

147 FERC ¶ 61,250
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Dauphin Island Gathering Partners

Docket No. RP14-566-000

ORDER ON ANNUAL STORM SURCHARGE ADJUSTMENT

(Issued June 26, 2014)

1. On February 28, 2014, Dauphin Island Gathering Partners (Dauphin Island) submitted an informational filing to reflect its annual limited Natural Gas Act (NGA) section 4 Storm Surcharge Adjustment in accordance with section 7.21 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. According to Dauphin Island, it did not file a tariff record because it proposed to keep the Storm Surcharge at the same rate. On March 31, 2014, the Commission issued an order subjecting Dauphin Island's informational filing to further review pursuant to NGA section 4.¹ As discussed below, we find that certain costs included by Dauphin Island in calculating the Storm Surcharge do not qualify as "Eligible Costs" as defined in Dauphin Island's tariff, and thus we direct Dauphin Island to correct its Storm Surcharge Deferred Cost Account accordingly.

I. Background

2. Dauphin Island's underlying filing in this docket is an annual filing that is mandatory pursuant to the terms of section 7.21 of the GT&C of Dauphin Island's tariff, which defines its Storm Surcharge. Generally, a Storm Surcharge is a variable cost tracker that allows a pipeline to manage the costs associated with natural disasters. Section 7.21.2, in relevant part, defines "Eligible Costs" as follows (emphasis added):

The costs eligible for reimbursement through the Storm Surcharge ("Eligible Costs") are 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). Eligible Costs shall include:

¹ *Dauphin Island Gathering Partners*, 146 FERC ¶ 61,246 (March 2014 Order).

- A. Property damage insurance;
- B. Deductible (uncovered) amounts on any such property damage insurance claims;
- C. Smart pigging;
- D. Construction, modifications (...), repair, burials, removal or replacements of pipeline (...) receipt points, delivery points, compressors, buildings, fences, debris (...), equipment (...), and other property;
- E. Construction, modifications, repairs and replacements of pipeline shore approaches, levee crossings and other water/land interfaces (...);
- F. **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.**

3. 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 (Bracing Project) to offshore platforms required by government regulations. In particular, Dauphin Island states that the Bracing Project is mandated by the Department of the Interior’s Bureau of Safety and Environmental Enforcement (BSEE) to comply with BSEE standards for hurricane conditions.

4. Dauphin Island projects an annual throughput of over 49.7 million Dekatherms (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. Dauphin Island proposes to carry the amount exceeding \$0.03 per Dth in its Storm Surcharge Deferred Cost Account.

5. In the March 2014 Order, the Commission noted that Indicated Shippers protested the inclusion of the Bracing Project in the Storm Surcharge accounting. Indicated Shippers argued, in short, that the Bracing Project costs were not incurred in relation to a storm, and are thus ineligible. Dauphin Island filed an answer, stating that BSEE mandated the Bracing Project, and argued the Bracing Project was therefore eligible for inclusion in the Storm Surcharge accounting. The March 2014 Order deferred action to allow Indicated Shippers to file a response to Dauphin Island’s late-filed answer. The

March 2014 Order also concluded that its “review of the Bracing Project costs shall be pursuant to our section 4 authority.”²

II. Positions of the Parties

6. Dauphin Island argues that the Bracing Project costs at issue in this proceeding meet the definition of Eligible Costs in section 7.21.2. Dauphin Island states that BSEE issued a Platform Notice that required OCS Platform operators perform an assessment of their platforms in light of new standards, which BSEE had developed as a result of Hurricanes Ivan, Katrina, and Rita. Based on this assessment, Dauphin Island reports, BSEE required it to perform the specific Bracing Project on the MP225 Platform to be completed by December 31, 2013. Therefore, Dauphin Island argues the inclusion of the Bracing Project costs fit the definition of an Eligible Cost in section 7.21.2 of its Tariff because the costs were incurred in relation to a Storm and are required by federal regulations. Dauphin Island further contends the Bracing Project costs are consistent with section 7.21.2.F because they are actual costs that were incurred during the period ending December 31, 2013, which it argues is the primary purpose of that section.

7. Indicated Shippers, in contrast, argue Dauphin Island ignores or misinterprets GT&C section 7.21.2.F. Indicated Shippers claim the record demonstrates Dauphin Island incurred the Bracing Project costs not “to repair damage and/or recover system operations related to a Storm,” but in response to BSEE. Therefore, Indicated Shippers conclude that the Bracing Project costs cannot be “Eligible Costs” pursuant to Dauphin Island’s tariff.

III. Commission Determination

8. The key issue in this proceeding is whether the Bracing Project costs are allowed under section 7.21.2 of Dauphin Island’s GT&C. As such, we clarify that our findings relate solely to Dauphin Island’s GT&C, and are without prejudice to any future filings that may seek to recover similar costs through tariff revisions or a NGA general section 4 rate proceeding.

9. We find that GT&C section 7.21.2.F prohibits Dauphin Island from recovering the costs of the Bracing Project in its Storm Surcharge. Dauphin Island did not incur the Bracing Project costs “to repair damage and/or recover system operations related to a Storm.” Rather, as Dauphin Island acknowledged, the costs were incurred because BSEE directed the pipeline to examine its system and, in turn, install the bracing modifications to its offshore platforms. Such modifications may render Dauphin Island’s facilities better able to withstand damage from future storms. However, they neither repair damage incurred in a storm or recover system operations, as required by GT&C

² March 2014 Order at P 9.

section 7.21.2.F. Accordingly, we direct Dauphin Island to reduce its Storm Surcharge Deferred Cost Account by the \$1,787,679 cost of the Bracing Project and associated carrying charges. Dauphin Island shall make an informational filing in this docket reflecting its corrected accounting. Based on the record presented, even disallowing the disputed costs from being included in the Storm Surcharge calculation, there are sufficient undisputed costs to support a \$0.03 per Dth maximum surcharge for the current filing year. The disputed costs, however, do affect the Storm Surcharge Deferred Cost Account Balance and potentially the amount of the Storm Surcharge in future years.³

The Commission orders:

Dauphin Island shall make an informational filing in this docket, within 30 days of the date that this order issues, updating its Storm Surcharge Deferred Cost Account to remove the \$1,787,679 cost of the Bracing Project and associated carrying charges.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ 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.