

144 FERC ¶ 61,008
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 5, 2013

In Reply Refer To:
Sea Robin Pipeline Company, LLC
Docket No. RP13-968-000

Sea Robin Pipeline Company, LLC
1300 Main Street
Houston, TX 77002

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

Reference: Order Accepting Tariff Records, Subject to Refund and Conditions

Ladies and Gentlemen:

1. On June 6, 2013, Sea Robin Pipeline Company, LLC (Sea Robin) filed revised tariff records¹ proposing to implement a new permanent Hurricane Surcharge mechanism to replace its current temporary mechanism which expires September 30, 2013. The Hurricane Surcharge mechanism records and recovers hurricane-related costs not recovered from insurance proceeds or from third parties. For the reasons discussed below, the Commission accepts and suspends the proposed tariff records for a nominal period, to become effective July 7, 2013, as requested, subject to refund and the ultimate outcome of Sea Robin's Natural Gas Act (NGA) section 4 general rate case filing required under the terms of a settlement on or before January 1, 2014.

2. On August 31, 2009, in Docket No. RP09-995-000, Sea Robin filed to establish its Hurricane Surcharge mechanism. On September 30, 2009, the Commission accepted and suspended the proposed tariff records for five-months, to become effective March 1, 2010, subject to refund and the outcome of a hearing.² In that same order, the

¹ See Appendix.

² *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*).

Commission concluded 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. The Commission set all other issues raised by the protests for hearing. Following a hearing, the Administrative Law Judge (ALJ) issued an initial decision on December 13, 2010.³ On December 15, 2011, the Commission issued Opinion No. 516 affirming the Initial Decision in part and reversing in part.⁴ In Opinion No. 516, the Commission, among other things, reversed the ALJ's findings regarding the Hurricane Surcharge recovery period, directing Sea Robin to use the 4-year amortization period it had proposed. Several parties sought rehearing of Opinion No. 516 and in Opinion No. 516-A, the Commission denied those requests for rehearing.⁵

3. Currently, the Hurricane Surcharge provisions in section 24 of the general terms and conditions (GT&C) of Sea Robin's tariff, provide for the recovery of capital and related operation and maintenance expenditures incurred to repair the damage to its facilities caused by Hurricane Ike in 2008, as well as costs related to future named hurricanes, for a period beginning October 1, 2009 and continuing through September 30, 2013. Section 24 required Sea Robin to file semi-annually to update the Hurricane Surcharge. Costs under the existing mechanism are recovered over a 4-year amortization period from the effective date of the first filing in which the costs were included. The Hurricane Surcharge only applies to transportation service provided in the West Area pursuant to Rate Schedules FTS, FTS-2 and ITS. Any balance remaining in the Hurricane Surcharge account on September 30, 2013 is required to be included in Sea Robin's next section 4 general rate proceeding. According to the settlement agreement on Sea Robin's previous general rate case, Sea Robin must file a new section 4 general rate case no later than January 1, 2014.⁶ Sea Robin made its last semi-annual filing under the existing mechanism on March 1, 2013, and the Commission accepted it on March 28, 2013.⁷

³ *Sea Robin Pipeline Co., LLC*, Initial Decision, 133 FERC ¶ 63,009 (2010).

⁴ *Sea Robin Pipeline Co., LLC*, Opinion No. 516, 137 FERC ¶ 61,201 (2011).

⁵ *Sea Robin Pipeline Co., LLC*, Opinion No. 516-A, 143 FERC ¶ 61,129 (2013). Opinion No. 516-A also addressed requests for rehearing of several related Commission orders, including Opinion No. 516. While Opinion No. 516 granted rehearing of one of the related Commission orders, it did not grant any of the requests for rehearing of Opinion No. 516 as stated above.

⁶ *Sea Robin Pipeline Co., LLC*, 125 FERC ¶ 61,185 (2008).

⁷ *Sea Robin Pipeline Co., LLC*, 142 FERC ¶ 61,239 (2013).

4. In the instant filing, Sea Robin proposes to revise section 24 of its tariff to include a permanent Hurricane Surcharge mechanism applicable to hurricane-related costs not included in the existing temporary mechanism expiring on September 30, 2013. Accordingly, Sea Robin proposes two types of Hurricane Surcharges - one for Hurricane Surcharges with an effective date prior to October 1, 2013, and one for Hurricane Surcharges with an effective date of October 1, 2013 or later. For Hurricane Surcharges with an effective date prior to October 1, 2013, the mechanism generally remains the same. Specifically, the surcharge would apply to transportation service provided only in the West Area under Rate Schedules FTS-1, FTS-2 and ITS for the period March 1, 2010 through September 30, 2013. These costs would be recovered over a 4-year amortization period, and any balance in the surcharge account at September 30, 2013 would be included in Sea Robin's rate proceeding proposing new base rates effective no later than January 1, 2014.⁸

5. For surcharges effective October 1, 2013 or later, Sea Robin proposes to apply the surcharge to all transportation service provided pursuant to Rate Schedule FTS, FTS-2 and ITS (and any other transportation service it provides). In addition, if Sea Robin files to recover new Eligible Costs (costs not included in a previous Hurricane Surcharge filing), whether from a future or past hurricane, the surcharge to recover those costs will be calculated based on a 3-year amortization period.⁹ If eligible costs are not recovered in the proposed 3-year amortization period, Sea Robin proposes to extend the surcharge on a month to month basis until it fully recovers such costs.¹⁰

6. Public notice of Sea Robin's filing issued June 10, 2013. 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 June 18, 2013, Indicated Shippers,¹¹ Arena Energy, L.P. (Arena), Deep Gulf

⁸ Proposed section 24.2(a).

⁹ Proposed section 24.2(b).

¹⁰ Proposed section 24.6(e).

¹¹ In the instant filing, Indicated Shippers include Apache Corporation, Chevron U.S.A., ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, Hess Corporation, and Shell Offshore Inc.

Energy LP and Deep Gulf Energy II, LLC (collectively, Deep Gulf), Walter Oil & Gas Corporation (Walter Oil & Gas), and the Producer Coalition¹² each filed protests.

7. Indicated Shippers oppose Sea Robin's proposal to institute a permanent Hurricane Surcharge tariff mechanism stating it would permit Sea Robin to track separately, an array of diverse capital and operating and maintenance (O&M) costs for recovery through a surcharge to its cost-based rates. Indicated Shippers state, as they have argued previously in response to Sea Robin's filings to institute a temporary Hurricane Surcharge following Hurricane Ike in 2008, that recovery of capital costs that Sea Robin would normally recover over the useful life of facilities instead of through a surcharge mechanism with an accelerated amortization period, shifts almost all of the risk of hurricane damage to Sea Robin's shippers. Indicated Shippers state that it diminishes the pipeline's incentive to engage in prevention or to insure adequately for future damage.

8. Moreover, Indicated Shippers state, the accelerated amortization violates the principle of matching costs with incurrence, by requiring current shippers to pay, over a short three-year period, the full costs of facilities that could remain in-service for decades beyond the amortization period. Indicated Shippers state that they recognize that the Commission considered these arguments with respect to the current, temporary Hurricane Surcharge due to expire on September 30, 2013. Indicated Shippers state that they are currently considering whether to seek judicial review of the orders approving the temporary surcharge mechanism. Indicated Shippers concludes that the concerns they raised previously apply *a fortiori* to Sea Robin's proposal to institute a permanent Hurricane Surcharge.

9. Indicated Shippers state that if the Commission permits Sea Robin to institute such a permanent Hurricane Surcharge, the Commission should condition its authorization on triennial rate review,¹³ thus allowing re-examination of Sea Robin's cost of service and rates at three-year intervals to assure that facility repair and replacement costs recovered through the Hurricane Surcharge were not offset by decreases in other costs underlying Sea Robin's base rates.

¹² The Producer Coalition consists of Castex Offshore, Inc.; Century Exploration New Orleans, LLC; Dynamic Offshore Resources, LLC; Hilcorp Energy Company; McMoRan Oil & Gas LLC; Pisces Energy LLC; and W&T Offshore, Inc.

¹³ Indicated Shippers state that prior to Order No. 636, the Commission permitted pipelines that utilized the former purchased gas adjustment (PGA) regulations to file semiannual or quarterly rate changes based on fluctuations in the cost of gas. Indicated Shippers Protest at 12 (citing former 18 C.F.R § 154.303(e)).

10. Indicated Shippers state that the Commission also must consider the relationship between Sea Robin's proposal to institute a permanent Hurricane Surcharge and Sea Robin's impending general NGA section 4 rate case. Indicated Shippers state that the capital and O&M costs reflected in the upcoming rate case could overlap with the costs reflected in filings under the proposed permanent Hurricane Surcharge mechanism. To protect the integrity of the cost-of-service ratemaking process, the Commission should direct Sea Robin to submit its permanent Hurricane Surcharge proposal for review in conjunction with its general rate filing, to ensure against double-recovery of same costs in base rates and the surcharge.

11. Indicated Shippers also seek clarification regarding the temporary and permanent surcharges, stating that Sea Robin does not explain why it needs to retain the temporary surcharge beyond its current expiration date and simultaneously adopt the permanent surcharge. Indicated Shippers state that unchanged proposed section 24.6(c)¹⁴ already provides that any costs in the Hurricane Surcharge account balance after September 30, 2013 will be included in the upcoming rate case, seemingly eliminating any continuing purpose for the temporary provision. Indicated Shippers also state that the proposal is unclear with respect to the recovery of "new" eligible costs incurred after the June 6 filing becomes effective. Indicated Shippers states that, based on Sea Robin's filing, even if Sea Robin files for additional costs attributable to past damage from Hurricane Ike, it evidently would recover those costs through the permanent surcharge provision. Lastly, Indicated Shippers state that, if the Commission accepts the June 6 filing to become effective July 7, 2013,¹⁵ it appears Sea Robin would recover "new" eligible costs incurred after that date under the permanent surcharge account established in proposed section 24.2(b), and that any costs in that account as of September 30, 2013, would be included in the impending general rate case.

12. Indicated Shippers accordingly request that the Commission: (1) suspend the effectiveness of the permanent Hurricane Surcharge proposal for the maximum five-months permitted under NGA Section 4(e); (2) require Sea Robin to clarify the operation of its temporary and permanent Hurricane Surcharge to address concerns against ambiguity and overlap; (3) require Sea Robin to explain and clarify how it will ensure it will not double-recover the same costs in its base rates and the surcharge mechanism; and (4) condition approval of the proposed permanent Hurricane Surcharge on a triennial rate refilling requirement.

¹⁴ 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."

¹⁵ In their protest, Indicated Shippers incorrectly stated July 1, 2013 instead of July 7, 2013, which is the requested effective date.

13. The remaining protests of Arena, Deep Gulf, Walter Oil & Gas and the Producer Coalition raise generally identical arguments. Although not generally opposed to Sea Robin's proposed extension of its Hurricane Surcharge mechanism past September 30, 2013 to recover eligible costs from future hurricanes, the protesters state the pipeline bears the burden of showing that any revisions to its existing Hurricane Surcharge mechanism are just and reasonable and supported by evidence in the record in this proceeding, which Sea Robin failed to show. First, the protesters state Sea Robin has not justified shortening the amortization period for costs recovery from four to three years. The protesters state there is no basis to permit Sea Robin to truncate the existing four-year amortization period, which the Commission previously held to be just and reasonable.¹⁶

14. Second, the protesters find troublesome Sea Robin's proposal to expand the scope of recoverable costs to include both new costs from future hurricanes and "costs not included in previous Hurricane Surcharge" filings. They state that, to the extent Sea Robin knows of such prior costs incurred but not included in previous Hurricane Surcharge filings, the Commission should direct Sea Robin to include such costs in its next NGA section 4 general rate filing required no later than January 1, 2014. Further, to the extent Sea Robin believes that costs not included in previous Hurricane Surcharge filings from past storms are probable, the protesters state the Commission should require Sea Robin to provide all parties with a list of all such costs, when they are expected to be incurred, and the amount of such costs to determine whether they are to be included in Sea Robin's next NGA general section 4 rate filing. The protesters state the Commission should not permit Sea Robin to sidestep its obligation to recover any remaining balance in its Hurricane Surcharge account on September 30, 2013 in its next rate case for both unrecovered costs actually in the account, as well as unrecovered costs for which it is aware but has not filed to recover such costs by September 30, 2013.

15. Finally, the protesters state that Sea Robin's proposal to apply any new Hurricane Surcharge to its entire pipeline system is inconsistent with the reasoning of the Commission's order in *Trunkline Gas Co., LLC and Sea Robin Pipeline Co., LLC*.¹⁷ The protesters state that, in that case, the Commission held that Sea Robin could not recover Hurricane Ike damage costs from shippers on Sea Robin's Terrebonne and Vermilion Systems because the damage incurred to its system occurred prior to Sea Robin's acquisition of the Terrebonne and Vermilion Systems and those two systems (which are not connected to Sea Robin's existing system) were not damaged. The protesters state that Sea Robin has made no showing that shippers on the discrete portions of its pipeline system, comprised of the Vermilion and Terrebonne Systems, should be assessed a

¹⁶ See, e.g., Producer Coalition Protest at 5 (citing Opinion No. 516-A, 143 FERC ¶ 61,129 at P 37).

¹⁷ See, e.g., Producer Coalition at 6 (citing 139 FERC ¶ 61,239, at P 129 (2013)).

Hurricane Surcharge to recover costs for damage to the remainder of its system. The protesters state that hurricane cost recovery should be limited to shippers on the “relevant” pipeline facilities that are damaged.¹⁸

16. As discussed below, the Commission accepts and suspends the proposed tariff records for a nominal period, to become effective July 7, 2013, subject to refund and the ultimate outcome of Sea Robin’s forthcoming general NGA section 4 rate case Sea Robin is required to file with the Commission on or before January 1, 2014.

17. As stated in *Tennessee Gas Pipeline Company*,¹⁹ current Commission policy permits a pipeline to establish a hurricane cost recovery mechanism via a limited section 4 filing to recover hurricane-related costs. Moreover, the Commission has found it reasonable for a pipeline to have in place a mechanism to recover *future* hurricane-related costs incurred prior to its next general section 4 rate case.²⁰ The Commission found that having in place such a mechanism provides the pipeline’s shippers notice of how such costs will be recovered.²¹ However, the Commission believes that efficiency dictates that the issues raised by the protesters concerning the design of the Sea Robin’s proposed revised Hurricane Surcharge be addressed in Sea Robin’s upcoming general NGA section 4 rate case proposing new base rates effective January 1, 2014. Those issues would include, for example, Sea Robin’s proposed amortization period, a triennial rate refiling requirement, the relationship between the Hurricane Surcharges in proposed sections 24.2(a) and (b), and the proposed applicability of the surcharge to all shippers.

18. 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

¹⁸ The protesters state the same would hold true if the Terrebonne and Vermillion Systems were damaged and the remainder of Sea Robin’s system was not (*i.e.*, shippers on the remainder of Sea Robin’s system should not be assessed a Hurricane Surcharge to recover costs related to the Terrebonne and Vermilion systems). *See, e.g.*, Producer Coalition at n.6.

¹⁹ 133 FERC ¶ 61,266, at P 23 (2010) (citing *Sea Robin Pipeline Co., LLC*, 128 FERC ¶ 61,286 (2009), *order denying reh’g*, 130 FERC ¶ 61,191 (2010); *Chandeleur Pipe Line Co.*, 117 FERC ¶ 61,250 (2006)).

²⁰ *Id.* (citing *Sea Robin*, 130 FERC ¶ 61,191 at P 13).

²¹ *Id.*

standards.²² 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.²³ Such circumstances exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff records and permit them to take effect on July 7, 2013, subject to the conditions set forth in the body of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

²² See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

²³ 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 July 7, 2013, Subject to Refund and the Outcome of the NGA Section 4 Rate Case Filing Required on or Before January 1, 2014.

- [1. Rate Schedule FTS, Firm Transportation Service, 2.0.0](#)
- [2. Rate Schedule FTS-2, Firm Transportation Service, 2.0.0](#)
- [3. Rate Schedule ITS, Interruptible Transportation Service, 2.0.0](#)
- [GT&C Section 24., Hurricane Surcharge, 2.0.0](#)