

134 FERC ¶ 61,262
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 31, 2011

In Reply Refer To:
Sea Robin Pipeline Company, LLC
Docket No. RP11-1850-000

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 March 1, 2011, Sea Robin Pipeline Company, LLC (Sea Robin) filed revised tariff records¹ proposing to increase its Hurricane Surcharge from \$0.0853 per Dth to \$0.1288 per Dth. Sea Robin also requests waiver of certain provisions of its tariff dealing with the calculation of the Hurricane Surcharge. 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, to become effective April 1, 2011, subject to refund and the outcome of the ongoing proceeding 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 (August 2009 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 volumetric surcharge applicable to all of its transportation services. The

¹ See Appendix.

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 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.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. The filing was protested.

4. On September 30, 2009, the Commission accepted and suspended Sea Robin's proposed tariff sheets for five-months, to become 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 Gas & Power Marketing Company, a Division of Exxon Mobil Corporation (ExxonMobil) and Hess Corporation (Hess) filed a joint request for rehearing of the September 2009 Order, which the Commission denied on March 18, 2010.⁴

² A settlement of Sea Robin's previous general section 4 rate proceeding 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 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).

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, 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, 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 declined to suspend the filing for the maximum five-month period given the limited recovery period (through September 30, 2013).⁶

6. On August 31, 2010, in Docket No. RP10-1133-000, Sea Robin filed to increase the Hurricane Surcharge to be effective October 1, 2010 (August 2010 Filing). On September 30, 2010, the Commission accepted and suspended the proposed tariff sheets, to become effective October 1, 2010, subject to refund and the outcome of the ongoing hearing in Docket Nos. RP09-995-000 and RP10-422-000.⁷

7. The hearing in Docket Nos. RP09-995-000 and RP10-422-000 was held on July 21-22, 2010. The Administrative Law Judge issued an Initial Decision in Docket Nos. RP09-995-000 and RP10-422-000 on December 13, 2010.⁸ An order on exceptions to the Initial Decision in the consolidated proceedings is pending before the Commission.

8. In the instant filing, Sea Robin states that it based the proposed Hurricane Surcharge upon the balance in the Hurricane Surcharge Account as of December 31, 2010, with the exception of the insurance reimbursement received in January 2011 and the Hurricane Surcharge recoveries which also include actual recoveries for January 2011 and projected recoveries for February and March 2011. Sea Robin states that including recoveries for three additional months reduces the Hurricane Surcharge Account balance used to derive the proposed surcharge. Sea Robin 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.

9. Sea Robin states that it calculated the annualized projected throughput volumes used to determine the proposed Hurricane Surcharge based on the actual volumes for the period the Hurricane Surcharge has been in effect from March 1, 2010, through

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

⁶ *Id.* P 11.

⁷ *Sea Robin Pipeline Co., LLC*, 132 FERC ¶ 61,277 (2010) (September 2010 Order).

⁸ *Sea Robin Pipeline Co., LLC*, 133 FERC ¶ 63,009 (2010) (Initial Decision).

January 31, 2011.⁹ Sea Robin states that this resulted in projected annual throughput of 167,829,464 Dth, as compared to the projected annual throughput of 178,240,591 Dth used in Sea Robin's August 2010 filing. Sea Robin states that the proposed Hurricane Surcharge is 12.88¢ per Dth, which is a 4.35¢ per Dth increase from the currently effective surcharge of 8.53¢ per Dth.

10. Notice of Sea Robin's filing issued March 2, 2011. 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 unopposed 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 disrupt this proceeding or place additional burdens on existing parties. ExxonMobil, Hess, and Arena Energy, LP (Arena) each filed protests. On March 17, 2011, 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 provides information that will assist us in our decision-making process.

11. All of the protestors request that the Commission condition acceptance of this filing by accepting it subject to the outcome of the hearing in Docket Nos. RP09-995-000 and RP10-422-000. In the alternative, Arena requests that the Commission consolidate this proceeding with Docket Nos. RP09-995-000 and RP10-422-000. Hess and ExxonMobil also request the Commission promptly issue an order on the Initial Decision. They argue that Sea Robin's proposed increase in the Hurricane Surcharge will exacerbate the adverse impact of the Hurricane Surcharge on them. They argue that whether the Commission affirms the Initial Decision's 21.4-year recovery period, or finds that a 25-year recovery period is appropriate, as they contend, the result of such an extended recovery period from less than four years to the longer period would dramatically reduce the heavy burden of the Hurricane Surcharge.

12. Arena also argues that the current filing should be suspended for the full five-month statutory period because the parties have not had the opportunity to review the proposed costs to be recovered as part of the instant filing during the discovery and hearing phases of Docket Nos. RP09-995-000 and RP10-422-000.

⁹ Sea Robin derived this 167,829,464 Dth figure by adding its total actual throughput for the eleven-month period from March 2010 to January 2011 (153,843,675 Dth) to the estimated February 2011 throughput of 13,985,789 Dth (calculated by dividing the actual total 11-month throughput of 153,843,675 Dth by 11 months) to annualize the throughput for a twelve-month period.

13. In its answer, Sea Robin asserts that 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.

14. The Commission finds that Sea Robin's proposed tariff records 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 hearing 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 nominal period, and permit them to become effective April 1, 2011, subject to refund and the outcome of the proceeding in Docket Nos. RP09-995-000 and RP10-422-000.

15. The Commission denies Arena's request to suspend the proposed Hurricane Surcharge for the maximum five-month period because, as the Commission stated in the March and September 2010 Orders, 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.¹⁰ 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.

16. 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.

17. 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.¹¹ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the

¹⁰ March 2010 Order, 130 FERC ¶ 61,261 at P 11; September 2010 Order, 132 FERC ¶ 61,277 at P 20.

¹¹ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

maximum period may lead to harsh and inequitable results.¹² Such circumstances exist here, as discussed above. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff records and permit them to take effect on April 1, 2011, subject to refund and to the outcome of the proceeding 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 *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

APPENDIX

Sea Robin Pipeline Company, LLC
Third Revised Volume No. 1
FERC NGA Gas Tariff

Accepted and Suspended, effective April 1, 2011, Subject to Refund and the Outcome of
the Docket Nos. RP09-995-000 and RP10-422-000 Proceeding

1. Rate Schedule FTS, Currently Effective Rates, 2.0.0
2. Rate Schedule FTS-2, Currently Effective Rates, 2.0.0
3. Rate Schedule ITS, Currently Effective Rates, 2.0.0