

130 FERC ¶ 61,262
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Dauphin Island Gathering Partners

Docket No. RP10-467-000

ORDER ACCEPTING TARIFF SHEETS
SUBJECT TO REFUND AND CONDITIONS

(Issued March 31, 2010)

1. On March 1, 2010, Dauphin Island Gathering Partners (Dauphin Island) filed proposed tariff sheets¹ to implement a commodity surcharge tariff mechanism (Storm Surcharge) to recover actual costs incurred in connection with preventing, preparing for, and repairing damage caused by natural disasters that may affect its system. Dauphin Island requests the proposed tariff sheets be accepted effective April 1, 2010. As discussed below, the Commission accepts and suspends the proposed tariff sheets, to be effective subject to refund and conditions and subject to further review, the earlier of September 1, 2010, or the date set by a subsequent Commission order in this proceeding.

I. Details of Filing

2. Dauphin Island states that it is an interstate natural gas pipeline located primarily off the shore of Alabama in the Gulf of Mexico. Dauphin Island states that since September 2005, approximately fifteen named tropical storms and hurricanes have made landfall in the northern Gulf of Mexico, affecting Dauphin Island. Dauphin Island also states that it has no way to predict when major natural disasters will occur, but when they do, the impact on Dauphin Island's operations can be significant and repair costs associated with such events are not recurring.

3. Accordingly, Dauphin Island proposes to add a Storm Surcharge to its tariff to recover actual costs incurred in connection with preventing, preparing for, and repairing damage caused by major storms and other significant natural disasters that may affect its system. Dauphin Island states that the Storm Surcharge will ensure that Dauphin Island has the resources needed to prepare for and prevent the disruptions and costs caused by a natural disaster and to expeditiously place its system back in operation as soon as

¹ See Appendix.

possible following a natural disaster. Dauphin Island also states that the Storm Surcharge will help provide Dauphin Island with a cost recovery mechanism to assist in the timely rebuilding of its system should there be major damage.

4. Under proposed section 22 of the General Terms and Conditions (GT&C) of Dauphin Island's tariff, no later than March 1 of each year after the initial Storm Surcharge mechanism is established, Dauphin Island shall make a limited filing under section 4 of the Natural Gas Act (NGA) to establish a new Storm Surcharge for the 12-month period beginning April 1 (Collection Period) based on the balance in the Storm Surcharge Deferred Cost Account as of the prior December 31 and the projected throughput for the Collection Period. The Storm Surcharge Deferred Cost Account shall be debited by Eligible Costs incurred during the 12-month period ending December 31 and credited by the Storm Surcharge amounts collected by Dauphin Island for the previous Collection Period. Eligible costs, as set forth in proposed section 22.2 of the GT&C, shall include actual capital and operation and maintenance expenses related to storm damage, property damage insurance cost premiums and deductibles, smart pigging operations and related pipeline modifications, and construction, modification, repair, burial, removal or replacement of pipeline and pipeline shore approaches, levee crossings and other water/land interfaces. Any capital costs eligible for recovery will be recovered as expenses without any associated return, depreciation, or taxes, other than carrying costs. The Storm Surcharge shall not exceed \$0.015/dth, and any Eligible Costs not recovered in any year because of the cap may be recovered by Dauphin Island in a future period. Eligible Costs shall be collected only through the Storm Surcharge and not in Dauphin Island's underlying base tariff rates.

5. Dauphin Island states that it proposes an initial Storm Surcharge of \$0.0016/dth, based on Dauphin Island's incurrence of Eligible Costs during the 12-month period ending December 31, 2009 (Recovery Period) of \$93,366 in property damage insurance costs divided by the Collection Period throughput.

II. Public Notice, Interventions, and Comments

6. Public notice of Dauphin Island's filing was issued on March 4, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2009). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. On March 19, 2010, the Producer Coalition² filed a motion to intervene out of time and limited protest. On March 23, 2010, Dauphin Island filed an answer to the

² For purposes of this proceeding, the members of the Producer Coalition are TOTAL E&P USA, INC. and Newfield Exploration Company.

Producer Coalition's protest. Rule 213(a)(2)³ of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Dauphin Island's answer because it has provided information that assisted us in our decision-making process.

7. The Producer Coalition states that until recently the Commission's policy has been to require a pipeline to recover costs related to extraordinary events exclusively through its insurance, and increased costs associated with storm damage were to be recovered through a general rate filing under section 4 of the Natural Gas Act. However, given the extraordinary damage that recent hurricanes have wreaked on Gulf of Mexico pipeline and production facilities and the unprecedented costs associated with the damage, the Producer Coalition does not object in principle to a departure from the Commission's longstanding policy so long as the storm surcharge is properly restricted to only storm-related costs, avoids any double-recovery of costs already embedded in rates and reflects proper adjustments for insurance proceeds and any third party recoveries associated with storm damage.

8. The Producer Coalition argues that recovery of Dauphin Island's yearly property damage insurance premiums through the Storm Surcharge would amount to a double recovery because these costs already are (or should be) embedded in Dauphin Island's rates. Accordingly, the Producer Coalition urges the Commission to require Dauphin Island to eliminate insurance premiums from the list of costs eligible for reimbursement through the storm surcharge. To the extent that Dauphin Island pays higher premiums for casualty insurance than the premiums embedded in its existing rates, the Producer Coalition asserts that its recourse is to file a new NGA section 4 rate case to recover the increased costs. The Producer Coalition notes that because insurance premiums represent the only cost item included in the proposed Storm Surcharge that Dauphin Island seeks to start collecting April 1, 2010, the Commission should reduce the surcharge to zero.

9. To eliminate the potential for double recovery, the Producer Coalition requests the Commission require Dauphin Island to clarify that the Storm Surcharge will be adjusted to reflect a credit for any insurance proceeds Dauphin Island receives related to insured storm damage as well as a credit for recoveries from third parties for negligence or other instances of third party liability associated with storm damage. In addition, the Producer Coalition states that Dauphin Island should report on whether recovery is being sought against third parties for damages due to anchor drags, collision or other causes in its annual filings on the Storm Surcharge.

10. In its answer, Dauphin Island asserts that expenses associated with insurance coverage in the Gulf of Mexico are extraordinary costs outside Dauphin Island's control, and as such are appropriately recovered through a storm surcharge. Dauphin Island states

³ 18 C.F.R. § 385.213(a)(2) (2009).

that it intends to only recover expenses incurred and not recovered by insurance or third parties. Accordingly, Dauphin Island agrees to clarify that amounts received from insurance related to eligible costs shall be credited to the Deferred Cost Account. Dauphin Island also agrees to clarify that amounts received from third parties to reimburse Dauphin Island eligible costs will be credited against the Deferred Cost Account and to identify in its annual filings eligible costs for which Dauphin Island has sought recovery from third parties.

III. Discussion

11. The Commission will accept and suspend the proposed tariff sheets, to be effective subject to refund and conditions and subject to further review, the earlier of September 1, 2010 or the date set by a subsequent Commission order in this proceeding. Dauphin Island's proposed definition of Eligible Costs to be included in the Storm Surcharge includes property damage insurance purchase costs. In accordance with that provision, Dauphin Island's initial Storm Surcharge for 2009 purports to recover \$93,366 in property damage insurance costs. In order to provide further information on the impact of hurricanes on Dauphin Island's insurance premiums and their eligibility for inclusion in the Storm Surcharge, the Commission directs Dauphin Island to make a compliance filing within 30 days of this order to: 1) explain how Dauphin Island has derived the \$93,366 in property damage insurance costs to be included in the Storm Surcharge and whether this represents Dauphin Island's total insurance costs or an increase in insurance costs, and if so, over what time period; 2) provide historical data to show Dauphin Island's insurance premiums over the last ten years and their relation, if any, to storms that occurred during that period; 3) state the amounts of insurance premiums currently included in the calculation of Dauphin Island's base rates; and 4) provide documentation or other support demonstrating that Dauphin Island's insurance premiums have increased due to hurricane activity.

12. Dauphin Island has agreed to clarify that amounts received from insurance and recoveries received from third parties associated with eligible costs shall be credited to the Deferred Cost Account. Dauphin Island has further agreed to identify in its annual filings eligible costs for which Dauphin Island has sought recovery from third parties. The Commission therefore directs Dauphin Island to include proposed revised tariff sheets reflecting the agreed-upon changes in the foregoing compliance filing to be filed within 30 days of this order.

Suspension

13. Based on a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept and suspend Dauphin Island's proposed tariff sheets, to be effective, subject to refund

and conditions and subject to further review, the earlier of September 1, 2010, or the date set by a subsequent Commission order in this proceeding.

14. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.⁴ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.⁵ The Commission does not find such circumstances exist here. Therefore, the Commission will accept and suspend the proposed tariff sheets, to be effective subject to refund and conditions and subject to further review, the earlier of September 1, 2010, or the date set by a subsequent Commission order in this proceeding.

The Commission orders:

(A) The tariff sheets listed in the Appendix are accepted and suspended, to be effective, subject to refund and conditions and subject to further review, the earlier of September 1, 2010, or the date set by a subsequent Commission order in this proceeding.

(B) Dauphin Island is directed to make a compliance filing within 30 days of the date this order issues, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

⁵ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

Appendix

**Dauphin Island Gathering Partners
FERC Gas Tariff
First Revised Volume No. 1**

**Tariff Sheets Accepted Effective September 1, 2010, Subject to Refund and
Conditions and Subject to Further Review**

Eighth Revised Sheet No. 6
Ninth Revised Sheet No. 7
Fourth Revised Sheet No. 109
Third Revised Sheet No. 243
Original Sheet No. 244
Original Sheet No. 245