

132 FERC ¶ 61,277
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 30, 2010

In Reply Refer To:
Sea Robin Pipeline Company, LLC
Docket No. RP10-1133-000

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 Rate Provisions to Increase Hurricane Surcharge and
Request for Waiver

Ladies and Gentlemen:

1. On August 31, 2010, Sea Robin Pipeline Company, LLC (Sea Robin) filed revised tariff rate provisions¹ proposing to increase its Hurricane Surcharge from \$0.0729 per Dth to \$0.0853 per Dth. Sea Robin also requests waiver of certain provisions of its tariff. The Hurricane Surcharge is a mechanism used to record and recover hurricane-related costs not recovered from insurance proceeds or from third parties. For the reasons discussed below, the Commission grants the requested waiver and accepts and suspends the proposed tariff rate provisions for a nominal period, to become effective October 1, 2010, subject to refund and the outcome of the ongoing hearing in Docket Nos. RP09-995-000 and RP10-422-000.

2. On August 31, 2009, in Docket No. RP09-995-000, Sea Robin made a Natural Gas Act (NGA) limited section 4 tariff filing to establish a Hurricane Surcharge to record and recover hurricane-related costs incurred as a result of any hurricane or tropical storm, including Hurricane Ike which caused damage to Sea Robin's facilities in September 2008 (Initial Filing). Under proposed section 24 of the General Terms and Conditions (GT&C) of its tariff, Sea Robin would collect the Hurricane Surcharge through a

¹ See Appendix.

volumetric surcharge applicable to all of its transportation services. The Hurricane Surcharge would remain in effect for 48 months, beginning October 1, 2009, and continuing through September 30, 2013. The eligible costs for reimbursement included the capital and operation and maintenance expenses incurred since September 1, 2008, less any proceeds received from insurance carriers or third parties. The proposed tariff provisions required Sea Robin to maintain a Hurricane Surcharge Account that the pipeline would credit monthly with the revenue received from the Hurricane Surcharge and debit or credit monthly with carrying charges on the monthly balance. Sea Robin would include any balance in the Hurricane Surcharge Account on September 30, 2013 in its general section 4 rate proceeding proposing new base rates effective January 1, 2014.²

3. Under proposed GT&C section 24.4, at least 30 days prior to October 1 and April 1 of each year, through September 30, 2013, Sea Robin would file to adjust the Hurricane Surcharge. Sea Robin would base its adjustment on the remaining balance in 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. The balance would be annualized based on the remaining term of the Hurricane Surcharge and divided by the projected billing determinants.

4. On September 30, 2009, the Commission accepted and suspended Sea Robin's proposed tariff sheets for five-months, effective March 1, 2010, subject to refund and the outcome of a hearing.³ The Commission found that Sea Robin could recover hurricane-related costs through a special tracking mechanism without filing a general section 4 rate case under the NGA. However, the Commission established a hearing to consider all other issues raised by the protests, including, but not limited to, throughput used to calculate the surcharge and the types of existing and future hurricane-related costs eligible for inclusion in the Hurricane Surcharge (*e.g.*, capital costs and carrying costs). On October 30, 2009, ExxonMobil and Hess filed a request for rehearing of the September 2009 Order, which the Commission denied on March 18, 2010.⁴

5. On March 1, 2010, in Docket No. RP10-422-000, Sea Robin filed to increase the Hurricane Surcharge to be effective April 1, 2010 (March 2010 Filing). On March 31,

² The settlement requires Sea Robin to file a general section 4 rate case no later than January 1, 2014. *Sea Robin Pipeline Co., LLC*, 125 FERC ¶ 61,185 (2008).

³ *Sea Robin Pipeline Co., LLC*, 128 FERC ¶ 61,286 (2009) (September 2009 Order). On January 29, 2010, Sea Robin filed its motion to place the aforementioned tariff sheets into effect. *See Sea Robin Pipeline Co., LLC*, Docket No. RP09-995-002 (February 25, 2010) (unpublished letter order).

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

2010, the Commission consolidated that proceeding with the underlying hearing proceeding in Docket No. RP09-955-000 and accepted and suspended the proposed tariff sheets for a nominal period, to become effective April 1, 2010, subject to refund and the outcome of the hearing scheduled in Docket No. RP09-995-000.⁵ Several protesters requested that the Commission suspend the filing for a five-month period, but the Commission was unwilling to suspend the filing for the maximum five-month period given the limited recovery period (through September 30, 2013).⁶

6. The hearing in Docket Nos. RP09-995-000 and RP10-422-000 was held on July 21-22, 2010, and that case is now pending before the Administrative Law Judge for an initial decision.

7. In the instant filing, Sea Robin states that it based the proposed Hurricane Surcharge upon the balance in the Hurricane Surcharge Account as of June 30, 2010, with the exception of already recovered expenses comprised of actual recoveries for July 2010 and projected recoveries for August and September 2010. Sea Robin states that including recoveries for three additional months reduces the Hurricane Surcharge Account balance used to derive the proposed surcharge. Sea Robin also requests waiver of sections 24.5(c) and 24.6(a) of the GT&C to allow shippers to benefit from a rate lower than the rate calculated absent this waiver.

8. Sea Robin calculated the projected billing determinants used to determine the proposed Hurricane Surcharge based on the annualized calculation of the actual volumes for the period March 1, 2010, through July 2010.⁷ This resulted in projected throughput of 178,240,591 Dth, as compared to the projected annual throughput of 237,957,516 Dth used in Sea Robin's Initial and March 2010 Filings.

9. Sea Robin states that the proposed Hurricane Surcharge is 8.53¢ per Dth, which is a 1.24¢ per Dth increase from the currently effective surcharge of 7.29¢ per Dth.

10. Notice of Sea Robin's filing issued September 1, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2010). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2010), all timely-filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not

⁵ *Sea Robin Pipeline Co., LLC*, 130 FERC ¶ 61,261 (2010) (March 2010 Order).

⁶ March 2010 Order, 130 FERC ¶ 61,261 at P 11.

⁷ Specifically, it appears that Sea Robin derived this 178,240,591 Dth figure by multiplying its total actual throughput for the five-month period from March to July, 2010, by 2.3999 to annualize the quantities for a twelve-month period.

disrupt this proceeding or place additional burdens on existing parties. ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation (ExxonMobil), Hess Corporation (Hess), Indicated Shippers,⁸ and Arena Energy, LP (Arena) each filed protests. On September 17, 2010, Sea Robin filed an answer to the protests. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), answers to protests are prohibited unless otherwise ordered by the decisional authority. We will accept Sea Robin's answer because it provided information that will assist us in our decision-making process.

11. The protestors request that the Commission condition this filing by accepting it subject to the outcome of the hearing in Docket Nos. RP09-995-000 and RP10-422-000. Indicated Shippers, Hess, and ExxonMobil also protest the methodology Sea Robin used to calculate its projected billing determinants. While they acknowledge that the tariff language does not specify how Sea Robin will calculate projected billing determinants, they assert that if Sea Robin used the projected billing determinants used in the previous filings (237,957,516 Dth) to calculate the surcharge in this filing, all else being equal, the resulting surcharge would be 6.39¢ per Dth, instead of 8.53¢ per Dth. Indicated Shippers state that it is unduly discriminatory to require Sea Robin's current shippers to bear the burden of an ever increasing surcharge rate during the hearing process and therefore, request the Commission to direct Sea Robin to recalculate the Hurricane Surcharge on the same basis as prior filings, until all of the issues regarding cost, amortization period, and throughput are determined. Otherwise, they argue, the Commission should suspend the current filing for the maximum five-month period.

12. ExxonMobil and Hess also argue that section 154.403(c)(5) of the Commission's regulations requires Sea Robin to provide a step-by-step description "of the manner in which the amount to be flowed through is calculated." 18 C.F.R. § 154.403(c)(5). Accordingly, they argue that the Commission must require Sea Robin to provide the description of its calculations required under the periodic rate adjustment regulations.

13. Arena argues that the current filing should be suspended for the full five-month statutory period because the parties have not had a chance to review the proposed costs to be recovered in Docket No. RP10-1133-000 during the discovery and hearing phases of Docket Nos. RP09-995-000 and RP10-422-000.

14. Hess also requests that the Commission require Sea Robin to explain the basis upon which it terminated a certain contract between Hess and Sea Robin. Hess contends that information provided in Sea Robin's filing appears to contradict Sea Robin's previously stated justification for terminating the contract.

⁸ Indicated Shippers include Apache Corporation and Chevron U.S.A. Inc.

15. In its answer, Sea Robin asserts the instant filing complies with the requirements of its tariff provisions accepted by the Commission in the September 2009 Order and imposing a five-month suspension will have a harsh and inequitable effect on Sea Robin. Further, Sea Robin contends that the shippers are protected because the Hurricane Surcharge is subject to refund and the outcome of a hearing.

16. In response to the protests regarding the projected billing determinants used to calculate the Hurricane Surcharge, Sea Robin contends that its tariff does not require it to calculate projected billing determinants in any particular manner. Sea Robin states that in its Initial Filing and the March 2010 Filing, it calculated the billing determinants based on the historical throughput of each shipper or producer/operator estimates of throughput. Sea Robin states that it used estimated throughput for the initial Hurricane Surcharge calculations because the Sea Robin system (System) had not been in full service a sufficient amount of time to use actual throughputs. Sea Robin maintains that this was appropriate because actual throughputs would not be indicative of throughputs that would occur after the System became fully operational. Sea Robin states that it used actual throughput here because the System had provided transportation service on a continuing, uninterrupted basis for an adequately representative amount of time.

17. Sea Robin points out that the Commission set for hearing the issues surrounding the mechanics of the hurricane surcharge and that the hearing is the appropriate and only venue to raise such matters.⁹ Specifically, Sea Robin states that issue No. 7 of the joint statement of issues addressed by the hearing specifically provides that the throughput used to calculate the Hurricane Surcharge is an issue to be addressed by the presiding judge in the hearing. Nevertheless, Sea Robin contends that it has provided more than adequate workpapers detailing its calculation of the projected billing determinants.

18. Regarding Hess' protest of the termination of its contract with Sea Robin, Sea Robin argues that this is not the appropriate proceeding to raise such issue.

19. The Commission finds that Sea Robin's proposed tariff provisions have not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory or otherwise unlawful. The Commission also finds that the matters set for in Docket Nos. RP09-995-000 and RP10-422-000 overlap with the instant proceeding. Accordingly, the Commission will accept and suspend the proposed tariff provisions for a

⁹ Sea Robin states that issue No. 7 of the joint statement of issues specifically provides that the throughput that should be used to calculate the Hurricane Surcharge is an issue to be addressed by the presiding judge in the hearing.

nominal period, and permit them to become effective October 1, 2010, subject to refund and the outcome of the hearing in Docket Nos. RP09-995-000 and RP10-422-000.¹⁰

20. The Commission denies Arena's and Indicated Shippers' request to suspend the proposed Hurricane Surcharge for the maximum five-month period because, as the Commission stated in the March 2010 Order, one of the purposes of Sea Robin's Hurricane 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 used to calculate the Hurricane Surcharge ends September 30, 2013, and, therefore, deferring the effective date of the instant increased Hurricane Surcharges will only serve to substantially increase future surcharge rates as the balance in the Hurricane Surcharge Account will have to be recovered over a shorter period. Moreover, shippers are fully protected by the refund condition we establish here. Accordingly, the Commission does not believe that suspending the instant Hurricane Surcharge rates for a five-month period is reasonable under the circumstances. We also find that good cause exists to grant the requested waiver so as to reduce the size of the increase in the Hurricane Surcharge and avoid an over-recovery. Therefore, we will grant the requested waiver and accept and suspend the effectiveness of Sea Robin's proposed surcharge rates for the minimal period under the NGA.

21. Regarding the methodology used to calculate the projected billing determinants, that matter is among the issues to be addressed in the hearing in Docket Nos. RP09-995-000 and RP10-422-000 and, accordingly, will be determined based upon the outcome thereof. Therefore, acceptance of the instant filing is made subject to the outcome of the hearing in Docket Nos. RP09-995-000 and RP10-422-000. Regarding ExxonMobil's and Hess' request for additional description from Sea Robin regarding the projected billing determinants' calculation, we believe that, between Sea Robin's workpapers detailing the calculation of the projected billing determinants and its answer, Sea Robin description is adequate in this regard and further description is unnecessary.

22. Regarding Hess' protest of what it asserts is the improper termination of one of its Sea Robin contracts, we find that this is not the appropriate forum to raise such an issue and, therefore, we will not address it here. If Hess desires to pursue this issue, it may file a complaint against Sea Robin.¹¹

¹⁰ We do not believe consolidation of the instant proceeding with the proceeding in Docket Nos. RP09-995-000 and RP10-422-000 is appropriate at this time given that the hearing in the latter proceeding has already been held and initial briefs have already been submitted.

¹¹ See, e.g., *Arena Energy LP v. Sea Robin Pipeline Company, LLC*, Docket No. RP10-1045-000 (filed Aug. 2, 2010) (complaint).

23. 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.¹² 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.¹³ Such circumstances exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed rates and permit them to take effect on October 1, 2010, subject to refund and to the outcome of the hearing in Docket Nos. RP09-995-000 and RP10-422-000, as discussed above.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: Public Files
All Parties

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

¹³ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

APPENDIX

SEA ROBIN PIPELINE COMPANY, LLC

FERC Gas Tariff
Third Revised Volume No. 1

Accepted and Suspended, effective October 1, 2010, Subject to Refund and the Outcome
of the Hearing in Docket Nos. RP09-995-000 and RP10-422-000

Version	Description	Title
1.0.0	Rate Schedule FTS	Currently Effective Rates
1.0.0	Rate Schedule FTS-2	Currently Effective Rates
1.0.0	Rate Schedule ITS	Currently Effective Rates