

128 FERC ¶ 61,286
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Sea Robin Pipeline Company, LLC

Docket No. RP09-995-000

ORDER ON TARIFF FILING

(Issued September 30, 2009)

1. On August 31, 2009, pursuant to section 154.403 of the Commission's regulations, Sea Robin Pipeline Company, LLC (Sea Robin) filed revised tariff sheets¹ to establish a mechanism to record and recover hurricane related expenses not recovered from insurance proceeds or from third parties (Hurricane Surcharge). As discussed below, the Commission accepts and suspends Sea Robin's proposed tariff sheets, to be effective March 1, 2010, subject to refund and establishes hearing procedures.

I. Background

2. Sea Robin states that it is engaged in the business of transporting natural gas supplies from various points in the Gulf of Mexico, offshore Louisiana, for processing and delivery to seven interconnecting pipelines and one gas storage facility in the vicinity of Sea Robin's onshore terminus near Erath, Louisiana Parish. Sea Robin states that in September of 2008, subsequent to its recent rate case settlement (Settlement),² Hurricane

¹ See Appendix.

² Sea Robin states that, on June 29, 2007, Sea Robin filed a Natural Gas Act (NGA) section 4 rate case in Docket No. RP07-513-000 proposing a general increase in its firm and interruptible transportation and gathering rates. Sea Robin states that its filing was based on an overall cost of service for the base period ended February 21, 2007 as adjusted for known and measurable changes through November 30, 2007. Sea Robin states that after numerous settlement discussions, it filed a settlement to resolve all the issues in the rate proceeding. Sea Robin states that the Settlement provides that Sea Robin will file a new NGA general section 4 rate case no later than the fifth anniversary of the effective date, which is January 1, 2009.

Ike caused considerable damage to Sea Robin's offshore Louisiana pipeline infrastructure. Sea Robin states that the actual and currently estimated total cost to repair the damage to its facilities caused by Hurricane Ike is \$144.6 million. Sea Robin anticipates reimbursement from its property insurance carrier for a significant portion of the damages in excess of the applicable deductible for this incident.³ Sea Robin states that certain of the repairs have already been completed, while others are slated to be completed between now and 2010.

3. Sea Robin states that, while these facilities have been damaged by prior hurricanes and tropical storms and are susceptible to future damage, it cannot accurately project the timing or frequency of named windstorms or the cost of damage repair and facility replacement. Sea Robin states that its experience with Hurricane Ike demonstrated that such natural disasters have unpredictable, significant cost, and operating impacts on an offshore pipeline system and such volatility in costs is more appropriately managed through a surcharge mechanism than through adjustment of base tariff rates. Sea Robin states that if the repair costs related to Hurricane Ike were included in the rate base, then an equity return on investment would be allowed and such equity return would serve to increase transportation rates for costs that are unpredictable and unique expenditures.

4. Accordingly, Sea Robin proposes to establish a volumetric surcharge in a separate, limited section 4 filing to recover actual costs incurred and to provide Sea Robin with the revenue certainty needed to rebuild and repair its pipeline system in the event of significant damage resulting from any hurricane or tropical storm named by the U.S. National Oceanic and Atmospheric Administration or the U.S. National Weather Service.

5. Sea Robin states that its proposed Hurricane Surcharge is consistent with recent Commission rulings which have allowed other offshore pipelines to implement surcharges designed to reimburse pipelines for hurricane related costs. Sea Robin states that the Commission recently articulated its policy stating:

³ Sea Robin states that the amount recoverable from insurance is subject to pro-rata reduction to the extent that the level of total accepted claims from all of the parties insured exceeds the carrier's \$750 million aggregate exposure limit. Sea Robin states that the insurance provider has announced it has reached the \$750 million aggregate exposure limit and has most recently estimated the payout amount shall be approximately 63 percent based on estimated claim information it has received. Sea Robin states that amounts received from insurance will be credited against the Hurricane Surcharge Account, discussed *infra* paragraph 8, thus reducing the amounts to be recovered from customers. Sea Robin also states that it has included the \$18.8 million insurance recovery as a credit against the current hurricane surcharge costs.

When a pipeline suffers an extraordinary, one-time loss that could not reasonable[y] have been predicted when it filed its last section 4 rate case, the pipeline may be able to recover that cost in a separate limited section 4 proceeding.⁴

Sea Robin states that the Commission approved a hurricane-related surcharge for Chandeleur Pipe Line Company (Chandeleur) in 2006.⁵ Further, Sea Robin states that its proposed hurricane surcharge is based upon similar tariff provisions contained in Discovery Gas Transmission LLC's (Discovery) Hurricane Mitigation & Reliability Enhancement surcharge provision that was approved by the Commission on February 5, 2008.⁶ Sea Robin also states that Stingray Pipeline Company, L.L.C. (Stingray) introduced an Event Surcharge to recover capital and related operation and maintenance costs incurred as a result of hurricanes or other storms in its proceeding in Docket No. RP08-436, which was approved as part of an uncontested settlement on June 29, 2009.⁷ Sea Robin states that Southern Natural Gas Company (SoNat) included in its recent general section 4 rate case filing a request to establish a hurricane surcharge mechanism.⁸

6. Sea Robin states that its proposed Hurricane Surcharge will allow it to remain competitive in attracting new supplies to its system, which would serve to keep transportation costs lower to all shippers in the future, improve operational efficiency, and promote overall system viability.

II. Description of Filing

7. Under proposed section 24 of Sea Robin's General Terms and Conditions (GT&C), the Hurricane Surcharge will be collected through a volumetric surcharge applicable to all transportation service provided pursuant to Rate Schedules FTS, FTS-2,

⁴ Sea Robin Transmittal at 6 (citing *Columbia Gulf Transmission Company*, 123 FERC ¶ 61,216, at P 17 (2008)(*Columbia Gulf*)).

⁵ Sea Robin Transmittal at 6 (citing *Chandeleur Pipe Line Company*, 117 FERC ¶ 61,250 (2006)(*Chandeleur*)).

⁶ Sea Robin Transmittal at 6 (citing *Discovery Gas Transmission LLC*, 122 FERC ¶ 61,099 (2008)(*Discovery*)).

⁷ Sea Robin Transmittal at 7 (citing *Stingray Pipeline Company, L.L.C.*, 127 FERC ¶ 61,308 (2009)(*Stingray*)).

⁸ Sea Robin Transmittal at 7 (citing *Southern Natural Gas Co.*, 127 FERC ¶ 61,003 (2009)(*SoNat*)).

ITS, and any other transportation service provided by Sea Robin, including shippers with a rate discount or a negotiated rate agreement, from October 1, 2009 through September 30, 2013. Proposed GT&C section 24.3 provides that the eligible costs for reimbursement through the Hurricane Surcharge are the capital and operation and maintenance (O&M) expenses including the cost of material, rental equipment, governmental charges, and any fees associated with the repair, remediation, and prevention of hurricane damage.⁹

8. Under proposed section 24.5 of the GT&C, Sea Robin will establish and maintain a Hurricane Surcharge Account consisting of three separate subaccounts: (a) Hurricane Damage Repair Capital Cost Subaccount; (b) Hurricane Damage Repair O&M Cost Subaccount; and (c) Hurricane Surcharge Recovery Subaccount, plus carrying charges. The Hurricane Damage Repair Capital Cost and Hurricane Damage Repair O&M Cost Subaccounts include eligible costs incurred since September 1, 2008, less any proceeds received from Sea Robin's insurance carriers or third parties. The Hurricane Surcharge Recovery Subaccount will be credited monthly by the revenue received from the Hurricane Surcharge and will be debited or credited monthly by carrying charges on the monthly balance calculated at the Commission prescribed interest rates in accordance with section 154.501(d) of the Commission's regulations. Proposed section 24.5 provides that these subaccounts will be updated on a monthly basis.

9. Proposed section 24.4 of the GT&C provides that Sea Robin will file with the Commission at least thirty days prior to April 1 and October 1 of each year and post the Hurricane Surcharge with supporting documentation, including a detailed description of all qualifying hurricane expenditures. Under proposed GT&C section 24.6, the surcharge will be calculated on the balance of the Hurricane Surcharge Account at December 31 and June 30 (to be effective April 1 and October 1, respectively) for each recovery

⁹ According to proposed section 24.3 of the GT&C, eligible costs will include, without limitation: cost incurred to repair or replace Sea Robin's facilities and equipment; costs to prevent hurricane damage; costs to maintain system reliability including service from third parties; retrieval and removal of Sea Robin's facilities and equipment including dewatering and disposal cost; raising or lowering the height or improving the durability of Sea Robin's facilities; pipeline burials or retrenching; preventive measures such as arranging for standby ships, divers, personnel and equipment; cost incurred to provide temporary housing for Sea Robin's personnel; diving vessels and equipment, radiographic equipment, pipeline pigging and operations or other inspection measures to assess potential damage to Sea Robin's facilities; installation of fencings, mattings and embankments; and miscellaneous expense associated with having personnel available to repair, operate or maintain Sea Robin's system other than measures taken in the ordinary course of business.

period, until September 30, 2013, divided by the projected billing determinants. Sea Robin is proposing an initial Hurricane Surcharge of \$0.0401 per Dth of natural gas transported.¹⁰

10. Proposed GT&C section 24.6(c) provides that any balance in the Hurricane Surcharge Account at September 30, 2013 shall be included in the Sea Robin rate proceeding proposing new base rates effective January 1, 2014. Proposed GT&C section 24.6(d) provides that, if the amount in the Hurricane Surcharge Account is less than \$100,000, Sea Robin may, upon 30 days prior notice to the Commission, revise the surcharge to \$0.00 and refund or bill the balance to shippers. The balance shall be allocated to shippers based upon the ratio of the actual quantities delivered by Sea Robin for each shipper during such billing month to the quantities delivered by Sea Robin for all shippers during such billing month. Under proposed section 24.7 of the GT&C, any capital-related eligible costs for which Sea Robin is reimbursed through collection of the Hurricane Surcharge shall not be debited to Sea Robin's gross plant accounts.

III. Public Notice, Intervention and Comments

11. Notice of Sea Robin's filing was issued on September 1, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2009). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), all timely motions to intervene and any 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 this proceeding or place additional burdens on existing parties. ExxonMobil Gas & Power Marketing Company, a Division of Exxon Mobil Corporation (Exxon Mobil) and Hess Corporation (Hess), Arena Energy, LLC (Arena), Apache Corporation and Chevron U.S.A. Inc. (collectively, the Indicated Shippers), and Medco Energi US LLC (Medco) filed protests. On September 22, 2009, Sea Robin filed an answer to the protests filed by Exxon Mobil and Hess, Arena, the Indicated Shippers, and Medco. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), 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.

¹⁰ According to Sea Robin's workpapers, the initial Hurricane Surcharge was derived by first, netting the insurance proceeds (approx. \$18.8 million) from the total hurricane damage repair costs of approximately \$57 million. Next, this amount (approx. \$38.2 million) was divided by the projected recovery period (4 years) to arrive at an annual recovery amount. Finally, the annual recovery amount of approximately \$9.5 million was divided by the projected annual throughput (approx. 238,000,000 Dth).

12. ExxonMobil and Hess, Medco, Arena, and the Indicated Shippers generally argue that the Commission should summarily reject Sea Robin's filing.¹¹ In the alternative, ExxonMobil and Hess and Medco request that the Commission suspend Sea Robin's Hurricane Surcharge filing for the maximum five-month period and set the filing for hearing. The protesting parties' comments, and Sea Robin's responses, are described in detail below.

Consistency with Commission Policy

13. The protesters generally argue that Sea Robin's proposed Hurricane Surcharge contravenes the Commission's general policy against trackers, as well as the requirements for the limited trackers that the Commission has permitted, and therefore, should be rejected. Several protesters state that the Commission disfavors cost recovery tracking mechanisms because they undercut the incentive a pipeline has to minimize its costs and maximize the service it provides by guaranteeing the pipeline a set revenue recovery.¹² Accordingly, several protestors argue, such costs should be recovered through a general section 4 proceeding as opposed to a limited section 4 proceeding.

14. The Indicated Shippers state that the Commission requires pipelines to recover their costs through a general section 4 rate case, where the rates are designed to recover costs on the basis of projected units of service and all costs and revenues can be thoroughly examined. The Indicated Shippers also state that the Commission also requires a pipeline to recover costs related to extraordinary events exclusively through their insurance. In this proceeding, the Indicated Shippers argue, Sea Robin is attempting

¹¹ In its answer, Sea Robin argues that the protesters must satisfy a very strict and demanding standard before any rejection of a limited section 4 filing can be ordered, i.e., when such filing "patently is either deficient in form or a substantive nullity." Sea Robin Answer at 4 (citing *Municipal Light Bds v. Federal Power Comm'n*, 450 F.2d 1341, 1345 (D.C. Cir. 1971)). Sea Robin contends that its filing fully complies with the requirements for such filing as specified in Part 154 of the Commission's regulations and is neither defective in form nor substantively defective.

¹² See, e.g., Medco Protest at 9 (citing *Canyon Creek Compression Co.*, 99 FERC 61,351, at P 14-15 (2002) ("As discussed in Order No. 436, this requirement [against trackers] means that the pipeline is at risk for under-recovery of its costs between rate cases, but may retain any over-recovery. This gives the pipeline an incentive both to minimize its costs and maximize the service it provides. A cost tracker would undercut these incentives by guaranteeing the pipeline a set revenue recovery.")); and Indicated Shippers Protest at 9 (citing *Florida Gas Transmission Co.*, 105 FERC ¶ 61,171, at P 47-48 (2003)(*Florida Gas*)).

to avoid both of these Commission-approved routes for cost recovery, and, instead seek to recover its hurricane-related costs through a limited section 4 filing. The Indicated Shippers argue that, given that Sea Robin has not demonstrated that the costs it seeks to recover have inhibited Sea Robin's ability to recover the cost of service established in the Settlement, the Commission should deny Sea Robin's proposed surcharge.

15. Medco argues that shippers are prejudiced by Sea Robin's effort to implement this tracker by means of a limited section 4 rate case, rather than as part of a general section 4 rate case, because in a general section 4 rate case all cost categories are examined and must be justified at a hearing before an administrative law judge, with discovery, rights to present testimony, and cross-examination rights. By filing a limited section 4 rate case requesting recovery of only increasing costs, Medco argues, shippers are denied the benefit of any potential offsets and are typically denied the right to heightened scrutiny, which is part of the evidentiary hearing process.¹³

16. Exxon Mobil and Hess contend that tracker mechanisms are simply not designed for the recovery of costs, such as hurricane costs, that are by their very nature "rare, catastrophic, and non-recurring event[s] that the Commission has specifically determined are unrecoverable in tracking mechanisms."¹⁴ ExxonMobil and Hess concede that the Commission permitted exceptions to the general policy against cost trackers for a few discrete cost items, but they contend that the Commission has not permitted tracking of costs that are as undefined as Sea Robin's and of a type already recovered in cost of service.

17. In reply, Sea Robin argues that its filing of the Hurricane Surcharge in a limited section 4 filing to recover only the actual costs incurred is appropriate and does not impact Sea Robin's duty to minimize costs, maximize services, and otherwise operate its pipeline in a prudent manner. Further, Sea Robin argues in its answer that the protesters' reliance on *Florida Gas* and *CenterPoint* are misplaced and that a surcharge is an appropriate way for a pipeline to recover extraordinary costs that are caused by events outside of its control in a short period of time to prevent or respond to a hurricane. A cost of service increase, Sea Robin argues, would embed the costs in rates shippers would

¹³ The Indicated Shippers and Medco point out that the Settlement does not contain any restrictions on Sea Robin filing a new general section 4 rate case before January 1, 2014, the date by which Sea Robin is required to file its next general section 4 rate case.

¹⁴ ExxonMobil and Hess Protest at 5 (citing *CenterPoint Energy Gas Transmission Co.*, 127 FERC ¶ 61,096, at P 23 (2009)(*CenterPoint*)).

continue to pay for years. Further, it argues that, in a cost of service rate increase, the hurricane-related costs would earn a return.

18. Sea Robin states that, taken in context, *CenterPoint* actually supports and reaffirms Sea Robin's contention that the Hurricane Surcharge is supported by Commission policy and precedent. Sea Robin states that in *CenterPoint*, the Commission examined the pipeline's proposed temporary surcharge to recover revenue associated with gas that was lost or used in repair efforts associated with a failure on one of its lines due to corrosion. Sea Robin states that the Commission began its analysis of the CenterPoint proposal by reiterating that in *Chandeleur* it had "allowed pipelines to establish a surcharge via a limited section 4 filing to recover costs related to damage resulting from events outside the pipeline's control, such as Hurricane Katrina."¹⁵ Sea Robin states that the Commission held the line failure was not eligible for a tracker, although it was a "rare, catastrophic, and non-recurring event," because the line failure was attributable to corrosion, a factor the Commission considered to be in the control of the pipeline.¹⁶

Commission Precedent

19. The protesters argue that the Commission precedent cited by Sea Robin in support of its Hurricane Surcharge mechanism is inapposite. ExxonMobil and Hess argue that, unlike the Hurricane Surcharge, *Columbia Gulf* dealt with lost gas, which Columbia Gulf sought to recover through an established tracker mechanism. They argue that Sea Robin is combining recovery of an extraordinary loss and a new tracker mechanism in the same filing, which *Columbia Gulf* does not permit. On the other hand, Arena argues that in *Columbia Gulf* the Commission was addressing a proposal to implement a one-time increase to a fuel surcharge, rather than establishing a policy under which a pipeline should file to recover significant capital, operations and maintenance expenses, and accrued interest related to both quantifiable existing storm damage costs, as well as future, unquantifiable storm damage costs.

20. Several protesters argue that Sea Robin's proposed Hurricane Surcharge is also distinguishable from the hurricane-related surcharges in *Chandeleur*, *Discovery*, and *Stingray*.¹⁷ They argue that in *Chandeleur* the Commission granted Chandeleur the

¹⁵ Sea Robin Answer at 9 (citing *CenterPoint*, 127 FERC ¶ 61,096 at P 22).

¹⁶ Sea Robin Answer at 9 (citing *CenterPoint*, 127 FERC ¶ 61,096 at P 22-23).

¹⁷ Arena states that the hurricane surcharge is still pending before the Commission in *SoNat*. Further, Arena states the hurricane surcharge mechanism was included in a general section 4 rate filing and among the issues the Commission set for hearing.

authority to implement an unopposed, temporary 12-month surcharge (which was extended for an additional 12 months) to recover only the expense portion of the costs incurred to place Chandeleur's system back in service after Hurricane Katrina. They argue that Sea Robin's proposal, on the other hand, is (a) a four-year proposal; (b) includes costs of approximately \$144.6 million (less insurance), some of which have yet to be incurred; and (c) includes capital costs and carrying charges, both of which were excluded from Chandeleur's surcharge. Further, they argue that Sea Robin's proposal is much broader than Chandeleur's surcharge because Sea Robin's proposed mechanism would include preventive and remediation costs rather than simply actual repair costs related to a specific named hurricane or tropical storm.

21. Several protestors argue that in *Discovery* and in *Stingray* the hurricane surcharge tracker was accepted as part of a general section 4 rate settlement and settlements do not establish precedent.¹⁸ In addition, ExxonMobil and Hess and Medco argue that in *Discovery* the Commission did not approve the surcharge mechanism as just and reasonable. Rather, they argue, the Commission approved the settlement as uncontested, severed the contesting party, and advised that if Discovery sought to increase rates applicable to the contesting party, it would need to make a filing under section 4 proposing revised rates that would be applicable to the contesting party.

22. In reply, Sea Robin contends that *Columbia Gulf* dealt with the recovery of lost gas through a fuel tracker, whereas Sea Robin's Hurricane Surcharge is not a fuel tracker and it is not seeking to recover costs for damages caused by an event within its control. Sea Robin also responds that there are no material differences between its filing and that of Chandeleur's that would justify approval in Chandeleur's case and denial in Sea Robin's case. It argues that both proposals: (a) are cost based, with Sea Robin's Hurricane Surcharge also including capital costs and carrying charges; (b) have defined durations, with Sea Robin's encompassing 48 months instead of 24 months as in *Chandeleur*; and (c) contain mechanisms to protect shippers from being overcharged, thereby eliminating any over recovery concerns. Further, Sea Robin argues that in *Chandeleur* the Commission did not establish a list of items that a pipeline must include in its proposed hurricane surcharge to be considered just and reasonable, nor did it set out a list of items to avoid so as not to have a proposal deemed unjust and unreasonable.

23. Regarding its reliance on *Discovery* and *Stingray*, Sea Robin states that it was only noting that its Hurricane Surcharge is based upon similar tariff provisions in *Discovery* and *Stingray*, including the capital and operation and maintenance expense categories, and not claiming that Commission approval of these settlements was precedent. Sea

¹⁸ Medco also points out that the hurricane surcharges approved in those cases were capped.

Robin also states that prior to approving the *Stingray* settlement, the Commission did not reject the tariff filing, but issued a suspension order accepting the pipeline's tariff sheets subject to refunds and conditions.¹⁹

Double Recovery

24. ExxonMobil and Hess argue that Sea Robin's proposed Hurricane Surcharge appears to recover costs already recovered in Sea Robin's current rates. Exxon Mobil and Hess state that Sea Robin's currently effective rates, which were the result of the Settlement and became effective January 1, 2009, already reflect hurricane costs. They contend that Sea Robin's proposal to collect additional hurricane costs through the proposed surcharge could allow Sea Robin to collect hurricane costs twice.

25. ExxonMobil and Hess also argue that Sea Robin's proposed Hurricane Surcharge filing reflects an annual cost recovery of approximately \$9.5 million for the next four years, which more than offsets the cost of service reduction reflected in the Settlement approved less than a year ago.²⁰ Further, ExxonMobil and Hess state that the Settlement provided that Sea Robin is free to treat all other insurance reimbursements related to any other hurricane pursuant to the Commission's regulations. They argue that this language applies to Hurricane Ike and other future hurricanes and therefore, appears to conflict with the Hurricane Surcharge, which would credit insurance reimbursements to the proposed Hurricane Surcharge. Thus, they argue that the Hurricane Surcharge may include costs that Sea Robin is already recovering in its settlement rates, or costs that it agreed that it would not recover.

26. ExxonMobil and Hess also argue that Sea Robin does not attempt to distinguish the O&M costs filed for in the Hurricane Surcharge from O&M recovered through its Settlement rates.

¹⁹ Sea Robin notes that the Commission also has addressed hurricane surcharges in its regulation of oil pipelines. It states that in *Chevron Pipe Line Co.*, 115 FERC ¶ 61,117 (2006), the Commission examined the hurricane surcharge proposed by the pipeline in response to Hurricane Katrina and the estimated \$160 million in damages it suffered. Sea Robin states that, in the suspension order in that case, the Commission found that Chevron's proposed surcharge was "an appropriate methodology to recover extraordinary expenses incurred as a result of Hurricane Katrina" and accepted and suspended Chevron's proposal and set the matter hearing. Subsequently, Sea Robin states the parties reached a settlement.

²⁰ ExxonMobil and Hess state that the last settlement provided for a stipulated cost of service of \$18,475,000, which reflected a cost of service reduction of \$3,524,662 from Sea Robin's total cost of service as reflected in its initial rate filing of \$21,999,662.

27. Sea Robin responds that its Hurricane Surcharge in no way frustrates its currently effective Settlement. It states that the Settlement does not prohibit it from making this filing and none of the costs that Sea Robin incurred or will incur to repair its system due to Hurricane Ike are included in Sea Robin's currently effective rates. It notes that Hurricane Ike occurred in September 2008, four months after the parties agreed to the Settlement rates. Sea Robin states that it is not double recovering hurricane costs. It states that it did not reflect all of its costs, including those limited costs attributable to hurricanes in the applicable period, in its last rate filing. Sea Robin states that those costs related to hurricanes, however, occurred in 2005.

Proposed Surcharge Mechanism

28. ExxonMobil and Hess and the Indicated Shippers argue that the tracker mechanism is vague, ill-defined and too broad, and could permit Sea Robin to recover costs for routine operations and facility replacements. The Indicated Shippers contend that "eligible costs" are not limited to damages related to specifically named hurricanes or tropical storms, but instead include items that may be done in the ordinary course of business (i.e., costs to maintain system reliability, pipeline burials or retrenching, and installation of fencing).²¹ The Indicated Shippers state that Sea Robin has not provided any details on how it will distinguish between activities done to prevent hurricane damage and other activities, particularly where there are no named hurricanes or tropical storms. Further, they state that Sea Robin has not described how it will account for preventative costs that are incurred in a year when no named storms impact its system nor has Sea Robin stated how it will determine whether preventative costs mitigated actual damages. Finally, they state that it is unclear if costs incurred to prevent damages do not result in mitigation of damages, whether Sea Robin's mechanism will require it to refund those preventative costs back to customers.

29. ExxonMobil and Mobil state that even though Sea Robin's proposed language purports to limit the activities and costs to be recovered through the proposed mechanism to those that would not be recovered in the "ordinary course of business," distinguishing costs incurred for hurricane damage prevention, mitigation or repair from costs incurred in the ordinary course of business could be highly subjective. They argue that, for example, considering Sea Robin's location is in an area prone to hurricanes, "costs to prevent hurricane damage" could justifiably be considered costs undertaken in the

²¹ The Indicated Shippers state that while the tariff does state that eligible miscellaneous costs would be those other than those which occur in the ordinary course of business, this limitation modifies only miscellaneous costs and not the list of other eligible costs.

ordinary course of business. Moreover, they argue that the broad category of “eligible costs” is further expanded by the by the qualifier “without limitation.”

30. Sea Robin states in its answer that it has adequately defined the eligible costs for reimbursement through the Hurricane Surcharge and has provided extensive detail on the hurricane related repairs that it made due to Hurricane Ike. Sea Robin states that, for any future hurricane related expenses, it is required to provide a detailed written description of all qualifying hurricane expenditures.

Filed Rate Doctrine and Rule Against Retroactive Ratemaking

31. ExxonMobil and Hess also argue that Sea Robin’s proposed Hurricane Surcharge tracker violates the filed rate doctrine and the rule against retroactive ratemaking, which prohibits using current rates to recoup past losses. ExxonMobil and Hess and the Indicated Shippers also argue that it violates section 154.403(d)(4) of the Commission’s Regulations, which prohibit a pipeline from recovering costs that are “applicable to the period pre-dating the effectiveness of the tariff language setting forth the periodic rate change mechanism, unless permitted or required to do so by the Commission.”²² They argue that Sea Robin should not be allowed to recover costs related to events that occurred prior to the effective date of the proposed mechanism.

32. In response, Sea Robin states that its Hurricane Surcharge is substantially similar to the hurricane recovery mechanism approved in *Chandeleur*, as well as contained in Commission approved settlements in *Discovery* and *Stingray* and the recent suspension order in *SoNat*. Sea Robin argues that the Hurricane Surcharge cannot violate the filed rate doctrine because such a surcharge does not retroactively increase the costs for gas that a shipper has previously shipped. Sea Robin states that if ExxonMobil decides not to transport gas on Sea Robin’s system, then it will not be required to pay the Hurricane Surcharge. As to the rule against retroactive ratemaking, Sea Robin states that the Hurricane Surcharge represents recovery of costs that Sea Robin expended to provide its current service and does not include any attempt to recover any under-recovery of its rates. Sea Robin states that the Hurricane Surcharge will be imposed on gas that is transported after the effective date of the surcharge and will not be charged to gas transported in the past.

²² ExxonMobil and Hess Protest at 4; the Indicated Shippers Protest at 7.

Hurricane Surcharge Application to Discounted and Negotiated Rate Agreements

33. Arena objects to the proposal to apply the surcharge to shippers with discounted or negotiated rate agreements. Arena argues that Sea Robin ignores the question of whether a shipper's discount agreement with Sea Robin permits Sea Robin to unilaterally apply the Hurricane Surcharge to increase the shipper's discounted rate. It argues that, to the extent a shipper's discount agreement with Sea Robin does not expressly permit applying the Hurricane Surcharge, Sea Robin is contractually prohibited from doing so. Accordingly, Arena argues that the Commission should reject those portions of Sea Robin's proposed Hurricane Surcharge that would permit Sea Robin to disregard the express terms of any discount agreement it has with any shipper, including without limitation sections 24.2 and 24.7(b), to nevertheless apply the Hurricane Surcharge to such shipper.

34. Exxon Mobil and Hess argue that ambiguity is created by Sea Robin's proposals for treatment of discounts and unrecovered capital costs at the expiration of the mechanism. They state that Sea Robin is currently discounting several shippers to rate levels lower than the surcharge. The Commission should direct Sea Robin to explain, with illustrative examples, how it intends to account for the proposed surcharge in any discount transactions. They argue that the importance of the treatment of discounts is particularly important in view of Sea Robin's proposal to roll forward any unrecovered plant balance in the Hurricane Surcharge Account as rate base cost in Sea Robin's next general section 4 rate case, further blurring the lines between a cost of service and an emergency surcharge cost item.

Suspension and Hearing

35. ExxonMobil and Hess and Medco argue that, if the Commission does not summarily reject Sea Robin's filing, the Commission should suspend Sea Robin's Hurricane Surcharge filing for the maximum five-month period and set the filing for hearing to ensure a meaningful opportunity to review these costs, including discovery rights. Exxon Mobil and Hess state that the proposed surcharge of \$0.0401 per Dth represents an 18 percent increase in Sea Robin's current volumetric rates. An increase of that magnitude, together with the numerous factual issues, they argue, requires a maximum suspension. Exxon Mobil and Hess also argue that Sea Robin's filing contains only a brief and very general narrative discussion of the costs in its transmittal, which categorizes nearly \$56 million of plant costs into four line entries and a simple spreadsheet aggregating all O&M costs without attribution to particular work done. Medco also argues that an evidentiary hearing is justified given Sea Robin's

demonstrated lack of prudence and due diligence in addressing hurricane damage related to Hurricane Ike, which Medco describes in detail in its protest.²³

36. Exxon Mobil and Hess also argue that Sea Robin's filing raises issues regarding the allocation of insurance proceeds among Sea Robin and its affiliates. Exxon Mobil and Hess state that Sea Robin's insurance coverage is spread among several affiliated entities, but Sea Robin provides little explanation of how insurance coverage and costs are allocated among these entities. Exxon Mobil and Hess state that it is unclear whether Sea Robin's share of the insurance reimbursement is appropriate, or whether, as a matter of prudence, Sea Robin was adequately insured for hurricane damage.

37. Sea Robin maintains that it acted in a diligent and timely manner to repair damage caused by Hurricane Ike. It contends that the offshore environment presents many difficulties, including dealing with frequent weather delays, when undertaking repair work. Sea Robin states in its answer that, if the Commission does not approve the tariff sheets to be effective October 1, 2009, it would support the Commission accepting and suspending the tariff sheets to be effective after an appropriate suspension period, subject to refund and the Commission ordering a technical conference to address any questions that the shippers may have on the mechanics of the Hurricane Surcharge.

IV. Discussion

38. The Commission accepts and suspends Sea Robin's proposed tariff sheets, to be effective March 1, 2010, subject to refund and the outcome of the hearing procedures discussed below. As discussed below, the Commission finds that Sea Robin may recover hurricane-related costs through a special tracking mechanism established in a limited section 4 filing without filing a general section 4 rate case. The Commission also finds that such recovery does not violate the filed rate doctrine. However, the Commission establishes a hearing to consider all other issues raised by the protests.

39. As the Commission stated in *CenterPoint*, "we have previously allowed pipelines to establish a surcharge via a limited section 4 filing to recover costs related to damage resulting from events outside the pipeline's control, such as Hurricane Katrina."²⁴ Not only are such extraordinary costs outside the pipeline's control, they also could not have been reasonably predicted when Sea Robin filed its last general section 4 rate case. Sea Robin's incurrence of this type of cost benefits its customers by allowing it to resume full service as quickly as possible following a catastrophic event. Therefore, the Commission

²³ Medco Protest at 3-9.

²⁴ *CenterPoint*, 127 FERC ¶ 61,096 at P 22(citing *Chandeleur*, 117 FERC ¶ 61,250).

finds it reasonable to permit Sea Robin to recover costs related to hurricane damage through a mechanism established outside of a general section 4 rate case.

40. The cases relied upon by the protesters to argue that Sea Robin should not be permitted to recover hurricane-related costs in a limited section 4 filing are distinguishable because they involved gas losses caused by events which, unlike a hurricane, did “not appear to be the result of forces beyond the pipeline’s control.”²⁵ For example, the Commission stated that the gas loss at issue in *CenterPoint* resulted from corrosion, and pipelines have the ability and responsibility to maintain their systems to prevent such losses.

41. The Commission recognizes that the surcharge it approved in the limited section 4 filing in *Chandeleur* only included costs incurred as a result of a single hurricane, and that the pipeline did not propose a mechanism to track costs incurred as a result of future hurricanes. By contrast, Sea Robin’s instant filing includes a mechanism to recover not only Hurricane Ike related costs but also similar costs Sea Robin may incur as a result of other hurricanes before its next general section 4 rate case. However, because the Commission has held that Sea Robin may recover hurricane-related costs in a limited section 4 filing, the Commission finds 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.

42. The cases relied upon by the protesters to contend that such a tracking mechanism violates Commission policy are distinguishable because they involved pipeline proposals to treat extraordinary gas losses as “lost and unaccounted-for gas,” eligible for recovery through the pipeline’s fuel tracking mechanism. However, as the Commission explained in a recent order in *ANR Pipeline Co.*,²⁶ extraordinary gas losses not associated with routine maintenance or other normal operations do not fall within the meaning of the term “lost and unaccounted-for gas,” which is commonly understood in the industry to mean gas that is inevitably lost through routine pipeline operations. Accordingly, extraordinary gas losses are not within the category of costs pipeline tariffs authorize to be recovered through a tracking mechanism for “lost and unaccounted for gas.” Here, Sea Robin is not seeking to recover extraordinary gas losses through a fuel tracker. In fact, its proposal does not seek to recover the costs of any gas losses. Rather, it is proposing a tracking mechanism to recover the costs incurred in order to enable it to resume full service following a hurricane.

²⁵ *CenterPoint*, 127 FERC ¶ 61,096 at P 22.

²⁶ *See* 128 FERC ¶ 61,128 (2009)(ANR).

43. We also do not agree with ExxonMobil's and Hess' assertion that Sea Robin's proposed Hurricane Surcharge necessarily violates the filed rate doctrine and the rule against retroactive ratemaking because it includes costs incurred prior to Sea Robin's filing. To the extent Sea Robin is not recovering in the Hurricane Surcharge past costs which it incurred solely to provide past service and instead using the facilities at issue to provide future service, the hurricane-related costs, as is true of all a pipeline's investments in used and useful facilities, would be related to all current and future service performed using the relevant facilities. Also, the proposed Hurricane Surcharge would only affect the rates to be charged for such future service. It does not change rates provided for service before the effective date of the Hurricane Surcharge.²⁷

44. However, we find that Sea Robin's proposed Hurricane Surcharge mechanism and initial Hurricane Surcharge raise issues that warrant further investigation. Accordingly, the Commission will establish a hearing to explore the issues set forth in the protests not resolved above. These issues include, but are not limited to, the proper design of the Hurricane Surcharge and the reasonableness of the costs initially included in the Hurricane Surcharge. In addition, these issues include the types of existing and future hurricane-related costs which should be eligible for inclusion in the Hurricane Surcharge tracking mechanism (e.g., capital costs, depreciation, costs related to prevention of hurricane damage, carrying costs), throughput to be used to calculate the surcharge, the role of insurance, and application of the Hurricane Surcharge with respect to discount and negotiated rate agreements. The Commission finds that it is appropriate to examine these issues in the context of a hearing where a factual record can be developed by the parties.

45. Based upon a review of the filing, the Commission finds that Sea Robin's proposed tariff sheets set forth in the Appendix have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept such tariff sheets listed in the Appendix for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

46. 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. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the

²⁷ *See Public Utilities Commission of the State of California v. FERC*, 988 F.2d 154, 160-61 (D.C. Cir. 1993); and *Western Resources, Inc. v. FERC*, 72 F.3d 147, 152 (D.C. Cir. 1995).

maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on March 1, 2010, subject to the conditions set forth in the body of this order and in the Ordering Paragraphs below.

The Commission orders:

(A) The tariff sheets listed in the Appendix are accepted and suspended, to be effective March 1, 2010, subject to refund and the outcome of the hearing established herein.

(B) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP09-995-000 concerning Sea Robin's proposed tariff sheets in the Appendix. A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall convene a prehearing conference regarding the tariff sheets in the Appendix in this proceeding in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

**Sea Robin Pipeline Company, LLC
FERC Gas Tariff, Second Revised Volume No. 1**

**Tariff Sheets Accepted and Suspended, to be Effective March 1, 2010,
Subject to Refund and the Outcome of a Hearing**

Second Revised Sheet No. 2
Eighth Revised Sheet No. 5
Eighth Revised Sheet No. 6
Seventh Revised Sheet No. 7
First Revised Sheet No. 25
Second Revised Sheet No. 26
First Revised Sheet No. 33
First Revised Sheet No. 34
Second Revised Sheet No. 36
Second Revised Sheet No. 47
Second Revised Sheet No. 100
Second Revised Sheet No. 181
Original Sheet No. 196
Original Sheet No. 197
Original Sheet No. 198
Original Sheet No. 199
Sheet Nos. 200-299