

138 FERC ¶ 61,131  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Sea Robin Pipeline Company, LLC

Docket No. RP12-313-000

ORDER ON COMPLIANCE TARIFF FILING

(Issued February 23, 2012)

1. On January 13, 2012, Sea Robin Pipeline Company, LLC (Sea Robin) filed revised tariff records<sup>1</sup> in compliance with Opinion No. 516.<sup>2</sup> Sea Robin requests the Commission accept the proposed tariff records effective on the dates set forth in the Appendix. For the reasons discussed below, the Commission accepts the proposed tariff records, to become effective on the dates listed in the Appendix, subject to refund and conditions, and to Sea Robin modifying the language in its tariff records as directed below.

**Background**

2. On August 31, 2009, in Docket No. RP09-995-000, Sea Robin filed to establish a surcharge mechanism to record and recover hurricane-related expenses not recovered from insurance proceeds or from third parties (Initial Filing). The Hurricane Surcharge provisions, outlined in section 24 of the General Terms and Conditions (GT&C) of Sea Robin's tariff, provide for the recovery of capital and related operation and maintenance expenditures that Sea Robin incurs to repair the damages to its facilities caused by Hurricane Ike, as well as costs related to future name hurricanes, for a period beginning October 1, 2009, and continuing through September 30, 2013. Sea Robin proposed that it would include any balance remaining in its Hurricane Surcharge Account on September 30, 2013 in its next section 4 general rate proceeding. The settlement of Sea

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<sup>1</sup> See Appendix.

<sup>2</sup> *Sea Robin Pipeline Co., LLC*, Opinion No. 516, 137 FERC ¶ 61,201 (2011) (Order on Initial Decision in Docket Nos. RP09-995-000 and RP10-422-000 issued December 15, 2011).

Robin's last general rate case requires it to file a new rate proposal no later than January 1, 2014.<sup>3</sup>

3. On September 30, 2009, the Commission accepted and suspended Sea Robin's proposed tariff records for five-months, to become effective March 1, 2010, subject to refund and the outcome of a hearing.<sup>4</sup> The Commission ruled that Sea Robin could recover hurricane-related costs through a special tracking mechanism established in a limited section 4 filing without filing a general section 4 rate case, and that such recovery did not violate the filed rate doctrine. However, the Commission set all other issues raised by the protesters for hearing, including the proper design of the Hurricane Surcharge, the types of hurricane-related costs which should be eligible for recovery in the surcharge, and application of the Hurricane Surcharge to discount and negotiated rate agreements.<sup>5</sup> As required by GT&C section 24.4(a), Sea Robin has made semiannual filings to update the Hurricane Surcharge and make any necessary adjustments.<sup>6</sup>

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<sup>3</sup> *Sea Robin Pipeline Co., LLC*, 125 FERC ¶ 61,185 (2008).

<sup>4</sup> *Sea Robin Pipeline Co., LLC*, 128 FERC ¶ 61,286 (2009) (Suspension Order), *order on reh'g*, 130 FERC ¶ 61,191, at P 11 (2010) (Rehearing Order), *appeal dismissed*, *ExxonMobil Gas & Marketing Co., et al. v. FERC*, No. 10-1098 (D.C. Cir. Oct. 21, 2011) (collectively, *Sea Robin*). On January 29, 2010, Sea Robin filed its motion to place the tariff records into effect. *See Sea Robin Pipeline Co., LLC*, Docket No. RP09-995-002 (February 25, 2010) (unpublished letter order).

<sup>5</sup> Suspension Order, 128 FERC ¶ 61,286 at P 44.

<sup>6</sup> On March 1, 2010, in Docket No. RP10-422-000, Sea Robin filed to increase the Hurricane Surcharge to be effective April 1, 2010. 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 records, to become effective April 1, 2010, subject to refund and the outcome of the hearing scheduled in Docket No. RP09-995-000. *Sea Robin Pipeline Co., LLC*, 130 FERC ¶ 61,261 (2010). On August 31, 2010, in Docket No. RP10-1133-000, Sea Robin filed to increase the Hurricane Surcharge and on September 30, 2010, the Commission accepted and suspended the proposed tariff records, to become effective October 1, 2010. On March 1, 2011, in Docket No. RP11-1850-000, Sea Robin filed to increase the Hurricane Surcharge and on March 31, 2011, the Commission accepted and suspended the proposed tariff records, to become effective April 1, 2011. On August 31, 2011, in Docket No. RP11-2494, Sea Robin filed to increase the Hurricane Surcharge and on September 30, 2011, the Commission accepted and suspended the proposed tariff records, to become effective October 1, 2011. In its above three orders, the Commission made the tariff records subject to refund and the outcome of the ongoing hearing in Docket Nos. RP09-995-000 and RP10-422-000.

4. The Administrative Law Judge (ALJ) issued an initial decision on December 13, 2010 (Initial Decision). On December 15, 2011, the Commission issued Opinion No. 516 affirming the Initial Decision in part and reversing in part.<sup>7</sup>

5. In Opinion No. 516, the Commission reversed the ALJ's findings regarding the Hurricane Surcharge recovery period, the date carrying charges should begin to accrue, and applicability of the Hurricane Surcharge to certain discount agreements. The Commission affirmed the remainder of the Initial Decision.

6. The Commission required Sea Robin to modify three aspects of its proposed Hurricane Surcharge. First, the Commission held that Sea Robin's proposal to amortize its recovery of hurricane repair costs over four years is generally just and reasonable. However, the Commission directed Sea Robin to modify its tariff to provide that, "if it files to recover new hurricane repair costs (i.e., costs not included in a previous Hurricane Surcharge Filing), whether from a future or past hurricane, Sea Robin must base the calculations to derive the surcharge to recover those costs on a 4-year amortization period from the effective date of such filing."<sup>8</sup> Second, the Commission rejected Sea Robin's proposal to commence recovering carrying costs at the Commission-published interest rate on O&M expenditures as of the date those expenses were incurred and on capital expenditures from the date the associated facilities were placed into service. The Commission directed Sea Robin to modify its tariff to provide that carrying charges should begin to accrue the later of August 1, 2009, the date Sea Robin filed to establish the Hurricane Surcharge, or the date the associated cost is incurred.<sup>9</sup> Third, the Commission rejected Sea Robin's proposal to include language in its tariff prohibiting Sea Robin from providing discounts of the Hurricane Surcharge.<sup>10</sup> The Commission

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<sup>7</sup> 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. *Sea Robin Pipeline Co., LLC*, 130 FERC ¶ 61,191 (2010).

<sup>8</sup> Opinion No. 516, 137 FERC ¶ 61,201 at P 51. The Commission also stated that, as is the case with costs related to Hurricane Ike, Sea Robin may include any balance remaining in the Hurricane Surcharge Account on September 30, 2013 in the rate proceeding proposing new base rates that Sea Robin must file by January 1, 2014.

<sup>9</sup> *Id.* P 61.

<sup>10</sup> Specifically, GT&C section 15.5 states that the "Hurricane Surcharge shall not be subject to discount" and GT&C section 24.7(b) states that "[a]ny rate discount agreed to by Sea Robin shall not be considered a discount of the Hurricane Surcharge." Rate Schedules FTS, FTS-2 and ITS also provide that, in accordance with section 24 of the GT&C, the Hurricane Surcharge shall be charged.

directed Sea Robin to file revised tariff records removing the Hurricane Surcharge from its minimum rates and any language from its tariff records indicating the Hurricane Surcharge is not discountable.<sup>11</sup> The Commission directed Sea Robin to file revised tariff records and rates, including workpapers, consistent with Opinion No. 516.

### **Opinion No. 516 Compliance Filing**

7. On January 13, 2012, Sea Robin filed revisions to the tariff records contained in its Third Revised Volume No. 1 tariff (Compliance Filing). Sea Robin proposes various tariff changes to comply with Opinion No. 516's holding that Sea Robin must base its surcharge calculation to recover new hurricane repair costs on a 4-year amortization period from the effective date of such filing. Sea Robin proposes to expand section 24.2 of its GT&C to include:

The Hurricane Surcharge shall be collected through a volumetric surcharge applicable to transportation service provided pursuant to Rate Schedules FTS, FTS-2 and ITS (and any other transportation service provided by Sea Robin) from ~~October 1, 2009~~ March 1, 2010 through September 30, 2013 for Hurricane Ike. If Sea Robin files to recover new hurricane repair costs following Hurricane Ike, the surcharge to recover costs for each named hurricane will be calculated based on a 4-year amortization period from the effective date of such filing. The Hurricane Surcharge shall apply to, and be paid in addition to, the rates applicable to such transportation service qualifying for any rate discount or provided under any negotiated rate agreement.

Sea Robin states its revisions include a corresponding modification in GT&C section 24.5 that provides that separate subaccounts will be maintained for each named hurricane.

8. Sea Robin also proposes to remove the end date of the surcharge period from GT&C section 24.4(a) to accommodate potential hurricane costs subsequent to September 30, 2013. Sea Robin proposes the following to section 24.4(a):

The effective date of each Hurricane Surcharge shall be April 1 and October 1 of each year ~~through September 30, 2013~~. The effective Hurricane Surcharge shall be shown on Sea Robin's Currently Effective Rates for the applicable Rate Schedule.

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<sup>11</sup> *Id.* P 94.

In addition, Sea Robin proposes to delete the Hurricane Surcharge termination date from GT&C section 24.6(a) regarding calculation of the surcharge. Sea Robin also proposes to modify GT&C section 24.6(c), which currently provides that any balance in the Hurricane Surcharge account as of September 30, 2013 shall be included in Sea Robin's next rate proceeding to be filed by January 1, 2014. Sea Robin proposes to limit that requirement to costs related to Hurricane Ike, and to add language permitting, but not requiring, it to include any September 30, 2013 balance relating to subsequent hurricanes in Sea Robin's next rate proceeding.

9. To comply with Opinion No. 516's holding concerning the start date for the accrual of carrying charges, Sea Robin revises GT&C section 24.5(d) to permit accrual of carrying charges beginning the later of August 31, 2009, the date Sea Robin filed to establish the Hurricane Surcharge, or the date Sea Robin incurs the associated cost. Specifically, Sea Robin proposes the following to section 24.5(d):

The balance in ~~the each~~ Hurricane Surcharge ~~Account~~Subaccount shall be debited or credited, as appropriate, by carrying charges calculated at the FERC prescribed interest rate on the monthly balance of the Hurricane Surcharge ~~Account~~Subaccount. Carrying charges shall be calculated in accordance with Section 154.501(d) of the Commission's Regulations. The carrying charges on the Hurricane Surcharge Subaccount shall commence on the date of the initial filing of such surcharge, which was August 31, 2009 for Hurricane Ike. Carrying charges for each subsequent Hurricane Surcharge Subaccount shall commence on the date Sea Robin files to establish a new Hurricane Surcharge Subaccount, or the date the associated cost is incurred, whichever is later.

10. To comply with Opinion No. 516's holding that Sea Robin may discount the Hurricane Surcharge, Sea Robin proposes to remove the Hurricane Surcharge from its minimum rates, as well as any language from its tariff records indicating that the Hurricane Surcharge is not discountable. Sea Robin states it estimated the Hurricane Surcharge amount from the minimum rate shown on the tariff records titled Currently Effective Rates for Rate Schedules FTS, FTS-2 and ITS on each effective date of the surcharge adjustment in Third Revised Volume No. 1. Sea Robin states it filed these tariff records, showing the removal of the Hurricane Surcharge amount from the minimum rates, for informational purposes only.

11. Sea Robin revises GT&C section 15.5 to show that the order of discounting includes the Hurricane Surcharge and to remove the language that the Hurricane Surcharge is not discountable from GT&C section 24.7(b) and GT&C section 24.2. Sea Robin's proposal also revises GT&C section 24.3 to remove language regarding hurricane prevention costs.

12. Finally, in compliance with Ordering Paragraph (B) of Opinion No. 516 and consistent with the determinations in the Initial Decision and Opinion No. 516, Sea Robin states its workpapers support the recalculation of the Hurricane Surcharge based on the findings in Opinion No. 516. Specifically, Sea Robin states the carrying charges in the periodic Hurricane Surcharge filings to date (Docket Nos. RP10-422-000, RP10-1133-000, RP11-1850-000 and RP11-2494-000) have been recalculated to reflect accrual of carrying charges from the date that Sea Robin filed to establish the Hurricane Surcharge, August 31, 2009. Sea Robin proposes the Commission effectuate the recalculated Hurricane Surcharge on October 1, 2011, the date of the latest Hurricane Surcharge adjustment.

### **Public Notice, Interventions and Protests**

13. Public notice of Sea Robin's filing issued January 17, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2011). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2011), 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. The Indicated Shippers,<sup>12</sup> and ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation and Hess Corporation (jointly ExxonMobil and Hess) filed protests. On February 9, 2012, Arena Energy, LP filed a protest, in which it agrees with and supports the protests filed by Indicated Shippers and ExxonMobil and Hess. On February 2, 2012, 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) (2011), 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.

### **Discussion**

14. For the reasons discussed below, the Commission finds that Sea Robin has not fully complied with Opinion No. 516. Accordingly, the Commission accepts the proposed tariff records to become effective as proposed on the dates listed in the Appendix, subject to modifying its tariff language and making refunds as directed herein.

#### **a. Four-Year Amortization Period**

15. Indicated Shippers and ExxonMobil and Hess contend Sea Robin failed to properly comply with Opinion No. 516's holding that Sea Robin base the surcharge

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<sup>12</sup> In this proceeding, the Indicated Shippers include Apache Corporation and Chevron U.S.A. Inc.

calculation to recover new hurricane repair costs on a 4-year amortization period from the effective date of the first semi-annual filing including those costs. The protesters focus on Sea Robin's proposal to add the following sentence to section 24.2 of its GT&C:

If Sea Robin files to recover new hurricane repair costs following Hurricane Ike, the surcharge to recover costs for each named hurricane will be calculated based on a 4-year amortization period from the effective date of such filing.

16. Indicated Shippers contend that Sea Robin's proposed tariff language would allow it to recover all repair costs related to a particular hurricane, within a four-year period commencing with the effective date of the first Hurricane Surcharge filing that includes any costs related to that hurricane, even though that filing may not include all of the repair costs related to that hurricane. For example, Indicated Shippers contend that Sea Robin's proposed language would allow it to recover all hurricane repair costs related to Hurricane Ike within the four-year amortization period ending September 30, 2013 established by Sea Robin's original August 31, 2009 Surcharge filing, despite the fact Sea Robin did not include all its Hurricane Ike costs in that initial filing. Specifically, Indicated Shippers note that on March 1, 2011, Sea Robin filed in Docket No. RP11-1850-000 for the first time to include an additional \$9,715,506.33 of Hurricane Ike repair costs in the Hurricane Surcharge proposed to become effective April 1, 2011. Indicated Shippers point out that this would allow Sea Robin to recover these specific costs over a 2.5-year period, rather than a four-year period ending on March 31, 2015. Similarly, Indicated Shippers state that Sea Robin filed in Docket No. RP11-2494-000 to recover for the first time another \$362,615.29 of Hurricane Ike costs in the surcharge proposed to become effective October 1, 2011. Indicated Shippers point out, in this instance, Sea Robin would recover these costs over two years, rather than the Commission-ordered four-year recovery period.

17. Therefore, Indicated Shippers request the Commission require Sea Robin to revise its proposed tariff language to provide it will recover hurricane repair costs within a four-year period commencing with the effective date of the first filing that includes the relevant costs, without regard to whether Sea Robin may have included repair costs related to the same hurricane in an earlier filing. Indicated Shippers also request that the Commission require Sea Robin to refund excess amounts collected from shippers as a result of its failure to use a four-year amortization period for the new hurricane repair costs included in the two 2011 semi-annual filings.

18. ExxonMobil and Hess agree with Indicated Shippers that Sea Robin's proposed section 24.2 is ambiguous and does not comply with the Commission's directives set forth in Opinion No. 516. Accordingly, ExxonMobil and Hess request that the Commission direct Sea Robin to modify section 24.2 as follows:

If Sea Robin files to recover new Eligible ~~hurricane repair~~  
Costs not included in a previous Hurricane Surcharge Filing.

whether from following Hurricane Ike or a future hurricane prior to September 30, 2013, the surcharge to recover such costs for each named hurricane will be calculated based on a four-year amortization period from the effective date of such filing.

19. ExxonMobil and Hess submit the above recommended wording accurately sets forth the requirement of Opinion No. 516, which stated that Sea Robin must recover new hurricane repair costs, whether from a future or past hurricane, in a four-year amortization period from the effective date of such filing, and not the period remaining between the effective date of the Hurricane Surcharge filing and September 30, 2013.<sup>13</sup>

20. Sea Robin responds that the protestors misconstrue the Commission's directive regarding the four year amortization period for new hurricane costs and misstate both the purpose and the Commission-approved application of Sea Robin's Hurricane Surcharge. Sea Robin contends that in P 51 of Opinion No. 516 the Commission intended only that Sea Robin establish a new four-year amortization for any costs it might incur as a result of future hurricanes, and not for any repair costs related to Hurricane Ike. Sea Robin states that protestors make a fundamental error in the way they construe the Commission's Opinion No. 516 directive regarding the four year amortization period for "new" hurricane repair costs. Sea Robin states that, according to the protesting parties, each time that Sea Robin files to recover new hurricane costs (whether from Hurricane Ike or another hurricane), the four year recovery period clock starts anew, which would require a new Hurricane Surcharge Subaccount and a new four year amortization period for each new element of cost.

21. Sea Robin also asserts that protestors' interpretation of Paragraph 51 (that the clock begins to run anew each time a filing is made regarding Hurricane Ike costs) does not comport with the Commission's rationale in directing Sea Robin to make the tariff change in the first place. Sea Robin contends the Commission drafted Paragraph 51 to ensure the recovery period for costs resulting from future hurricanes and storms occurring after issuance of the order but before the expiration of the Hurricane Surcharge would not be less than 4 years. Sea Robin contends that if one applies the protestors' interpretation regarding the recovery period with equal weight to the issue of insurance recoveries, this would require Sea Robin to flow any additional insurance recoveries received in 2012 back to its shippers over a four year period starting with the 2012 filing date.

22. Sea Robin states the only reasonable interpretation of the phrase "new hurricane repair costs" is that they are costs from new (non-Hurricane Ike) hurricanes whose related

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<sup>13</sup> ExxonMobil and Hess state that in Sea Robin's Hurricane Surcharge filing, in Docket No. RP11-2494-000, Sea Robin proposed to recover new costs attributable to the installation of pipeline crossings over 24 months, not 48 months.

costs are not included in a previous Hurricane Surcharge filing. Sea Robin states a rational construction of the Commission's language, taken in the context of the entire proceeding is that the Commission intended to place Hurricane Ike costs (incurred and to be incurred) in the one currently-existing Hurricane Surcharge Subaccount to be recovered over the Commission-approved four year period ending September 30, 2013. In addition, Sea Robin states its Hurricane Surcharge Subaccount methodology properly reflects the natural timing differences of expenditures and recoveries. Sea Robin states this is consistent with the Commission's determination that a four year recovery period is just and reasonable. Furthermore, Sea Robin states the approach advocated by the protestors would result in higher costs spread out over a longer period because insurance proceeds typically lag expenditures by a substantial amount.

### **Commission Determination**

23. Sea Robin misinterprets the Commission's intent concerning paragraph 51 of Opinion No. 516 which states:

ExxonMobil and Hess were also concerned that, under Sea Robin's current proposal, the recovery period for costs resulting from future hurricanes and storms that occur between now and the expiration of the mechanism would be less than 4 years, depending upon the remaining term of the Hurricane Surcharge. For example, if Sea Robin filed to recover new hurricane repair costs in 2011, whether from a future or past hurricane, Sea Robin could file to recover those new capital costs over the two-year period remaining prior to termination of the mechanism. We find that such a result would be unjust and unreasonable. Accordingly, Sea Robin is directed to modify its tariff to provide that if it files to recover new hurricane repair costs (i.e., costs not included in a previous Hurricane Surcharge Filing), whether from a future or past hurricane, the surcharge to recover those costs must be calculated based on a 4-year amortization period from the effective date of such filing. However, as is the case with costs related to Hurricane Ike, Sea Robin may include any balance remaining in the Hurricane Surcharge Account on September 30, 2013 that is associated with such costs in the rate proceeding proposing new base rates required to be filed by January 1, 2014.

24. Opinion No. 516 intended for Sea Robin to amortize each hurricane repair cost over a four-year period calculated from the effective date of the first semi-annual Hurricane Surcharge filing which included that particular cost, regardless of whether other repair costs related to the same hurricane may have been included in earlier semi-annual filings. Opinion No. 516 found that it would be unjust and unreasonable for Sea

Robin “to recover new hurricane repair costs in 2011, *whether from a future or past hurricane . . . over the two-year period remaining prior to the termination of the mechanism.*”<sup>14</sup> Opinion No. 516 then directed Sea Robin to modify its tariff to provide that “if it files to recover *new hurricane repair costs (i.e., costs not included in a previous Hurricane Surcharge filing), whether from a future or past hurricane*, the surcharge to recover those costs must be calculated based on a 4-year amortization period from the effective date of such filing.”<sup>15</sup> The Commission intended the references to repair costs “whether from a future or past hurricane” to be all inclusive and thus to include any new repair costs from Hurricane Ike. Nothing in this language supports Sea Robin’s interpretation that it need only establish a new four-year amortization period for new repair costs related to a future hurricane for which it has not previously filed to recover any repair costs.

25. In addition, the Commission finds Sea Robin’s contention concerning insurance recoveries unpersuasive. Sea Robin credits all insurance recoveries to the Hurricane Surcharge Account balance as they are received and reflected in each semi-annual filing.<sup>16</sup> This effectively returns the entire amount of any insurance recovery to the shippers immediately as of the effective date of the next semi-annual filing, because it reduces the starting net hurricane repair cost balance to be recovered in that filing. The Commission directs that Sea Robin maintain this methodology.

26. As Indicated Shippers point out, Sea Robin filed in each of its 2011 semi-annual Hurricane Surcharge filings to recover new repair costs related to Hurricane Ike. In Docket No. RP11-1850-000, it proposed to recover an additional \$9,715,506.33 of Hurricane Ike repair costs effective April 1, 2011, and in Docket No. RP11-2494-000 it filed to recover another \$362,615.29 of new Hurricane Ike repair costs effective October 1, 2011. In each filing, Sea Robin proposed to recover the entire amount of the new repair costs by September 30, 2013. Consistent with the tariff change required by Opinion No. 516 and this order, Sea Robin must recalculate the surcharges proposed in those two filings to amortize the new costs included in each filing over a four-year period from the effective date of that filing, and refund any excess amounts collected from each shipper during the period the surcharges proposed in those filings have been in effect.

27. As stated in Opinion No. 516, Sea Robin may include any remaining balance associated with these semi-annual tracker filings not recovered on September 30, 2013, in its next general section 4 rate filing.

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<sup>14</sup> *Id.* (emphasis supplied).

<sup>15</sup> *Id.* (emphasis supplied).

<sup>16</sup> *See* Sea Robin Answer at 10.

**b. Hurricane Surcharge Termination Date**

28. In the August 31, 2009 initial filing to establish the Hurricane Surcharge mechanism, Sea Robin proposed that the mechanism would be in effect for the four-year period October 1, 2009 through September 30, 2013, and that it would include any balance remaining in the surcharge account as of September 30, 2013 would be included in its next general section 4 rate case due by January 1, 2014. GT&C sections 24.2, 24.4(a), 24.6(a), and 24.6(c), as proposed in the August 2009 filing, all included language related to the termination of the Hurricane Surcharge mechanism on September 30, 2013. However, in its instant compliance filing, Sea Robin proposes to modify all those sections to permit the surcharge mechanism to continue in effect after September 30, 2013, and thus allow Sea Robin to use that mechanism indefinitely into the future to recover repair costs related to hurricanes after Hurricane Ike.

29. ExxonMobil and Hess assert Sea Robin's proposal to eliminate the tariff language providing for the Hurricane Surcharge mechanism to terminate on September 30, 2013 conflicts with Opinion No. 516 and exceeds the scope of the compliance requirements, because nothing in Opinion No. 516 requires or even contemplates removal of the September 30, 2013 termination date. ExxonMobil contends the proposed elimination of the termination date from GT&C section 24.4(a) would fundamentally alter the Hurricane Surcharge. Furthermore, ExxonMobil and Hess assert Sea Robin's proposed revisions to sections 24.2, 24.4(a), 24.6(a), and 24.6(c) combined could extend to hurricanes occurring after the termination date for an indefinite period, including hurricanes that occur after Sea Robin files its next rate case on January 1, 2014, thereby turning a temporary mechanism into a permanent surcharge mechanism for all future hurricanes.

30. Sea Robin responds that the tariff revision in the Compliance Filing removing provisions for the termination of the Hurricane Surcharge ensures, consistent with the Commission's orders, that all shippers are on notice, between section 4 rate cases, of how Sea Robin will recover costs from future hurricanes if needed. Sea Robin asserts that the Hurricane Surcharge is an ongoing mechanism, available if needed, that provides Sea Robin's shippers notice of how Sea Robin will recover hurricane damage costs and is consistent with the tariff provisions of other pipelines.<sup>17</sup> Sea Robin states the protestors' construction would attempt to place Sea Robin in an untenable Catch-22 where shippers argue that Sea Robin cannot have a mechanism in place to notify shippers of how future hurricane damage costs will be collected yet also claim that Sea Robin cannot recover such costs if it does not have a tariff mechanism in place at the time the damage occurs.

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<sup>17</sup> Sea Robin notes that, in direct contradiction to ExxonMobil's and Hess' claim, the Commission held in the Suspension Order that "it reasonable for Sea Robin to have in place a mechanism to recover future such costs. This will provide Sea Robin's shippers notice of how such costs will be recovered." Sea Robin Answer at 12.

### **Commission Determination**

31. Section 154.203(b) of the Commission's regulations<sup>18</sup> provides that filings to comply with Commission orders must include only those changes required to comply with the order. The regulation further provides that pipelines may not combine compliance filings with other rate or tariff changes, and that the Commission may reject any compliance filings that include other changes or that do not comply with the applicable order in every respect.

32. Thus, the purpose of a compliance filing is limited to implementing the specific directives of the Commission's order.<sup>19</sup> A compliance filing may not include new proposed tariff provisions not addressed in the Commission's order, and the Commission will reject a compliance filing that goes beyond the scope of the directives in the Commission's order.<sup>20</sup>

33. The Commission finds that Sea Robin's proposal to remove from section 24 of its GT&C the various provisions for the Hurricane Surcharge mechanism to terminate on September 30, 2013 exceeds the scope of the compliance requirements of Opinion No. 516. Regardless of whether Commission policy might permit Sea Robin to include in its tariff a permanent Hurricane Surcharge mechanism, Sea Robin did not propose such a permanent mechanism in its initial August 31, 2009 tariff filing in this proceeding. Instead it proposed that the Hurricane Surcharge mechanism would terminate on September 30, 2013. Opinion No. 516 does not require Sea Robin to remove the September 30, 2013 termination date from GT&C section 24. Accordingly, Sea Robin must submit a revised compliance filing, modifying sections 24.2, 24.4(a), 24.6(a), and 24.6(c) to reinstate the September 30, 2013 termination date for the Hurricane Surcharge. Our holding here is without prejudice to Sea Robin making a separate filing pursuant to NGA section 4, proposing to continue the Hurricane Surcharge mechanism in effect beyond September 30, 2013.

#### **c. Carrying Charges**

34. Opinion No. 516 directed Sea Robin to modify its tariff to provide that carrying charges should begin to accrue the later of August 31, 2009, the date Sea Robin filed to establish the Hurricane Surcharge, or the date the associated cost is incurred. In order to

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<sup>18</sup> 18 C.F.R. § 154.203(b) (2011).

<sup>19</sup> *El Paso Natural Gas Co.*, 115 FERC ¶ 61,395, at P 13 (2006). *North-Western Corp.*, 113 FERC ¶ 61,215, at P 9 (2005).

<sup>20</sup> *See, e.g., Maritimes & Northeast Pipeline, LLC*, 105 FERC ¶ 61,356 at P 11 (2003); *Transcontinental Gas Pipe Line Corp.*, 101 FERC ¶ 61,154 (2002).

comply with that requirement, Sea Robin proposes to add to section 24.5(d) the following:

The carrying charges on the Hurricane Surcharge Subaccount shall commence on the date of the initial filing of such surcharge, which was August 31, 2009 for Hurricane Ike. Carrying charges for each subsequent Hurricane Surcharge Subaccount shall commence on the date Sea Robin files to establish a new Hurricane Surcharge Subaccount, or the date the associated cost is incurred, whichever is later.

35. ExxonMobil and Hess contend that Sea Robin's proposed modification to section 24.5(d) does not comply with Opinion No. 516. ExxonMobil and Hess assert that Sea Robin's proposal would provide for accrual of carrying costs attributable to all Hurricane Ike repair costs on August 31, 2009 even if Sea Robin did not incur the costs until after August 31, 2009. They assert this is contrary to the Commission's directive in Opinion No. 516 that carrying costs should begin to accrue on "the date Sea Robin filed to establish the Hurricane Surcharge [August 31, 2011] or the date the associated cost is incurred, whichever is later."<sup>21</sup> ExxonMobil and Hess state that although Sea Robin seems to recognize, both in its discussion and workpapers in the instant filing, that carrying charges must begin to accrue at the later of August 31, 2009, or the date Sea Robin incurred the underlying costs, its proposed implementing tariff language does not reflect that holding. Therefore, to reflect the requirements of Opinion No. 516, ExxonMobil and Hess propose the following changes to Sea Robin's proposed language:

The accrual of carrying charges on ~~the~~ each Hurricane Surcharge Subaccount shall commence on the date of the initial filing of such surcharge for the corresponding Subaccount, ~~which was August 31, 2009 for Hurricane Ike.~~ ~~Carrying charges for each subsequent Hurricane Surcharge Subaccount shall commence on the date Sea Robin files to establish a new Hurricane Surcharge Subaccount,~~ or the date the associated cost is incurred, whichever is later.

ExxonMobil and Hess assert that this language provides that any Hurricane Ike costs Sea Robin incurred after August 31, 2011, would accrue carrying charges as of the date Sea Robin incurred those costs, not August 31, 2009.

36. Sea Robin states its revisions to GT&C section 24.5(d) are consistent with the Commission's order in Opinion No. 516. Sea Robin states that its revisions to GT&C

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<sup>21</sup> Opinion No. 516, 137 FERC ¶ 61,201 at P 61.

section 24.5(d) provide that carrying charges for Hurricane Ike will begin to accrue on August 31, 2009, as directed by the Commission, and carrying charges for subsequent hurricanes will begin to accrue the later of (1) the date Sea Robin files to create a new Hurricane Surcharge Subaccount or (2) the date the associated cost is incurred. Sea Robin states this language is consistent with the Commission's directive and stated goals in Opinion No. 516 as it provides Sea Robin incentive to create the new Hurricane Surcharge Subaccount in the next semiannual Hurricane Surcharge filing following the new hurricane damage, and therefore its revisions to GT&C section 24.5(d) are in direct compliance with Opinion No. 516.

37. ExxonMobil and Hess also state the Commission should direct Sea Robin to correct its Hurricane Surcharge account calculations to comply with the Commission's holdings regarding the accrual of carrying costs. ExxonMobil and Hess assert Opinion No. 516 required Sea Robin to recalculate carrying charges from the later of August 31, 2009, the date Sea Robin filed to establish the Hurricane Surcharge, or the date the associated cost was incurred. ExxonMobil and Hess assert Sea Robin recalculated the carrying charges shown in prior Hurricane Surcharge filings, but not the surcharges that result from the recalculation of the carrying charges. They contend Sea Robin's filing does not indicate whether those over-recoveries are somehow reflected in Sea Robin's proposal to reduce the current Hurricane Surcharge rate, which took effect on October 1, 2011, from 16.20 cents to 16.11 cents. Therefore, ExxonMobil and Hess request the Commission require Sea Robin to further explain its calculations and address whether it corrected the surcharge prospectively for past overcharges. In addition, ExxonMobil and Hess state it is unclear whether Sea Robin's recalculation of carrying charges includes the carrying charges included in its initial August 31, 2009 filing in Docket No. RP09-995-000. Therefore, they request the Commission require Sea Robin to confirm that it removed the carrying charges attributable to the first filing.

38. The Indicated Shippers also assert that because the Commission revised how carrying costs would accrue would be calculated for costs and expenses incurred after the filing of the initial Hurricane Surcharge,<sup>22</sup> refunds are due to shippers as a result of the reduction in the Hurricane Surcharges in each semi-annual filing. Indicated Shippers state that simply crediting the Hurricane Surcharge Account used to calculate the current surcharge which took effect on October 1, 2011 does not satisfy the refund requirement and that Sea Robin must actually refund each individual shipper who overpaid the surcharge.

39. Sea Robin maintains that no refunds are due with respect to carrying charges, because it properly recalculated the carrying charges consistent with Opinion No. 516,

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<sup>22</sup> Indicated Shippers note the Commission initially accepted and suspended Sea Robin's Hurricane Surcharge proposal, subject to refund. *Sea Robin Pipeline Co., LLC*, 128 FERC ¶ 61,286, at P 1 and ordering para. (A) (2009).

and consequently lowered the balance in the Hurricane Surcharge Subaccount and correspondingly lowered the currently effective Hurricane Surcharge. Sea Robin states it has refunded the over-collection of the portion of the surcharge related to carrying charges for the period prior to August 31, 2009 in the recalculated and reduced Hurricane Surcharge proposed to be effective October 1, 2011, and that this recalculation continues to carry forward to each subsequent filing. Sea Robin states that consistent with the Commission's directive in Opinion No. 516, Sea Robin recalculated the carrying charges to eliminate carrying charges for costs incurred prior to the Initial Filing and Sea Robin provided sufficient detail regarding the recalculation in the workpapers attached to the Compliance Filing. According to Sea Robin, the carrying charges for each subsequent month were adjusted to reflect the removal of these carrying charges and the cumulative effect of these revisions is a reduction of the current Hurricane Surcharge from 16.20 cents to 16.11 cents.

40. In its Reply to Sea Robin's Answer, ExxonMobil and Hess note that, although Sea Robin asserts the "refunds" for over-recovery of carrying charges from March 1, 2010 through September 30, 2011, are somehow embedded in the surcharge reduction effective October 1, 2011, the workpapers do not provide adequate information to verify this assertion. ExxonMobil and Hess state that Sea Robin provides no refunds for the 19 months that its Hurricane Surcharge presumably exceeded the just and reasonable rate. They assert that Opinion No. 516 did not grant Sea Robin authority to decide not to provide such refunds for overcharges. Therefore, ExxonMobil and Hess request the Commission reject Sea Robin's Compliance Filing or direct Sea Robin to clarify, revise, and supplement the filing in accordance with the requirements of Opinion No. 516, including computing refunds for overcharges.

#### **Commission Determination**

41. The Commission finds that Sea Robin's proposed change to section 24.5(d) does not fully comply with Opinion No. 516. To the extent Sea Robin incurred Hurricane Ike repair costs on or before August 31, 2009, Sea Robin's proposal correctly provides that carrying charges on those costs will begin to accrue on August 31, 2009. However, as discussed above, Sea Robin filed to recover new Hurricane Ike repair costs in both of its 2011 semi-annual Hurricane Surcharge filings. Those costs were not incurred until after August 31, 2009. Consistent with Opinion No. 516, carrying charges on those costs should not begin to accrue until the date they were incurred. However, as drafted by Sea Robin, revised section 24.5(d) appears to provide that carrying charges on all Hurricane Ike repair costs will begin accruing on August 31, 2009, even if those costs were not incurred until after August 31, 2009. Therefore, Sea Robin must revise section 24.5(d) to reflect that carrying charges on Hurricane Ike repair costs shall not begin to accrue until the later of August 31, 2009 or the date they were incurred.

42. While Sea Robin's proposed revision to section 24.5(d) does not comply with Opinion No. 516, we find that Sea Robin's recalculation of its carrying charges does comply with Opinion No. 516. Upon review of page 13, column (g) of the workpapers

Sea Robin submitted with its Compliance Filing, the Commission finds that Sea Robin eliminated the carrying charges for repair costs for the period prior to the Initial Filing on August 31, 2009, and Sea Robin has correctly calculated the carrying charges for new costs not incurred until after August 31, 2009 from the date those costs were incurred. As Sea Robin states, the carrying charges for each month after August 31, 2009 were adjusted to reflect the removal of the carrying charges prior to September 2009. These carrying charge adjustments are reflected in each subsequent semiannual Hurricane Surcharge filing. In addition, when Sea Robin filed to recover new repair costs in its two 2011 semi-annual filings, it only included carrying charges from the date those costs were incurred. The Commission finds that Sea Robin's approach is consistent with the directive in Opinion No. 516 that carrying charges on Hurricane Ike repair costs begin accruing as of the later of August 31, 2009 or the date the costs were incurred. Therefore, Sea Robin does not need to provide additional information concerning its carrying charge calculations to supplement the filing.

43. Sea Robin has proposed to return to its shippers the excess carrying charges it previously recovered by crediting the cumulative effect of its revised carrying charge calculations against the hurricane repair costs to be recovered in its current Hurricane Surcharge, which was proposed in Docket No. RP11-2494-000 and took effect on October 1, 2011. That credit would reduce the current surcharge from the 16.20 cents to 16.11 cents. However, previously in this order, we have required Sea Robin to recalculate the surcharges proposed in both Docket No. RP11-2494-000 and the previous semi-annual filing in Docket No. RP11-1850-000, which took effect on April 1, 2011, in order to amortize the new costs included in those two filings over a four-year period. We have also required Sea Robin to refund any excess amounts collected from each shipper during the period the surcharges proposed in those two filings have been in effect, i.e. since April 1, 2011. Therefore, we will require Sea Robin to credit the cumulative effect of its carrying charge recalculations through March 31, 2011 against the hurricane repair costs to be recovered in the Docket No. RP11-1850 surcharge, effective April 1, 2011, and thus include the pre-April 2011 excess carrying charge collections in the amount to be returned in that proceeding as well as in the Docket No. RP11-2494-000 proceeding. The Commission also finds that the effect of the carrying charge recalculations on surcharges in effect before April 1, 2011 is so minimal, that there is no need for Sea Robin to make refunds of amounts shippers paid pursuant to the surcharge in effect before April 1, 2011. It is sufficient that such amounts be returned through the reduction in the surcharges in effect starting on April 1, 2011.

The Commission orders:

(A) The tariff records listed in the Appendix are accepted effective on the dates listed in the Appendix.

(B) Within 20 days of the date of this order issues, Sea Robin must file revised tariff language to its Hurricane Surcharge provisions, outlined in section 24 of the GT&C of its tariff, as directed in the body of this order.

(C) Within 45 days of the date of this order, Sea Robin must file a report detailing the refunds it has made.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**APPENDIX**

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

Accepted effective August 24, 2010

1. Rate Schedule FTS, Currently Effective Rates, 0.1.0
2. Rate Schedule FTS-2, Currently Effective Rates, 0.1.0
3. Rate Schedule ITS, Currently Effective Rates, 0.1.0  
GT&C Section 15., Statements and Payments, 0.1.0  
GT&C Section 24., Hurricane Surcharge, 0.1.0

Accepted effective October 1, 2010

1. Rate Schedule FTS, Currently Effective Rates, 1.1.0
2. Rate Schedule FTS-2, Currently Effective Rates, 1.1.0
3. Rate Schedule ITS, Currently Effective Rates, 1.1.0

Accepted effective April 1, 2011

1. Rate Schedule FTS, Currently Effective Rates, 2.1.0
2. Rate Schedule FTS-2, Currently Effective Rates, 2.1.0
3. Rate Schedule ITS, Currently Effective Rates, 2.1.0

Accepted effective October 1, 2011

1. Rate Schedule FTS, Currently Effective Rates, 3.1.0
1. Rate Schedule FTS, Currently Effective Rates, 4.1.0
2. Rate Schedule FTS-2, Currently Effective Rates, 3.1.0
2. Rate Schedule FTS-2, Currently Effective Rates, 4.1.0
3. Rate Schedule ITS, Currently Effective Rates, 3.1.0
3. Rate Schedule ITS, Currently Effective Rates, 4.1.0