

NuStar Energy L.P.
Form S-4/A
June 14, 2018

As filed with the Securities and Exchange Commission on June 14, 2018

Registration No. 333-223671

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

Amendment No. 4
to
Form S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

NuStar Energy L.P.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of

4610
(Primary Standard Industrial

74-2956831
(I.R.S. Employer

incorporation or organization) **Classification Code Number)** **Identification Number)**
19003 IH-10 West
San Antonio, Texas 78257
(210) 918-2000

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Amy L. Perry
Senior Vice President, General Counsel
and Corporate Secretary
NuStar GP, LLC
19003 IH-10 West
San Antonio, Texas 78257
(210) 918-2000

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

George J. Vlahakos	Mark V. Purpura	Igor Kirman
Sidley Austin LLP	Richards, Layton & Finger, P.A.	Wachtell, Lipton, Rosen & Katz
1000 Louisiana St., Suite 6000	One Rodney Square	51 West 52nd Street
Houston, Texas 77002	920 North King Street	New York, NY 10019
	Wilmington, DE 19801	

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective and upon consummation of the merger described in the enclosed proxy statement/prospectus.

If the securities being registered on this Form are to be offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

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 7(a)(2)(B) of the Securities Act.

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Explanatory Note

NuStar Energy L.P. is filing this Amendment No. 4 (this Amendment), to its Registration Statement on Form S-4 (File No. 333-223671) (the Registration Statement) as an exhibit-only filing to file Exhibit 5.1, Exhibit 8.1 and Exhibit 8.2 to the Registration Statement. Accordingly, this Amendment consists of only the cover page, this explanatory note, Part II of the Registration Statement, the signature page to the Registration Statement and Exhibit 5.1, Exhibit 8.1 and Exhibit 8.2. The joint proxy statement/prospectus contained in the Registration Statement is unchanged and has been omitted.

PART II.

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. *Indemnification of Directors and Officers*

Section 17-108 of the Delaware Revised Uniform Limited Partnership Act empowers a Delaware limited partnership to indemnify and hold harmless any partner or other person from and against all claims and demands whatsoever.

The Sixth Amended and Restated Agreement of Limited Partnership of NuStar Energy L.P. (the Partnership), dated as of November 30, 2017 provides that the Partnership will indemnify (1) Riverwalk Logistics, L.P., (2) any departing general partner, (3) any person who is or was an affiliate of Riverwalk Logistics, L.P. or any departing general partner, (4) any person who is or was a member, partner, officer director, employee, agent or trustee of Riverwalk Logistics, L.P. or any departing general partner or any affiliate of Riverwalk Logistics, L.P. or any departing general partner or (5) any person who is or was serving at the request of Riverwalk Logistics, L.P. or any departing general partner or any affiliate of any such person, any affiliate of Riverwalk Logistics, L.P., or any fiduciary or trustee of another person (each, an Indemnitee), to the fullest extent permitted by law, from and against any and all losses, claims, damages, liabilities (joint or several), expenses (including, without limitation, legal fees and expenses), judgments, fines, penalties, interest, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as a Indemnitee; provided that in each case the Indemnitee acted in good faith and in a manner that such Indemnitee reasonably believed to be in or not opposed to the best interests of the Partnership and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not create an assumption that the Indemnitee acted in a manner contrary to that specified above. Any indemnification under these provisions will be only out of the assets of Partnership, and Riverwalk Logistics, L.P. shall not be personally liable for, or have any obligation to contribute or lend funds or assets to the Partnership to enable it to effectuate, such indemnification. The Partnership is authorized to purchase (or to reimburse Riverwalk Logistics, L.P. or its affiliates for the cost of) insurance against liabilities asserted against and expenses incurred by such persons in connection with the Partnership s activities, regardless of whether the Partnership would have the power to indemnify such person against such liabilities under the provisions described above.

Section 18-108 of the Delaware Limited Liability Company Act provides that, subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a Delaware limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

The First Amended and Restated Limited Liability Company Agreement of NuStar GP, LLC, as amended, contains the following provisions relating to indemnification of, among others, its officers and directors:

15. INDEMNIFICATION. (a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative, or investigative (hereinafter a proceeding), by reason of the fact that he or she is or was a director or an officer of the Company or is or was serving at the request of the Company as a director, officer, employee, or agent of another company or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan (Indemnitee), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, or agent or in any other capacity while serving as a director, officer, employee, or agent, shall be indemnified and held harmless by the Company to the fullest extent permitted or required by the Act, as the same

exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than such law permitted the Company to provide prior to such amendment), against all

expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith; provided, however, that, except as provided in Section 15(c) with respect to proceedings to enforce rights to indemnification, that Company shall indemnify any such Indemnitee in connection with a proceeding (or part thereof) initiated by such Indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Company.

(b) Right to Advancement of Expenses. The right to indemnification conferred in this Section 15(b) shall include the right to be advanced by the Company the expenses (including, without limitation, attorneys' fees and expenses) incurred in defending any such proceeding in advance of its final disposition (hereinafter an advancement of expenses); provided, however, that, if the Act so requires, an advancement of expenses incurred by an Indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Company of an undertaking (an Undertaking), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a Final Adjudication) that such Indemnitee is not entitled to be indemnified for such expenses under this Section 15(b) or otherwise. The rights to indemnification and to the advancement of expenses conferred in Sections 15(a) and 15(b) shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the Indemnitee's heirs, executors and administrators.

(c) Right of Indemnitee to Bring Suit. If a claim under Section 15(a) or 15(b) is not paid in full by the Company within 60 calendar days after a written claim has been received by the Company, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 calendar days, the Indemnitee may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Company to recover an advancement of expenses pursuant to the terms of an Undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the Indemnitee has not met any applicable standard for indemnification set forth in the Act. Neither the failure of the Company (including its Board of Directors, independent legal counsel, or its Member) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the Act, nor an actual determination by the Company (including its Board of Directors, independent legal counsel, or its Member) that the Indemnitee has not met such applicable standard of conduct shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. If any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Company to recover an advancement of expenses pursuant to the terms of an Undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section 15 or otherwise, shall be on the Company.

(d) Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Section 15 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, this Agreement, vote of members, or disinterested directors or otherwise.

We have obtained directors' and officers' insurance to protect the Partnership and the officers and directors of its general partner against losses arising from certain claims, including claims under the Securities Act of 1933.

Item 21. Exhibits and Financial Statement Schedules

The following Exhibits are filed as a part of, or are incorporated by reference in, this Registration Statement:

Exhibit No.	Document
2.1	Agreement and Plan of Merger, dated as of February 7, 2018, by and among NuStar Energy L.P., Riverwalk Logistics, L.P., NuStar GP, LLC, Marshall Merger Sub LLC, Riverwalk Holdings, LLC and NuStar GP Holdings, LLC (included as Annex A to the proxy statement/prospectus in Part I of this Registration Statement).
3.1	Form of Seventh Amended and Restated Agreement of Limited Partnership of NuStar Energy L.P. (included as Annex B to the proxy statement/prospectus in Part I of this Registration Statement).
3.2	Form of Second Amended and Restated Limited Liability Company Agreement of NuStar GP, LLC (included as Annex C to the proxy statement/prospectus in Part I of this Registration Statement).
5.1+	<u>Opinion of Sidley Austin LLP as to the legality of the securities being registered.</u>
8.1+	<u>Opinion of Sidley Austin LLP as to certain tax matters.</u>
8.2+	<u>Opinion of Wachtell, Lipton, Rosen & Katz as to certain tax matters.</u>
10.1	Support Agreement, dated as of February 7, 2018, by and among NuStar Energy L.P., Marshall Merger Sub LLC, WGL Holdings, LLC, William E. Greehey and NuStar GP Holdings, LLC (included as Annex D to the proxy statement/prospectus in Part I of this Registration Statement).
23.1+	<u>Consent of Sidley Austin LLP (contained in Exhibit 5.1 hereto).</u>
23.2+	<u>Consent of Sidley Austin LLP (contained in Exhibit 8.1 hereto).</u>
23.3+	<u>Consent of Wachtell, Lipton, Rosen & Katz (contained in Exhibit 8.2 hereto).</u>
23.4*	<u>Consent of KPMG LLP, independent registered public accounting firm.</u>
23.5*	<u>Consent of KPMG LLP, independent registered public accounting firm.</u>
24.1*	<u>Power of Attorney (included on signature page to the registration statement).</u>
99.1*	<u>Consent of Robert W. Baird & Co. Incorporated.</u>
99.2*	<u>Consent of William B. Burnett.</u>
99.3*	<u>Consent of James F. Clingman, Jr.</u>
99.4*	<u>Consent of Jelynn LeBlanc-Burley.</u>
99.5*	<u>Form of Proxy Card for NuStar GP Holdings, LLC.</u>

* Indicates exhibits previously filed

+ Indicates exhibits filed herewith

Item 22. Undertakings

(a) The undersigned registrants hereby undertake:

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(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement.

Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser: if the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(b) The undersigned registrants hereby undertake that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) The undersigned registrants hereby undertake that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(d) That every prospectus (1) that is filed pursuant to paragraph (e) immediately preceding, or (2) that purports to meet the requirements of Section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(e) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into this prospectus pursuant to Items 4, 10(b), 11, or 13 of this form, within one business day of receipt of

such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of this registration statement through the date of responding to the request.

(f) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in this registration statement when it became effective.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Antonio, State of Texas on June 14, 2018.

NUSTAR ENERGY L.P.

By: RIVERWALK LOGISTICS, L.P.,
its general partner

By: NUSTAR GP, LLC,
its general partner

By: /s/ Bradley C. Barron

Name: Bradley C. Barron

Title: *President and Chief Executive Officer*

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated below.

Signature	Title	Date
*	Chairman of the Board	June 14, 2018
William E. Greehey		
/s/ Bradley C. Barron	President, Chief Executive Officer and Director (Principal Executive Officer)	June 14, 2018
Bradley C. Barron		
*	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	June 14, 2018
Thomas R. Shoaf		
*	Senior Vice President and Controller (Principal Accounting Officer)	June 14, 2018
Jorge A. del Alamo		
*	Director	June 14, 2018
J. Dan Bates		

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*	Director	June 14, 2018
Dan J. Hill		
*	Director	June 14, 2018
Robert J. Munch		
*	Director	June 14, 2018
W. Grady Rosier		

*By: /s/ Bradley C. Barron
Name: Bradley C. Barron
Title: *Attorney-in-Fact*