

130 FERC ¶ 61,261  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 31, 2010

In Reply Refer To:  
Sea Robin Pipeline Company, LLC  
Docket Nos. RP10-422-000  
RP09-995-000

Sea Robin Pipeline Company, LLC  
5444 Westheimer Road  
Houston, TX 77056-5306

Attention: Michael T. Langston  
Sr. Vice President, Government and Regulatory Affairs

Reference: Revised Tariff Sheets to Increase Hurricane Surcharges

Ladies and Gentlemen:

1. On March 1, 2010, Sea Robin Pipeline Company, LLC (Sea Robin) filed revised tariff sheets<sup>1</sup> proposing a \$.0328 per Dth increase in its Hurricane Surcharge from \$.0401 to \$.0729 per Dth, and supporting work papers showing the derivation of the surcharge. The Commission granted Sea Robin the authority to recoup hurricane-related expenses in Docket No. RP09-995-000; however, the Commission set for hearing the methodology to be used for calculating the expenses.<sup>2</sup> The Commission accepts and suspends the proposed tariff sheets, effective April 1, 2010, subject to refund and the outcome of the hearing scheduled in Docket No. RP09-995-000. In addition, the Commission consolidates the instant proceeding with the underlying proceeding in Docket No. RP09-995-000.

2. On August 31, 2009, Sea Robin filed the proposed tariff sheets in Docket No. RP09-995-000 as part of a limited section 4 filing to establish a volumetric surcharge to recover hurricane-related expenses. Section 24 of the General Terms and Conditions (GT&C) of Sea Robin's proposed tariff established a mechanism for the recovery of capital and related operation and maintenance expenditures. Specifically, section 24.6 of

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<sup>1</sup> Ninth Revised Sheet No. 5, Ninth Revised Sheet No. 6, and Eighth Revised Sheet No. 7 to its FERC Gas Tariff, Second Revised Volume No. 1.

<sup>2</sup> *Sea Robin Pipeline Company, LLC*, 128 FERC ¶ 61,286 (2009).

the GT&C specified that Sea Robin should calculate the surcharge on the balance of the Hurricane Surcharge Account (including carrying charges) at December 31 and June 30 (to become effective April 1 and October 1, respectively) for each recovery period until September 30, 2013. Several parties protested this filing and argued, among other things, that the proposed surcharge violated the NGA, the filed rate doctrine, the rule against retroactive ratemaking, and section 154.403(d)(4) of the Commission's regulations.

3. On September 30, 2009, the Commission issued an order (September 30 Order) accepting and suspending the tariff sheets for five-months, subject to refund and the outcome of a hearing on the methodology of the surcharge.<sup>3</sup> The Commission found that Sea Robin may recover hurricane-related costs through a special tracking mechanism without filing a general section 4 rate case under the Natural Gas Act (NGA). However, the Commission established a hearing to consider all other issues raised by the protesters in the proceeding, including, but not limited to, the types of existing and future hurricane-related expenses that Sea Robin could include in the Hurricane Surcharge.

4. On October 30, 2009, protesters in the underlying proceeding, ExxonMobil Gas & Power Company (ExxonMobil) and Hess Corporation (Hess), requested rehearing of the Commission's September 30 Order essentially raising the same arguments raised in their initial protests. The Commission denied this rehearing request by order issued on March 18, 2010.<sup>4</sup>

5. Meanwhile, the five-month suspension period for the tariff sheets ended on February 28, 2010, and Sea Robin filed a request to place the afore-mentioned tariff sheets in service in Docket No. RP09-995-002. The Commission accepted these tariff sheets subject to the outcome of Sea Robin's underlying proceeding.<sup>5</sup> Sea Robin filed the instant proceeding to adjust the Hurricane Surcharge for April 1, 2010, in accordance with Section 24 of Sea Robin's GT&C.

6. Public notice of the filing issued March 2, 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 filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. On March 15, 2010, ExxonMobil, Hess, Walter Oil & Gas Corporation and Superior Natural

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<sup>3</sup> See case cited *supra* n.2.

<sup>4</sup> *Sea Robin Pipeline Co., LLC*, 130 FERC ¶ 61,191 (2010)

<sup>5</sup> *Sea Robin Pipeline Co., LLC*, Docket No. RP09-995-002 (February 25, 2010) (unpublished letter order).

Gas Corporation (Walter and Superior), and Arena Energy, LP (Arena) filed protests and comments. On March 16, 2010, Medco Energi US LLC (Medco) filed a motion to intervene out-of-time and comments. On March 24, 2010, Sea Robin filed an answer to the protests. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or adverse comments unless otherwise ordered by the decisional authority. In this case, we accept Sea Robin's answer because it provides information that assisted the Commission in our decision-making process.

7. ExxonMobil, Hess, Walter and Superior, and Arena (protesters) request the Commission accept and suspend Sea Robin's proposed increase to the Hurricane Surcharge for the full five-month period permitted under the NGA, for the same reasons the Commission suspended the effective date of the September 30 Order. In addition, the protesters request that the Commission either consolidate the instant proceeding with Docket No. RP09-995-000 or make the acceptance of the filing in the instant proceeding subject to the outcome of Docket No. RP09-995-000. Medco filed comments in support of the protesters.

8. In the response to the protesters, Sea Robin asserts the instant filing complies with the requirements of its tariff provisions accepted by the Commission; therefore, it is unnecessary to impose an additional five-month suspension. Furthermore, Sea Robin asserts that allowing multiple five-month suspensions would have a harsh and inequitable effect on Sea Robin by delaying its ability to recoup hurricane-related costs. Sea Robin also states that the shippers are currently protected because the Hurricane Surcharge is subject to refund and a hearing where issues will be explored and resolved.

9. Based upon a review of the filing, the Commission finds Sea Robin's proposed tariff sheets have yet to be shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission accepts such tariff sheets for filing and suspends their effectiveness, subject to refund.

10. The Commission agrees with the protesters that the matters set for hearing in Docket No. RP09-995-000 and the instant proceeding overlap. The issues in the proceedings contain the same factual and legal issues, including, but not limited to, the appropriate hurricane-related expenses eligible for inclusion in the Hurricane Surcharge. Moreover, the outcome of the hearing in Docket RP09-995-000 may affect the outcome of the decision in this proceeding. Accordingly, the Commission consolidates the filing here with Docket No. RP09-995-000 into a single proceeding for hearing and disposition.

11. The Commission, however, disagrees with the protesters' suggestion that we suspend Sea Robin's Hurricane Surcharge for the full five-months allowable under the NGA. One of the purposes of Sea Robin's surcharge is to allow the pipeline to spread the costs of its hurricane-related expenses over several years so the pipeline can begin

recovering some of its expenses immediately. The recovery period for this surcharge ends September 30, 2013; if the Commission were to suspend recovery for an additional five-months, Sea Robin could not begin collections until August 2010. The Commission does not believe that this is reasonable under the circumstances. Therefore, we will suspend the effectiveness of Sea Robin's tariff for the minimal suspension time under the NGA.

12. The Commission's policy regarding rate suspensions is that rate 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 that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances exist here. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on April 1, 2010, subject to refund and to the outcome of the hearing in Docket No. RP09-995-000, as discussed above.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

cc: Public Files  
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