

142 FERC ¶ 61,239
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 28, 2013

In Reply Refer To:
Sea Robin Pipeline Company, LLC
Docket No. RP13-642-000

Sea Robin Pipeline Company, LLC
5051 Westheimer Road
Houston, TX 77056

Attention: Michael T. Langston
Vice President, Chief Regulatory Officer

Ladies and Gentlemen:

1. On March 1, 2013, Sea Robin Pipeline Company, LLC (Sea Robin) filed revised tariff records¹ proposing to decrease its Hurricane Surcharge from 29.15 cents per Dth to 28.36 cents per Dth. Sea Robin also requested 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 waivers and accepts and suspends the proposed tariff records, to become effective April 1, 2013, subject to refund and the ultimate outcome of the rehearing proceeding in Docket Nos. RP09-995-004 and RP10-422-003.

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

¹ Sea Robin Pipeline Company, LLC, FERC NGA Gas Tariff, [Third Revised Volume No. 1, >Tariff, Third Revised Volume No. 1, 0.0.0, >Part IV, Currently Effective Rates, 0.0.0, 1. Rate Schedule FTS, Currently Effective Rates, 8.0.0, 2. Rate Schedule FTS-2, Currently Effective Rates, 8.0.0, 3. Rate Schedule ITS, Currently Effective Rates, 8.0.0.](#)

Robin's tariff, provide for the recovery of capital and related operation and maintenance expenditures that Sea Robin incurs to repair the damage to its facilities caused by Hurricane Ike, as well as costs related to future named hurricanes, for a period beginning October 1, 2009 and continuing through September 30, 2013. The Hurricane Surcharge is collected through a volumetric surcharge applicable to all transportation service provided by Sea Robin pursuant to Rates Schedules FTS, FTS-2, ITS, and any other transportation service provided by Sea Robin. The surcharge is calculated by dividing the costs to be recovered through the surcharge by Sea Robin's projected throughput.

3. In its Initial Filing, 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. According to the settlement agreement on Sea Robin's most recent general rate case, Sea Robin must file a new section 4 rate case no later than January 1, 2014.²

4. 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.³ 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.⁴

5. The Administrative Law Judge (ALJ) issued an initial decision on the Docket No. RP09-995 proceeding December 13, 2010.⁵ On December 15, 2011, the Commission issued Opinion No. 516 affirming the Initial Decision in part and reversing in part.⁶ In Opinion No. 516, the Commission reversed the ALJ's findings regarding the

² *Sea Robin Pipeline Co., LLC*, 125 FERC ¶ 61,185 (2008).

³ *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*).

⁴ Suspension Order, 128 FERC ¶ 61,286 at P 44.

⁵ *Sea Robin Pipeline Co., LLC*, Initial Decision, 133 FERC ¶ 63,009 (2010).

⁶ *Sea Robin Pipeline Co., LLC*, Opinion No. 516, 137 FERC ¶ 61,201 (2011).

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.⁷

6. On January 17, 2012, Arena Energy, L.P. (Arena), Apache Corporation (Apache), Chevron U.S.A. Inc. (Chevron), ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation (ExxonMobil), and Hess Corporation (Hess) filed requests for rehearing of Opinion No. 516.

7. As required by GT&C section 24.4(a), Sea Robin has made six semi-annual filings to update the Hurricane Surcharge and to make any necessary adjustments.⁸ Those filings have gradually increased the surcharge from an initial rate of 4.1 cents per Dth⁹ to 29.15 cents per Dth in the most recent filing in Docket No. RP12-982-000, which took effect on October 1, 2012. This increase has occurred almost entirely because of the steep decline in throughput on Sea Robin's system during the period the Hurricane Surcharge has been in effect.¹⁰

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,

⁷ Opinion No. 516, 137 FERC ¶ 61,201 at P 14. On January 13, 2012, in Docket No. RP12-313-000, Sea Robin filed revised tariff records in compliance with Opinion No. 516. On February 23, 2012, the Commission accepted the proposed tariff records, subject to refund and conditions, and to Sea Robin modifying the language in its tariff records as directed in the order. *Sea Robin Pipeline Co., LLC*, 138 FERC ¶ 61,131 (2012). On March 1, 2012, Sea Robin filed revised tariff records to comply with the Commission's February 23, 2012 order. On March 30, 2012, the Commission accepted the compliance tariff records to become effective on the dates shown in the appendices, subject to the pending rehearing requests in Docket Nos. RP09-995-004 and RP10-422-003. *Sea Robin Pipeline Co., LLC*, 138 FERC ¶ 61,242 (2012).

⁸ The Commission accepted and suspended these filings in the following orders: *Sea Robin Pipeline Co., LLC*, 130 FERC ¶ 61,261 (2010); 132 FERC ¶ 61,277 (2010); 134 FERC ¶ 61,262 (2011); 136 FERC ¶ 61,229 (2011); 138 FERC ¶ 61,242 (2012); and 140 FERC ¶ 61,247 (2012).

⁹ Suspension Order, 128 FERC ¶ 61,286.

¹⁰ In Sea Robin's initial and March 2010 surcharge filings, Sea Robin calculated the surcharge based on annual projected throughput of 237,957,516 Dth. In its September 2010 filing, Sea Robin's projected annual projected throughput declined to 178,240,591 Dth and continued to decline through Sea Robin's August 2012 filing, which reflected a projected annual throughput of 82,635,502 Dth.

2012, with the exception of the credit for Hurricane Surcharge Recoveries which also includes actual recoveries for January 2013 and projected recoveries for February and March 2013. 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 that otherwise would be derived absent this waiver. Sea Robin states that the proposed Hurricane Surcharge is 28.36 cents per Dth, which is a 0.79 cents per Dth decrease from the currently effective surcharge of 29.15 cents per Dth. Sea Robin calculated the Hurricane Surcharge based on a projected annual throughput of 83,862,484 Dth, which reflects a slight increase from the projected annual throughput of 82,635,502 Dth used to calculate the Hurricane Surcharge in Sea Robin's last semi-annual filing.

9. Public notice of Sea Robin's filing was issued March 4, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2012). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), 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.

10. On March 13, 2013, Indicated Shippers¹¹ and Arena each filed protests, raising concerns about the substantial increase in the Hurricane Surcharge since it was originally implemented. Arena and the Indicated Shippers request that the Commission condition the instant filing by accepting it subject to the outcome of the rehearing of Opinion No. 516.¹²

11. The Commission accepts and suspends the proposed tariff records for a nominal period, effective April 1, 2013, subject to refund and the ultimate outcome of the Docket Nos. RP09-995-000 and RP10-422-000 proceedings, in which rehearing is currently pending. This is consistent with our previous orders involving Sea Robin's semi-annual surcharge filings.¹³ The Commission also finds that good cause exists to grant the requested waiver of sections 24.5(c) and 24.6(a) of Sea Robin's GT&C so as to reduce the Hurricane Surcharge.

¹¹ In this proceeding, Indicated Shippers include Apache, Chevron, ExxonMobil, and Hess.

¹² Arena Protest at 3 and Indicated Shippers Protest at 3.

¹³ See n.8 *supra*.

12. 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'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.¹⁴ 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.¹⁵ 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, 2013, subject to the conditions set forth in the body of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁵ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).