

146 FERC ¶ 61,246
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 31, 2014

In Reply Refer To:
Dauphin Island Gathering Partners
Docket No. RP14-566-000

Ms. Katie Rice
Director, Regulatory Affairs
DCP Midstream, LP
Denver, Colorado 80202

Dear Ms. Rice:

1. On February 28, 2014, Dauphin Island Gathering Partners (Dauphin Island) submitted an informational filing to reflect its annual Limited Section 4 Storm Surcharge Adjustment in accordance with section 7.21 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. The Storm Surcharge allows Dauphin Island to recover costs related to damage resulting from weather related events outside of its control. As discussed below, the Commission accepts the Storm Surcharge subject to further review, to be effective April 1, 2014, as proposed.
2. Pursuant to section 7.21 of the GT&C of Dauphin Island's tariff, no later than March 1 of each year Dauphin Island shall make a limited section 4 filing to establish a new Storm Surcharge for the 12 month period beginning April 1, based on the balance in the Storm Surcharge Deferred Cost Account of the prior year and the projected throughput for the collection period. The tariff provides that the Storm Deferred Cost Account shall be debited by Eligible Costs incurred during the 12-month period ending December 31 and credited by the Storm Surcharge amounts collected by Dauphin Island for the previous collection period. Eligible costs, as set forth in section 7.21.2 of the GT&C, generally include actual capital and operation and maintenance expenses related to storm damage. In this filing, Dauphin Island is proposing to recover through the Storm Surcharge \$3,278,224 of Eligible costs for calendar year 2013, consisting of \$1,490,545 in storm related insurance costs and \$1,787,679 for costs related to bracing modifications to offshore platforms as required by government regulations.

3. Dauphin Island states that, under its tariff, the Storm Surcharge permits it to recover costs related to damage resulting from weather related events outside its control, including costs in connection with preventing, preparing for, and repairing damage caused by major storms and significant disasters. Accordingly, Dauphin Island proposes to include for recovery through the storm surcharge the costs of a Bracing Project mandated by the Department of the Interior's Bureau of Safety and Environmental Enforcement (BSEE) to comply with BSEE standards for hurricane conditions. Dauphin Island reports that the total Bracing Project costs were almost \$1.8 million. On the Schedules that Dauphin Island files to show its accounting, it reports a total Storm Surcharge Deferred Cost Account of over \$4.1 million. Dauphin Island projects an annual throughput of over 49.7 Dth, which would result in a surcharge of \$0.0836 per Dth. However, because this amount exceeds the \$0.03 per Dth cap provided for in Dauphin Island's section 7.21.4.D, it proposes to keep the Storm Surcharge at the existing \$0.03 per Dth rate.

4. Public notice of the filing was issued on March 4, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹ Pursuant to Rule 214,² all timely filed motions to intervene and any unopposed motions 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 12, 2014, the Indicated Shippers filed a protest. On March 19, 2014, Dauphin Island filed an answer to the Indicated Shippers' protest. Rule 213³ of the Commission's Rule of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Dauphin Island's answer because it has provided information that assisted us in our decision-making process.

5. In its protest, Indicated Shippers argue that GT&C section 7.21 of Dauphin Island's tariff does not authorize Dauphin Island to collect the \$1.8 million in Bracing Project costs through its Storm Surcharge. In particular, they argue that three subsections of the tariff, when read in combination, limit the Storm Surcharge to recovering costs incurred in reaction to extraordinary weather, not in preparation for it. Indicated Shippers note that GT&C section 7.21.2 defines "Eligible Costs" as "the actual capital and operation and maintenance expenses related to Storm damage (including inspections of or for damage related to a Storm, and/or other actions related to a Storm and required by federal or state laws or regulations)." Further, they note, GT&C section 7.21.1 defines a "Storm" as "any hurricane, tropical storm or depression named or numbered by the U.S.

¹ 18 C.F.R. § 154.210 (2013).

² 18 C.F.R. § 385.214 (2013).

³ 18 C.F.R. § 385.213 (2013).

National Weather Service.” Finally, they note that GT&C section 7.21.2.F states: “the term “Eligible Costs” shall in all cases include only actual costs incurred to repair damage and/or recover system operations related to a Storm.” Indicated Shippers argue that the Bracing Project costs were not incurred in relation to a storm, and are thus ineligible. Indicated Shippers further argue that, in any event, the Commission policy on limited section 4 surcharges is to only allow recovery of extraordinary, one-time losses resulting from events outside the pipeline’s control, and that the Bracing Project was not extraordinary.

6. In its Answer, Dauphin Island argues that the Bracing Project related costs qualify as Eligible Costs for purposes of the Storm Surcharge because they were incurred in relation to a storm and were required by law or regulations. Dauphin Island claims that the BSEE’s Notice mandating that off shore platforms install certain bracing came in direct response to Hurricanes Ivan, Katrina, and Rita. Dauphin Island also claims that the particular details of the Bracing Project were only confirmed through extensive correspondence with BSEE. In a supplement filed separately from its Answer, Dauphin Island submits the BSEE’s Notice as evidentiary support.

7. Dauphin Island also asserts that Commission policy permits its use of the Storm Surcharge to recover the Bracing Project costs. Dauphin Island claims that the Bracing Project costs were both extraordinary and outside its control. Further, Dauphin Island argues, these types of expenses benefit all shippers because they allow the pipeline to resume full service as quickly as possible after a catastrophic event.

8. We find that resolution of the items disputed by Indicated Shippers requires an analysis and interpretation of the tariff provisions governing the Surcharge, GT&C section 7.21, and their application to the unique circumstances at hand, in particular the BSEE’s Notice. This Notice, however, was not a part of the record until Dauphin Island filed its answer. Thus, Indicated Shippers has not been afforded an opportunity to respond to the evidence and arguments that were presented for the first time in Dauphin Island’s answer. Accordingly, we shall permit Indicated Shippers to file an answer addressing that evidence within 15 days of the date that this order is issued.

9. We also note that Dauphin Island proposes a Storm Surcharge of \$0.03 per Dth, which is the maximum allowable under its tariff. Because the previous year’s Storm Surcharge was also for the \$0.03 per Dth maximum rate, Dauphin Island is not proposing to change its rate on file, and thus it does not submit a tariff record. Further, based on the record presented, it appears that were the Commission to disallow the disputed costs from being included in the Storm Surcharge, there would nevertheless be sufficient undisputed costs to support a \$0.03 per Dth maximum surcharge for the current filing year. The disputed costs, in other words, only affect the Storm Surcharge Deferred Cost Account, which is not recorded in Dauphin Island’s tariff but does affect what the Storm Surcharge

may be in future years.⁴ Accordingly, there are no tariff records to act upon in the instant filing. However, because this filing is required by Dauphin Island's tariff in order to support its Natural Gas Act (NGA) section 4 rates, and because the tariff specifies that Dauphin Island must make this filing pursuant to NGA section 4, we clarify that our review of the Bracing Project costs shall be pursuant to our section 4 authority. Accordingly, the Commission accepts Dauphin Island's Storm Surcharge of \$0.03 per Dth, effective April 1, 2014, subject to further review as discussed above.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁴ Section 7.21.4.D of Dauphin Island's GT&C provides that the \$0.03 per Dth cap will not serve to limit the recovery of any Eligible Costs credited to the Storm Surcharge Deferred Cost Account.