

NUSTAR ENERGY L.P.

FORM 8-K (Current report filing)

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **July 23, 2018**

NuStar Energy L.P.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation)

001-16417

(Commission File Number)

74-2956831

(I.R.S. Employer Identification
No.)

**19003 IH-10 West
San Antonio, Texas 78257**

(Address of principal executive offices)

(210) 918-2000

(Registrant's telephone number, including area code)

Not applicable

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02 **Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On February 8, 2018, NuStar Energy L.P. (the “Partnership”) announced (1) a proposed reset of the Partnership’s quarterly distribution per common unit representing limited partner interests (“Common Units”) to \$0.60 (\$2.40 on an annualized basis), starting with the first-quarter distribution payable in May 2018 (the “Distribution Reset”) and (2) a proposed transaction, pursuant to which a subsidiary of the Partnership would merge with and into NuStar GP Holdings, LLC (“NSH”), with NSH surviving the merger as a wholly owned subsidiary of the Partnership (the “Merger”). Due to the significance of the then-pending Distribution Reset and Merger, the Compensation Committee (the “Committee”) of the board of directors (the “Board”) of NuStar GP, LLC (the “Company”), the general partner of the general partner of the Partnership, delayed consideration of annual performance unit awards to executive officers and 2018 Partnership performance measures generally until after the closing of the Merger on July 20, 2018.

On July 23, 2018, the Committee approved awards of performance units for the Company’s executive officers (including the named executive officers included in the Partnership’s most recent Annual Report on Form 10-K) pursuant to the terms of the Company’s Fifth Amended and Restated 2000 Long-Term Incentive Plan, as amended (the “Plan”). The performance units are payable in Common Units upon vesting. The performance units are eligible to vest in one-third annual increments at the Committee’s meetings in January 2019, January 2020 and January 2021, based upon the Partnership’s performance during the annual performance periods that end on December 31, 2018, December 31, 2019 and December 31, 2020, respectively. One-half of any performance units not earned in a given performance period are carried forward for one additional performance period and up to 100% of such performance units carried forward have the opportunity to vest based upon the Partnership’s performance in the following performance period. In addition, in its discretion permitted by the Plan, on July 23, 2018, the Committee determined that one-half of the performance units that did not vest with respect to the Partnership’s 2017 performance would be carried forward for one additional performance period, with the opportunity for up to 100% of such performance units carried forward to vest based upon the Partnership’s 2018 performance.

The performance units awarded to the Partnership’s named executive officers on July 23, 2018, including the carried forward performance units, are set forth below:

Name	Title	Number of Performance Units Awarded	Number of Performance Units Carried Forward
Bradley C. Barron	President and Chief Executive Officer	28,045	5,370
Mary Rose Brown	Executive Vice President and Chief Administrative Officer	13,230	2,684
Thomas R. Shoaf	Executive Vice President and Chief Financial Officer	12,282	2,492
Daniel S. Oliver	Senior Vice President-Marketing and Business Development	7,767	1,890
Michael Truby	Senior Vice President-Operations	7,221	1,314

The Committee has the full discretion to vest up to 200% of the performance units available for vesting (other than any performance units carried forward, which are only eligible to vest up to 100%). The form of performance unit award agreement is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The Committee’s overall assessment of 2018 performance is expected to occur at its January 2019 meeting and is expected to include, without limitation, the Committee’s assessment of the implementation of the Distribution Reset, the Merger, the issuance by the Partnership of convertible preferred units, the continued integration of the Permian Basin assets acquired by the Partnership, the Partnership’s total unitholder return and an overall evaluation of employee performance.

As previously disclosed, the Partnership's executive officers, including the named executive officers, did not receive cash bonuses for 2017. In the Committee's discretion, on July 23, 2018, the Committee awarded fully vested units pursuant to the Plan to each executive officer in an amount equal to 50% of each such executive officer's bonus target with respect to 2017.

The units awarded on July 23, 2018 to the Partnership's named executive officers are set forth below:

Name	Title	Number of Units Awarded
Bradley C. Barron	President and Chief Executive Officer	12,318
Mary Rose Brown	Executive Vice President and Chief Administrative Officer	4,842
Thomas R. Shoaf	Executive Vice President and Chief Financial Officer	4,495
Daniel S. Oliver	Senior Vice President-Marketing and Business Development	3,751
Michael Truby	Senior Vice President-Operations	3,399

In addition, in consideration of their significant efforts to complete the Distribution Reset, the Merger and the Partnership's issuance of convertible preferred units, on July 23, 2018 the Committee approved additional fully vested unit awards pursuant to the Plan for certain of the Company's executive officers, including Mr. Barron and Mr. Shoaf, who received awards of 5,075 units and 3,087 units, respectively.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
Exhibit 10.1	Form of 2018 Performance Unit Award Agreement under the NuStar GP, LLC Fifth Amended and Restated 2000 Long-Term Incentive Plan

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

NUSTAR ENERGY L.P.

By: Riverwalk Logistics, L.P.
its general partner

By: NuStar GP, LLC
its general partner

Date: July 25, 2018

By: /s/ Amy L. Perry
Name: Amy L. Perry
Title: Senior Vice President, General Counsel - Corporate & Commercial Law and Corporate Secretary

PERFORMANCE UNIT AWARD AGREEMENT

This Performance Unit Agreement (“**Agreement**”), effective as of July 23, 2018 (“**Grant Date**”), is between NuStar GP, LLC (the “**Company**”), NuStar Services Company LLC and the recipient of this Agreement (“**Participant**”), a participant in the **NuStar GP, LLC Fifth Amended and Restated 2000 Long-Term Incentive Plan**, as the same may be amended (the “**Plan**”), pursuant to and subject to the provisions of the Plan. All capitalized terms contained in this Agreement shall have the same definitions as are set forth in the Plan unless otherwise defined herein. The terms governing this Award are set forth below. Certain provisions applicable to this Agreement are set forth on Appendix A.

1. **Grant of Performance Units**. The Compensation Committee of the Board of Directors of the Company (the “**Committee**”) hereby grants, pursuant to Section 6.4 of the Plan, to Participant the number of Performance Units under the Plan communicated to the Participant by the Participant’s manager, which represents the target number of Performance Units subject to this Agreement, which grant is subject to the terms and conditions of this Agreement and the Plan. A “**Performance Unit**” is an unfunded, unsecured contractual right (commonly referred to as a “phantom unit”) which, upon vesting, entitles Participant to receive a Unit of NuStar Energy L.P. No DERs are granted in connection with this Award of Performance Units.
 2. **Performance Period**. Except as provided below with respect to a Change of Control, the performance period for any Performance Units eligible to vest on any given Vesting Date (as defined below) shall be the calendar year ending on the December 31 immediately preceding such Vesting Date (each, a “**Performance Period**” and specifically, with respect to each of the 2018, 2019 and 2020 calendar years, the “**Year 1 Performance Period**,” the “**Year 2 Performance Period**,” and the “**Year 3 Performance Period**,” respectively).
 3. **Vesting and Settlement**.
 - A. **Vesting**. Except as otherwise provided in this Agreement, the Performance Units granted hereunder shall be eligible to vest, subject to Section 4, over a period of three years in equal, one-third increments (provided, however, that if such increments would otherwise result in a fractional Performance Unit with respect to the applicable Annual Tranche, such fractional Performance Unit shall be rounded to the nearest whole number) (each increment, an “**Annual Tranche**” and specifically, with respect to the applicable Performance Period for each of the 2018, 2019 and 2020 calendar years, the “**Year 1 Annual Tranche**,” the “**Year 2 Annual Tranche**,” and the “**Year 3 Annual Tranche**,” respectively). Except as otherwise provided in this Agreement, the applicable portion, if any, of each Annual Tranche shall vest on the date that the Committee certifies the attainment of the Performance Goals established by Committee (“**Performance Measures**”) for the applicable Performance Period in accordance with Section 4 following completion of the applicable Performance Period (each of these three vesting dates is referred to as a “**Vesting Date**”). Except as provided below in Section 3C, Performance Units subject to an Annual Tranche that do not vest as of the Vesting Date for such Annual Tranche shall be automatically and immediately forfeited for no consideration. In no event shall a number of Performance Units greater than 200% of the number set forth in Section 1 vest under any circumstances.
 - B. **Settlement**. Except as provided otherwise in Section 6, any Performance Units that vest pursuant to this Agreement shall be settled as soon as reasonably practical after the applicable Vesting Date and in all events no later than March 15 of the calendar year following the end of the applicable Performance Period. This Agreement and the Award evidenced hereby are intended to comply with or otherwise be exempt from, and shall be administered consistently in all respects with, Section 409A of the Code and the regulations promulgated thereunder. If necessary in order to attempt to ensure such compliance, this Agreement may be reformed, to the extent possible, unilaterally by the Company consistent with guidance issued by the Internal Revenue Service. Participant agrees that the Units to which Participant will be entitled in connection with the vesting, if any, of each Performance Unit may be in uncertificated form and recorded with the Company’s or its Affiliates’ service provider.
 - C. **Additional Vesting Opportunity for Carried Forward Units**. With respect to each Annual Tranche, one-half of the Performance Units that do not vest on the original Vesting Date for such Annual Tranche and that would otherwise be forfeited pursuant to Section 3A (the “**Carried Forward Units**”) shall not be forfeited pursuant to Section 3A and shall again be eligible to vest on the Vesting Date for the immediately following Performance Period. The portion of the Carried Forward Units that vest, if at all, shall be based on the attainment of the Performance Measures for such immediately following Performance Period; provided, however, that regardless of the level of Performance Measures achieved by NuStar Energy L.P. for the immediately following Performance Period, no more than 100% of the Carried Forward Units shall be eligible to vest. Any Carried Forward Units that do not vest on the Vesting Date for the immediately following Performance Period shall be automatically and immediately forfeited for no consideration.
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4. **Performance Measures.**

- A. **Performance Unit Vesting for the Year 1 Performance Period.** The Year 1 Annual Tranche shall vest based on the Committee's assessment of performance during the Year 1 Performance Period, including, without limitation, the Committee's assessment of the implementation of NuStar Energy L.P.'s distribution reset, the simplification transaction between NuStar Energy L.P. and NuStar GP Holdings, LLC, the issuance of NuStar Energy L.P. convertible preferred units, the continued integration of the Permian Basin assets acquired by NuStar Energy L.P., NuStar Energy L.P.'s total unitholder return and an overall evaluation of employee performance. The Committee has full discretion to vest between 0% and 200% of the Year 1 Annual Tranche.
- B. **Performance Unit Vesting for Year 2 and Year 3.** The Committee will designate the Performance Measures that will apply for the Year 2 Performance Period and the Year 3 Performance Period (the "**Year 2 Performance Measures**" and the "**Year 3 Performance Measures**," respectively) in the first quarter of the applicable calendar year based on the Company's approved budget for such applicable year. Within the Committee's discretion, the Year 2 Performance Measures and the Year 3 Performance Measures may result in the vesting of greater than 100% (up to 200%) of the Year 2 Annual Tranche and the Year 3 Annual Tranche, respectively. The Year 2 Performance Measures and the Year 3 Performance Measures shall be applied to the Year 2 Annual Tranche and the Year 3 Annual Tranche, respectively, to determine the Performance Units that vest with respect to the applicable Performance Period. Notwithstanding the foregoing, the Committee has full discretion to vest between 0% and 200% of the applicable Annual Tranche, regardless of the level of Performance Measures achieved by NuStar Energy L.P. for the applicable year.

5. **Termination of Employment.**

- A. **Voluntary Termination and Termination for Cause.** Except for a Change of Control, if Participant's employment is voluntarily terminated by Participant (other than through Participant's death), or is terminated by the Company or an Affiliate for Cause, any Annual Tranche for a Performance Period not completed as of the date of termination shall be automatically forfeited for no consideration; provided, however, that a Participant who remains continuously employed with the Company or an Affiliate from the Grant Date through the last day of a Performance Period will be entitled to the Performance Units (i.e., the Performance Units in the Annual Tranche for such completed Performance Period in accordance with Section 4 and any Carried Forward Units from the immediately preceding Performance Period which are eligible to vest with respect to such completed Performance Period), whether or not Participant remains employed by the Company or an Affiliate until the Vesting Date applicable to the completed Performance Period.
- B. **Death, Disability and Termination by the Company Other Than for Cause.** Except for a Change of Control, if Participant experiences a Disability (as defined below) or if Participant's employment with the Company or an Affiliate is terminated by the Company or an Affiliate other than for Cause (at a time when Participant is otherwise willing and able to continue providing services) or as a result of Participant's death (each, a "**Triggering Event**"), and the then-current Performance Period will be completed in fewer than 30 days after such Triggering Event, the Annual Tranche applicable to the then-current Performance Period and any Carried Forward Units which are eligible to vest with respect to the then-current Performance Period) shall vest and be settled in accordance with Sections 3 and 4 as if Participant had remained employed through the last day of the Performance Period. Any Performance Units (including any Carried Forward Units) that fail to vest for the then-current Performance Period after the application of the previous sentence, including any Performance Units for any Performance Periods that would otherwise have commenced following the Triggering Date, shall be automatically and immediately forfeited for no consideration. Any Performance Units that vest pursuant to this Section 5B shall be settled as soon as administratively practicable after the Vesting Date for the then-current Performance Period and in all events no later than March 15 of the calendar year following the end of the calendar year in which the applicable Triggering Event occurs. For purposes of this Agreement, "**Disabled**" or "**Disability**" means (i) the inability of Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months or (ii) the receipt of income replacements by Participant, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, for a period of not less than three (3) months under the accident and health plan of the Company or an applicable Affiliate thereof.
6. **Change of Control.** Upon a Change of Control, with respect to then-outstanding Performance Units, all applicable Performance Measures will be deemed achieved at the maximum levels applicable to such Performance Units and all such Performance Units shall automatically vest in full. Any Performance Units that vest pursuant to this Section 6 shall be settled as soon as administratively practicable after the Change of Control and in all events no later than March 15 of the calendar year following the end of the calendar year in which the Change of Control occurs.
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7. **Withholding**. The Company or one of its Affiliates will withhold any taxes due from Participant's grant as the Company or an applicable Affiliate determines is required by law, which, in the sole discretion of the Committee, may include withholding a number of Performance Units or the Units issuable thereunder otherwise payable to Participant.
8. **Acceptance and Acknowledgement**. Participant hereby accepts and agrees to be bound by all of the terms, provisions, conditions and limitations of the Plan and any subsequent amendment or amendments thereto, as if it had been set forth verbatim in this Award. Participant shall be deemed to have timely accepted this Agreement and the terms hereof if Participant has not explicitly rejected this Agreement in writing to the Company within sixty (60) days after the Grant Date. Participant hereby acknowledges receipt of a copy of the Plan, this Agreement and Appendix A. Participant has read and understands the terms and provisions thereof, and accepts the Performance Units subject to all of the terms and conditions of the Plan and this Agreement. Participant acknowledges that there may be adverse tax consequences upon the vesting or settlement of the Performance Units or disposition of the underlying Units and that Participant has been advised to consult a tax advisor prior to such vesting, settlement or disposition.
9. **Plan and Appendix Incorporated by Reference**. The Plan and Appendix A are incorporated into this Agreement by this reference and are made a part hereof for all purposes; provided, however, that, in the event of a conflict between the Plan and this Agreement or between the Plan and Appendix A, the Plan shall control.
10. **Restrictions**. This Agreement and Participant's interest in the Performance Units granted by this Agreement are of a personal nature and, except as expressly provided in this Agreement or the Plan, Participant's rights with respect thereto may not be sold, mortgaged, pledged, assigned, alienated, transferred, conveyed or otherwise disposed of or encumbered in any manner by Participant. Any such attempted sale, mortgage, pledge, assignment, alienation, transfer, conveyance, disposition or encumbrance shall be void, and the Company and its Affiliates shall not be bound thereby.
11. **Amendment to Prior Awards**. Notwithstanding anything in the Participant's 2015 Award, 2016 Award or 2017 Award (in each case, as defined below):
 - (a) with respect to the award of Performance Units approved by the Committee in 2015 with respect to the 2015, 2016 and 2017 Performance Periods (the "**2015 Award**"), one half of the Annual Tranche that was subject to Performance Measures for the 2017 Performance Period but that did not vest with respect to the 2017 Performance Period shall not be forfeited and shall be eligible to vest on the Vesting Date for the 2018 Performance Period based on the attainment of the Performance Measures for the 2018 Performance Period,
 - (b) with respect to the Performance Units subject to the award approved by the Committee in 2016 with respect to the 2016, 2017 and 2018 Performance Periods (the "**2016 Award**"), (i) one half of the Annual Tranche that was subject to Performance Measures for the 2017 Performance Period but that did not vest with respect to the 2017 Performance Period shall not be forfeited and shall be eligible to vest on the Vesting Date for the 2018 Performance Period based on the attainment of the Performance Measures for the 2018 Performance Period and (ii) one half of the Annual Tranche that is subject to Performance Measures for the 2018 Performance Period that does not vest with respect to the 2018 Performance Period shall not be forfeited and shall be eligible to vest on the Vesting Date for the 2019 Performance Period based on the attainment of the Performance Measures for the 2019 Performance Period,
 - (c) with respect to the Performance Units subject to the award approved by the Committee in 2017 with respect to the 2017, 2018 and 2019 Performance Periods (the "**2017 Award**"), (i) one half of the Annual Tranche that was subject to Performance Measures for the 2017 Performance Period but that did not vest with respect to the 2017 Performance Period shall not be forfeited and shall be eligible to vest on the Vesting Date for the 2018 Performance Period based on the attainment of the Performance Measures for the 2018 Performance Period; (ii) one half of the Annual Tranche that is subject to Performance Measures for the 2018 Performance Period that does not vest with respect to the 2018 Performance Period shall not be forfeited and shall be eligible to vest on the Vesting Date for the 2019 Performance Period based on the attainment of the Performance Measures for the 2019 Performance Period and (iii) one half of the Annual Tranche that is subject to Performance Measures for the 2019 Performance Period that does not vest with respect to the 2019 Performance Period shall not be forfeited and shall be eligible to vest on the Vesting Date for the 2020 Performance Period based on the attainment of the Performance Measures for the 2020 Performance Period;

provided, however, that with respect to each of the 2015 Award, the 2016 Award and the 2017 Award, no more than 100% of the Performance Units that are carried forward as being eligible to vest in the immediately following Performance Period pursuant to this Section 11 may vest on the Vesting Date for the immediately following Performance Period, regardless of the level of Performance Measures achieved by NuStar Energy L.P. for the immediately following Performance Period and any such carried forward Performance Units that do not become vested on the Vesting Date for the immediately following Performance Period shall be automatically and immediately forfeited for no consideration.

NUSTAR GP, LLC

By: _____
Bradley C. Barron
President & Chief Executive Officer

NUSTAR SERVICES COMPANY LLC

By: _____
Bradley C. Barron
President & Chief Executive Officer

APPENDIX A

1. **No Guarantee of Tax Consequences**. None of the Board, the Company or any Affiliate of any of the foregoing makes any commitment or guarantee that any federal, state, local or other tax treatment will (or will not) apply or be available to Participant (or to any person claiming through or on behalf of Participant) or assumes any liability or responsibility with respect to taxes and penalties and interest thereon arising hereunder with respect to Participant (or to any person claiming through or on behalf of Participant).
2. **Successors and Assigns**. The Company and NuStar Services Company LLC may assign any of their respective rights under this Agreement. This Agreement shall be binding and inure to the benefit of the successors and assigns of the Company and NuStar Services Company LLC. Subject to the restrictions on transfer set forth herein, this Agreement will be binding upon Participant and Participant's beneficiaries, executors, administrators and the person(s) to whom the Performance Units may be transferred by will or the laws of descent or distribution.
3. **Governing Law**. The validity, construction and effect of this Agreement shall be determined by the laws of the State of Delaware without regard to conflict of laws principles.
4. **No Rights as Unitholder**. Neither Participant nor any person claiming by, through or under Participant with respect to the Performance Units shall have any rights as a unitholder of NuStar Energy L.P. (including, without limitation, voting rights) unless and until the Performance Units vest and are settled by the issuance of Units.
5. **Amendment**. The Committee has the right to amend, alter, suspend, discontinue or cancel this Agreement and/or the Performance Units; provided, that no such amendment shall adversely affect Participant's material rights under this Agreement without Participant's consent.
6. **No Right to Continued Service**. Neither the Plan nor this Agreement shall confer upon Participant any right to be retained in any position, as an Employee or Director of the Company or any Affiliate thereof. Further, nothing in the Plan or this Agreement shall be construed to limit the discretion of the Company or any Affiliate thereof to terminate Participant's service at any time, with or without Cause.
7. **Notices**. Any notice required to be delivered to the Company or NuStar Services Company LLC under this Agreement shall be in writing and addressed to the Secretary of the Company at the Company's principal offices. Any notice required to be delivered to Participant under this Agreement shall be in writing and addressed to Participant at Participant's address as then shown in the records of the Company. Any party hereto may designate another address in writing (or by such other method approved by the Company) from time to time.
8. **Interpretation**. Any dispute regarding the interpretation of this Agreement shall be submitted by such party to the Committee for review. The resolution of such dispute by the Committee shall be final and binding on the parties hereto.
9. **Severability**. The invalidity or unenforceability of any provision of the Plan or this Agreement shall not affect the validity or enforceability of any other provision of the Plan or this Agreement, and each provision of the Plan and this Agreement shall be severable and enforceable to the extent permitted by law.