

140 FERC ¶ 61,247
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 27, 2012

In Reply Refer To:
Sea Robin Pipeline Company, LLC
Docket No. RP12-982-000

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

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

Reference: Semi-Annual Hurricane Surcharge Filing

Ladies and Gentlemen:

1. On August 31, 2012, Sea Robin Pipeline Company, LLC (Sea Robin) filed revised tariff records¹ proposing to increase its Hurricane Surcharge from 19.90 cents per Dth to 29.15 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 October 1, 2012, subject to refund and the ultimate outcome of the rehearing proceeding in Docket Nos. RP09-995-000 and RP10-422-000.

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 GT&C of Sea 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

¹ See Appendix.

continuing through September 30, 2013. 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

3. 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 As required by GT&C section 24.4(a), Sea Robin has made semi-annual filings to update the Hurricane Surcharge and to make any necessary adjustments.⁵

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*). On January 29, 2010, Sea Robin filed its motion to place the tariff records into effect. *See Sea Robin Pipeline Co., LLC*, Docket No. RP09-995-002 (February 25, 2010) (unpublished letter order).

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

⁵ On March 1, 2010, in Docket No. RP10-422-000, Sea Robin filed to increase the Hurricane Surcharge from 4.1 to 7.29 cents per Dth to be effective April 1, 2010. 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 records, to become effective April 1, 2010, subject to refund and the outcome of the hearing scheduled in Docket No. RP09-995-000. *Sea Robin Pipeline Co., LLC*, 130 FERC ¶ 61,261 (2010). On August 31, 2010, in Docket No. RP10-1133-000, Sea Robin filed to increase the Hurricane Surcharge from 7.29 to 8.53 cents per Dth and on September 30, 2010, the Commission accepted and suspended the proposed tariff records, to become effective October 1, 2010. *Sea Robin Pipeline Co., LLC*, 132 FERC ¶ 61,277 (2010). On March 1, 2011, in Docket No. RP11-1850-000, Sea Robin filed to increase the Hurricane Surcharge from 8.53 to 12.88 cents per Dth and on March 31, 2011, the Commission accepted and suspended the proposed tariff records, to

(continued...)

4. The Administrative Law Judge (ALJ) issued an initial decision on the Docket No. RP09-995 proceeding December 13, 2010.⁶ On December 15, 2011, the Commission issued Opinion No. 516 affirming the Initial Decision in part and reversing in part.⁷ In Opinion No. 516, the Commission reversed the ALJ's findings regarding the 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.⁸

become effective April 1, 2011. *Sea Robin Pipeline Co., LLC*, 134 FERC ¶ 61,262 (2011). On August 31, 2011, in Docket No. RP11-2494-000, Sea Robin filed to increase the Hurricane Surcharge from 12.88 to 16.20 cents per Dth and on September 30, 2011, the Commission accepted and suspended the proposed tariff records, to become effective October 1, 2011. *Sea Robin Pipeline Co., LLC*, 136 FERC ¶ 61,229 (2011). On March 1, 2012, in Docket No. RP12-469-000, Sea Robin filed to increase the Hurricane Surcharge from 13.14 cents per Dth (revised in compliance in Docket No. RP12-313-002) to 19.90 cents per Dth and on March 30, 2012, the Commission accepted and suspended the proposed tariff records, to become effective April 1, 2012, subject to refund and conditions. *Sea Robin Pipeline Co., LLC*, 138 FERC ¶ 61,242 (2012). On April 30, 2012, Apache and Chevron and the Producer Coalition (including Century Exploration New Orleans, LLC, Dynamic Offshore Resources, LLC, Energy XXI (Bermuda) Ltd., Hilcorp Energy Company, McMoRan Oil & Gas LLC, Pisces Energy LLC, and W&T Offshore, Inc.) filed requests for rehearing of the March 30, 2012 order. In the above-mentioned orders, the Commission made the tariff records subject to refund and the outcome of the ongoing hearing in the Docket Nos. RP09-995-000 and RP10-422-000.

⁶ *Sea Robin Pipeline Co., LLC*, Initial Decision, 133 FERC ¶ 63,009 (2010).

⁷ *Sea Robin Pipeline Co., LLC*, Opinion No. 516, 137 FERC ¶ 61,201 (2011).

⁸ 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*, 138 FERC ¶ 61,242.

5. 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.

6. 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, 2012, with the exception of the credit for Hurricane Surcharge Recoveries which also includes actual recoveries for July 2012 and projected recoveries for August and September 2012. 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.

7. Sea Robin states that the proposed Hurricane Surcharge is 29.15 cents per Dth, which is a 9.25 cents per Dth increase from the currently effective surcharge of 19.90 cents per Dth. Sea Robin states that the surcharge increase is primarily the result 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 82.6 Bcf are based on actual throughput in the West Area for the 12-month period ending July 31, 2012. Sea Robin notes that this is a decrease of 25.4 Bcf from the projected volumes of 108 Bcf used in its last Hurricane Surcharge filing in March 2012.⁹

8. Public notice of Sea Robin's filing was issued September 5, 2012. 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. On September 12, 2012, Indicated Shippers¹⁰ and Arena Energy, L.P. (Arena) each filed protests. On September 19, 2012, 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) (2012), answers to protests are prohibited unless otherwise ordered by

⁹ The projected volume of 108 Bcf was based on an annualization of actual throughput for the twelve months ended January 31, 2012.

¹⁰ In this proceeding, Indicated Shippers include Apache, Chevron, ExxonMobil, and Hess.

the decisional authority. We will accept Sea Robin's answer because it provides information that will assist us in our decision-making process.

9. Arena requests the Commission suspend the proposed tariff sheets for the full five-month statutory period until March 1, 2013 and condition the instant filing by accepting it subject to the outcome of the rehearing of Opinion No. 516. Arena states the proposed Hurricane Surcharge of 29.15 cents per Dth is now 32 percent higher than Sea Robin's maximum interruptible transportation rate for its West System. Arena states that this rate increase, together with low gas prices, will cause producers to see "their already razor thin gas sales netbacks eroded even further, if not eliminated."¹¹ Such a result, Arena contends, will have significant detrimental impacts to the end-use market, as producers will now reconsider the economics of continuing to produce the affected gas. Arena also states that the projected throughput of 82.6 Bcf used to calculate the proposed Hurricane Surcharge does not take into account:

either one-time events during the twelve-month period that may have resulted in shut-in gas, or whether any future additions of gas are known or likely during the next six months. Moreover, the Gulf of Mexico drilling moratorium likely has had a significant impact on drilling and completions in the offshore.¹²

10. In its answer, Sea Robin states that Arena has provided no justification for suspending the instant filing for a five-month period. Further, Sea Robin states that in the Initial Decision, the ALJ ruled (and was affirmed by the Commission) that "since Sea Robin's system is currently fully operational, actual total throughput volumes should be used for calculating the Hurricane Surcharge for all subsequent surcharge filings"¹³ thereby accepting Sea Robin's and Commission Staff's proposal that "the actual throughput volumes should be used as the projected volume level for calculating the Hurricane Surcharge."¹⁴ Sea Robin states that this is precisely what it has done in calculating the Hurricane Surcharge for the instant filing.

¹¹ Arena Protest at 3.

¹² *Id.*

¹³ Indicated Shippers Protest at 4 (citing Initial Decision, 133 FERC ¶ 63,009 at P 210).

¹⁴ *Id.* (citing Initial Decision, 133 FERC ¶ 63,009 at P 207).

11. Indicated Shippers also request the Commission condition the instant filing by accepting it subject to refund and the outcome of the proceedings in Docket Nos. RP09-995-000, RP09-995-004, RP10-422-000, and RP10-422-003. Indicated Shippers state the 46 percent increase reflected in Sea Robin's current filing would result in a Hurricane Surcharge that exceeds the base 100 percent load factor transmission rate of 22.07 cents per Dth for Sea Robin's West Area by approximately 32 percent.¹⁵ Indicated Shippers further protest the cumulative magnitude of the Hurricane Surcharge.

12. In addition, Indicated Shippers request the Commission promptly issue an order on the requests for rehearing of Opinion No. 516 currently pending before the Commission in Docket Nos. RP09-995-004 and RP10-422-003. Indicated Shippers respectfully requests that the Commission promptly issue an order on the merits regarding the rehearing requests filed in Docket Nos. RP09-995-003 and RP10-422-001, either to provide some relief from the substantial adverse economic impact of the Hurricane Surcharge, or to permit Indicated Shippers and the other parties to determine whether to seek relief from the burden of this surcharge through judicial review of the Commission's orders under Section 19(b) of the Natural Gas Act, 15 U.S.C. § 717r(b).

13. The Commission accepts and suspends the proposed tariff records for a nominal period, effective October 1, 2012, 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 filing.¹⁶

14. Arena claims that the projected throughput of 82.6 Bcf used to calculate the proposed Hurricane Surcharge does not take into account one-time events during the twelve-month period that may have resulted in shut-in gas, the likelihood of future gas additions during the next six months, or the impact of the drilling moratorium in the Gulf of Mexico. As Sea Robin points out, the ALJ ruled that actual total throughput volumes should be used for calculating the Hurricane Surcharge for all subsequent surcharge filings.¹⁷ In fact, the ALJ found that, "[w]ith the exception of the initial surcharge calculation, all parties agree that actual throughput should be used to calculate the Hurricane Surcharge" for all subsequent surcharge filings.¹⁸ Opinion No. 516 affirmed the ALJ's holding on this issue stating, "No party has filed exceptions to the ALJ's

¹⁵ *Id.* at 4.

¹⁶ *See* n.5 *supra*.

¹⁷ Initial Decision, 133 FERC ¶ 63,009 at P 210.

¹⁸ Initial Decision, 133 FERC ¶ 63,009 at P 210.

holdings that ...Sea Robin's proposal concerning the volumes to be used to design the surcharge is reasonable."¹⁹ Consistent with Opinion No. 516, Sea Robin states that its projected volumes of 82.6 Bcf are based on the twelve months ended July 31, 2012 actual throughput in the West Area. Arena does not dispute Sea Robin's assertion. Therefore, the Commission rejects Arena's protest.

15. The Commission also denies Arena's request to suspend the proposed Hurricane Surcharge for the maximum five-month period. Arena provides no justification for a five-month suspension. Further, as the Commission has stated in multiple orders,²⁰ 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. 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.

16. 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 size of the increase in the Hurricane Surcharge.

17. 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.²¹ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and

¹⁹ Opinion No. 516, 137 FERC ¶ 61,201 at P 14.

²⁰ See, e.g., *Sea Robin*, 130 FERC ¶ 61,261 at P 11; *Sea Robin*, 132 FERC ¶ 61,277 at P 20; *Sea Robin*, 134 FERC ¶ 61,262 at P 15.

²¹ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

inequitable results.²² 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, 2012, subject to the conditions set forth in the body of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²² See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

APPENDIX

Sea Robin Pipeline Company, LLC
Third Revised Volume No. 1
FERC NGA Gas Tariff

Accepted and Suspended, effective October 1, 2012, Subject to Refund and the Outcome
of the Rehearings in Docket Nos. RP09-995-000 and RP10-422-000.

- [1. Rate Schedule FTS, Currently Effective Rates, 7.0.0](#)
- [2. Rate Schedule FTS-2, Currently Effective Rates, 7.0.0](#)
- [3. Rate Schedule ITS, Currently Effective Rates, 7.0.0](#)