

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: NUSTAR PIPELINE OPERATING PARTNERSHIP L.P.	DOCKET NO. HLP-2021-0002
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FINAL DECISION AND ORDER

APPEARANCES

Bret Dublinske, Attorney at Law, Fredrickson & Byron, P.A., 111 E. Grand Ave., Suite 301, appearing for NuStar Pipeline Operating Partnership L.P.

Jennifer Johnson, Attorney at Law, appeared for the Office of Consumer Advocate, a division of the Iowa Department of Justice. 1375 E. Court Ave., Des Moines, Iowa.

Anna Ryon, Attorney at Law, appeared for the Office of Consumer Advocate, a division of the Iowa Department of Justice. 1375 E. Court Ave., Des Moines, Iowa.

John Hayes, pro se, appeared for Hayes Menke 9, LLC. 216 Willie St., Mount Prospect, Illinois.

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BACKGROUND

On January 27, 2022, NuStar Pipeline Operating Partnership L.P. (NuStar) filed a petition with the Utilities Board (Board) in Docket No. HLP-2021-0002 for a permit to construct, operate, and maintain 13.74 miles of six-inch diameter hazardous liquid pipeline in Lee County, Iowa, to transport anhydrous ammonia. The proposed hazardous liquid pipeline would have a maximum operating pressure (MOP) of 1,480 pounds per square inch gauge (psig) with a normal operating pressure of 1,320 psig. The requested permitted pressure is 1,480 psig. The proposed hazardous liquid pipeline is to be located entirely in Lee County, Iowa.

On April 11, 2022, the Board issued an order setting a scheduling conference for April 22, 2022.

On May 9, 2022, the Board issued an order addressing Exhibit H and setting the intervention deadline based upon discussions held at the April 22, 2022 scheduling conference.

On June 29, 2022, the Board issued an order declaring Exhibit H to be in final form and setting the procedural schedule.

On October 7, 2022, NuStar filed a motion to reschedule the hearing originally scheduled to commence on October 19, 2022.

On October 10, 2022, Hayes Menke 9, LLC (HM9) filed an objection to NuStar's motion to reschedule.

On October 14, 2022, the Board issued an order continuing the hearing and setting a scheduling conference for October 19, 2022, to discuss a new hearing date.

On October 26, 2022, HM9 filed a petition to intervene and requested Board approval to be represented by John Hayes.

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On October 28, 2022, the Board issued an order continuing the hearing and approving the notice of eminent domain proceedings. Based on discussions at the October 19, 2022 scheduling conference, the hearing was continued until 1 p.m. January 9, 2023.

On November 4, 2022, the Board issued an order granting HM9's intervention and consenting to John Hayes' representation of HM9. The order also modified the procedural schedule for direct testimony, filed by HM9, and corresponding responses filed by NuStar and the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice.

The hearing commenced at 1 p.m. January 9, 2023, in Fort Madison, Iowa, and concluded at 9 p.m. January 10, 2023, which closed the evidentiary record for this docket. NuStar appeared and presented the testimony of Mr. Gary Koegeboehn, Ms. Megan Acker, Mr. Jim Schwartz, Mr. Brian Potts, and Mr. K.C. Purgason over the two-day hearing. OCA appeared and presented the testimony of Mr. Scott Bents. HM9 appeared and presented the testimony of John Hayes. A Board staff engineer assigned to review the petition and route, testified at the hearing.

At the hearing, the parties agreed, without objection, to the admission of the initial staff report issued on July 7, 2022, and the supplemental staff report issued on October 31, 2022, into the record. (HT,¹ p. 16.) The parties also agreed to the admission of the pleadings, prefiled testimony, and prefiled exhibits. (HT, pp. 16-17.) NuStar and Mr. Hayes reserved their rights to object to prefiled exhibits, if needed, during the hearing. (*Id.*)

¹ HT as used throughout this order shall refer to the hearing transcript filed in EFS on January 26, 2023.

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During the course of the hearing, HM9 introduced and moved admission of eight hearing exhibits. (HT, pp. 98, 230, 306, 298, 399, 514.) All eight hearing exhibits were admitted without objection. (*Id.*) The Board's rules at 199 Iowa Administrative Code (IAC) 7.23(4)(d) require the sponsoring party to file admitted hearing exhibits in the Board's electronic filing system (EFS) within three days of the hearing's conclusion. HM9 filed HM9 Hearing Exhibits 1, 3, 5, 6, 7, and 8 on January 13, 2023. To date, HM9 has not filed HM9 Hearing Exhibits 2 and 4, which consist of pictures of NuStar right-of-way markers and the Iowa Fertilizer Company's (IFCo) rail yard, respectively. (HT, pp. 77-78, 253-254.)

On January 23, 2023, the Board issued an order setting the briefing schedule with simultaneous initial briefs due 14 days after filing of the hearing transcript and simultaneous reply briefs due seven days thereafter.

On January 26, 2023, the hearing transcript was filed.

On February 9, 2023, NuStar, OCA, and HM9 filed simultaneous initial post-hearing briefs.

On February 16, 2023, NuStar, OCA, and HM9 filed simultaneous post-hearing reply briefs.

On March 8, 2023, the Board issued an order reopening the record for the limited purpose of receiving additional evidence as it relates to NuStar's ability to pull the drill string, used for horizontal directional drilling (HDD), from the southwest toward the Margaret Strunk and Coette Gida property. On March 15, 2023, NuStar filed its response to the Board's order.² Included in NuStar's response was a statement indicating NuStar had executed an agreement with IFCo.

² An in-depth discussion about the drill string can be found, *infra*, Section B.7.

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On March 22, 2023, OCA filed its response, appreciating the efforts made by NuStar to minimize the impact to Ms. Strunk and Ms. Gida's property, while maintaining the issues raised in its initial and reply post-hearing briefings.

Also on March 22, 2023, HM9 filed its response to NuStar's filing. HM9's response requests the Board strike the information contained within NuStar's response relating to the signed agreement. HM9 asserts this information is beyond the scope of the limited reopening made by the Board.³

The Board agrees with HM9 that this information is beyond the limited reopening of the record for the limited purpose of receiving additional evidence about pulling the drill string from the opposite direction. The Board will therefore strike the information contained on page two of NuStar's March 15, 2023 response discussing the IFCo agreement.

HM9's filing also requests the Board take official notice of information related to Ms. Strunk. The Board will not be taking official notice of this information. Rather, the Board reviewed and considered the information testified to by her daughter, Ms. Gida. (See HT, p. 546.) Taking official notice of this information now would run afoul of the same arguments HM9 made about the information NuStar included.

FINDINGS OF FACT

Iowa Code chapter 479B establishes requirements for issuing a permit for an interstate hazardous liquid pipeline. The Board has adopted rules in 199 IAC chapter 13 that establish requirements for a hazardous liquid pipeline permit. The relevant statutory

³ HM9's response discusses the merits of NuStar's filing. This information will be discussed, *infra*, Section B.7.

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and rule requirements for issuing a new hazardous liquid pipeline permit are addressed below:

A. Iowa Code § 479B.4

Iowa Code § 479B.4 requires a company seeking to construct a hazardous liquid pipeline to “file a verified petition with the board asking for a permit to construct, maintain, and operate a new pipeline along, over, or across the public or private highways, grounds, waters, and streams of any kind in this state.” Iowa Code § 479B.4(1). An informational meeting is required to be held in each county where real property rights will be affected, at least 30 days prior to the filing of a petition, and the proposed hazardous liquid pipeline is projected to be five or more miles in length and be operated above 150 psig. (*Id.* at § 479B.4(3); 199 IAC 13.2.)

Pursuant to Iowa Code § 479B.4(4), a hazardous liquid pipeline company is required to give “notice of the informational meeting to each landowner affected by the proposed project and each person in possession of or residing on the property.” Additionally, Iowa Code § 479B.4(5)(b) requires the hazardous liquid pipeline company to serve the notice, with return receipt requested, “not less than thirty days previous to the time set for the meeting, and shall be published once in a newspaper of general circulation in the county.” The Board’s rules at 199 IAC 13.2(5)(c) require the notice to be published in a newspaper of general circulation “at least one week and not more than three weeks prior to the date of the meeting.”⁴

⁴ NuStar’s request for the informational meeting was filed prior to the revisions enacted during the Board’s comprehensive review of 199 IAC chapter 13. The revisions enacted in Docket No. RMU-2020-0013 did not become effective until October 13, 2021, eight days after NuStar’s informational meeting. Therefore, the requirements for the informational meeting were subject to the previous chapter 13 rules effective on December 24, 2008, and the petition and remainder of NuStar’s docket is subject to the current chapter 13 rules effective October 12, 2021.

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On September 28, 2021, NuStar filed a copy of its informational meeting presentation and proof of publication of the informational meeting. The affidavit attached with the proof of publication, filed on September 28, 2021, states the informational meeting notice was published in The Daily Democrat on September 20, 2021. The Board finds NuStar complied with the requirements in effect at the time for notice of the informational meeting.

The informational meeting was held on October 5, 2021, in Lee County, Iowa. (NuStar Petition Exhibit G.)

The Board finds NuStar has met the requirements established by Iowa Code § 479B.4 and 199 IAC 13.2.

B. Iowa Code § 479B.5

Iowa Code § 479B.5 establishes the information to be included in a verified petition. The Board's rules at 199 IAC 13.3 establish filing requirements and exhibits to be filed with the petition. Each requirement will be discussed below.

1. Iowa Code §§ 479B.5(1) and (2)

Iowa Code §§ 479B.5(1) and (2) require the petition to state the name of the company applying for the petition and the company's principal place of business. NuStar's revised petition identifies NuStar as a limited partnership conducting business under the laws of Delaware, with its principal place of business at 19003 IH-10 West, San Antonio, Texas 78257. The Board finds NuStar has met the requirements of Iowa Code §§ 479B.5(1) and (2).

2. Iowa Code § 479B.5(3)

Iowa Code § 479B.5(3) requires the petition to include a legal description and map of the proposed hazardous liquid pipeline. The Board's rules at 199 IAC 13.3(1)(a)

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and (b) establish Exhibits A and B, respectively, to meet these requirements. Board rule 199 IAC 13.3(1)(a) establishes the minimum requirements for the contents of the legal description, and 199 IAC 13.3(1)(b) describes the characteristics and what is to be included in the map of the proposed hazardous liquid pipeline. In Mr. Potts' direct testimony, he states he is sponsoring Exhibits A and B. (Potts Direct, p. 3.) The Board finds NuStar has met the requirements of Iowa Code § 479B.5(3) and 199 IAC 13.3(1)(a) and (b).

3. Iowa Code § 479B.5(4)

Iowa Code § 479B.5(4) requires “[a] general description of the public or private highways, grounds, waters, streams, and private lands of any kind along, over, or across which the proposed pipeline will pass.” To comply with this statutory provision, the Board’s rules at 199 IAC 13.3(1)(f)(2)(1), Exhibit F, require a statement of the nature of the lands, waters, and public or private facilities where the proposed pipeline will cross. In its Exhibit F, section 2, sponsored by Mr. Potts, NuStar describes the general nature of the lands it will cross. (Potts Direct, p. 3.) NuStar asserts its proposed hazardous liquid pipeline will not cross any public land or facility, not including railroad rights-of-way or roadways. (NuStar Exhibit F, section 2.4.) NuStar states its proposed hazardous liquid pipeline would cross two named waterbodies: Lost Creek and Mud Creek. (*Id.* at section 2.3.) Furthermore, NuStar estimates its proposed hazardous liquid pipeline will cross 7.32 miles of cultivated land, 2.87 miles of hay or pasture land, 1.94 miles of deciduous forest, approximately 1.07 miles of developed land, approximately 0.31 miles of wetlands, and approximately 0.28 miles of herbaceous or shrub land. (*Id.* at section 2.1, table 1.)

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The Board finds NuStar provided a general description of the lands to be crossed by its proposed hazardous liquid pipeline in compliance with Iowa Code § 479B.5(4) and 199 IAC 13.3(1)(f)(2)(1).

4. Iowa Code § 479B.5(6)

Iowa Code § 479B.5(6) requires a company petitioning the Board for a hazardous liquid pipeline to include a description about the use of alternative routes. The Board's rules state, at 199 IAC 13.3(1)(f)(2)(2), that Exhibit F is to include a general statement about the possible use of alternative routes.

In Exhibit F, section 3, and Mr. Potts' direct testimony, NuStar describes the alternative routes it considered before selecting its preferred route. In his testimony, Mr. Potts describes three alternative routes to the route proposed in the petition: first, a direct route from the beginning point to endpoint; second, a route following a railroad that also runs near the endpoints; and third, following Highway 61, which runs near the beginning and endpoints. (Potts Direct, p. 5.) Mr. Potts testifies the first alternative was removed from further consideration due to its close proximity to Fort Madison, Iowa. (*Id.*) Mr. Potts' testimony states the second alternative was removed from consideration due to a portion of the railroad being built into the Mississippi River and the proximity to Fort Madison. (*Id.*) For the third alternative, Mr. Potts testifies it was removed from consideration due to large elevation and terrain changes. (*Id.*)

In his direct testimony, Mr. Hayes questions why NuStar did not evaluate a route that would parallel the TransCanada pipeline⁵ for a longer distance before paralleling

⁵ The TransCanada pipeline is an interstate natural gas pipeline currently owned by TC Energy after it acquired ANR Pipeline Co. in 2007. *TransCanada Completes \$4.1B Acquisition of ANR Pipe, Great Lakes Gas, MI Storage*, Natural Gas Intelligence (Feb. 26, 2007), <https://www.naturalgasintel.com/transcanada-completes-4-1b-acquisition-of-anr-pipe-great-lakes-gas-mi-storage/>.

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180th Street. (Hayes Direct, p. 4.) Mr. Hayes testifies this route would allow for better access for construction and have approximately four miles of nearly unabated access. (*Id.*; see Hayes Direct Exhibit FF.)

In rebuttal testimony, Mr. Potts testifies NuStar did evaluate a longer paralleling of the TransCanada pipeline but ultimately removed it from consideration due to constructability issues, the need to remove more trees, and the need to construct a longer hazardous liquid pipeline with additional turns to properly align with IFCo. (Potts Supp. Rebuttal, p. 2.) Mr. Potts testified the route proposed by Mr. Hayes would have increased the overall length by 0.5 miles and would have impacted 11 additional parcels. (*Id.* at 3.) Additionally, Mr. Potts testified the route proposed by Mr. Hayes would have needed to be altered to accommodate a parcel owned by the Iowa Conservation Commission.⁶ (*Id.*)

The Board has determined NuStar demonstrated it considered alternative routes. The Board will discuss whether it will approve the proposed route or require modifications in Section E below.

5. Iowa Code § 479B.5(7)

Iowa Code § 479B.5(7) requires a hazardous liquid pipeline company to describe the relationship of the proposed hazardous liquid pipeline to the present and future land use and zoning ordinance. The Board rule at 199 IAC 13.3(1)(f)(2)(3) describes this requirement in terms of the petition documentation.

In Exhibit F, section 4.0, NuStar states it met with Lee County and local municipal representatives regarding its proposed hazardous liquid pipeline. NuStar states its

⁶ The Iowa Conservation Commission became the Iowa Department of Transportation in 1986. (86 Iowa Acts, ch. 1245, section 1827.)

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proposed hazardous liquid pipeline will adhere to applicable county and local land use and zoning restrictions. (NuStar Exhibit F, section 4.0.) Additionally, NuStar states there are no known changes to the existing zoning covering the proposed route of the hazardous liquid pipeline that would impact its proposed pipeline. (*Id.*)

The Board finds NuStar has complied with the requirements of Iowa Code § 479B.5(7) and 199 IAC 13.3(1)(f)(2)(3).

6. Iowa Code § 479B.5(8)

Iowa Code § 479B.5(8) requires the hazardous liquid pipeline company's petition to include a statement regarding the inconvenience and undue injury which may result to property owners as a result of the proposed hazardous liquid pipeline. Exhibit F, 199 IAC 13.3(1)(f), is the petition documentation requirement for this code provision.

NuStar's Exhibit F, section 5.0, states the proposed hazardous liquid pipeline would inconvenience landowners with construction-related noise and activities, as well as temporary disruption to the land. (NuStar Exhibit F, section 5.0.) NuStar states the Pipeline and Hazardous Materials Safety Administration (PHMSA) has regulations at 49 CFR Parts 194 and 195 that must be completed prior to filing to avoid and minimize the chance of an emergency resulting from the hazardous liquid pipeline. (*Id.*)

At hearing, Ms. Gida testified regarding the inconvenience or undue injury that may result due to the construction of NuStar's proposed hazardous liquid pipeline. (HT, pp. 546-548.) Ms. Gida testified the use of the temporary construction easement would limit her ability to freely access her pond and impact her summer pasture and hay ground for feeding her cattle. (*Id.* at 544, 546.) Ms. Gida further testified the aerial surveillance of NuStar's proposed hazardous liquid pipeline would be an intrusion onto her property. (*Id.* at 546.) Ms. Gida also testified the proposed hazardous liquid

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pipeline construction would impact her mother. (*Id.* at 547.) Ms. Gida testified her mother suffers from a medical issue, which may result in the need for her to leave the house during the construction of the proposed hazardous liquid pipeline. (*Id.*)

In its initial post-hearing brief, HM9 states NuStar failed to notify landowners about incidents that occurred in the fall of 2021 and spring of 2022, which resulted in evacuations. (HM9 Initial Post-Hearing Brief, p. 28.) HM9 asserts leaving your home during the nighttime would be an inconvenience not disclosed by NuStar. (*Id.* at 29.) HM9 states this silence is a deliberative deception used by NuStar for it to obtain voluntary easements. (*Id.*)

In its initial post-hearing brief, OCA restates Ms. Gida's concerns with affirmation that NuStar's proposed hazardous liquid pipeline would inconvenience Ms. Gida.

In its post-hearing reply brief, NuStar states it was examining whether the drill string can be lined up on the adjoining property to the west and be pulled northeast toward the Struck/Gida property. (NuStar Post-Hearing Reply Brief at 14.) NuStar stated that, if this is a viable option, there would be additional space between the construction and Ms. Gida's mother's house. (*Id.*) Regarding OCA's acceptance of Ms. Gida's injury from the flyovers, NuStar stated this theory is unprecedented and would allow thousands of Iowans to assert that they are injured daily "by commercial airlines, military and law enforcement aircraft, traffic and medical helicopters. . . ." (*Id.* at 15.)

The Board in its March 8, 2023 order reopening the record sought an update as to whether the drill string could be pulled as is described in NuStar's post-hearing reply brief. In its response, NuStar states it was able to obtain additional easements to the southwest of Ms. Gida's property and will be able to pull the drill string toward

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Ms. Gida's property.⁷ NuStar states temporary workspace still will be needed on Ms. Gida's property; however, the workspace can be reduced and the impact will be less intensive. (*Id.* at 1-2.) Instead of staging, stringing, and welding on the temporary workspace, NuStar asserts the temporary workspace will be used only to access the drill site. (See *id.* at 2.) NuStar's response states the change in the use of the easement means it can reduce the width of the easement by 10 feet and relocate the easement 15 feet further away from Ms. Gida's mother's house. (*Id.*)

In its response, OCA states it "appreciates the efforts made by NuStar to minimize the impact of pipeline construction on Ms. Strunk by changing the direction of the drill string." (*OCA Reply to Response to Order Reopening Record*, p. 1.)

In response to NuStar's March 15, 2023 filing, HM9 states the relocation of the drill string from Ms. Gida's property to another does not alleviate the concerns raised by Ms. Gida at hearing.⁸ HM9 asserts there is no discernable difference between the access easement currently proposed by NuStar and the earlier temporary construction easement. (*Id.*) Furthermore, HM9 asserts the owner of the property where the drill string is now to be strung was not aware of the change. (*Id.* at 4.)

While the Board understands the situation described by Ms. Gida, the Board finds NuStar has complied with the requirements of Iowa Code § 479B.5(8) and 199 IAC 13.3(1)(f)(2)(3).

In order to address the concerns made by Ms. Gida, the Board will require NuStar to relocate the access easement from between Ms. Gida's house and her

⁷ *In re: NuStar Pipeline Operating Partnership L.P.*, Docket No. HLP-2021-0002, *Response to Order Reopening Record and Requiring Update*, p. 1 (IUB March 15, 2023) [hereinafter *NuStar Reopening Response*].

⁸ *HM9 Objection to NuStar Response to Order Reopening Record and Requiring Update, Request to Redact or Strike, Request to Examine New Evidence*, p. 3.

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mother's house to the south of Ms. Gida's mother's house. The Board finds relocating the access easement to the south of Ms. Gida's mother's house, with the entrance to the access easement located across from the access to the HM9 property, will reduce the impacts raised by Ms. Gida as well as address her concerns as it relates to her mother.

In addition to relocating the access easement, the Board will hold NuStar to its testimony where it states it will work with landowners, including eminent domain landowners, to address concerns they may have. (HT, pp. 342, 579.) At hearing, Mr. Potts testified NuStar is willing to work with Ms. Gida to ameliorate construction disturbances to her mother. (*Id.* at 579.) Mr. Potts agreed to work with Ms. Gida on schedules and notifications for construction activities on her parcels. (*Id.*)

To the issues raised about summer pasturing and hay, the Board notes that should Ms. Gida be forced to purchase additional hay as a result of the construction work, this would be a damage resulting from the pipeline construction for which NuStar would be required to compensate Ms. Gida. (Iowa Code §479B.29.) With regard to summer pasturing, if Ms. Gida is forced to relocate her livestock for grazing purposes during the construction, this too is a damage for which NuStar is required to compensate Ms. Gida. (*Id.*) It should also be noted that under the land restoration plan, discussed below, NuStar is required to construct temporary fencing "in a manner which will contain livestock." (199 IAC 9.4(3).) As Ms. Gida has testified to having both horses and bulls, the fencing required will need to be of sufficient strength to contain, what can be, cantankerous animals. (See HT, pp. 521, 540.)

The Board will require NuStar to comply with all these requirements and to work with Ms. Gida to reduce her concerns related to her mother's well-being. NuStar will

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only be allowed to use the temporary access easement as an access easement and not as a staging ground. This means NuStar will be able to drive equipment on the easement, but may not park anything on the easement. By ensuring NuStar works with Ms. Gida and does not use the temporary construction easement for anything besides an access easement, the Board finds the inconvenience and undue injury to Ms. Gida and her mother will be reduced and issues raised by HM9 will be addressed.

Regarding HM9's assertions that the landowner where the drill string is now to be located is unaware of this change, the Board will not require additional information or changes from NuStar. NuStar is not requesting the right of eminent domain over this property, and the property owner has entered into an agreement with NuStar for NuStar to use the property. Details of that language and conditions of the agreement are between NuStar and the landowner. If the landowner believes NuStar is acting beyond the terms of the agreement, the landowner may have a course of action in a court that has jurisdiction over this issue.

7. Iowa Code § 479B.5(9)

Iowa Code § 479B.5(9) requires an affidavit attesting that the informational meeting was held in each affected county, along with providing the date and time of such meetings. The Board's rules at 199 IAC 13.3(1)(g), Exhibit G, require copies of the notice letter, corridor map, and published meeting notices attached to the affidavit.

In NuStar's Exhibit G, NuStar includes an affidavit signed by Mr. Koegeboehn averring that he attended the informational meeting held at 6 p.m. October 5, 2021, in Lee County. Mr. Koegeboehn's affidavit asserts copies of the notice letter, corridor map, published notice, and proof of publication were attached to his affidavit. Lastly, Mr. Koegeboehn's affidavit states a representative of the Board presided over the

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informational meeting and presented an agenda for the meeting, including a summary of the legal rights of affected landowners.

The Board finds NuStar has complied with the requirements of Iowa Code § 479B.5(9) and 199 IAC 13.3(1)(g).

C. Iowa Code § 479B.6

Iowa Code § 479B.6(1) requires the hearing to be set by the Board and for published notice to occur for two consecutive weeks in each county where the proposed hazardous liquid pipeline is to be located. Iowa Code § 479B.6(2) requires the hearing to be not less than 10 and no more than 30 days from the date of the last publication. Additionally, if the proposed hazardous liquid pipeline is to be more than five miles in length, the hearing must be held in the county seat of the county located at the midpoint of the proposed hazardous liquid pipeline. The Board's rules at 199 IAC 13.4(3) establish the requirements for the hearing notice. The published hearing notice is to include a map of the hazardous liquid pipeline route or a telephone number and address through which an interested person may obtain a copy of the map at no cost. (199 IAC 13.4(3).)

For parcels subject to a request for eminent domain, the Board's rules at 199 IAC 13.4(4) require additional notice to those affected persons. In addition to the published notice, the hazardous liquid pipeline company shall serve a copy of the "notice of hearing on the landowners and any affected person with an interest in the property over which eminent domain is sought" and a copy of Exhibit H for the affected property. (199 IAC 13.4(4).) The notice sent to eminent domain landowners and affected persons is to be mailed via certified United States mail, return receipt requested, no later than the first day of publication of the hearing notice. (*Id.*) The hazardous liquid pipeline company is

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to provide a certificate of service to the Board, not less than five days prior to hearing, “showing all persons and addresses to which notice was sent by certified mail, the date of the mailing, and an affidavit that all affected persons were served.” (*Id.*)

On January 3, 2023, NuStar filed a proof of mailing stating it sent notices via United States certified mail, return receipt requested, to all owners of record and parties in possession of the land over which eminent domain was sought. NuStar’s proof of mailing states it received returned mail on December 19, 2022, of Northwestern Bell Company’s notice. NuStar’s proof of mailing asserts it sent notice on December 19, 2022, to Lumen Technologies as successor of Northwestern Bell Company. On January 6, 2023, NuStar filed proof of publication of the hearing notice for the hearing on January 9, 2023, establishing the hearing notice and map were published on December 6 and 13, 2022, in The Daily Democrat.

The Board finds NuStar has complied with the requirements of Iowa Code § 479B.6 and 199 IAC 13.4(3). NuStar’s proposed hazardous liquid pipeline is located entirely within Lee County. (See NuStar Petition Exhibit A.) Lee County is the only Iowa county that has two county seats: Fort Madison and Keokuk.⁹ The hearing was held in Fort Madison. (HT, p. 6.) The proof of mailing establishes NuStar sent the notice to landowners and affected persons for those parcels subject to a request for eminent domain, and the notices were sent on December 1, 2022. This notice was mailed before the official notice was published. (199 IAC 13.4(4).) Lastly, the hearing notice was published in a newspaper of general circulation in Lee County, The Daily Democrat, not less than 10 and no more than 30 days from the date of the second

⁹ See *The Honorable Rich Taylor*, Opinion No. 15-1-1, 2015 WL 0014872, at *4 (Iowa Att’y Gen. Op. January 16, 2015).

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publication. The second publication date was December 13, 2022, and the hearing was held on January 9-10, 2023; therefore, 27 days elapsed between the second publication and the date of the hearing. (*Id.* at 13.4(2).) Based upon this information, the Board finds NuStar complied with the requirements of Iowa Code § 479B.6 and 199 IAC 13.4.

D. Iowa Code § 479B.7

Iowa Code § 479B.7(1) allows that “[a] person, including a governmental entity, whose rights or interests may be affected by the proposed pipeline or hazardous liquid storage facilities may file written objections.” Iowa Code § 479B.7(2) requires all objections to be filed five days prior to the hearing, but the Board may permit the late filing of objections so long as the Board grants the company seeking to construct a hazardous liquid pipeline a reasonable amount of time to respond to the late-filed objections.

In total, as of the date of the post-hearing reply briefs, the Board received 24 objections in NuStar’s docket. Prior to the hearing, there were 16 objections filed in the docket. Of those objections, four related to NuStar. The remaining objections filed prior to NuStar’s hearing related to liquefied carbon dioxide pipelines and are not pertinent to NuStar’s anhydrous ammonia pipeline. Of the four objections, one objection filed by Marilyn Mercer and John Mercer on October 13, 2021, was withdrawn by them on January 27, 2022. Another objection filed was by HM9 prior to it becoming a party to the proceeding.

A third objection was filed by Ted W. Stein, Trustee of the Ted W. Stein Trust (Stein Trust) on October 5, 2021. The Stein Trust objects to the proposed hazardous liquid pipeline and asserts the proposed pipeline does not meet the standard for public convenience and necessity. Additionally, Stein Trust states NuStar could use railroad

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rights-of-way, highway easements, or truck the anhydrous ammonia over the corridor.

On November 10, 2022, Ms. Carelle Jean Muellner Stein filed a document titled

“Memorandum Concerning the Use of Eminent Domain to Condemn Iowa Farmland.”

According to the signature, Ms. Stein was signing on behalf of the Stein Trust. Ms.

Stein testified at the hearing. (HT, pp. 586-600.) Stein Trust’s property is approximately

0.5 miles from the proposed hazardous liquid pipeline. (*Id.* at 588.)

A fourth objection was filed by Assistant Iowa Attorney General Michael Moss on

December 21, 2022, representing the State of Iowa. Mr. Moss states the use of

eminent domain against the State is prohibited by Iowa Code § 479B.16(3). According

to Mr. Moss, NuStar is precluded from utilizing eminent domain against the State of

Iowa to acquire any portion of property interest. Mr. Moss states:

To the extent that the interest of the State of Iowa in said lands is not an interest in a public highway right-of-way, it is incumbent upon [NuStar] to set forth clear and convincing legal authority which would permit the exercise of eminent domain in relation to the State of Iowa in that scenario.

The objection by HM9 will be discussed based upon arguments it made in

testimony and at hearing. The objections and testimony by Stein Trust and Ms. Stein

will be discussed later in this order. Similarly, the objection by Mr. Moss will be

discussed later in this order.

Since the commencement of the hearing, an additional nine objections, as of the

date of the post-hearing reply briefs, were filed. Two of these objections were filed by

Ms. Stein and one was filed by Mr. Stein. Another five were filed relating to liquefied

carbon dioxide pipelines. The last was filed by Ms. Anita Hunold, stating she does not

want NuStar or a liquefied carbon dioxide pipeline on her property. As stated above,

the evidentiary aspect of this proceeding ceased upon adjournment of the hearing on

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January 10, 2023, except for the limited reopening ordered by the Board. Therefore, the Board will not consider these objections as part of the record to be reviewed by the Board.¹⁰

E. Iowa Code §§ 479B.8 and 479B.9

Iowa Code § 479B.8 allows the Board to examine the proposed route of a hazardous liquid pipeline and requires the Board to “consider the petition and any objections,” while further adding the Board “may hear testimony to assist the board in making its determination regarding the application.” The first sentence of Iowa Code § 479B.9 allows the Board the ability to “grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper.”¹¹

The Board had its staff perform a route examination for NuStar’s proposed hazardous liquid pipeline as well as the examination of the petition. Board Staff performed their route examination on May 17 and 18, 2022. (HT, p. 23; July 7, 2022, Staff Report.) The July 7, 2022 report states the petition appears to be complete and sufficient to proceed with a hearing. However, Board Staff did raise several issues, which NuStar was to address in its testimony. (HT, pp. 19-21.)

One concern raised by Board Staff stemmed from the consents from highway authorities and permits or consents from other state or federal authorities. (*Id.* at 20.) The Board’s rules at 199 IAC 13.3(1)(e) require a list of all other consents or

¹⁰ While the February 8, 2023 filing by Stein Trust is titled “Post-Hearing Memorandum Concerning the Use of Eminent Domain to Condemn Iowa Farmland for Private Use,” Stein Trust is not a party to the proceeding, thus the Board will treat the filing as an objection, not a brief. See 199 IAC 7.23(8) (describing when and how a party may file a brief).

¹¹ A discussion on whether the proposed hazardous liquid pipeline will promote the public convenience and necessity will be discussed in Section I.

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documentation from public highway authorities, railroad companies, other state agencies, and federal agencies. NuStar witness Potts testifies that NuStar received two of the three necessary permits for Iowa Department of Transportation (IDOT) crossings. (Potts Direct, p. 18.) Mr. Potts testified the outstanding permit was a joint IDOT and Lee County permit, which Lee County indicated it would issue upon the Board's granting of a permit. (*Id.*) Mr. Potts further testified NuStar had outstanding permits from the United States Army Corps of Engineers, the Iowa Department of Natural Resources, and Lee County. (*Id.* at 19.) According to Mr. Potts, these permits will be obtained one to three months prior to construction commencing. (*Id.*) At hearing, NuStar witness Purgason testified that NuStar had obtained all three of the road crossing permits. (HT, p. 404.) Mr. Purgason did not address any other additional permits obtained by NuStar. (See HT, pp. 402-404.)

Another question posed by Board Staff stemmed from how NuStar proposes to traverse through forested areas and the crossing of creeks and streams. (HT, p. 21; July 7, 2022 Staff Report.) In direct testimony and at hearing, Mr. Potts asserts NuStar will HDD areas where there are trees and creeks or streams. (Potts Direct, p. 19; HT, pp. 364-365.) Mr. Potts further testifies that in areas where trees are located on the permanent right-of-way, the trees will be removed to the width of the easement, 30 feet. (Potts Direct, p. 19.) Mr. Potts testifies the clearing of trees on the permanent easement is necessary to comply with the aerial requirements of 49 CFR § 195.412. (*Id.*) Mr. Potts testifies any trees removed will be subject to the land restoration plan proposed by NuStar as part of its petition. (NuStar Petition Exhibit I; Potts Direct, p. 20.)

Additionally, Board Staff asked NuStar the reason for the 1,700-foot temporary construction easement located on eminent domain parcels H-05 (IA-LEE-038-041.00);

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H-07 (IA-LEE-038-043.00); and H-8 (IA-LEE-038-043.10). In his direct testimony, Mr. Potts states the need for the 1,700-foot temporary easement is to accommodate the drill string needed to HDD under the creek. (Potts Direct, p. 21.) At hearing, Mr. Potts explained the entire drill string must be laid out, welded, sand blasted, and coated prior to the hazardous liquid pipeline being pulled through the HDD, under the area where open trenching is not feasible. (HT, pp. 359, 558.)

In addition to Board Staff's areas of concern, HM9 raised issues regarding the route of NuStar's proposed hazardous liquid pipeline. (Section B.5., *supra*.) HM9 suggested the proposed route parallel the TransCanada pipeline for longer and then follow 180th Street. (*Id.*) Ms. Gida suggested the proposed route not cross her property, but rather follow the outside of her fence line along the state property, as to not impact her property. (*Id.*)

The Board's rules at 199 IAC 13.3(1)(e) require the consents for highway authorities and other state and federal agencies to be filed with the Board as part of a petition for hazardous liquid pipeline permit. As demonstrated by NuStar's testimony, NuStar has obtained three road crossing agreements, but has yet to obtain all other necessary state and federal permits. (*Compare* HT, p. 404, *with* Potts Direct, p. 18.) Based upon this information, the Board will require NuStar to file copies of all three road crossing agreements with the Board, file copies of the remaining state and federal permits as they are obtained, and revise Exhibit E as necessary. The Board is requiring copies of the three already-obtained road agreements based upon the objection filed by Assistant Iowa Attorney General Moss. Ensuring NuStar has all necessary road agreements will address the concerns raised by Mr. Moss about eminent domain being requested over state property.

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With regard to how NuStar will traverse trees or forested areas and creeks, the Board finds NuStar has adequately addressed both Board Staff's and the Board's concerns. As will be discussed later in this order, the land restoration plan will address what is to be done with any cleared trees from the right-of-way.

The route proposed by NuStar further complies with the requirements of IDOT's administrative rules. (761 IAC chapter 115 (establishing requirements for locating utilities on IDOT property).) Additionally, the route proposed by Ms. Gida at the hearing would either run afoul with the requirements for routing along the IDOT property, or result in the proposed hazardous liquid pipeline being routed through more of HM9's property on the south side of County Road 103, which appears to be completely covered by trees. (NuStar KMZ – Revised (filed October 11, 2022).) Rerouting NuStar's hazardous liquid pipeline across the IDOT property raises several other questions as to how the remainder of the routing would occur, including at what point would the reroute reconnect to the area of the proposed hazardous liquid pipeline where NuStar has already obtained voluntary easements; the number of newly impacted landowners; distance to new structures, including houses; and whether additional eminent domain would be necessary.

Lastly, the Board will approve the route as proposed by NuStar.¹² NuStar's proposed hazardous liquid pipeline route connects the existing NuStar anhydrous ammonia system to IFCo. As described earlier in this order, NuStar considered alternative routes for the location of this proposed hazardous liquid pipeline; however, based upon analysis of these routes, NuStar ultimately proposed the route described in

¹² A discussion as to whether NuStar will be granted the right of eminent domain will be addressed in Section J.

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Exhibit A and shown in Exhibit B. (See Potts Direct, pp. 5-6; Potts Supp. Rep., pp. 2-4.)

The proposed route has obtained voluntary easements for 81 of 89 parcels necessary for the proposed hazardous liquid pipeline. (HT, p. 411.)

The Board finds NuStar's proposed route to be reasonable and will not require any modifications to the proposed route. While using the IDOT property may appear to be an option, there are too many unknown variables, which removes that reroute option from consideration.

F. Iowa Code § 479B.13

Iowa Code § 479B.13 requires a hazardous liquid pipeline company to:

satisfy the board that the applicant has property within this state other than pipelines or underground storage facilities, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction, maintenance, or operation of its pipeline or underground storage facilities in this state.

The Board's rules at 199 IAC 13.3(1)(d) (Exhibit D) expand upon the statutory requirement by allowing the Board to "require additional surety or insurance policies to ensure the payment of damages resulting from the construction and operation of a hazardous liquid pipeline in a county."

In direct testimony, NuStar witness Acker states she is sponsoring Exhibit D. (Acker Direct, p. 3.) Exhibit D contains an affidavit from Mr. Scott Smajstrla, asserting NuStar owns property in Iowa valued in excess of \$250,000. Exhibit D states the value of NuStar's four terminals in Iowa exceeds \$25 million.

Ms. Acker also testifies NuStar is a limited partnership, with the membership interest in NuStar owned 99 percent by NuStar Pipeline Partners L.P., as a limited

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partner, and 1 percent owned by NuStar Pipeline Company, LLC, as a general partner. *Id.* at 4. NuStar Pipeline Company, LLC, is indirectly wholly owned by NuStar Energy, which is a master limited partnership. (*Id.*)

In direct testimony, Mr. Bents states it appears NuStar has met the statutory and administrative rule requirements to prove assets in Iowa, other than a pipeline, in excess of \$250,000. (Bents Direct, p. 8.) However, Mr. Bents questions whether \$250,000 is sufficient to pay for cleanup should a leak or spill occur. (*Id.*) Lastly, Mr. Bents states he has not seen any insurance documentation from NuStar establishing that insurance would cover the costs associated with such cleanup. (*Id.*)

In its initial post-hearing brief, OCA reiterates this point and requests the Board withhold the issuance of the permit until NuStar provides the Board a copy of its insurance that contains an unconditional and irrevocable guarantee that NuStar Energy will pay for damages related to a leak or spill. (OCA Initial Post-Hearing Brief, p. 12.) OCA admits in its brief that NuStar has met the requirements of Iowa Code § 479B.13; however, OCA states this is the minimum amount and the Board may impose a greater amount as it deems necessary. (See *id.* at 12-13.) Furthermore, at hearing, HM9 presented evidence that cleanup costs could exceed \$600,000. (HM9 Hearing Exhibit 1.)

In his rebuttal testimony, Mr. Koegeboehn states NuStar already has 100 times the required financial security in Iowa, and NuStar Energy is a publicly traded company with a market capitalization of \$1.423 billion as of September 7, 2022. (Koegeboehn Rebuttal, p. 3.)

The Board finds additional surety is needed in the event damages occur within the state of Iowa. The Board understands the relationship between NuStar and NuStar

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Energy would allow for NuStar Energy to be liable for damages resulting from a pipeline operated by NuStar. (See Del. Code tit. 17, § 303 (2023).) However, given the uncertainty as to what may occur to a publicly traded entity's stock in the event of an incident and the cleanup cost evidence presented at hearing, the Board will require NuStar to obtain and hold general liability insurance in the amount of at least \$2.5 million. The Board will require NuStar to file proof of the insurance policy each time it is renewed, for the life of NuStar's hazardous liquid pipeline. Proof of such insurance in excess of \$2.5 million already in existence will be accepted by the Board. The Board will allow NuStar Energy to be the holder of the general liability insurance in order to conform to the limited partnership laws of Delaware, should that be necessary; however, proof of the insurance still will be required to be filed with the Board each time the policy is renewed, for the life of the hazardous liquid pipeline.

Additionally, the Board has authority under Iowa Code § 479B.9 to place conditions on the hazardous liquid pipeline as to the location and the route as the Board determines to be just and proper. While the Board has found the route reasonable, the Board is placing this insurance requirement as a condition to the approved route. The Board finds having the amount of insurance stated above for this route will ensure that any release of anhydrous ammonia will have insurance coverage in order to provide the appropriate cleanup to the route. Therefore, the Board finds it just and reasonable to require NuStar, or NuStar Energy, to obtain insurance for the proposed route as a condition of this route.

G. Iowa Code § 479B.20

Iowa Code § 479B.20 establishes the requirements for land restoration standards during and after hazardous liquid pipeline construction. The Board has enacted 199

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IAC chapter 9 to establish standards for agricultural land restoration. This is a required part of the petition pursuant to 199 IAC 13.3(1)(i), Exhibit I. Mr. Potts sponsored NuStar's Exhibit I. (Potts Direct, p. 3.)

On Page 5 of NuStar's Exhibit I, NuStar's definition of "pipeline" excludes hazardous liquids. At hearing, Mr. Potts testified that NuStar would change this definition. (HT, p. 374.) The Board will require NuStar to amend the definition of pipeline to include hazardous liquid pipelines.

At hearing, there was a discussion regarding the definition of "pipeline construction," also contained on Page 5 of NuStar's Exhibit I. (HT, p. 375.) The Board finds that "pipeline construction," as written, would not consider emergency work, tree clearing, or topsoil surveying to be considered "pipeline construction" only on lands where NuStar has written approval from the landowner. This means that, should a landowner agree in writing, these three items would not be considered "pipeline construction" for the purposes of the land restoration plan. This necessarily means the opposite is true. If a landowner does not agree in writing, then these three items are considered "pipeline construction." The Board is not requiring a change to the definition, but only provides this clarification to describe the Board's understanding of the term.

During the hearing, Mr. Potts testified Lee County had selected Xiphos as the county inspector for this project, but had yet to finalize an agreement. (HT, pp. 359-360.) The Board will require NuStar to update its Exhibit I once Lee County finalizes who the county inspector for the project will be. Under 199 IAC 9.3(2), after the Board approves the land restoration plan, but prior to construction, a hazardous liquid pipeline company is to provide copies of the final approved plan "to all landowners of property

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and persons in possession of the property under a lease that will be disturbed by the construction, the county board of supervisors in each county affected by the project, the county engineer of each affected county, and to the county inspector in each affected county.” Having an approved county inspector is therefore a prerequisite for beginning construction. As such, NuStar will be unable to begin construction activities until Lee County selects a county inspector.

Lastly, the Board will require a modification to the notice provisions defined in “proper notice to the county inspector.” Currently, the definition includes a 24-hour notice provision in compliance with 199 IAC 9.1(2). However, “the board may impose additional or more stringent standards as necessary to address issues specific to the nature and location of the particular pipeline project.” (199 IAC 9.1(1).) Based upon the nature of this project, the Board will require 72 hours’ notice. At hearing, Mr. Potts indicated NuStar’s willingness to increase the amount of notice provided to landowners. (HT, pp. 379-380.) The increase in the amount of notice will allow adequate time for landowners to be prepared for the events that will occur and that require notice. (See, e.g., *id.* at 201 (stating none of HM9’s members live in Iowa); *id.* at 546 (describing Ms. Gida’s mother’s disturbance concerns).) By increasing the notice time, the impact to landowners, while not eliminated, may be reduced as they will be better able to adjust their schedules to accommodate the construction activity.

Based upon the above discussion, the Board will require NuStar to file a revised Exhibit I prior to the Board approving the land restoration plan.

H. Iowa Code § 479B.27

Iowa Code § 479B.27 requires a hazardous liquid pipeline company to file with the Board a document showing how damages that result from the construction of the

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hazardous liquid pipeline will be paid. Under 199 IAC 13.2(5)(11), the Board requires the statement of damage claims to be mailed with the notice of the informational meeting.¹³

In NuStar's Exhibit G, NuStar filed a copy of the statement of damage claims included in its informational meeting notice. NuStar's Exhibit G includes how it proposes to compensate for damages caused to crops, compaction, ruts, erosion, or washing of soil. Exhibit G also explains how damage to farm equipment and other damages that may occur as a result of pipeline construction will be addressed.

The Board finds NuStar complied with the requirements of Iowa Code § 479B.27.

I. Public Convenience and Necessity

Iowa Code § 479B.9 states “[a] permit shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity.” The meaning of “public convenience and necessity” was examined by the Iowa Supreme Court in *Puntenney v. Iowa Utilities Board*, 928 N.W.2d 829 (Iowa 2019). The court held the Board's use of a balancing test was not irrational, illogical, or wholly unjustifiable. (*Id.* at 841.)

In order to determine whether the proposed hazardous liquid pipeline promotes the public convenience and necessity, the Board will conduct a balancing test for the factors at issue in this case. The parties have addressed the main contested issues of safety, economic benefits, impacts to landowners, and the overall need for the proposed hazardous liquid pipeline. Each will be discussed in turn.

¹³ This rule reference is to the rules currently in effect. The rule requirement in effect at the time of the informational meeting was found in 199 IAC 13.3(4)(a).

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1. Safety

The Board recognizes that the safety of the construction and operation of a hazardous liquid pipeline is under the jurisdiction of PHMSA. In order to determine whether a hazardous liquid pipeline is in the public convenience and necessity, the Board considers other factors that some could argue are safety related; however, the Board considers these factors to be public interest concerns and part of the balancing test for determining whether the proposed pipeline meets the statutory requirement.

In Ms. Acker's testimony, she states "transportation by pipeline is the safest, most reliable . . . mode of transportation for anhydrous ammonia." (Acker Direct, p. 13.) At hearing, HM9 discussed two releases which occurred on NuStar's anhydrous ammonia system, one in the fall of 2021 and one in the spring of 2022. (HT, pp. 87-89.) In their initial post-hearing briefs, OCA and HM9 assert NuStar has failed to show the proposed hazardous liquid pipeline is safe and, therefore, this factor weighs against the public convenience and necessity finding.

The Board finds that NuStar has committed to going above the safety requirements for PHMSA in construction of the proposed pipeline. (HT, pp. 386, 388-389; Potts Direct, p. 11 ("In the event of any conflict between reference documents, the more stringent of the controlling specifications will control.")) NuStar states it will bury its proposed pipeline at least four feet deep, whereas the federal regulations only require a three-foot depth of cover. (Potts Direct, p. 8.) NuStar is committing to conduct non-destructive weld tests on 100 percent of the welds. (*Id.* at 16; HT, p. 389.) Furthermore, NuStar states it will hydrostatically test its proposed hazardous liquid pipeline at 125 percent of the MOP for eight hours, instead of the federal requirements,

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which require 125 percent MOP for four hours and 110 percent MOP for four hours, totaling the entire eight hours of required pressure testing. (Potts Direct, p. 16.)

In its post-hearing reply brief, NuStar identifies a train derailment in Ohio that resulted in evacuations and is threatening the health and safety of nearby residents. (NuStar Post-Hearing Reply Brief, p. 11.) NuStar's reply brief continues by stating it is common sense that pipelines are a safer form of transportation. (*Id.*) NuStar states:

a static underground pipeline has less interaction with potential hazards than a moving above-ground train or truck, and unlike roads or rails, pipelines rarely run through population centers. As a result, on a volume-per-mile basis, pipeline transport is inevitably safer – particularly as volumes increase because of the increasingly large number of trains and trucks needed to replace the volume of a pipeline.

(*Id.*)

The fact PHMSA makes such an assertion and does not break it out by commodity type indicates there is little difference between the commodity being transported and the safety of the pipeline. It is worth noting that there are already approximately 46,000 miles of pipeline located within Iowa, according to PHMSA.¹⁴ Additionally, of the two incidents identified by HM9, one was the result of mechanical damage resulting from a puncture by a track hoe.¹⁵ (HT, p. 87.)

Lastly, NuStar already has anhydrous ammonia pipelines within the state of Iowa. (*In re: NuStar Operating Partnership L.P.*, Docket No. HLP-1997-0001.) NuStar even has an existing anhydrous ammonia pipeline located in Lee County. (HT, p. 96.)

¹⁴ See generally, *Data Statistics Overview*, PHMSA, <https://www.phmsa.dot.gov/data-and-statistics/pipeline/data-and-statistics-overview> (last visited March 23, 2023).

¹⁵ During the hearing, there was discussion about whether a farmer would be liable should they strike NuStar's proposed hazardous liquid pipeline. HT, pp. 83-84. Under 49 USC § 60104(c), the federal government allows states to enforce One Call notification programs against pipelines. Iowa has enacted its One Call legislation in Iowa Code chapter 480. As it relates to farmers, they are not liable so long as they comply with the requirements of Iowa Code § 480.9.

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These pipelines have been installed and operating within the state of Iowa for more than 50 years at lengths much longer than that proposed by NuStar in this docket. (*See id.*)

After considering all the arguments, the Board finds this factor weighs in favor of the public convenience and necessity for granting the hazardous liquid pipeline permit.

2. Economics

Ms. Acker testified that the proposed hazardous liquid pipeline would cost approximately \$10 million. (Acker Supp. Rebuttal, p. 6.) Additionally, Mr. Potts testifies the construction of the proposed hazardous liquid pipeline will create approximately 85 construction jobs. (Potts Direct, p. 17.) Mr. Potts testifies the state of Iowa and Lee County will also benefit in the form of additional tax revenue for the new pipeline. Lastly, Mr. Potts and Ms. Acker testify the proposed hazardous liquid pipeline will connect to IFCo and allow the company to expand its production. (Potts Direct, p. 17; Acker Supp. Rebuttal, p. 6.)

In his direct testimony, Mr. Bents testifies the \$10 million cost of the project will be borne by the users of NuStar's anhydrous ammonia system, and OCA does not object to the project cost or recovery mechanism. (Bents Direct, p. 7.) Mr. Bents further states NuStar did not conduct an economic impact study for this project, but there will be "positive economic benefits due to the investment of over \$10 million, the employment of approximately 85 skilled workers, the construction duration of approximately five months, the payment to property owners for crop damages and easements, as well as the secondary impact of the above-mentioned spending." (*Id.* at 11.)

In his direct testimony, Mr. Hayes testifies that Mr. Potts' economic benefits come down to only four months of temporary construction jobs. (Hayes Direct, p. 6.) Mr.

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Hayes testifies that Mr. Potts provided no evidence that payments to landowners will impact the local economy, specifically if the payments are made out of state. (*Id.* at 5; HT, p. 201.) Mr. Hayes asserts property owners already pay property tax on the land and NuStar paying taxes would not be a benefit. (Hayes Direct, p. 5.) Mr. Hayes further testifies the secondary benefits provided by the increased production at IFCo is a self-serving comment as NuStar already has the capability to provide a local source of anhydrous ammonia via the Fort Madison terminal. (*Id.* at 5-6.) Lastly, Mr. Hayes testifies that more than 99 percent of IFCo's products stay within a 200-mile radius of the facility, where truck transport is competitive with pipeline transportation. (*Id.* at 6; HT, p. 298.)

Mr. Hayes also testifies that should NuStar's proposed hazardous liquid pipeline be approved, it would lead to increased fertilizer costs for farmers. (Hayes Direct, p. 10.) Mr. Hayes testified that should NuStar be granted this permit, NuStar will be able to sell the anhydrous ammonia as a green energy source for 500 percent more than the current cost for fertilizer. (*Id.* at 10-11.) Mr. Hayes asserts this would have a negative economic impact on Iowa and farmers. (*Id.* at 11.)

In its initial post-hearing brief, OCA makes contradictory statements compared to those from the direct testimony provided by Mr. Bents. (*Compare* Bents Direct, p. 11, *with* OCA Initial Post-Hearing Brief, pp. 5-6.) OCA's position in its initial brief argues against the economic benefits of the proposed pipeline and questions whether 85 temporary construction jobs are an economic benefit. (*See id.* at 5.) OCA witness Mr. Bents testifies these are economic benefits.

In HM9's initial post-hearing brief, HM9 makes many of the same arguments as those made by Mr. Hayes in his testimony. (*See* HM9 Initial Post-Hearing Brief, pp.

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23-27.) HM9 points to its Hearing Exhibit 6 as proof that the construction of the proposed hazardous liquid pipeline will do little to reduce fertilizer costs, as energy costs and farmer demand have larger impacts on fertilizer costs. (*Id.* at 24-25.)

In its post-hearing reply brief, NuStar denies that there is a lack of evidence to support its claims of economic benefit. (NuStar Post-Hearing Brief, p. 3.) NuStar states:

there is ample testimony, both written direct testimony or presented by a witness during the hearing, as to classes of benefits that will arise from the investment in, and construction and operation of, the proposed pipeline. This sworn testimony by witnesses with relevant knowledge is evidence, and is one of the most common forms of evidence at a hearing. Nothing in the Iowa Code or Board rules requires any particular kind of evidence, nothing in the Iowa Code or Board rules requires a study of any kind.

(*Id.*) NuStar states an economic study is the exception and not the rule. (*Id.* at 3-4 (citing recent Board precedent where permits were granted without an economic impact study being provided).) NuStar states its proposed project will result in \$10 million in direct investment in Lee County, provide easement payments to landowners, result in additional ad valorem taxes, and create construction related jobs, all of which are benefits. (*Id.* at 4.)

NuStar asserts OCA is using Dakota Access's case as a model for this one. (*Id.*) at 5. NuStar asserts OCA's argument actually proves NuStar's case as the evidence relied upon by OCA is from Dakota Access witness Guy Caruso, who was testifying based upon basic economic principles of supply, demand, and input costs. (*Id.*) NuStar states the same holds true in its case. (*Id.* (citing to testimony given by Mr. Schwartz).)

Lastly, NuStar's post-hearing reply brief asserts the Board has never set a threshold for the number of jobs that are relevant to a project. (*Id.* at 6.) NuStar states

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following OCA's logic to its conclusion would result in a situation where only the largest projects could be approved to clear the jobs threshold stated by OCA. (*Id.*)

OCA in its post-hearing reply brief states the record does not support a finding that the construction of the pipeline, known as the Wever Lateral, will result in lower prices for ammonia products. (OCA Post-Hearing Reply Brief, p. 6.) OCA asserts this is in contrast to the facts in *Dakota Access*, where the Iowa Supreme Court found the record supported such a conclusion. (*Id.* at 6-7.) OCA asserts the factual gaps in the records require the Board to reach conclusions beyond what is provided in the record and, therefore, NuStar has failed to reach its burden of proof. (*See id.* at 3.)

HM9 in its post-hearing reply brief asserts NuStar failed to provide data to support any economic claims the Board can use to weigh this balancing factor. (HM9 Post-Hearing Reply Brief, p. 3.) HM9 states that, absent data, the Board cannot use the information presented by NuStar as it is a recitation of potential benefits, which is inconsequential and irrelevant. (*Id.*)

The Board finds the economic benefits weigh in favor of granting NuStar's permit request. With OCA's contradictory statements, the Board is unsure what position OCA is putting forth, but the Board agrees with Mr. Bents' testimony on the issue. There is no specific requirement that an economic impact study be conducted for projects in order for the Board to consider granting the company a permit. (*See Iowa Code chapter 479B; 199 IAC chapter 13.*) However, as noted by Mr. Bents, the expenditure of \$10 million will create a positive net impact to the state of Iowa and Lee County.

The construction of the new hazardous liquid pipeline will generate an additional capital improvement project subject to taxation by the state and local governments. Local landowners will also receive additional income based upon the payments made

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by NuStar for easements. OCA and HM9 question whether payments that are made outside the state of Iowa are benefits. The question itself overlooks the fact these individuals are landowners in Iowa. They have a connection to Iowa via their property, which, at the very least, requires they pay property tax. As stated by Mr. Hayes, “[t]his farm and the lands are sacred grounds to the members of HM9.” (Hayes Direct, p. 3.) If this statement is true, then it is likely that at times these members would be present in Iowa and spend money in Iowa enjoying their property.

Additionally, the new hazardous liquid pipeline construction will generate approximately 85 construction jobs. Construction jobs, for the most part, are all temporary jobs. (HT, pp. 488-89.) OCA and HM9’s reliance upon the term “temporary” does not change the economic benefit from the construction jobs. Workers will still need to be hired, will be in the area, and will need supplies. (See Bents Direct, p. 11.) The Board agrees with NuStar that there is not a jobs threshold that must be met in order to include construction jobs as an economic impact variable. The employment of a person during construction has not only a positive economic impact to that person, but secondary and tertiary benefits based upon that person’s employment.

The Board finds this factor weighs in favor of the public convenience and necessity for the above reasons.

3. Impact to landowners

As described earlier in this order, 81 of 89 parcel owners have agreed to voluntary easements. (HT, p. 411.) However, testimony by Mr. Hayes and Ms. Gida describe the impacts they would encounter based upon NuStar’s proposed hazardous liquid pipeline.

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In testimony, Mr. Potts states there would be minor disruptions during the approximate four-month construction period. (Potts Direct, p. 7.) Mr. Potts testifies these impacts would be minimized and remedied as a result of its land restoration plan (Exhibit I). (*Id.*) At hearing, Mr. Potts testified that blocking roadways, impeding a landowner's ability to move around, and the removal of crops all have an impact on landowners. (HT, p. 387.)

Mr. Hayes states, "[a]ll [HM9] member[s] spent substantial time as children, adolescents and young adults on this farm forming not just memories, but the fiber and core of who we are. So to be honest, it was an easy decision to say no to this pipeline and mount a spirited defense, which is why we are here today." (*Id.* at 510-511.) Mr. Hayes testified NuStar's pipeline should not be placed anywhere in Lee County where landowners do not want it. (HT, p. 510.)

At hearing, Ms. Gida testified the use of the temporary construction easement would limit her ability to freely access her pond and impact her summer pasture and hay ground for feeding her cattle. (*Id.* at 544, 546.) Ms. Gida's testimony asserted erosion is a big issue on her property given the creek and the construction activities of IDOT. (*Id.* at 522.) According to Ms. Gida's testimony, the hazardous liquid pipeline's construction would also impact her mother, who has a medical condition that may require her to leave the house during construction. (*Id.* at 547.)

In its initial post-hearing brief, OCA restates the comments made by Ms. Gida and the impacts NuStar's proposed hazardous liquid pipeline would have on Ms. Gida's property and her mother. (OCA Initial Post-Hearing Brief, pp. 7-8.) OCA addressed concerns related to Ms. Gida's mother. (*Id.* at 7.) Additionally, OCA asserted the impacts to Ms. Gida's summer pasture and hay would reduce the amount of grazing

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available, and the purchase of necessary hay may be difficult due to Ms. Gida's plan of becoming an organic beef farm. (*Id.*)

In NuStar's initial post-hearing brief, NuStar asserts "[t]he interest of the one landowner during a limited construction window cannot outweigh what is the best route overall." (NuStar Initial Post-Hearing Brief, p. 13.) NuStar reiterated its willingness to work with Ms. Gida "to minimize the imposition caused by the location and use of the temporary construction easement." (*Id.*)

In NuStar's post-hearing reply brief, NuStar further demonstrates its willingness to work with Ms. Gida to address her concerns. (See NuStar Post-Hearing Reply Brief, p. 14.) NuStar states it is evaluating whether the drill string can be pulled the opposite direction, toward Ms. Gida's property, to try to reduce the impact to her property and her mother. (*Id.*)

The Board has reviewed this information and finds it weighs against the public convenience and necessity. There is little doubt that construction occurring on a parcel negatively impacts landowners, especially those who do not want the proposed hazardous liquid pipeline there in the first place. While Ms. Gida will be able to recuperate damages resulting from the construction, i.e., costs associated with buying organic hay for damage done to the hay field or due to the loss of pasture ground, the Board finds these are negative impacts of the proposed pipeline. (*Cf.* HT, p. 385.) While Ms. Gida may be compensated for damages relating to construction, the impacts to her mother may be something for which there is no financial compensation. While NuStar may be correct that the interests of one landowner cannot outweigh the best overall route, the fact of the matter is the interest of one landowner does matter and is

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given weight. In this instance, the Board finds the impact to landowners weighs against the granting of a permit to NuStar under Iowa Code § 479B.9.

4. Need

In Exhibit F, sponsored by Mr. Potts, NuStar states it is proposing to construct a bi-directional common carrier hazardous liquid pipeline from its Fort Madison terminal to IFCo. Exhibit F states the proposed hazardous liquid pipeline will be capable of delivering 40 tons of anhydrous ammonia per hour to the IFCo facility. NuStar's Exhibit F states it is a common carrier under federal law. (49 USC § 15101 *et seq.*) NuStar's Exhibit F asserts, "Iowa is the largest consumer of anhydrous ammonia used for agricultural direct application in the United States, consuming approximately 720,000 tons of ammonia annually." At hearing, NuStar witness Jim Schwartz testified IFCo takes the input, bulk anhydrous ammonia and either resells the anhydrous ammonia via its distribution network or manufactures the anhydrous ammonia into enhanced anhydrous ammonia products: urea, urea ammonium nitrate (UAN), or diesel exhaust fluid (DEF). (HT, p. 235.)

In his direct testimony, Mr. Hayes testified that NuStar did not update its Exhibit F to state NuStar had secured a contract, term sheet, or even a memorandum of understanding with IFCo for IFCo to use NuStar's proposed hazardous liquid pipeline. (Hayes Direct, p. 13.) At hearing, Ms. Acker testified there was a commercial agreement negotiated for the interconnection with IFCo, but it was not yet formally executed.

(HT, pp. 187-188.) Mr. Hayes asserts that absent any of these agreements, the Board cannot grant NuStar its requested permit because IFCo's use of the proposed pipeline is too speculative without its written commitment. (Hayes Direct, p. 13.) Mr. Hayes

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testifies NuStar needs IFCo and not IFCo needing NuStar. (*Id.* at 14.) At hearing, Mr. Hayes testified that even if a contract was entered into between NuStar and IFCo, if the contract did not have “teeth,” there still would not be a public purpose. (HT, p. 506.) Mr. Hayes testifies the “teeth” he is referring to is a contract provision that would force either the carrier or the supplier to deliver or receive the product. (*Id.* at 506-507.)

Additionally, as part of his economic analysis, Mr. Hayes testified NuStar could reverse the directional flow of its pipeline and ship the anhydrous ammonia to the Gulf of Mexico, where it could be transported and sold as a green energy source. (Hayes Direct, p. 10-11.) Mr. Hayes asserts this exportation of anhydrous ammonia has nothing to do with improving Iowa farmers’ access to lower cost fertilizer. (*Id.* at 11.)

In rebuttal testimony, Ms. Acker asserts it was IFCo that approached NuStar in the fall of 2020 about connecting its facility to NuStar’s anhydrous ammonia system. (Acker Supp. Rebuttal, p. 5.) Ms. Acker states NuStar is obligated to make service available on a non-discriminatory basis in compliance with federal law. (*Id.*; 49 USC § 15505.) Furthermore, Ms. Acker testifies NuStar does not own the anhydrous ammonia contained within its system and does not have any input as to the origin or destination of the product a shipper places into NuStar’s anhydrous ammonia system. (Acker Rebuttal, p. 2.)

In rebuttal, Mr. Koegeboehn testified the USDA announced a program to increase the domestic production of fertilizer to reduce the costs for farmers and to have a more reliable supply chain. (Koegeboehn Rebuttal, p. 5.) According to the source provided in Mr. Koegeboehn’s rebuttal testimony, the USDA established this program due to a limited supply of minerals, high energy costs, and global demand. (*Id.*)

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With regard to IFCo's necessity for the interconnection, Mr. Schwartz asserts Iowa, Missouri, and Illinois consume 1.7 million short tons per year of just anhydrous ammonia. (Schwartz Supp. Rebuttal, p. 6; HT, p. 273.) Iowa alone consumes 720,000 tons annually. (NuStar Exhibit F; HT, p. 246-247.) Mr. Schwartz testifies the proposed hazardous liquid pipeline will allow IFCo to fill storage tanks to allow it to produce more product during the year, as its storage tanks are currently only 10 percent to 20 percent full. (HT, p. 236.) Mr. Schwartz asserts the increased availability of anhydrous ammonia will allow IFCo to better absorb the influxes during the busy anhydrous ammonia application periods while still allowing IFCo to produce the other products it manufactures. (*Id.*)

In addition to assisting the farming community, Mr. Schwartz asserts IFCo employs more than 260 full-time employees, and IFCo partners with many local suppliers throughout southeast Iowa. (Schwartz Supp. Rebuttal, p. 4.) Mr. Schwartz testifies the average salary is nearly \$100,000 per year for employees of IFCo. (*Id.* at 5; HT, p. 242.) Mr. Schwartz testified that while there is no signed agreement, IFCo has spent millions of dollars in anticipation of the interconnection to NuStar's proposed hazardous liquid pipeline. (*Id.* at 260.) Lastly, at hearing, Mr. Potts testified NuStar would not begin construction until a signed agreement was entered into between NuStar and IFCo. (HT, p. 580-581.)

Based upon review of the testimony, the Board finds there is a need for this proposed hazardous liquid pipeline. Iowa's economy is inextricably tied to agriculture and manufacturing.¹⁶ As described by NuStar, this proposed hazardous liquid pipeline

¹⁶ See Schwartz Supp. Rebuttal p. 5 (stating corn production alone in Iowa was valued at \$14 billion in 2021); see also Iowa's Gross Domestic Product, Iowa Data, <https://data.iowa.gov/stories/s/ubgu-5xaq#>

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will provide IFCo direct, continuous access to anhydrous ammonia in order to allow IFCo to distribute anhydrous ammonia to the surrounding area, as well as produce enhanced anhydrous ammonia products. OCA and HM9 assert the proposed hazardous liquid pipeline is not needed because the only reason for NuStar's proposal is to allow for IFCo to increase production. The Board does not agree with the assertions made by OCA and HM9 on this point, weighing against a finding that the statutory requirements have been met.

In *Puntenney*, the Iowa Supreme Court stated:

Iowa is a heavy user of petroleum products. Iowa consumes the equivalent of 85.2 million barrels of oil per year but produces no oil itself. Iowa is fifth in the country in per capita energy use. Iowa ranks eighth in the country in per capita gasoline consumption. Iowa's percentage of gross domestic product from manufacturing ranks near the top in this country, and Iowa ranks sixth highest nationally in energy consumption per capita in its industrial sector. The record indicates that the Dakota Access pipeline will lead to longer-term, reduced prices on refined products and goods and service[s] dependent on crude oil and refined products.

Puntenney, 928 N.W.2d at 841 (internal quotations omitted). The court continued by agreeing with the Board that "these are public benefits, even though the pipeline also provides benefits to the shippers of crude oil." (*Id.*) The Board finds the same logic used by the Iowa Supreme Court for the Dakota Access, LLC, hazardous liquid pipeline applies to NuStar's hazardous liquid pipeline. Of the 1.7 million tons of anhydrous ammonia consumed by Iowa, Missouri, and Illinois, Iowa's consumption alone accounts for nearly half. (HT, p. 273-274.) Using a simple supply and demand analysis, it stands to reason that increasing the supply of fertilizer on the market will have a downward

(last visited Feb. 24, 2023) (describing the manufacturing sector as 19 percent of Iowa's gross domestic product).

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pressure on fertilizer prices overall as demand will remain relatively consistent. (See HT, p. 269 (agreeing no new farmland has been created).) Furthermore, the increased availability of anhydrous ammonia to the IFCo facility will allow it to produce the other enhanced anhydrous ammonia products consistently at the same time as it distributes anhydrous ammonia during critical farming periods. The more consistent production of urea, UAN, and DEF will also have a downward pressure on prices for these products and there will be less volatility in the supply of these products during the critical farming periods where anhydrous ammonia for field application is in high demand. By increasing production at IFCo, the public receives a benefit by increasing the supply of fertilizer and other products and potentially lowering prices for anhydrous ammonia, urea, UAN, and DEF.

While IFCo has asserted it has spent millions of dollars in anticipation of this proposed hazardous liquid pipeline, the Board will require NuStar to file an affidavit or a copy of the executed agreement between NuStar and IFCo with the Board prior to commencing construction. The Board will hold NuStar to its testimony that it will not begin construction until there is a signed agreement. (HT, p. 580-581.) Having an affidavit or a copy of the agreement on file with the Board will ensure NuStar complies with the Board's requirement.

Additionally, Mr. Koegeboehn's rebuttal testimony shows there are benefits on the national level for increasing the domestic production of fertilizer. (Koegeboehn Rebuttal, p. 5.) As pointed out by the United States Department of Agriculture (USDA), numerous external factors impact fertilizer production. (*Id.*) To combat this, the federal government announced \$500 million in grant funds to increase the domestic supply of fertilizer. (*Id.*) The United States federal government has determined there is a national

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need to increase the domestic production of fertilizer. NuStar's proposed hazardous liquid pipeline will allow IFCo to assist that national need for reliable, domestic fertilizer production.

Lastly, HM9 asserts NuStar could use the bi-directional nature of its proposed hazardous liquid pipeline to ship anhydrous ammonia to the Gulf of Mexico to be used as a green energy alternative, thus reducing the need in Iowa. (Hayes. Direct, p. 10-11.) However, at hearing, Mr. Potts testified that the only portion of NuStar's system that is bi-directional is the area above its Hermann, Missouri, junction point. (HT, p. 312.) Mr. Potts did testify as to what work would need to be done to make the entire system bi-directional. (HT, p. 395-396.) Furthermore, HM9 asserts this would increase the costs of fertilizer to farmers and only benefit IFCo. (Hayes Direct, p. 10-11.)

Whether the entire system could be switched to be bi-directional has little to do with NuStar's request as this information goes to IFCo's — and other users of NuStar's anhydrous ammonia system — business plan. NuStar is a common carrier under federal law and does not own the anhydrous ammonia it transports. (49 USC § 15101 *et seq.*; Acker Supp. Rebuttal, p. 5.)¹⁷

NuStar is the system by which anhydrous ammonia is delivered to companies that either sell it locally or upgrade it into other products to be sold on the market. While the Board does not identify an issue with a company actively participating in beneficial markets, the company petitioning for a permit is NuStar, which is trying to fulfill its obligation under federal common carrier law to supply anhydrous ammonia to IFCo. (See 49 USC § 15101 *et seq.*; Acker Supp. Rebuttal, p. 5.) What IFCo seeks to do with

¹⁷ Additional discussion regarding whether NuStar is a common carrier may be found in section J *infra*.

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the anhydrous ammonia after delivery from the NuStar system or onto the NuStar system is not relevant to the Board's decision.

The Board finds there is a need for NuStar's proposed hazardous liquid pipeline, both within the state of Iowa and within the United States, and this factor weighs in favor of granting a permit under Iowa Code § 479B.9.

5. Board Decision

The Board has addressed the four above factors in this case as they are the main areas of concern raised in testimony during this docket. There may be other areas discussed by parties in testimony that the Board has determined do not require further discussion or decision by the Board, as these tangential factors would not impact the Board's overall conclusion. Reviewing the above factors, the Board finds that the safety, economic benefits, and the overall need for NuStar's proposed pipeline weigh in favor of granting a permit, whereas the impact to landowners weighs against the issuance of a permit.

Balancing these interests, the Board finds NuStar's proposed hazardous liquid pipeline will promote the public convenience and necessity and, as a result, the Board will grant NuStar a permit to construct, operate, and maintain its proposed hazardous liquid pipeline within the state of Iowa, subject to the terms and conditions described throughout this order.

J. Public Use

On April 13, 2022, NuStar filed its initial request for the right of eminent domain over 23 parcels pursuant to Iowa Code § 479B.16 and the Board's rules at 199 IAC 13.3(1)(h) (Exhibit H). On May 23, 2022, NuStar updated its request for eminent

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domain for an additional three parcels, bringing the total number of parcels subject to Exhibit H to 26.¹⁸ NuStar filed withdrawals for 18 parcels.

At the time of hearing, NuStar was requesting the right of eminent domain over eight parcels: Exhibit H-03 (IA-LEE-038-039.00), Exhibit H-04 (IA-LEE-038-040.00), Exhibit H-05 (IA-LEE-038-041.00), Exhibit H-06 (IA-LEE-038-042.00), Exhibit H-07 (IA-LEE-038-043.00), Exhibit H-08 (IA-LEE-038-043.10), Exhibit H-09 (IA-LEE-038-044.00), and Exhibit H-10 (IA-LEE-038-044.10).

Margaret Strunk and Coette Gida are the owners of the parcels subject to Exhibit H-03 (IA-LEE-038-039.00), Exhibit H-04 (IA-LEE-038-040.00), Exhibit H-05 (IA-LEE-038-041.00), Exhibit H-06 (IA-LEE-038-042.00), Exhibit H-07 (IA-LEE-038-043.00), and Exhibit H-08 (IA-LEE-038-043.10) (collectively, Strunk/Gida Parcels).

HM9 is the owner of the parcels subject to Exhibit H-09 (IA-LEE-038-044.00) and Exhibit H-10 (IA-LEE-038-044.10) (collectively, HM9 Parcels).

The Board will determine below whether, or to what extent, the right of eminent domain will be granted for the Strunk/Gida Parcels and HM9 Parcels.

1. Legal Requirements

The Fifth Amendment of the United States Constitution contains certain express limitations on the power of government to take private property through eminent domain. U.S. Const. amend. V. The Iowa Constitution, Article I, Section 18, provides that private property shall not be taken for public use without just compensation first being made or secured to the landowner. (Iowa Const. art. 1, § 18.) The Iowa Legislature has vested the Board with the authority to grant eminent domain via the

¹⁸ The Exhibit H's are numbered consecutively from 1 to 26. To ensure clarity, the Board will discuss and identify the parcels subject to eminent domain using both the Exhibit H number and the county identification number.

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enactment of Iowa Code § 479B.16. The Iowa Supreme Court has repeatedly stated “agencies have no inherent power and [have] only such authority as [they are] conferred by statute or is necessarily inferred from the power expressly granted.” (*Wallace v. Iowa St. Bd. of Educ.*, 770 N.W.2d 344, 348 (Iowa 2009) (alterations in original) (internal quotations omitted).)

The Iowa Supreme Court in *Puntenney* examined the constitutionality of Iowa Code § 479B.16. (*Puntenney*, 928 N.W.2d 829, 844-852.) In *Puntenney*, the Iowa Supreme Court examined whether there was a public use by which the hazardous liquid pipeline company is allowed to use the right of eminent domain. (*Id.* at 844.) The Iowa Supreme Court held that a valid “public use” under the Iowa Constitution must either be for when the sovereign takes the private property and transfers it to public ownership, *i.e.* roads, hospitals, etc., or where the sovereign takes private property and transfers the property to another private party, but the beneficiary is a common carrier, *i.e.* railroads, a public utility, or stadium. (*Id.* at 845.) The Iowa Supreme Court rejected the U.S. Supreme Court’s eminent domain jurisprudence by not allowing economic development to qualify as a “public use.” (*Id.* at 848.) The Iowa Supreme Court held that the standards for which eminent domain may be granted under the Iowa Constitution are distinct and Iowa “jealously reserve[s] the right under our state constitutional provisions to reach results different from current United States Supreme Court precedent under parallel provisions. (*State v. Ingram*, 914 N.W.2d 794, 799 (Iowa 2018).) “Our Iowa Constitution, like other state constitutions, was designed to be the primary defense for individual rights, with the United States Constitution Bill of Rights

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serving only as a second layer of protection. . . .”¹⁹ The *Puntenney* Court stated that under the Iowa Constitution, economic development was not a public use for Iowa eminent domain proceedings. (*Puntenney*, 928 N.W.2d at 848 (“If economic development alone were a valid public use, then instead of building a pipeline, [a company] could constitutionally condemn Iowa farmland to build a palatial mansion, which could be defended as a valid public use so long as 3100 workers were needed to build it, it employed twelve servants, and it accounted for \$27 million in property taxes.”))

The *Puntenney* Court, however, found the pipeline at issue was a common carrier, and not one being constructed for economic development. (*Id.*) The court stated common carrier takings have “long been recognized in Iowa as a valid public use, even when the operator is a private entity and the primary benefit is a reduction in operational costs.” (*Id.*) Additionally, the court stated “a common carrier need not serve all the public all the time.” (*Id.* at 843 (citing *Wright v. Midwest Old Settlers & Threshers Ass’n*, 556 N.W.2d 808, 810 (Iowa 1996)).) To this point, the Iowa Supreme Court found persuasive an Illinois Appellate Court decision where that court stated:

Oil, natural gas, and other energy sources are essential to modern American life and must be transported from production facilities to refineries and ultimately to consumers. Pipelines are necessary for this transportation and are often safer and more efficient than transportation by train or truck.

(*Id.* at 849-850 (citing *Enbridge Energy (Illinois), LLC v. Kuerth*, 99 N.E.3d 210, 218 (Ill. App. Ct. 2018)).)

Additionally, the *Puntenney* Court quoted with approval *Stewart v. Board of Supervisors of Polk County*, where the court stated:

¹⁹ The Hon. Mark Cady, *A Pioneer’s Constitution: How Iowa’s Constitutional History Uniquely Shapes Our Pioneering Tradition in Recognizing Civil Rights and Civil Liberties*, 60 Drake L. Rev. 1133, 1145 (2012).

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[I]f the *public interest can be in any way* promoted by the taking of private property, *it must rest in the wisdom of the legislature*, to determine whether the benefit to the public will be of sufficient importance to render it expedient for them to exercise the right of eminent domain and to interfere with the private rights of individuals for that purpose.

(*Id.* (citing *Stewart v. Bd. of Supervisors*, 30 Iowa 9, 21 (1870)) (emphasis in original).)

A common carrier meets the definition of a “public use” and may be authorized to use eminent domain. (Iowa Code § 6A.22(2)(a)(2).) Under Iowa Code § 6A.21(1)(d), “‘public purpose’ or ‘public improvement’ does not include the authority to condemn agricultural land for private development purposes unless the owner of the agricultural land consents to the condemnation.” However, in Iowa Code § 6A.21(2), this limitation “does not apply to utilities, persons, companies, or corporations under the jurisdiction of the Iowa utilities board in the department of commerce or to any other utility conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain” The court in *Puntenney* held that a company under the jurisdiction of the Board via Iowa Code chapter 479B qualified for the exemption and therefore did not require landowner consent under Iowa Code § 6A.21 prior to condemnation. (*Puntenney*, 928 N.W.2d at 843.)

2. Board Discussion

The Board has reviewed the evidence and applicable law and will grant NuStar the right of eminent domain over the parcels as described below. The Iowa Supreme Court in *Puntenney* was clear that a common carrier “has long been recognized in Iowa as a valid public use, even when the operator is a private entity and the primary benefit is a reduction in operational costs.” (*Puntenney*, 928 N.W.2d at 848.) The Iowa Supreme Court did not, however, define what a common carrier is.

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Common carrier is a term not defined in 49 USC § 15101 *et seq.* nor within Iowa Code chapters 6A, 6B, or 479B; therefore, its plain or common meaning is to be used. (*Mathis v. Iowa Util. Bd.*, 934 N.W.2d 423, 428 (Iowa 2019).) Black's Law Dictionary defines "common carrier" to be "a commercial enterprise that holds itself out to the public as offering to transport freight or passengers for a fee." (See, e.g., *Bob Zimmerman Ford, Inc. v. Midwest Automotive I, LLC*, 679 N.W.2d 606, 609 (Iowa 2004) (stating the dictionary may be used to determine the meaning of undefined legislative terms).)

As provided in the course of this proceeding, NuStar has numerous points of interconnection with different shippers of anhydrous ammonia. (See e.g., HT, 153-154.) NuStar has consistently stated it does not own the anhydrous ammonia contained within its system, and the proposed hazardous liquid pipeline is proposed to connect to IFCo to provide it a direct source to NuStar's anhydrous ammonia system. (*Compare* NuStar Informational Meeting Presentation, filed Sept. 28, 2021, *with*, HT, p. 216 (demonstrating the continual position that NuStar transports anhydrous ammonia as a common carrier).) Furthermore, NuStar has testified IFCo is the entity that initiated contact with NuStar about connecting to NuStar's system. (Acker Supp. Rebuttal, p. 3.) Examining these facts, the Board finds NuStar is a common carrier seeking to connect its anhydrous ammonia system to IFCo.

The Board is unpersuaded by OCA's argument regarding the fact that this proposed hazardous liquid pipeline will only serve IFCo. OCA's argument seems to misunderstand linear infrastructure projects and the necessity of being able to serve such facilities. As NuStar has stated, this project could accommodate other shippers or receivers of anhydrous ammonia in the future. (See HT, p. 118.) In an ideal world,

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everything which needs to be connected to linear infrastructure projects would line up perfectly with the existing infrastructure; the world does not operate like that. Therefore, the necessity of being able to extend linear infrastructure to these facilities is an integral part of the modern world. The Board has found in other dockets that companies extending services to only one shipper can be granted a permit and the right of eminent domain.

In Docket Nos. P-657, P-658, P-659, and P-660, the Board issued Mid-America Pipeline Company (MAPCO) a permit to construct approximately 274 miles of anhydrous ammonia pipeline in Iowa and held:

The applicant is a public owned carrier by pipeline. Neither it nor any of its subsidiaries will own the product proposed to be transported here. It has, on the record, held itself out to transport products of a like nature for all on like terms to the extent of its capacity under tariffs to be filed with the Interstate Commerce Commission. At time of hearing applicant had but one committed shipper. This fact, however, in our opinion, is not determinative of carrier status.

In the Matter of Petitions of Mid-America Pipeline Company for a Permit to Construct, Operate and Maintain Pipeline, Docket No. P-657 *et al.*, *Decision and Order*, p. 11 (Iowa State Commerce Comm'n,²⁰ April 15, 1968), abrogated on other grounds by *Kinley Corp. v. Iowa Util. Bd.* 999 F.2d 354, 360 (8th Cir. 1993). In reaching its decision, the Board relied upon the Iowa Supreme Court's decision in *Reter v. Davenport, Rock Island, and North Western Railway Company*, 54 N.W.2d 863 (Iowa 1952). In *Reter*, it was noted that the railroad company:

proposes to make the contemplated spur track a part of its railway system, subject to the same control and under the same public regulations and obligations as apply to the other parts thereof. In no sense is the proposed spur track to be the

²⁰ The Iowa State Commerce Commission was the predecessor to the Board. For ease of use, the two will be referred to interchangeably as the Board.

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private property of Clinton Industries (now Clinton Foods, Inc.).

(*Id.* at 867.) The *Reter* court held, “[th]e test of public character is not in the number of persons or corporations located along the line of the proposed branch but in the character of the use of which the branch will be put.” (*Id.*) The court continued:

The service of any particular spur is denied to no industry which it is reasonably feasible for the spur to serve, provided the industry pay its equitable share of the cost; in other words, all concerns which can possibly have any occasion to use the track . . . are given the right to use it on the same equitable terms. This must be held public use in a true sense, although not a public use of precisely the same quality as that which pertains to an extension of the main line of a railroad.

(*Id.* at 867-868 (alterations in original).) The court noted this kind of situation was described in American Jurisprudence’s discussion of eminent domain. (*Id.* at 868.) The court concluded by stating:

A spur track is just as truly a part of the railroad as is the main line itself, whether it serves one industry or a dozen. The public character of the service rendered by it is not dependent on the number of industries it furnishes access to. Most spur tracks are necessarily limited in that respect.

(*Id.*) In deciding whether to grant MAPCO the right of eminent domain, the Board restated that:

The record reveals that MAPCO is not, and will not be the owner of any anhydrous ammonia transported through its pipeline. By filing a tariff with the Interstate Commerce Commission, MAPCO holds itself out to the public to transport similar product belong[ing] to any shipper according to the terms of the filed tariff.

In the Matter of Petition of MAPCO, Inc., for Eminent Domain Over Certain Parcels of Property: Docket P-657, Southwest Leg, and P-660, Northeast Leg, Docket Nos. P-657 and P-660, Decision and Order, p. 7 (Iowa State Commerce Comm’n, Nov. 27, 1968). The Board stated the initial capacity of MAPCO’s pipeline will be 1,300 tons per

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day. (*Id.* at 8.) However, under an agreement with Hill Chemical, 1,200 tons per day of capacity must be set aside for Hill Chemical. (*Id.* at 8-9.) Returning to the court's decision in *Reter*, the Board stated:

It is the opinion of the [Board] that the transportation of anhydrous ammonia by a pipeline company, under federal law a common carrier, impressed with the obligation of operating as a common carrier, constitutes a public use for which the power of eminent domain may be exercised. . . . Whether a use is public does not depend upon the number using the utility, but rather, whether the public has the right to use it without discrimination.

(*Id.* at 9.)

The Board finds this analysis to be assistive with NuStar's current docket. The 14-mile hazardous liquid pipeline is currently proposed to be used solely by NuStar to provide a service to IFCo, making the proposed hazardous liquid pipeline essentially a spur line as discussed by the court in *Reter*. While NuStar has testified the proposed hazardous liquid pipeline could accommodate additional shippers, the limited number of customers in MAPCO and *Reter* did not prove to be dispositive to a finding of public convenience and necessity or a public use. NuStar's proposed hazardous liquid pipeline will be available without discrimination to any entity who uses or needs transportation of anhydrous ammonia, including IFCo, and complies with the terms of its tariff.

NuStar holds itself out as a common carrier of anhydrous ammonia, in this case, and IFCo availed itself of NuStar's services. In order to reach IFCo, NuStar is proposing to build a 14-mile extension to its anhydrous ammonia system in order to fulfill IFCo's request. Under federal law, a common carrier "shall provide the transportation or service on reasonable request." (49 USC § 15701(a).) NuStar examined IFCo's request for service and determined constructing the proposed

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hazardous liquid pipeline was a reasonable request, setting forth this proceeding. The Board finds NuStar is a common carrier and is fulfilling its requirement under federal law to provide service to IFCo, while also complying with the requirements necessary to request a permit from the Board. Therefore, as a common carrier whose product will provide benefits to those both within the borders of the state of Iowa and benefits beyond, the Board finds there is a public use, which allows the Board to grant the right of eminent domain.

With regard to OCA's assertion that IFCo should be constructing the proposed hazardous liquid pipeline, the Board is unpersuaded by this argument. OCA points to NuStar's tariff Item No. 70 as evidence that IFCo should be the entity seeking the permit. However, NuStar's tariff Item No. 105 clarifies that NuStar's custody of the anhydrous ammonia begins "when [anhydrous ammonia] passes the block valve downstream from the Shipper's pump station at a point of Origin and ends [when anhydrous ammonia] passes the block valve downstream from the Carrier's meter station at a point of Destination."²¹ Applying this liability limitation found in NuStar's tariff Item No. 105 with that of NuStar's tariff Item No. 70's requirements for shippers, it is evident IFCo would not be responsible for the construction of the proposed hazardous liquid pipeline NuStar is seeking a permit for in this petition. As stated in NuStar's tariff Item No. 70, there is to be a meter and a pump at points of origin, which measure the amount of anhydrous ammonia placed onto or removed from NuStar's system. These would be the pumps discussed in NuStar's tariff Item No. 105 that delineate a shipper's liability and when NuStar assumes control of the anhydrous ammonia. For these

²¹ Capitalized words within this quote are defined terms contained within NuStar's tariff.

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reasons, the Board does not agree with OCA that NuStar is not the correct entity seeking the permit in this proceeding.

Lastly, with regard to Ms. Stein's assertion that eminent domain cannot be granted for agricultural land, the Board finds the Iowa Supreme Court in *Puntenney* clearly stated the exception within Iowa Code § 6A.21(2) applies to a proceeding brought as part of the Board's permitting process under Iowa Code chapter 479B. (*Puntenney*, 928 N.W.2d at 843.) Therefore, NuStar is not required to obtain landowner consent prior to seeking the right of eminent domain and may seek eminent domain over agricultural land.

For all the above reasons, the Board finds there is a public use and will grant NuStar the right of eminent domain over the parcels described below.

a. Margaret Strunk and Coette Gida Parcels

The Strunk/Gida Parcels consist of six parcels. The Board will grant NuStar the right of eminent domain over four of the Strunk/Gida Parcels subject to the modifications and limitations discussed herein.

Prior to requesting the right of eminent domain, an acquiring entity must make a good faith effort to negotiate the purchase of an easement. (Iowa Code § 6B.2B.) In Mr. Purgason's direct testimony, he describes the events and conversations that occurred as it related to the Strunk/Gida Parcels. (Purgason Direct, p. 7-8.) Mr. Purgason testifies land agents with JCG met with Ms. Gida's husband on October 20, 2021, and hand-delivered an offer package for a voluntary easement. Mr. Purgason states during this conversation, Mr. Gida suggested a route deviation that moved the proposed hazardous liquid pipeline closer to the creek on the property. (*Id.* at 7.) Mr. Purgason states NuStar was informed on October 30, 2021, that the local sheriff was

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called to make contact with its cultural/environmental survey group. (*Id.*) Mr. Purgason testifies JCG notified the landowners that JCG had sent the survey notice pursuant to Iowa Code § 479B.15 as to why the surveying was occurring. (*Id.*) Mr. Purgason's direct testimony asserts a meeting occurred on January 3, 2022, between JCG and Mr. and Ms. Gida, at which time they indicated they would not sign an easement. (*Id.* at 8.) Mr. Purgason's testimony indicates JCG reached out to Mr. and Ms. Gida in January, February and March 2022, with no response. (*Id.*) Mr. Purgason testifies JCG hand-delivered a letter to Ms. Gida in March 2022, and Ms. Gida indicated her position had not changed. (*Id.*) Mr. Purgason testifies JCG reached out to Ms. Gida on July 1, 2022, when she reasserted she would not sign a voluntary easement. (*Id.*) At hearing, Mr. Purgason testified the initial offers for easements to all landowners were based upon the 2020 Iowa State University land survey. (HT, p. 406.) Mr. Purgason continued by stating landowners negotiated different prices based upon the nature of their properties. (*Id.* at 407.)

During her testimony, Ms. Gida described conversations she had with land agents and others as it relates to the requested easements on her property. (*Id.* 523-528; 540-542.) Ms. Gida testified that she was told NuStar would go "[t]hrough my driveway and out my back pasture. . . . So they're going right in between the house and barn." (*Id.* at 525.) Ms. Gida also testifies regarding the surveying which occurred on her property. (*Id.* at 540.) Ms. Gida's testimony also recounted the interactions she and her husband had with NuStar's land agents. (*Id.* at 540-541.) Furthermore, during her testimony, Ms. Gida recommended NuStar's proposed hazardous liquid pipeline not cross her property, but rather follow the outside of her fence line along the state property where there are fewer trees. (HT, p. 532.)

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The Board has already found NuStar's project passes the requirements in Iowa Code § 479B.16 to be granted eminent domain, and the Board finds NuStar engaged in good faith negotiations with Ms. Gida regarding the attempt to obtain a voluntary easement. The Board will grant NuStar the right of eminent domain over the Strunk/Gida Parcels as described below.

As the Board described earlier in this order, the Board is requiring NuStar to relocate the access easement to the south of Ms. Gida's mother's house. Due to this modification, the Board will deny NuStar the right of eminent domain over Exhibit H-07 (IA-LEE-038-043.00) and H-08 (IA-LEE-038-043.10).

With regard to Exhibit H-03 (IA-LEE-038-039.00), Exhibit H-04 (IA-LEE-038-040.00), Exhibit H-05 (IA-LEE-038-041.00), and Exhibit H-06 (IA-LEE-038-042.00), the Board will require that NuStar strike subsection (ii) from section (i) of the easement agreement. Section (ii) of section (i) of the easement allows for the transportation of "oil, petroleum, gas, hydrocarbons, any of their related projects." At hearing, Mr. Purgason testified he was unsure why that language was included, but that NuStar has no intent to use the proposed hazardous liquid pipeline for anything other than anhydrous ammonia. (HT, p. 455.)

Additionally, the Board will require NuStar to modify section (viii) of Exhibit H-03 (IA-LEE-038-039.00) to remove the term "trees." NuStar has testified 49 CFR § 195.412 requires it to clear the easement width in order to allow aerial inspection. This provision of the Code of Federal Regulation states, "[e]ach operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-

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way.” (49 CFR § 195.412(a).) The federal regulations allow for forms of inspection other than aerial, which necessitates the clearing of trees. Given the amount of erosion Ms. Gida testified has occurred in and around the creek and the fact NuStar will conduct HDD in the area, the Board finds it not reasonable to have the trees removed.

With regard to Exhibit H-05 (IA-LEE-038-041.00) and Exhibit H-06 (IA-LEE-038-042.00), the Board will require NuStar to file revised eminent domain exhibits and KMZ showing the revised access easement based upon the modification discussed above in this order. (*Section B. 7; supra*) Furthermore, as stated earlier in this order, NuStar will be required to work with Ms. Gida to inform her of construction-related activities and timelines to reduce the impact the hazardous liquid pipeline may have on Ms. Gida or her mother. (*Id.*)

The Board will require NuStar to file revised easement agreements as described above and submit revised Exhibit H's for the Strunk/Gida Parcels reflecting the above changes.

b. Hayes Menke 9, LLC, Parcels

Prior to requesting the right of eminent domain, an acquiring entity must make a good faith effort to negotiate the purchase of an easement. Iowa Code § 6B.2B. In his prefiled direct testimony, Mr. Purgason testifies on October 6, 2021, that JCG had a verbal conversation with the landowner regarding the proposed easement. (Purgason Direct, p. 8.) Mr. Purgason testifies that during this conversation, verbal survey permission was obtained and an email address was provided to send documents. (*Id.*) Mr. Purgason testifies on October 7, 2021, that a few days later, JCG sent the documents to the landowners to which it received a response, indicating a response from an attorney would be forthcoming. (*Id.*) Mr. Purgason's testimony states on

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October 28, 2021, NuStar received notice that a hunting party was upset from the cultural/environmental survey group being on the property. (*Id.*) Mr. Purgason testifies the landowner was made aware of the incident via email, at which time the landowner indicated they had not given permission and all other communication should be in writing to avoid confusion. (*Id.*) Mr. Purgason testifies that outreach was done in November 2021 and January, March, April, and June 2022, with no response. (*Id.* at 8-9.)

At hearing, HM9 questioned Mr. Purgason if it would surprise him if the quote, “We’re not going anywhere,” was used during negotiations. (HT, p. 426.) Mr. Purgason testified it would slightly surprise him and a more sensitive tone would be appropriate. (*Id.*) During his testimony, Mr. Hayes states this quote was stated to his brother, Mr. Steven Hayes. (*Id.* at 502.) Mr. John Hayes states in testimony there are two ways to take the quote: “We’re not going anywhere, or you could say, Okay, well, if you change your mind or if you need something, we’re not going anywhere. And I could tell you it was interpreted as the former.” (*Id.*)

While the language used during the negotiation process may have been interpreted in a negative manner by Mr. Steven Hayes, Mr. John Hayes’ own testimony shows how there are two ways to interpret it. (*See id.*) The Board has already found NuStar’s project passes the requirements of Iowa Code § 479.16 to be granted eminent domain, and the Board finds NuStar engaged in good faith negotiations with HM9 regarding the attempt to ascertain a voluntary easement. The Board will grant NuStar the right of eminent domain over the HM9 Parcels as described below.

With regard to the HM9 Parcels, Exhibit H-09 (IA-LEE-038-044.00) and Exhibit H-10 (IA-LEE-038-044.10), the Board will require NuStar strike subsection (ii) from

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section (i) of the easement for the reasons described above for the Strunk/Gida Parcels. Additionally, having examined the requirements of 49 CFR §195.412 above, the Board will require NuStar to modify the language in section (viii) in Exhibit H-09 (IA-LEE-038-044.00) and section (vii) in Exhibit H-10 (IA-LEE-038-044.10) to remove the term “trees.” Seeing as NuStar intends to conduct HDD for the proposed hazardous liquid pipeline across HM9’s parcels, the Board is not persuaded that removal of trees is necessary.

The Board will require NuStar to file revised easements as described above and submit revised Exhibit H’s for the HM9 Parcels reflecting the above changes. The revised easements will be subject to Board approval.

c. State of Iowa

On December 21, 2022, Assistant Iowa Attorney General Moss filed an objection regarding the use of eminent domain against the State of Iowa. Mr. Moss asserts it is the State of Iowa’s position that under Iowa Code § 479B.16(3), NuStar is precluded from utilizing eminent domain against the State of Iowa to acquire any portion of property interest. Mr. Moss states:

To the extent that the interest of the State of Iowa in said lands is not an interest in a public highway right-of-way, it is incumbent upon [NuStar] to set forth clear and convincing legal authority which would permit the exercise of eminent domain in relation to the State of Iowa in that scenario.

In direct testimony provided at hearing, Mr. Purgason testifies that NuStar was not seeking the right of eminent domain against the State of Iowa. (HT, p. 402.) Mr. Purgason testifies NuStar is only crossing IDOT property governed by crossing agreements. (*Id.* at 403.) Mr. Purgason testifies he is not aware of any other

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State of Iowa property at issue for NuStar's project where NuStar would need rights from the state. (*Id.*)

Based upon the testimony of Mr. Purgason, it does not appear that NuStar is requesting the right of eminent domain over State of Iowa property. A review of the requests for eminent domain show the State of Iowa is an easement holder on numerous parcels, which may have been the reason the State of Iowa received the notice of eminent domain proceedings as an affected person. Under 199 IAC 13.1(3), an "affected person" is defined to include "any person with a legal right or interest in the property, including but not limited to . . . a record encumbrancer of the property." To avoid any ambiguity to the extent NuStar is requesting the right of eminent domain over property owned by the State of Iowa, the request will be denied.

K. Other Issues

Included in HM9's post-hearing reply brief and its March 22, 2023 response, HM9 requests the Board reopen the record to allow NuStar and HM9 the opportunity to develop a fuller record. The Board's rules at 199 IAC 7.24 establish the rules for reopening the record prior to the issuance of a final decision. The rules require the moving party to provide "affidavits of witnesses who will present new evidence" and "include an explanation of the competence of the witness to sponsor the evidence and a description of the evidence to be included in the record." (199 IAC 7.24.) Neither HM9's post-hearing reply brief nor its March 22, 2023 response contains an affidavit of a witness or a description of what evidence would be added into the record. The Board will not grant HM9's motion to reopen the record.

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L. Permit

The Board is granting NuStar a permit to construct, operate, and maintain a 13.74-mile hazardous liquid pipeline in Lee County, and is granting NuStar the right of eminent domain, as described above. However, the Board is not issuing the permit at this time. Due to the number of corrective filings, the Board will issue the permit once NuStar has filed the corrected exhibits, excluding Exhibit E, and the Board approves of the changes. Once compliance with this order is achieved, the Board will issue the permit, allowing NuStar to begin construction and any necessary eminent domain proceedings.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject matter of this docket under the provisions of Iowa Code chapter 479.
2. The requirements of Iowa Code § 479B.5 have been completed by NuStar.
3. NuStar has established its hazardous liquid pipeline will promote the public convenience and necessity as required by Iowa Code § 479B.9.
4. NuStar has demonstrated compliance with the financial requirements of Iowa Code § 479B.13.
5. NuStar will be vested with the right of eminent domain as described in this order, consistent with Iowa Code § 479B.16.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The petition for a hazardous liquid pipeline permit filed by NuStar Pipeline Operating Partnership L.P. on January 27, 2022, as subsequently revised, is granted

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subject to the terms and conditions of this order.

2. The motion to strike filed by Hayes Menke 9, LLC, on March 22, 2023, is granted.

3. The information filed by NuStar Pipeline Operating Partnership L.P. on March 15, 2023, subject to Ordering Clause 2, is admitted into the record.

4. The request to take official notice filed by Hayes Menke 9, LLC, on March 22, 2023, is denied.

5. The responses filed by the Office of Consumer Advocate, a division of the Iowa Department of Justice, and Hayes Menke 9, LLC, on March 22, 2023, are admitted into the record.

6. NuStar Pipeline Operating Partnership L.P. shall be granted the right of eminent domain as described in this order over the following parcels:

- Exhibit H-03 (IA-LEE-038-039.00)
- Exhibit H-04 (IA-LEE-038-040.00)
- Exhibit H-05 (IA-LEE-038-041.00)
- Exhibit H-06 (IA-LEE-038-042.00)
- Exhibit H-09 (IA-LEE-038-044.00)
- Exhibit H-10 (IA-LEE-038-044.10)

7. NuStar Pipeline Operating Partnership L.P. is denied the right of eminent domain over the following parcels:

- Exhibit H-07 (IA-LEE-038-043.00)
- Exhibit H-08 (IA-LEE-038-043.10)

8. NuStar Pipeline Operating Partnership L.P. shall relocate the temporary access easement from its current location between Coette Gida's and Margaret Strunk's houses to south of Margaret Strunk's house.

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9. NuStar Pipeline Operating Partnership L.P.'s entrance for the relocated temporary access easement shall be located across from the entrance to Exhibit H-09 (IA-LEE-038-044.00). The access easement shall extend generally in a westerly direction to connect with the access easement shown on Exhibit H-05 (IA-LEE-038-041.00).

10. NuStar Pipeline Operating Partnership L.P. shall remove the term "trees" from Exhibit H-03 (IA-LEE-038-039.00); Exhibit H-09 (IA-LEE-038-044.00); and Exhibit H-10 (IA-LEE-038-044.10).

11. NuStar Pipeline Operating Partnership L.P. shall work with landowner Coette Gida to address her concerns and shall abide by the terms described in the body of this order.

12. NuStar Pipeline Operating Partnership L.P. shall file copies of the Lee County road crossing permits in this docket.

13. NuStar Pipeline Operating Partnership L.P. shall file a revised Exhibit E as it obtains the outstanding federal and state permits.

14. NuStar Pipeline Operating Partnership L.P. shall file an affidavit or a copy of the agreement, pertaining to shipping anhydrous ammonia on the hazardous liquid pipeline between it and the Iowa Fertilizer Company, with the Utilities Board prior to commencing construction.

15. NuStar Pipeline Operating Partnership L.P. shall file a copy of its insurance in this docket as described in the body of this order.

16. NuStar Pipeline Operating Partnership L.P. shall file a revised Exhibit I reflecting the revisions made in the body of this order.

17. NuStar Pipeline Operating Partnership L.P. shall file revised eminent

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domain exhibits as described in the body of this order. The revised eminent domain exhibits are subject to review and approval of the Utilities Board.

18. NuStar Pipeline Operating Partnership L.P. shall file notice when construction of the hazardous liquid pipeline commences, weekly updates regarding the construction, and an as-built map and notice of the completion of construction once construction is completed.

19. The Board retains jurisdiction of the subject matter of this docket for purposes of receiving and considering the additional filings required by this order and for such other purposes as may be appropriate.

UTILITIES BOARD

Geri Huser Date: 2023.04.26
08:27:16 -05'00'

Richard Lozier Date: 2023.04.25
15:44:20 -05'00'

ATTEST:

Keetah Horras 2023.04.26
12:31:17 -05'00'

Joshua Byrnes Date: 2023.04.25
14:47:55 -05'00'

Dated at Des Moines, Iowa, this 26th day of April, 2023.