

136 FERC ¶ 61,229  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Sea Robin Pipeline Company, LLC

Docket No. RP11-2494-000

ORDER ON TARIFF FILING

(Issued September 30, 2011)

1. On August 31, 2011, Sea Robin Pipeline Company, LLC (Sea Robin) filed revised tariff records<sup>1</sup> proposing to increase its Hurricane Surcharge from \$0.1288 per Dth to \$0.1620 per Dth. Sea Robin also requests 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 waiver and accepts and suspends the proposed tariff records, to become effective October 1, 2011, subject to refund, conditions and the outcome of the ongoing proceeding in Docket Nos. RP09-995-000 and RP10-422-000.

**Background**

2. On August 31, 2009, in Docket No. RP09-995-000, Sea Robin made a Natural Gas Act (NGA) limited section 4 tariff filing to establish a Hurricane Surcharge to record and recover hurricane-related costs incurred as a result of any hurricane or tropical storm, including Hurricane Ike which caused damage to Sea Robin's facilities in September 2008 (August 2009 Filing). Under proposed section 24 of the General Terms and Conditions (GT&C) of its tariff, Sea Robin would collect the Hurricane Surcharge through a volumetric surcharge applicable to all of its transportation services. The Hurricane Surcharge would remain in effect for 48 months, beginning October 1, 2009, and continuing through September 30, 2013. The eligible costs for reimbursement included the capital and operation and maintenance expenses incurred since September 1, 2008, less any proceeds received from insurance carriers or third parties. The proposed tariff provisions required Sea Robin to maintain a Hurricane Surcharge

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<sup>1</sup> See Appendix.

Account that the pipeline would credit monthly with the revenue received from the Hurricane Surcharge and debit or credit carrying charges on the monthly balance. Sea Robin would include any balance in the Hurricane Surcharge Account on September 30, 2013, in its general section 4 rate proceeding.<sup>2</sup>

3. Under proposed GT&C section 24.4, at least 30 days prior to October 1 and April 1 of each year, through September 30, 2013, Sea Robin would file to adjust the Hurricane Surcharge. Sea Robin would base its adjustment on the remaining balance in the Hurricane Surcharge Account (including carrying charges) at December 31 and June 30 (to become effective April 1 and October 1, respectively) for each recovery period, until September 30, 2013. The balance would be annualized based on the remaining term of the Hurricane Surcharge and divided by the projected billing determinants. The filing was protested.

4. On September 30, 2009, the Commission accepted and suspended Sea Robin's proposed tariff sheets for five-months, to become effective March 1, 2010, subject to refund and the outcome of a hearing.<sup>3</sup> The Commission found that Sea Robin could recover hurricane-related costs through a special tracking mechanism without filing a general section 4 rate case under the NGA. However, the Commission established a hearing to consider all other issues raised by the protests, including, but not limited to, throughput used to calculate the surcharge and the types of existing and future hurricane-related costs eligible for inclusion in the Hurricane Surcharge (e.g., capital costs and carrying costs). 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.<sup>4</sup>

5. On March 1, 2010, in Docket No. RP10-422-000, Sea Robin filed to increase the Hurricane Surcharge to be effective April 1, 2010 (March 2010 Filing). 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 sheets, to become effective April 1, 2010, subject to refund and the

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<sup>2</sup> A settlement of Sea Robin's previous general section 4 rate proceeding requires Sea Robin to file a general section 4 rate case no later than January 1, 2014. *Sea Robin Pipeline Co., LLC*, 125 FERC ¶ 61,185 (2008).

<sup>3</sup> *Sea Robin Pipeline Co., LLC*, 128 FERC ¶ 61,286 (2009) (September 2009 Order). On January 29, 2010, Sea Robin filed its motion to place the tariff sheets into effect. *See Sea Robin Pipeline Co., LLC*, Docket No. RP09-995-002 (February 25, 2010) (unpublished letter order).

<sup>4</sup> *Sea Robin Pipeline Co., LLC*, 130 FERC ¶ 61,191 (2010).

outcome of the hearing scheduled in Docket No. RP09-995-000.<sup>5</sup> Several protesters requested that the Commission suspend the filing for a five-month period, but the Commission declined to suspend the filing for the maximum five-month period given the limited recovery period (through September 30, 2013).<sup>6</sup>

6. On August 31, 2010, in Docket No. RP10-1133-000, Sea Robin filed to increase the Hurricane Surcharge to be effective October 1, 2010 (August 2010 Filing). On September 30, 2010, the Commission accepted and suspended the proposed tariff sheets, to become effective October 1, 2010, subject to refund and the outcome of the ongoing hearing in Docket Nos. RP09-995-000 and RP10-422-000.<sup>7</sup>

7. On March 1, 2011, in Docket No. RP11-1850-000, Sea Robin filed to increase the Hurricane Surcharge to be effective April 1, 2011 (March 2011 Filing). On March 31, 2011, the Commission accepted and suspended the proposed tariff sheets, to become effective April 1, 2011, subject to refund and the outcome of the ongoing hearing in Docket Nos. RP09-995-000 and RP10-422-000.<sup>8</sup>

8. The hearing in Docket Nos. RP09-995-000 and RP10-422-000 was held on July 21-22, 2010. The Administrative Law Judge issued an Initial Decision in Docket Nos. RP09-995-000 and RP10-422-000 on December 13, 2010.<sup>9</sup> Exceptions to the Initial Decision in the consolidated proceedings are pending before the Commission.

### **Details of Instant Filing**

9. In the instant filing, Sea Robin states that it based the proposed Hurricane Surcharge upon the balance in the Hurricane Surcharge Account as of June 30, 2011, with the exception of the credit for Hurricane Surcharge recoveries which also includes actual recoveries for July 2011 and projected recoveries for August and September 2011. 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 calculated absent this waiver.

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<sup>5</sup> *Sea Robin Pipeline Co., LLC*, 130 FERC ¶ 61,261 (2010) (March 2010 Order).

<sup>6</sup> *Id.* P 11.

<sup>7</sup> *Sea Robin Pipeline Co., LLC*, 132 FERC ¶ 61,277 (2010) (September 2010 Order).

<sup>8</sup> *Sea Robin Pipeline Co., LLC*, 134 FERC ¶ 61,262 (2011) (March 2011 Order).

<sup>9</sup> *Sea Robin Pipeline Co., LLC*, 133 FERC ¶ 63,009 (2010) (Initial Decision).

10. Sea Robin states that the proposed Hurricane Surcharge is 16.20¢ per Dth, which is a 3.32¢ per Dth increase from the currently effective surcharge of 12.88¢ per Dth. Sea Robin states the surcharge increase results mainly from two components, both of which are volumetric in nature. First, Sea Robin states that prior period recoveries have proven less than projected because actual throughput in past periods was less than the projected throughput for those periods. This resulted in the under-recovery of costs which must now be spread over the fewer remaining months for collection. Secondly, because of the continued decline in actual throughput on its system, Sea Robin states that the projected throughput which is the denominator used in the Hurricane Surcharge calculation, continues to decrease resulting in an increase in the Hurricane Surcharge per Dth. Sea Robin states the instant filing's projected volumes of 146 Bcf are based on actual throughput for the 12-month period ending July 31, 2011. Sea Robin notes that this is a decrease of 21 Bcf from the projected volumes of 167 Bcf used in its last Hurricane Surcharge filing (March 2011 Filing).

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

11. Notice of Sea Robin's filing issued September 1, 2011. 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>10</sup> ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation (ExxonMobil) and Hess Corporation (Hess), and Arena Energy, LP (Arena) filed protests. On September 21, 2011, 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.

12. All of the protestors request that the Commission condition acceptance of this filing by accepting it subject to the outcome of the hearing in Docket Nos. RP09-995-000 and RP10-422-000. In the alternative, Arena requests that the Commission consolidate this proceeding with Docket Nos. RP09-995-000 and RP10-422-000. Arena and the Indicated Shippers also argue that the current filing should be suspended for the full five-month statutory period. Arena contends that the parties have not had the opportunity to review the proposed costs to be recovered as part of the instant filing during the discovery and hearing phases of Docket Nos. RP09-995-000 and RP10-422-000. The

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<sup>10</sup> In this proceeding, the Indicated Shippers include Apache Corporation and Chevron U.S.A. Inc.

Indicated Shippers state that this will provide the Commission with additional time to issue an order on the Initial Decision.

13. Sea Robin asserts that the instant filing complies with the requirements of its tariff provisions accepted by the Commission in the September 2009 Order and imposing a five-month suspension will have a harsh and inequitable effect on Sea Robin. Further, Sea Robin contends that the shippers are protected because the Hurricane Surcharge is subject to refund and the outcome of a hearing.

14. The Indicated Shippers also protest Sea Robin's proposal to amortize the eligible costs of the Hurricane Surcharge over the period from October 1, 2009 through September 30, 2013, regardless of the date when the repaired facility was placed back in service. The Indicated Shippers state that, while Sea Robin claimed that "the costs not recovered in prior periods must now be spread over the fewer remaining months for collection," Sea Robin's tariff does not require this result. The Indicated Shippers state that section 24.2 of the GT&C of Sea Robin's tariff states that the Hurricane Surcharge "shall be collected through a volumetric surcharge applicable to all 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 through September 30, 2013." The Indicated Shippers state that the tariff also states that "[a]ny 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."<sup>11</sup> Thus, the Indicated Shippers argue, Sea Robin's tariff does not require that all Eligible Costs be collected during the defined four-year period or that those costs be amortized as if they were all incurred on October 1, 2009. The Indicated Shippers contend that Sea Robin's proposal to use an ever-decreasing amortization period produces unjust and unreasonable results, i.e., a Hurricane Surcharge that has nearly quadrupled in two years.

15. Sea Robin states in its answer that, as it did in each of its past semi-annual filings, it calculated the Hurricane Surcharge pursuant to GT&C section 24.6(a) which requires that the "surcharge shall be calculated on the balance of the Hurricane Surcharge Account (including carrying charges) at December 31, and June 30 (to be effective April 1 and October 1, respectively) for each recovery period until September 30, 2013 divided by the projected billing determinants." Sea Robin states that it has consistently calculated the Hurricane Surcharge in this same manner. Sea Robin states that each filing has shown that the new recovery period is shortened by six months to account for the Hurricane Surcharge termination date of September 30, 2013. Sea Robin states that no shippers protested this method of calculation at the hearing or in any of the past semi-annual tariff filing dockets.

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<sup>11</sup> Indicated Shippers Protest at 7 (citing section 24.6(c) of the GT&C of Sea Robin's FERC Gas Tariff).

16. The Indicated Shippers, ExxonMobil and Hess request that the Commission direct Sea Robin to provide additional factual support for a new cost item that Sea Robin seeks to recover in the current filing. ExxonMobil and Hess state that Sea Robin's supporting schedules indicate that Sea Robin incurred additional costs of \$362,615.29 since the last filing, attributable to installation of pipeline crossings (Project No. 500157).<sup>12</sup> ExxonMobil and Hess state that this is the first new cost Sea Robin has incurred since 2009 and that Sea Robin's filing indicates that these facilities were actually placed in service on May 30, 2011. The Indicated Shippers state that section 24.4(b) of the GT&C of Sea Robin's tariff states that "Sea Robin shall include a detailed written description of all qualifying Hurricane Expenditures (except for any expenditure carried forward from a prior filing), with an explanation of how each such expenditure qualifies for inclusion in the Hurricane Surcharge in accordance with Sections 24.2 and 24.3." The Indicated Shippers, ExxonMobil and Hess request that the Commission direct Sea Robin to comply with its tariff and provide further information regarding the project and why these costs are eligible for recovery through the Hurricane Surcharge mechanism.

17. In its answer, Sea Robin states that it has provided sufficient information on this project in accordance with its tariff. However, in response to the shippers' requests, it has included with its answer additional information on Project No. 500157.<sup>13</sup>

18. ExxonMobil and Hess further request that the Commission direct Sea Robin to include, in its Hurricane Surcharge filings, information regarding the status of its litigation against ENSCO Offshore Company (ENSCO), the owner of a drilling barge that Sea Robin has sued for damages to its pipeline during Hurricane Ike. ExxonMobil and Hess state that the Initial Decision states that Sea Robin's recovery in that litigation could be as much as approximately \$20.5 million.<sup>14</sup> ExxonMobil and Hess state that the

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<sup>12</sup> ExxonMobil and Hess Protest at 6 (citing App. B, p. 2, Line 15 of Sea Robin's instant filing).

<sup>13</sup> As an overview, Sea Robin states that its Line 709, a 24-inch pipeline, was moved out of its Right-of-Way by Hurricane Ike, and ended up on top of several pipelines. Sea Robin states that it originally scheduled the repair work to commence and be completed in 2010. However, it needed to focus its repair efforts on the more immediate operational issues on the West Leg to return the West Leg to service. Upon completion of the West Leg work, Sea Robin states that it submitted an application to the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) in November 2010, with the intention of making the repairs to Line 709 before the end of 2010. Sea Robin states that BOEMRE did not take action on its application in the requested timeframe and, due to this delay, it was unable to get the crossing repairs completed as planned in 2010.

<sup>14</sup> ExxonMobil and Hess Protest at 7 (citing Initial Decision, 133 FERC ¶ 63,009 at P 4 & n.2).

Initial Decision holds that the \$57.84 million of uninsured costs included within the Hurricane Surcharge “should be reduced by any recovery Sea Robin is awarded in the ENSCO litigation.”<sup>15</sup> ExxonMobil and Hess state that no party excepted to this holding. ExxonMobil and Hess request that, in view of the potential impact of this litigation on the Hurricane Surcharge, the Commission direct Sea Robin to provide information regarding the status of the ENSCO litigation and to include such information in future semiannual Hurricane Surcharge filings.

19. In response, Sea Robin states that ExxonMobil and Hess do not cite to any tariff provision in support of this new requirement and Sea Robin states there is no grounds for such a tariff requirement. Nonetheless, in response to shippers’ request for additional information, Sea Robin states that the ENSCO litigation is pending and the trial currently is scheduled for May 2012. Sea Robin states that the case is styled as *In the Matter of the Complaint of ENSCO Offshore Company, as Owner of the MODU ENSCO 74 for Exoneration from or Limitation of Liability*, U.S. District Court for the Southern District of Texas, Houston Division, Civil Action No. 4:09-cv-02838. Sea Robin states that the pleadings, orders and documents for this case are publicly available on PACER (Public Access to Court Electronic Records) at [www.pacer.gov](http://www.pacer.gov). Sea Robin states that the state court litigation (*Sea Robin Pipeline Co, LLC vs. ENSCO Offshore Co.*, 19th Judicial District Court for the Parish of East Baton Rouge, No. 582561) has been stayed pending the outcome of the litigation in the U.S. District Court.

20. ExxonMobil and Hess also request the Commission promptly issue an order on the Initial Decision. They argue that Sea Robin’s proposed increase in the Hurricane Surcharge will exacerbate the adverse impact of the Hurricane Surcharge on them. They argue that whether the Commission affirms the Initial Decision’s 21.4-year recovery period, or finds that a 25-year recovery period is appropriate, as they contend, the result of such an extended recovery period from less than four years to the longer period would dramatically reduce the heavy burden of the Hurricane Surcharge.

### **Commission Determination**

21. 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 also finds that the matters set for hearing in Docket Nos. RP09-995-000 and RP10-422-000 overlap with the instant proceeding. Accordingly, the Commission will accept and suspend the proposed tariff records for a nominal period, and permit them to become effective October 1, 2011,

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<sup>15</sup> ExxonMobil and Hess Protest at 7 (citing Initial Decision, 133 FERC ¶ 63,009 at P 128).

subject to refund, conditions and the outcome of the proceeding in Docket Nos. RP09-995-000 and RP10-422-000.

22. The Indicated Shippers protest the recovery, or amortization, period utilized by Sea Robin to calculate the proposed Hurricane Surcharge. Among the issues set for hearing in Docket Nos. RP09-995-000 and RP10-422-000 was the design of the Hurricane Surcharge, including the appropriate recovery period for the Hurricane Surcharge. At hearing, Sea Robin proposed a four-year recovery period, while certain shippers and Commission Trial Staff advocated recovery periods based on the useful life of the system ranging from 25 years to 12.5 years. Ultimately, the ALJ found that a 21.4-year recovery period was appropriate.<sup>16</sup> Various parties, including Sea Robin, have filed Briefs on Exceptions on this issue. Given that the recovery, or amortization, period is among the exceptions to the Initial Decision, we will accept Sea Robin's proposed Hurricane Surcharge subject to the outcome of the proceeding in Docket No. RP09-995-000 and RP10-422-000. Moreover, as stated above, shippers are fully protected by the refund condition established here.

23. Regarding the new cost item proposed by Sea Robin, as the Indicated Shippers point out, section 24.4(b) of the GT&C requires Sea Robin to "include a detailed written description of all qualifying Hurricane Expenditures (except for any expenditure carried forward from a prior filing), with an explanation of how each such expenditure qualifies for inclusion in the Hurricane Surcharge in accordance with Sections 24.3 and 24.3." We agree with the shippers that Sea Robin's description of "Install Offshore Pipeline Crossings (NTL)" in its filing did not satisfy this tariff requirement. However, Sea Robin included a more detailed description with its answer. Because the parties have not had an opportunity to comment on the information provided by Sea Robin in its answer, the Commission will accept Sea Robin's inclusion of this new cost item, subject to further Commission review. Parties to this proceeding are invited to file comments within 20 days of the date of this order regarding the new cost item in light of the new information provided by Sea Robin.

24. The Commission also denies ExxonMobil and Hess' request that Sea Robin provide additional information regarding the status of its litigation against ENSCO, the owner of a drilling barge that Sea Robin has sued for damages to its pipeline during Hurricane Ike, and to include such information in future semiannual Hurricane Surcharge filings. Sea Robin's tariff does not currently include a requirement that Sea Robin provide such information with its semi annual Hurricane Surcharge filings and moreover, as Sea Robin points out, information regarding this litigation is publicly available on PACER.

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<sup>16</sup> Initial Decision, 133 FERC ¶ 63,009 at P 200.

25. We find 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 size of the increase in the Hurricane Surcharge and avoid an over-recovery.

26. The Commission denies the Indicated Shippers' and Arena's request to suspend the proposed Hurricane Surcharge for the maximum five-month period because, as the Commission stated in the March 2010, September 2010 and March 2011 Orders, one of the purposes of Sea Robin's Hurricane Surcharge is to allow the pipeline to spread the costs of its hurricane-related expenses over several years so the pipeline can begin recovering some of its expenses immediately.<sup>17</sup> The recovery period used to calculate the Hurricane Surcharge ends September 30, 2013, and, therefore, deferring the effective date of the instant increased Hurricane Surcharges will only serve to substantially increase future surcharge rates as the balance in the Hurricane Surcharge Account will have to be recovered over a shorter period. Moreover, shippers are fully protected by the refund condition we establish here. Accordingly, the Commission does not believe that suspending the instant Hurricane Surcharge rates for a five-month period is reasonable under the circumstances.

27. 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.<sup>18</sup> 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.<sup>19</sup> 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 October 1, 2011, subject to the conditions set forth in the body of this order and in Ordering Paragraph (A).

The Commission orders:

(A) The tariff records listed in the Appendix are accepted and suspended, effective October 1, 2011, subject to refund, conditions and the outcome of the proceeding in Docket Nos. RP09-995-000 and RP10-422-000.

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<sup>17</sup> See March 2010 Order, 130 FERC ¶ 61,261 at P 11; September 2010 Order, 132 FERC ¶ 61,277 at P 20; March 2011 Order, 134 FERC ¶ 61,262 at P 15.

<sup>18</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>19</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(B) Within 20 days of the date of this order, parties may file comments on Sea Robin's proposed new cost item in light of the new information provided by Sea Robin in its September 21, 2011 Answer.

(C) Sea Robin's request for waiver of sections 24.5(c) and 24.6(a) of its GT&C is granted.

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 and Suspended, effective October 1, 2011, Subject to Refund, Conditions and the Outcome of the Proceeding in Docket Nos. RP09-995-000 and RP10-422-000

1. Rate Schedule FTS, Currently Effective Rates, 4.0.0
2. Rate Schedule FTS-2, Currently Effective Rates, 4.0.0
3. Rate Schedule ITS, Currently Effective Rates, 4.0.0