

152 FERC ¶ 61,100
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

NuStar Logistics, L.P.

Docket No. OR15-26-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 31, 2015)

1. On May 22, 2015, NuStar Logistics, L.P. (NuStar) filed a Petition for Declaratory Order (Petition) requesting approval of NuStar's Second Open Season held for its South Texas Crude Oil Pipeline System Expansion Project (Expansion Project).
2. NuStar requests Commission action on the Petition no later than August 31, 2015, to ensure NuStar can meet its transportation service obligations for the Expansion Project. The Commission grants the rulings requested by NuStar, as discussed below.

Background and Petition Summary

3. On December 13, 2013, NuStar Crude Oil Pipeline L.P.,¹ submitted a Petition seeking certain regulatory assurances for its Expansion Project. The Expansion Project was intended to provide take-away capacity in the Eagle Ford shale region. The Expansion Project includes the installation of mainline pumps and 60 miles of pipeline to loop a segment of the existing pipeline system.²
4. NuStar held an open season from July 17, 2013 to September 30, 2013 (Initial Open Season) seeking binding monthly volume commitments for a five-year term.

¹ NuStar Crude Oil Pipeline L.P., merged with NuStar Logistics, L.P., in March 2014. For ease of reference, NuStar will refer to NuStar Crude Oil Pipeline L.P., prior to its merge with NuStar Logistics, L.P., and NuStar Logistics, L.P., following the merger.

² Petition at 2.

Shippers had the ability to make volume commitments from three origin point locations: (1) Hwy 85, Frio County, Texas, (2) Hwy 97, McMullen County, Texas, and (3) Gardendale, La Salle County, Texas. NuStar also reserved at least 10 percent of the Expansion Project capacity during pipeline operations for uncommitted shippers. NuStar explained that committed shippers which executed a Throughput and Deficiency Agreement (Expansion Project T&D) would receive firm service and be charged a premium rate compared to the uncommitted shippers (Initial Committed Shippers).³

5. On February 28, 2014, the Commission issued a Declaratory Order approving the terms and conditions of service (February Declaratory Order).⁴ Among other things, the Commission held that: (1) NuStar's proposed rate structure and priority provisions were consistent with those the Commission has approved for other petroleum pipelines, (2) NuStar properly reserved 10 percent of the Expansion Project's capability for uncommitted shippers, (3) NuStar will properly charge a premium rate to those shippers receiving firm service, (4) committed shippers may assign their contracts or a portion of their contracted capacity, (5) NuStar may file committed shipper rates as settlement rates during the term of the Expansion Project T&Ds, (6) the Expansion Project T&Ds will be upheld and applied during the agree-upon term, and (7) NuStar's proposed rate structure and terms and conditions contained in the Expansion Project T&Ds are just and reasonable and do not result in undue discrimination or undue preference.⁵

6. After the Initial Open Season and during the construction of the Expansion Project, NuStar learned of shipper interest for a new origin point at Hwy 99. The Hwy 99 origin point was not previously contemplated during the Initial Open Season or listed in the Expansion Project T&D. NuStar determined it was feasible to include Hwy 99 as an origin point without detrimentally impacting the completion timing of the Expansion Project.⁶

7. Also during construction, NuStar became aware that the Expansion Project was capable of transporting more barrels than originally estimated.⁷ NuStar originally estimated the Expansion Project would be able to transport a total of 100,000 barrels per

³ *NuStar Crude Oil Pipeline L.P.*, Petition for Declaratory Order, Docket No. OR14-12-000, December 13, 2013.

⁴ *NuStar Crude Oil Pipeline L.P.*, 146 FERC ¶ 61,146 (2014).

⁵ *Id.* at PP 12-17.

⁶ Petition at 4-5.

⁷ *Id.* at Exhibit 2.

day (bpd), with 90,000 bpd available for committed shippers. After construction commenced, NuStar determined it will have an additional 10,000 bpd of capacity for committed shippers, after setting aside 10 percent for uncommitted shippers (Additional Firm Capacity).

8. NuStar conducted a “Supplemental” (Second) Open Season which took place from April 2, 2015 to April 23, 2015.⁸ A press release detailing the Second Open Season was issued on NuStar’s public website, and was reported by trade press.

9. During the Second Open Season, Initial Committed Shippers and Prospective Committed Shippers were able to elect Hwy 99 as an origin point. Any volumes tendered at this location would count towards fulfillment of the Initial Committed Shipper’s contracted volume commitments. The Additional Firm Capacity was also made available to both Prospective Committed Shippers and Initial Committed Shippers. Prospective Committed Shippers making a volume commitment for firm service on the Additional Firm Capacity were required to execute a throughput and deficiency agreement (Second Expansion Project T&D). NuStar contends the only difference between the Expansion Project T&D and the Second Expansion Project T&D was the addition of Hwy 99 as a potential origin point.⁹

10. NuStar states it provided an Information Memorandum and Binding Open Season Notice (Notice) to shippers interested in participating in the Second Open Season upon execution of a confidentiality agreement. The Notice outlined the Second Open Season process and provided a high-level summary of the proposed terms and conditions of service for the Expansion Project. The Notice also highlighted procedures available to Prospective Committed Shippers and Initial Committed Shippers.

11. NuStar contends that the Second Open Season process follows established Commission guidelines.¹⁰ NuStar states it held a well-publicized open season during which preferential capacity rights were available to any interested shipper willing and able to meet the pipeline’s contractual requirements. Further, NuStar maintains that it ensured the Second Open Season allowed ample time for parties to review the Second Expansion Project T&D and the amendment process to the existing Expansion Project T&Ds.

⁸ *Id.* at 5. NuStar’s “Supplemental” Open Season process is referred to herein as the Second Open Season for clarity of demarcation, since the Initial Open Season had in fact closed on September 30, 2013.

⁹ *Id.* at 6.

¹⁰ *Id.* at PP 9-10.

12. NuStar further states that it conducted its Second Open Season in a manner that ensured the same terms and conditions of service equally applied to all similarly-situated committed shippers on the Expansion Project. NuStar explains the Expansion Project T&D was identical to the T&D offered during the Second Open Season with exception of the addition of the origin and volume commitment amendment. NuStar maintains these were the only amendments available during the Second Open Season and all other provisions in the existing Expansion Project T&Ds would remain unchanged.

13. Following the conclusion of the Second Open Season, NuStar explains that several Initial Committed Shippers elected to amend their existing Expansion Project T&Ds to add Hwy 99 as an origin point. No shippers submitted volume commitments for the Additional Firm Capacity.¹¹

14. NuStar explains it has not harmed any committed shipper on the Expansion Project by allowing Initial Committed Shippers the ability to amend the Expansion Project T&Ds and that all shippers had an equal and ample opportunity to elect Hwy 99 as an origin point. NuStar contends the amendments do not impact the applicability of any provision set forth in the Expansion Project T&D and that the amendments provide additional flexibility to all committed shippers. NuStar states that the exact provisions the Commission reviewed and approved in the February Declaratory Order were reflected in the Second Open Season.¹²

Requested Rulings

15. NuStar requests Commission confirmation and approval of the following aspects of the Second Open Season:

- i. The Second Open Season process properly followed Commission guidelines;
- ii. NuStar appropriately allowed Initial Committed Shippers to amend their existing Expansion Project T&Ds during the Second Open Season to add Hwy 99 as an origin point and/or increase their volume commitments for firm capacity on Additional Firm Capacity;

¹¹ *Id.* at Footnote 28.

¹² *Id.* at PP 12-13.

- iii. The regulatory assurances provided by the Commission in the February Declaratory Order are not affected by the Second Open Season or by the above-noted amendments to the Expansion Project T&D.

Public Notice, Interventions, Protests, and Comments

16. Notice of the Petition was issued on May 26, 2015, providing for motions to intervene, comments and protests to be filed on or before June 22, 2015. Pursuant to Rule 214 of the Commission's regulations,¹³ all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. The Petition is unopposed.

Commission Analysis

17. The Commission will grant the rulings requested by the Petitioners. The Commission finds that the Second Open Season Process appropriately followed Commission guidelines. The Second Open Season was publicly advertised on NuStar's website, and was reported by trade press. All shippers had a fair and equal opportunity to acquire the Additional Firm Capacity and to select the Hwy 99 origin point on the system. The Commission has previously stated that any new terms or conditions offered in a Second Open Season must also be offered to the Initial Committed Shippers so that all committed shippers will be afforded the opportunity to accept the same terms or conditions.¹⁴ The present situation follows this guidance.

18. The Commission finds that NuStar appropriately allowed Initial Committed Shippers to amend their existing Expansion Project T&Ds during the Second Open Season to add Hwy 99 as an origin point and/or increase their volume commitments for firm capacity on the Additional Firm Capacity. The new terms were afforded to all shippers in an open, fair, and non-discriminatory fashion, and the process and limited nature of the Expansion Project T&D amendment was clearly outlined in the Notice.

19. The Commission confirms that the regulatory assurances provided in its February Declaratory Order remain effective, and are not affected by the Second Open Season or the amendments to the terms of the Expansion Project T&D.

¹³ 18 C.F.R. § 385.214 (2014).

¹⁴ *Alpha Crude Connector, LLC*, 149 FERC ¶ 61,111 (2014).

The Commission orders:

The Commission grants the Petition, consistent with the discussion above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.