149 FERC ¶ 61,240
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Sea Robin Pipeline Company, LLC — Docket No. RP14-247-000
RP14-247-001
RP14-247-002
RP14-247-003
RP13-968-000
RP13-968-001
RP13-968-002
RP13-968-003
RP13-968-004

ORDER CONDITIONALLY APPROVING UNCONTESTED SETTLEMENT, SUBJECT TO MODIFICATION

(Issued December 18, 2014)

1. On July 23, 2014, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,[1] Sea Robin Pipeline Company, LLC (Sea Robin) filed an Offer of Settlement (Settlement) regarding, among other things, a Natural Gas Act (NGA) section 4 general rate case filed by Sea Robin seeking an increase in its firm and interruptible transportation and gathering rates. For the reasons discussed below, the Commission conditionally approves the Settlement, subject to modification.

I. Background

2. On June 6, 2013, Sea Robin filed revised tariff records proposing to implement a new, permanent Hurricane Surcharge mechanism to replace its current temporary mechanism, which expired September 30, 2013. The Hurricane Surcharge mechanism records and recovers hurricane-related costs not recovered from insurance proceeds or from third parties. The Commission accepted and suspended the proposed tariff records, to become effective July 7, 2013, subject to refund and the ultimate outcome of Sea

[1] 18 C.F.R. § 385.602 (2014).

Robin's then-upcoming Natural Gas Act (NGA) section 4 general rate case filing.[2] On August 1, 2013, Sea Robin filed for clarification or, in the alternative, rehearing of the July 2013 Order. On August 16, 2013, Indicated Shippers[3] filed an answer to Sea Robin's request for clarification.

3. On December 2, 2013, Sea Robin filed revised tariff records proposing a general rate increase under section 4 of the NGA, as well as other tariff changes, including restructuring of the creditworthiness standards and increasing the penalties for violation of an Operational Flow Order (OFO). On December 30, 2013, the Commission accepted and suspended the creditworthiness tariff records for five months to become effective June 1, 2014, subject to refund and the outcome of a briefing schedule. The Commission accepted Sea Robin's proposed tariff record increasing its penalties for violation of an OFO, effective January 1, 2014. Lastly, the Commission accepted and suspended the remaining tariff records to become effective June 1, 2014, subject to refund and the outcome of a hearing.[4] On January 28, 2014, Sea Robin filed a request for limited clarification or, in the alternative, rehearing of the December 2013 Order. On January 30, 2014, Indicated Shippers[5] filed a motion for clarification of the December 2013 Order.

4. On July 23, 2014, Sea Robin filed the Settlement. Sea Robin states that the Settlement is supported by Sea Robin, Commission Trial Staff and the intervenors to these proceedings. On August 4, 2014, the Producer Coalition,[6] Sea Robin and Commission Trial Staff each filed initial comments in support of the Settlement. No

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[2] *Sea Robin Pipeline Co.*, 144 FERC ¶ 61,008 (2013) (July 2013 Order).

[3] For purposes of this answer, Indicated Shippers include Apache Corporation (Apache), Chevron U.S.A. Inc. (Chevron), ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation (ExxonMobil), Fieldwood Energy, LLC (Fieldwood), Hess Corporation (Hess), and Shell Offshore, Inc. (Shell).

[4] *Sea Robin Pipeline Co.*, 145 FERC ¶ 61,292 (2013) (December 2013 Order).

[5] For purposes of their motion for clarification of the December 2013 Suspension Order, Indicated Shippers include Chevron, ExxonMobil, Fieldwood, Hess, and Shell Offshore, Inc.

[6] The Producer Coalition includes Arena Energy, LP, Castex Energy Inc., Century Exploration New Orleans, LLC, Deep Gulf Energy LP, Deep Gulf Energy II, LLC, Energy XXI (Bermuda) Ltd., Enven Energy Ventures, LLC, McMoRan Oil & Gas, LLC, Superior Natural Gas Corporation, Walter Oil & Gas Corporation, and W&T Offshore, Inc.

other comments were filed. On October 7, 2014, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.[7]

II. Settlement

5. The principal terms of the Settlement are as follows. Article I provides a brief introduction, which states that the Settlement resolves all of the issues in Docket Nos. RP14-247-000 and RP13-968-000.

6. Article IV sets forth the matters settled. Article IV, section A, sets forth the Settlement rates, which are the base rates for Sea Robin's system and include both minimum and maximum rates for Sea Robin's Rate Schedules FTS, FTS-2, ITS, and GPS and apply to transportation rates and gathering services during the period of the Settlement. Sea Robin shall file with the Commission a motion to place the Settlement rates and the corresponding Settlement tariff records into effect on an interim basis, effective as of September 1, 2014.

7. Article IV, section B.1, specifies the Settlement depreciation rates, including negative salvage rates. Article IV, section B.2, provides that the Settlement rates included in the Settlement are deemed to be based on approved ratemaking methods for purposes of Section 154.305 of the Commission's Regulations and, unless changed in accordance with law and regulation, Sea Robin must continue to use full inter-period tax normalization to establish its rate base and cost of service.

8. Article IV, section B.3, provides that the requirements of the Commission's Statement of Policy Regarding Post-Employment Benefits Other Than Pensions (PBOP), Docket No. PL93-1-000, 61 FERC ¶ 61,330 (1992), shall be deemed to apply to Sea Robin's payments of retirement benefits (other than pensions) in recognition of the requirements of the Statement of Financial Accounting Standards No. 106. The Settlement Rates include an annual PBOP cost of service allowance of $0. Article IV, section B.4, provides that, on the West Area of Sea Robin's system, consistent with Commission Orders and designations, all assets upstream of the Vermilion 149 platform are classified as gathering assets and the Vermilion 149 platform and all downstream assets are classified as transmission assets. On the East Area of Sea Robin's system, consistent with Commission Orders and designations, Lines 300-1 and 300-2, Line 316A-100, the TRIMARS platform, and certain piping facilities located entirely onshore are classified as transmission assets and all assets upstream of the TRIMARS platform (T-25 in Ship Shoal Block 139) are classified as gathering assets.

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[7] *See Sea Robin Pipeline Co.*, 149 FERC ¶ 63,006 (2014).

9. Article IV, section B.5 establishes an Asset Retirement Obligation Cost Recovery mechanism, which will entitle Sea Robin to collect in rates the amounts necessary to fund the terminal retirement or decommissioning of Sea Robin's tangible long-lived assets as a result of a legal obligation to retire or decommission such assets.

10. Article IV, section C establishes that Sea Robin shall refund to those shippers that are the Subject Parties the total amount, if any, collected since June 1, 2014 in excess of the amounts that would have been collected under the Settlement Rates, plus interest. Further, Sea Robin's refund obligations will be subject to the "refund floor" protection under NGA sections 4 and 5. The settlement rates established in the 2008 Stipulation and Agreement will constitute the refund floor for the Settlement Rates for the West Area, and all of the Settlement Rates for the East Area are greater than the rates that were in effect prior to June 1, 2014.

11. Article IV, section D sets forth that Sea Robin is authorized to include in its annual cost of service $21,999 ($34,353, as adjusted for the tax-on-tax effect) to effectuate the collection of deficient deferred income taxes, due to the increase in Sea Robin's Louisiana effective state income tax rate.

12. Article IV, section E, titled "Hurricane Surcharge Provisions," provides that eligible Hurricane Surcharge costs shall be accounted for and assessed separately on the East Area and West Area systems based on the costs specifically incurred by each respective system. Additionally, the eligible Hurricane Surcharge costs will be amortized over a four-year period and there is no cap on the Hurricane Surcharge. Article IV, section F requires that Sea Robin amortize the remaining balance of the regulatory asset established pursuant to Commission orders in Docket Nos. RP09-995-000, *et al*., at a level of $150,231 per year during the Settlement Period.

13. Article IV, section G, provides that Sea Robin has reached an agreement in principle with Ensco concerning Sea Robin's claim of damages related to Ensco's rig breaking loose during Hurricane Ike. Sea Robin's legal expenses related to the Ensco litigation are greater than the amount Sea Robin has received from Ensco as a result of litigation and Sea Robin did not allocate any of the legal expenses from this litigation to the Sea Robin system. The parties to the Settlement agree that Sea Robin will not credit to the Subject Parties' benefit any amounts that Sea Robin received arising out of the Ensco litigation. Article IV, section H provides that Sea Robin will revise the creditworthiness provisions of its tariff as provided in the tariff records in Appendix A-2. Additionally, Sea Robin will delete the Messenger agreement from its tariff and replace it with a reference to assessing such agreement on its Internet web site.

14. Article IV, section I provides that Sea Robin will not make a general rate case filing under NGA section 4 prior to December 1, 2016. Prior to December 1, 2016, no Subject Party will seek or solicit a change or challenge, or support either financially or through pleadings a change or challenge, to any effective provisions of the Settlement

through a complaint filed pursuant to NGA section 5 or otherwise. Article IV, section J, provides that Sea Robin will file a new NGA section 4 general rate case no later than December 31, 2020, or forty-eight months following the effective date of a positive Hurricane Surcharge greater than $0.05/Dth under the prospective Hurricane Surcharge tracker mechanism implemented in Docket No. RP13-968-000.

15. Article V, among other things, provides that the Settlement constitutes a negotiated settlement and that no party to the settlement is consenting to the establishment of any ratemaking or tariff principle. Article VI lists the conditions necessary for the Settlement to take effect. It also provides that the effectiveness of the Settlement shall serve to terminate the proceeding in Docket Nos. RP14-247-000 and RP13-968-000.

16. Article VII sets forth reservations and miscellaneous provisions, including the standard of review. Article VII, section D provides that:

> [a]fter the Effective Date, the standard for review of proposed changes to the terms and conditions of this Settlement by a Subject Party or Sea Robin is the "public interest" standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), rather than the just and reasonable standard of review. For changes to this Settlement initiated by the Commission *sua sponte* after the Effective Date, however, the standard of review shall be the "just and reasonable" standard. Furthermore, the "just and reasonable" standard of review shall govern any action brought by a Non-Consenting Party.[8] (footnotes omitted)

17. The Settlement defines "Subject Party" as any party in this proceeding, or other person affected by this Settlement, including Commission Trial Staff, but other than Sea Robin, who (1) files initial comments supporting or not opposing Commission approval of the Settlement without condition or modification; or (2) does not file initial comments or any comments respecting this Settlement, as specified by the Commission's Rules of Practice and Procedure.[9] The Settlement defines "Non-Consenting Party" as any person who opposes approval of this Settlement, supports this Settlement only in part or subject to condition, qualification or modification or who requests clarification that is

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[8] Article VII, section D of the Settlement.

[9] *See* Article III, section C of the Settlement.

inconsistent with this Settlement. A Non-Consenting Party shall not be bound by this Settlement, nor shall a Non-Consenting Party obtain or share in any benefit afforded by this Settlement.[10]

III. Discussion

18. As noted above, Article VII, section D of the Settlement seeks to bind Sea Robin and any Subject Party to the *Mobile-Sierra* "public interest" standard of review. Article III, section C of the Settlement defines "Subject Party" as "any party in this proceeding, *or other person affected by this Settlement, including Commission Trial Staff*, but other than Sea Robin, who (1) files initial comments supporting or not opposing Commission approval of the Settlement without condition or modification; or (2) does not file initial comments or any comments respecting this Settlement."[11] The language emphasized above in the Settlement's definition of Subject Party thus appears to include third parties who have not intervened in this proceeding but who may be considered to be affected by the Settlement and the Commission's Trial Staff. As a result, the Settlement appears to invoke the *Mobile-Sierra* "public interest" presumption with respect to third parties who had no opportunity to participate in the negotiation of the Settlement, as well as the Commission through its Trial Staff. Therefore, we will analyze the applicability here of that more rigorous application of the just and reasonable standard.

19. The *Mobile-Sierra* "public interest" presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,[12] however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory "just and reasonable" standard of review on future changes to agreements that fall within the second category described above.

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[10] *See* Article III, sections D and F of the Settlement.

[11] Emphasis supplied.

[12] *New England Power Generators Ass'n v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

20. The terms of the Settlement will be incorporated into the service agreements of all present and future shippers;[13] therefore, the Settlement addresses rates, terms, or conditions that are generally applicable. For this reason, we find that the Settlement does not embody "contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption."[14]

21. As we have stated recently, in the context of reviewing settlements that do not involve "contract rates," the Commission has discretion as to whether to approve a request to impose on third parties the more rigorous application of the statutory "just and reasonable" standard of review that is often characterized as the *Mobile-Sierra* "public interest" standard of review.[15] The Commission also stated in these orders that it will not approve imposition of that more rigorous application of the statutory "just and reasonable" standard of review on future changes to an agreement sought by non-settling third parties, absent compelling circumstances such as were found to exist in *Devon Power*. We find that the circumstances presented here do not satisfy that test. Thus, we find it unjust and unreasonable to impose the more rigorous application of the statutory "just and reasonable" standard of review in the instant proceedings with respect to future changes to the Settlement sought by a non-settling third party or the Commission.

22. With the exception of the issue discussed above, the Settlement appears to be fair and reasonable and in the public interest.[16] As such, the Settlement is conditionally approved subject to Sea Robin filing, within 30 days of the date of this order, a revised settlement agreement reflecting a revision to the standard of review provision that applies to third parties who did not intervene in these proceedings and the Commission's Trial

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[13] *See, e.g.*, Sea Robin FERC NGA Gas Tariff, Form of Service Agreement for Rate Schedule FTS, Article VI, section 6.3.

[14] *Panhandle Eastern Pipe Line Co.*, 143 FERC ¶ 61,041, at P 84 (2013); *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,299, at P 92 (2013).

[15] *See, e.g., MidAmerican Energy Co.*, 138 FERC ¶ 61,028, at P 7 (2012) (citing *Devon Power, LLC*, 134 FERC ¶ 61,208, *order on reh'g*, 137 FERC ¶ 61,073 (2011), *aff'd, New England Power Generators Ass'n, Inc. v. FERC*, 707 F.3d 364 (D.C. Cir. 2013); *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014 (2011): *High Island Offshore Sys., LLC*, 135 FERC ¶ 61,105, at P 24 (2011).

[16] Likewise, with the exception of the issue discussed above, the Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

Staff. Within 30 days of the date of this order, Sea Robin is required to submit a compliance filing through eTariff to ensure that its electronic tariff data base reflects the Commission's action in these proceedings.[17]

23. Subject to a further compliance filing, this order terminates the proceedings in the captioned dockets.

The Commission orders:

(A) The Settlement is hereby approved, as modified, subject to a further compliance filing, as discussed in the body of this order.

(B) Sea Robin is hereby directed to submit a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[17] *See Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).