (16) North Dakota Pipeline Authority; (17) North Dakota Soil Conservation Committee; (18) North Dakota State Water Commission; (19) North Dakota Transmission Authority; (20) North Dakota Geological Survey; (21) SHSND; and (22) North Dakota Department of Commerce;

- c. Local: (1) City of West Fargo; (2) Maple River Water District; (3) Cass County Board of County Commissioners; (4) Mapleton Township Board of Supervisors; (5) Mapleton Township Zoning Administrator; and (6) Cass County Joint Water Resource District.

16. NuStar met with the City of West Fargo to discuss the Project's Route and confirmed no permits are required from the City for the Project.

Siting Criteria

17. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22.1-03 to guide 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.

18. NuStar evaluated the Project for the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria of the Commission.

19. An Exclusion Area may not encompass more than fifty percent of a corridor width unless there is no reasonable alternative. An Exclusion Area must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of an Exclusion Area must be included in the siting of the transmission facility.

20. NuStar's studies and surveys did not record any Exclusion Areas within the Corridor or crossed by the Route.

21. An Avoidance Area is a geographic area that may not be considered in the routing of a transmission facility 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.

22. NuStar's studies and surveys did not record any Avoidance Areas within the Corridor or crossed by the Route.

23. In accordance with the Commission's Selection Criteria set forth in North Dakota Administrative Code Section 69-06-08-02(3), a transmission facility route shall be approved if it is demonstrated that any significant adverse effects that will result from the location, construction, and maintenance of the transmission facility will be at an acceptable minimum or managed and maintained at an acceptable minimum. NuStar has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. The Project will have no significant adverse effects on the Commission's Selection Criteria.

24. Wetlands are a selection criteria. Two palustrine emergent wetlands were identified within the Corridor. Both will be crossed using the HDD technique. Additionally, silt fence will be installed along the right-of-way adjacent to wetlands and waterbodies.

25. The impact upon agricultural production and family farms and ranches is a selection criteria. Following completion of construction of the Project, NuStar will return the right-of-way to pre-construction contours, and farming or ranching operations will continue over the operational right-of-way. NuStar has existing easements and landowners will be compensated in accordance with the terms of those easements.

26. In accordance with the Commission's Policy Criteria set forth in North Dakota Administrative Code Section 69-06-08-02(4), preference may be given to an applicant demonstrating certain benefits of the transmission facility. NuStar submitted evidence to demonstrate its commitment to maximize the benefits of the proposed transmission facility to the extent possible so as to meet the Policy Criteria.

Additional Measures to Minimize Impact

27. NuStar has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed Certification Relating to Order Provisions – Transmission Facility Siting, which is incorporated by reference and attached to this Order. No trees are within the Project right-of-way, and the five shrubs inventoried are located within a wetland that will be crossed using HDD; as a result, the shrubs will not be disturbed by construction activities. Therefore, no replacement trees or shrubs will need to be planted.

28. The Project will be designed, constructed, maintained, inspected, and operated in accordance with U.S. Department of Transportation regulations governing the transportation of hazardous liquids by pipeline, which are set forth in 49 Code of Federal Regulations (CFR) Part 195.

29. During Project operation, pipeline pressure, temperature, and flow rate data will be continuously monitored from the Pipeline Control Center in NuStar's Corporate Office. Where changes in the data occur that indicate a potential issue with the pipeline or facilities, alarms will be triggered, notifying operations personnel of the potential issue. NuStar will amend the current North System Pipeline Integrity Management Plan to incorporate the relocation pipeline segment. This Integrity Management Plan complies with applicable federal regulations (49 CFR 195.400) and outlines preventive maintenance, inspection, line patrol, leak detection systems, and other pipeline integrity procedures that are implemented to ensure the safe operation of the North System Pipeline. In the event of an emergency, NuStar will implement emergency response measures to address the situation. Further, as required by 49 CFR 194, NuStar will amend the existing North System Pipeline Emergency Response Plan to include the relocation pipeline segment.
30. NuStar will provide construction oversight to confirm contractor compliance with mitigation measures, landowner agreements, and applicable permits. NuStar will have an inspector who is knowledgeable of the environmental mitigation requirements for the Project. The inspector will have the authority to stop construction activities and order corrective mitigation and will maintain appropriate compliance documents.
31. NuStar conducts annual emergency response exercises with local emergency responders in communities in which the North System Pipeline is located.
32. Approximately 100 feet of the Project is co-located with the existing North System Pipeline corridor.
33. NuStar has developed several project control documents that will be utilized in connection with the construction and operation of the Project, including a Storm Water Pollution Prevention Plan, Environmental Mitigation Plan (which includes NuStar's erosion control plan, revegetation plan, weed management plan, construction plan, and dust control plan), Frac-Out Contingency Plan, and an Unanticipated Discovery Plan. The Project will be integrated into NuStar's existing Pipeline Integrity Management Plan and Emergency Response Plan for the North System Pipeline.
34. NuStar will conduct regular pipeline monitoring, regular inspection, internal inspections, and aerial and foot patrol inspections as required by the Department of Transportation regulations.
35. NuStar will require that all construction-related equipment be thoroughly cleaned prior to moving the equipment to the job site to limit the potential for the spread of noxious weeds, insects and soil-borne pests. Furthermore, only certified weed free vegetative components (e.g., mulch, straw/hay bales, seed mixes) will be used on the Project.
36. NuStar will participate in the North Dakota One-Call notification system.

37. NuStar will comply with all applicable safety laws and standards.
38. In general, the Project will utilize an 80-foot-wide temporary construction right-of-way. However, additional workspace in certain areas, such as HDD boring entrance and exit locations, will be required.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over the applicant, NuStar Pipeline Operating Partnership L.P., and the subject matter of the Application under Chapter 49-22.1 of the North Dakota Century Code.
2. NuStar is a utility as defined in Section 49-22.1-01(13) of the North Dakota Century Code.
3. The Project is a gas or liquid transmission facility as defined in North Dakota Century Code Section 49-22.1-01(7).
4. The construction, operation, and maintenance of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The Project is compatible with environmental preservation and the efficient use of resources.
6. The construction, operation, and maintenance of the Project minimizes 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.

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

Order

The Commission Orders:

1. 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 2.21 miles of approximately 10-inch inside diameter refined petroleum products pipeline in Cass County, North Dakota. The Corridor will consist of the 200-foot-wide corridor centered on the pipeline route depicted on Hearing Exhibit 4.
2. Route Permit No. ____ is issued to NuStar Pipeline Operating Partnership L.P. designating a route for the construction, operation, and maintenance of approximately

2.21 miles of approximately 10-inch inside diameter refined petroleum products pipeline in Cass County, North Dakota, as depicted on Hearing Exhibit 4.

3. The Certification Relating to Order Provisions – Transmission Facility Siting (“Certification”), executed November 16, 2020 is incorporated by reference and attached to this Order.

4. To the extent there are any conflicts or inconsistencies between NuStar’s Application and the Certification, the Certification provisions control.

5. NuStar shall obtain all other necessary licenses and permits prior to commencing construction on such portion of the Project for which the license and/or permit is required, and shall provide copies of such licenses and permits to the Commission prior to said construction.

6. 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 Application within the corridor designated in this proceeding.

PUBLIC SERVICE COMMISSION

**Julie Fedorchak
Commissioner**

**Brian Kroshus
Chairman**

**Randy Christmann
Commissioner**