

July 2, 2021

VIA ELECTRONIC MAIL TO: bill.moler@tallgrassenergylp.com

Mr. William Moler
Chief Executive Officer
Tallgrass Energy, LP
4200 W. 115th St., Suite 350
Leawood, Kansas 66211

Re: CPF No. 3-2020-1008

Dear Mr. Moler:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a reduced civil penalty of \$66,500. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by electronic mail is effective upon the date of transmission as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Ms. Crystal Heter, Chief Operating Officer, Tallgrass Energy, LP,
crystal.heter@tallgrassenergylp.com
Mr. Craig Meis, Vice President – EHSS & Governmental Affairs, Tallgrass Energy, LP,
craig.meis@tallgrassenergylp.com

CONFIRMATION OF RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

In the Matter of

Tallgrass Energy Partners, LP,

Respondent.

CPF No. 3-2020-1008

FINAL ORDER

From May 7 through 11, 2018, and December 4 through 6, 2018, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of Tallgrass Energy Partners, LP (Tallgrass or Respondent) in Lakewood, Colorado and virtually. Tallgrass owns and operates more than 8,300 miles of natural gas pipeline and more than 850 miles of crude pipeline, as well as natural gas midstream and natural gas liquids facilities, across Wyoming, Colorado, Nebraska, Colorado, Kansas, Oklahoma, Missouri, Illinois, Indiana, and Ohio.¹ This inspection included review of three natural gas pipeline systems owned and operated by Tallgrass, including the Rockies Express Pipeline, Tallgrass Interstate Gas Transmission, and Trailblazer Pipeline systems.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated October 26, 2020, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Tallgrass committed four violations of 49 C.F.R. Part 192 and proposed assessing a civil penalty of \$86,700 for the alleged violations.

Tallgrass submitted a timely response to the Notice by letter dated December 11, 2020 (Response).² Respondent contested one of the allegations of violation, provided an explanation of its actions and requested that the proposed civil penalty be reduced or eliminated for all of the items. Respondent also submitted a supplemental response on April 1, 2021. Respondent did not request a hearing and therefore has waived its right to one.

¹ <https://www.tallgrassenergy.com/About.aspx>;
https://www.tallgrassenergy.com/Documents/Tallgrass%20System%20Map_11x17_v518L.pdf (last accessed April 22, 2021).

² On November 24, 2020, PHMSA granted Tallgrass a 15-day extension to respond to the Notice.

FINDINGS OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 192.631(c)(3), which states:

§ 192.631 Control room management.

(a) *General.* (1) This section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this section ...

(c) *Provide adequate information.* Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:

(1) ...

(3) Test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months;

The Notice alleged that Respondent violated 49 C.F.R. § 192.631(c)(3) by failing to test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months. Specifically, the Notice alleged that Respondent did not test and verify its internal communication plan during the calendar year 2017.

In its Response, Tallgrass did not contest this allegation of violation, but did request that PHMSA reduce the proposed civil penalty for this item.

Accordingly, I find that Respondent violated 49 C.F.R. § 192.631(c)(3). Respondent's arguments regarding the proposed civil penalty are addressed in full in the "Assessment of Penalty" section below.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 192.631(d)(2) and (3), which states:

§ 192.631 Control room management.

(a) ...

(d) *Fatigue mitigation.* Each operator must implement the following methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities the operator has defined:

(1) ...

(2) Educate controllers and supervisors in fatigue mitigation strategies and how off-duty activities contribute to fatigue;

(3) Train controllers and supervisors to recognize the effects of fatigue;

The Notice alleged that Respondent violated 49 C.F.R. § 192.631(d)(2) and (3) by failing to educate controllers and supervisors in fatigue mitigation strategies and how off-duty activities contribute to fatigue and by failing to train controllers and supervisors to recognize the effects of fatigue. Specifically, the Notice alleged that the Tallgrass Control Room Management (CRM) Procedures required fatigue mitigation training to occur annually, but not to exceed 15 months. The Notice alleged Respondent did not follow those procedures and provide training to educate three controllers in the calendar year 2017, more than 15 months after the last fatigue mitigation training the controllers received.

In its Response, Tallgrass provided additional evidence not presented during the inspection showing two of the three controllers did receive training within the required 15-month interval. Tallgrass did not contest the allegation of violation regarding the third controller, admitting the controller completed the training three months after the 15-month interval.³ Tallgrass also requested that the penalty be reduced for this item.

After considering all of the evidence, I find that Respondent violated 49 C.F.R. § 192.631(d)(2) and (3) by failing to educate one controller in fatigue mitigation strategies and how off-duty activities contribute to fatigue, but withdraw the allegation with respect to two additional controllers. Respondent's arguments regarding the proposed civil penalty are addressed in full in the "Assessment of Penalty" section below.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 192.631(e)(2), which states:

§ 192.631 Control room management.

(a) ...

(e) *Alarm management.* Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to:

(1) ...

(2) Identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities;

The Notice alleged that Respondent violated 49 C.F.R. § 192.631(e)(2) by failing to have and follow a plan that includes provisions to identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities. Specifically, the Notice stated Respondent's CRM Procedures required monthly reviews of false alarms, but the monthly reviews only included a review of the highest volume alarms without identifying "all the false

³ Tallgrass Energy, LP's Response to Notice (December 11, 2020), at 4.

alarms that could be occurring on the pipeline system and affecting safety.”⁴ The Notice noted the monthly alarm reviews showed Tallgrass categorized alarms as “actual” or “faulty,” but did not categorize any as “false.”⁵

In its Response and its Rebuttal to the Region Recommendation, Tallgrass contests the violation and the associated proposed civil penalty assessment. Tallgrass argues its separate Alarm Management Plan is in compliance with § 192.631(e)(2) because its Plan requires a monthly review of the alarm system, which includes an evaluation of all monthly alarms, in addition to the top repeating alarms.⁶ Tallgrass argues this process meets the text of the code as well as the purpose of the regulation. Tallgrass explains that it does not “draw distinctions in its monthly alarm reports between actual and false alarms” because there is no definition of a “false alarm” in the regulations nor is there a consensus approach or definition used across the industry.⁷ Tallgrass further argues its Alarm Management Plan is not in violation of the regulation because the regulation requires monthly identification of points affecting safety that generated false alarms, and does not require operators to determine whether every alarm is “false.” Tallgrass clarified in its Response that the “faulty” designation for some alarms in its monthly reports is an indication of devices that have been commissioned, but not activated, and is not a tag that is synonymous with “false.”⁸ Finally, Tallgrass argues that if PHMSA interprets § 192.631(e)(2) to require that every alarm must be reviewed on a monthly basis to determine it is false, it did not have fair notice of that interpretation.

After reviewing all of the arguments and evidence presented, it is clear Respondent did not adhere to its own CRM Procedures for evaluating points affecting safety that generated false alarms. Tallgrass’ CRM Procedures state, “[t]he alarm system will be reviewed monthly by the Manager and his/her designee to identify and address safety-related points that have been taken off-scan, have manual values or have had false alarms.”⁹ In its Response, Tallgrass admits it does not “draw distinctions in its monthly alarm reports between actual and false alarms.”¹⁰ Without any indication of which alarms are false, Tallgrass personnel would be unable to use the monthly alarm reports to identify and address points affecting safety that generated false alarms during the monthly reviews, as required by the CRM Procedures.

Rather than following its CRM Procedures, it appears Tallgrass follows its Alarm Management Plan, a separate plan that also addresses monthly reviews of alarms. This Plan, however, does not include a process for identifying points affecting safety that generated false alarms. Section

⁴ Notice, at 3.

⁵ *Id.*

⁶ Response, at 9-10.

⁷ *Id.*, at 9.

⁸ *Id.*, at 10.

⁹ Pipeline Safety Violation Report (on file with PHMSA), at 54.

¹⁰ Response, at 9.

8 of the Plan, Alarm System Review, states that the monthly alarm “review currently consists of an excel report which draws data from SCADA reports. The SCADA reports are uploaded into a folder on SharePoint each month and the alarm reports are linked to display the data from these reports.”¹¹ This section states “the categories that are included in the review” are: point-to-point, current configuration error, out-of-service, all monthly alarms, alarm limit changes, user disabled, bypassed, and top alarms.¹² Tallgrass confirms in its Response that alarms falling into these eight categories are organized into tabs on an excel spreadsheet, which are analyzed during the monthly reviews.¹³ Section 192.631(b)(2) requires operator's plans to include provisions to identify points affecting safety that have generated false alarms at least once each calendar month, however, provisions directing personnel to identify points affecting safety that have generated any false alarms are demonstrably absent from Tallgrass' Alarm Management Plan. In fact, the Plan does not include provisions for the identification of points affecting safety that generated any alarms during its monthly reviews. Finally, the reports analyzed by Tallgrass personnel on a monthly basis do not include identification of points affecting safety or false alarms, so personnel would be unable to determine if any points affecting safety generated a false alarm when conducting its review of these reports.

Accordingly, the evidence shows that Respondent failed to follow its own CRM Procedures for conducting monthly alarm reviews, including the identification of points affecting safety that generated false alarms. Further, the evidence shows Respondent's alternative Alarm Management Plan does not include provisions to identify points affecting safety at all, including those that have generated false alarms.

Respondent makes several arguments that are not persuasive. First, Respondent states it is not required to designate alarms as “false” in its monthly reports because the regulations do not prescribe a method for identifying “false” alarms. Section 192.631(e)(2) requires each operator to have and follow a written alarm management plan that includes provisions to, among other things, identify points affecting safety that have generated false alarms. The allegation of violation here is not related to Tallgrass' methodology for identifying “false” alarms. Rather, the allegation is that Tallgrass failed to identify points affecting safety that generated false alarms in accordance with its own CRM Procedures. Further, Tallgrass already determined a methodology for identifying alarms as “false.” Section 6 of the Plan, titled, Alarm System Performance, includes a subsection titled, False or Malfunctioning Alarms. This section states:

A false or malfunctioning alarm is any alarm that is presented to the Controller that does not accurately reflect the actual operational parameter or condition, or an alarm that can mislead a Controller to believe a condition exists, but does not exist... All false or malfunctioning alarms that are not generated during testing or scheduled maintenance are reported to the [Operations Control Center] management team via the SharePoint log by selecting the “alarm malfunction” category. Alarm malfunctions reported to the

¹¹ *Id.*, at 39.

¹² *Id.*, at 39-40.

¹³ *Id.*, at 9-10.

[Operations Control Center] management will be handled and corrected as soon as possible.

Further, section 9 of the Alarm Management Plan, Roles and Responsibilities, states that controllers must, “[p]rovide feedback as to validity of alarms ([l]og entry),” including “reporting false alarms, inaccurate alarms, [m]alfunctioning or problem alarms.”¹⁴

Based on Tallgrass’ Alarm Management Plan, Tallgrass requires controllers to analyze the validity of alarms and document any “false,” “malfunctioning,” “inaccurate,” and “problem” alarms that are identified. Specifically, the Plan requires that controllers report all “false” or “malfunctioning” alarms not generated during testing or maintenance activities to management via a SharePoint site log under an “alarm malfunction” designation. The monthly review process of alarms that is included in the Alarm Management Plan, however, does not require a review of this data on a monthly basis. As explained above, the Plan states that monthly reviews include analysis of the point-to-point, current configuration error, out-of-service, all monthly alarms, alarm limit changes, user disabled, bypassed, and top alarms categories, but it does not include a category for “false” or “malfunctioning” alarms. Tallgrass admits it “doesn’t draw distinctions in its monthly alarm reports between actual and false alarms,” despite controllers documenting false alarms as they are identified.¹⁵ It is clear from the evidence that Tallgrass’ current process fails to include identification of points affecting safety that generated false alarms in accordance with its CRM Procedures despite its own prescribed methodology for identifying false alarms. The fact that the operator defined which alarms would be designated as false rather than the definition being prescribed in the regulations had no bearing on Respondent’s failure to follow its own CRM Procedures.

Next, Respondent argues that § 192.631(e)(2) does not require any “review” or “analysis” of the false alarms, only that the points affecting safety that generated false alarms are “identified.” This argument is inconsequential because Respondent failed to identify at least once each calendar month points affecting safety that have generated false alarms. Tallgrass’ CRM Procedures further require personnel to conduct monthly “reviews” of their alarm system. The Procedures state, “[t]he alarm system will be *reviewed* monthly by the Manager and his/her designee to identify and address safety-related points that have been taken off-scan, have manual values or have had false alarms” (emphasis added).¹⁶ The allegation in the Notice is that Tallgrass failed to follow its own CRM Procedures, which require the review of alarms to determine or identify if any points affecting safety are generating such alarms. Further, the process Tallgrass describes in its Response does not actually include identification of points that affect safety that generated any alarms, in violation of § 192.631(e)(2). Again, the Respondent failed to follow its own Procedures, because it neither “reviewed” its alarm system nor “identified and addressed” certain safety-related points as required.

¹⁴ *Id.*, at 42.

¹⁵ *Id.*, at 9.

¹⁶ Violation Report, at 54.

Tallgrass next argues that the regulations do not require that all alarms be designated as “false” or “actual,” and that if PHMSA interprets § 192.631(e)(2) to include such a requirement, Tallgrass lacked fair notice of that interpretation. That question is not at issue here because Tallgrass admits it did not analyze *any* false alarms during its monthly review process.¹⁷ The regulation as well as Respondent’s own CRM Procedures, however, clearly require at least some analysis of false alarms so that any points affecting safety that generated those alarms could be identified. As explained above, spreadsheets included in the Violation Report and with the Response show several categories of alarms are evaluated by Tallgrass personnel during monthly reviews, however, the spreadsheets do not include “false,” or “malfunctioning” alarms. Without any indication of which alarms may be “false,” Respondent would not be able to identify points affecting safety that generated those alarms, as required by the § 192.631(e)(2) or the CRM Procedures. Further, there is no identification of points affecting safety related to any of the alarms reviewed by Tallgrass, meaning it would be impossible for personnel to identify any points affecting safety that generated any alarms. As described in detail above, it is clear from the evidence, including Respondent’s own admissions, that it does not follow its own CRM Procedures in conducting monthly alarm reviews by failing to review the information necessary to “identify and address safety related points that ... had false alarms.”¹⁸

Finally, Tallgrass states that by reviewing all alarms every month it is reviewing false alarms, practically speaking. I do not find this argument persuasive. The regulation requires focused attention to the points affecting safety that generated false alarms, so a review of *all* alarms without any way of identifying which are false would render it impossible to then identify a point affecting safety that generated the specific type of alarm pinpointed by § 192.631(e)(2), a false alarm. Moreover, the evidence in the record does not show that Respondent’s review of all alarms resulted in the appropriate monthly identification of points affecting safety that generated false alarms.

Accordingly, after considering all of the evidence and the legal issues presented, I find that Respondent violated 49 C.F.R. § 192.631(e)(2) by failing have and follow a plan that had provisions to identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 192.631(j)(1), which states:

§ 192.631 Control room management.

(a) ...

(j) *Compliance and deviations.* An operator must maintain for review during inspection:

(1) Records that demonstrate compliance with the requirements of this section;

¹⁷ Response, at 9.

¹⁸ Violation Report, at 54.

The Notice alleged that Respondent violated 49 C.F.R. § 192.631(j)(1) by failing to maintain for review records that demonstrate compliance with the requirements of § 192.631. Specifically, the Notice alleged that Tallgrass failed to maintain records demonstrating compliance with the requirement at § 192.631(e)(2) to perform monthly reviews of points affecting safety that have been taken off scan during the year 2015.

In its Response, Tallgrass did not contest this violation, but did request that PHMSA reduce the proposed civil penalty for this item.

Accordingly, I find that Respondent violated 49 C.F.R. § 192.631(j)(1) by failing to maintain for review records that demonstrate compliance with the requirements of § 192.631. Respondent's arguments regarding the proposed civil penalty are addressed in full in the "Assessment of Penalty" section below.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.¹⁹

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$86,700 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$19,000 for Respondent's violation of 49 C.F.R. § 192.631(c)(3), for failing to test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months. Respondent does not contest the allegation of violation but argues the penalty should be reduced based on the culpability penalty assessment criterion because the company discovered and corrected the violation before it was discovered by PHMSA. Respondent also argues that based on PHMSA's Pipeline Safety Enforcement Procedures (Enforcement Procedures)²⁰ and the Department of Transportation's regulations in 49

¹⁹ These amounts are adjusted annually for inflation. See 49 C.F.R. § 190.223.

²⁰ PHMSA, Pipeline Safety Enforcement Procedures, at § 3.1.1.4 (Sept. 15, 2020), available at <https://www.phmsa.dot.gov/pipeline/enforcement/pipeline-enforcement-procedures>.

CFR Part 5, PHMSA should further reduce the penalty assessment.

Having considered the arguments, while I agree with Respondent that finding and correcting a violation prior to discovery by PHMSA could warrant assessing a credit under the culpability assessment criterion, in this case Tallgrass did not correct the violation before it was discovered by PHMSA.²¹ Tallgrass states that it tested its internal communication plan annually in 2015 and 2016, but discovered on September 12, 2017, that there was no internal “task item” directing Tallgrass personnel to test the communication plan in 2017.²² Upon making this discovery, Tallgrass personnel created a “task item” to complete a communication test in August 2018, and conducted the test at that time in compliance with the annual requirement for the year 2018.²³ Tallgrass, however, took no action to conduct a test to satisfy the requirement for the calendar year 2017. Had the operator conducted a test to satisfy the 2017 interval, even if was not able to conduct the test until early 2018 due to the discovery of the issue in September of 2017, Tallgrass would have shown documented action to correct the violation for calendar year 2017 requirement. Instead, the operator simply skipped the 2017 test and resumed testing in August 2018. In other words, in the five years from 2015 to 2019, only four tests were completed, rather than the five that were required. Respondent’s compliance with the regulation in 2018 and 2019 does not amount to a correction of its violation for failing to conduct the test in 2017.

With regard to Respondent’s additional arguments, the purpose of PHMSA’s Enforcement Procedures is to provide PHMSA personnel with guidance on when to select different enforcement tools and to improve PHMSA’s consistency in implementing the pipeline enforcement program. The Enforcement Procedures do not bind PHMSA to any particular course of action and do not mandate that PHMSA consider any penalty assessment criteria other than those required by statute and regulation.²⁴ Further, the provisions of 49 CFR Part 5 cited by Respondent have been rescinded. Even before they were rescinded, they did not create any right or benefit, substantive or procedural, enforceable at law or in equity to any party.²⁵ Accordingly, neither the Enforcement Procedures nor the Part 5 regulations require a reduction in the civil penalty.

Based upon the foregoing, I assess Respondent a civil penalty of \$19,000 for violation of 49 C.F.R. § 192.631(c)(3).

Item 2: The Notice proposed a civil penalty of \$19,600 for Respondent’s violation of 49 C.F.R. § 192.631(d)(2) and (3), for failing to educate controllers in fatigue mitigation strategies and how off-duty activities contribute to fatigue and by failing to train controllers to recognize the effects

²¹ In its Recommendation, the Region suggested that a credit under culpability is only appropriate when an operator “self-reports” a violation, but the Violation Report, at page 9, indicates a credit may be provided where “the operator took documented action to address the cause of the non-compliance . . . before PHMSA learned of the violation.”

²² Response, at 2.

²³ *Id.*

²⁴ 49 U.S.C. 60122; 49 CFR § 190.225.

²⁵ *See* Enforcement Procedures, Section 3, page 1; 86 Fed. Reg. 17,292 (Apr. 2, 2021); and 49 CFR § 5.111 (2020).

of fatigue. Respondent argues the penalty should be reduced based on the gravity penalty assessment criterion because it presented evidence with its Response that there was only one instance of violation, rather than three instances of violation as alleged in the Notice. Respondent also requests a reduction in the penalty based on the culpability penalty assessment criterion because it discovered and corrected the violation before it was discovered by PHMSA. Respondent again argues that based on the Enforcement Procedures and the Department of Transportation's regulations in 49 CFR Part 5, PHMSA should further reduce the penalty assessment.

As explained in more detail above, the evidence provided with the Response confirms that two of the three controllers received fatigue mitigation training within the required 15-month interval. Based on this evidence, the number of instances of violation for this Item is reduced from three to one. The gravity penalty assessment criterion has been adjusted accordingly, resulting in a reduced penalty.

Tallgrass admits that one controller did not receive fatigue mitigation training within the required 15-month interval, and the evidence submitted with the Response shows the controller completed training three months following the deadline for compliance. The issue was discovered and corrected prior to PHMSA's inspection. Accordingly, the record reflects that Tallgrass took documented steps to correct the non-compliance with § 192.631(d)(2) and (3). Such action warrants assessing a credit under the culpability penalty assessment criterion.

For the reasons discussed under Item 1, the penalty will not be further reduced based on the PHMSA Enforcement Procedures or the Part 5 regulations.

Based upon the foregoing, I assess Respondent a reduced civil penalty of \$0 for violation of 49 C.F.R. § 192.631(d)(2) and (3).

Item 3: The Notice proposed a civil penalty of \$28,500 for Respondent's violation of 49 C.F.R. § 192.631(e)(2), for failing to have and follow a plan that includes provisions to identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities. Respondent requests PHMSA withdraw the allegation of violation and the associated penalty arguing the company was not in violation of the regulation. For the reasons provided above, I find that Respondent is in violation of Item 3. The Item and associated penalty, therefore, are not withdrawn. Respondent made no additional arguments for a reduction in the penalty under the assessment criteria.

Based upon the foregoing, I assess Respondent a civil penalty of \$28,500 for violation of 49 C.F.R. § 192.631(e)(2).

Item 4: The Notice proposed a civil penalty of \$19,600 for Respondent's violation of 49 C.F.R. § 192.631(j)(1), for failing to maintain for review records that demonstrate compliance with the requirements of § 192.631(e)(2). Respondent argues the penalty should be reduced based on the culpability, gravity, and good faith penalty assessment criteria. Respondent argues it found and

corrected the violation prior to discovery of the violation by PHMSA so it should receive credit under the culpability criterion. Respondent also argues for a reduction in the penalty based on the gravity criterion since it was able to find and submit two of the missing records. Respondent requests that the good faith credit be applied because it acted in good faith in attempting to comply with the regulations. Respondent again argues that based on the Enforcement Procedures and the Department of Transportation's regulations in 49 CFR Part 5, PHMSA should further reduce the penalty assessment. PHMSA's Central Region agrees with Tallgrass that the instances of violation should be reduced from 13 to 11 based on the evidence submitted with the Response.

Respondent argues a reduction based on the culpability criterion is appropriate because it found and corrected the violation prior to discovery of the violation by PHMSA. While Tallgrass states it attempted to correct the violation, the company admits it was not able to recover 11 of the 13 missing records, so it cannot be concluded that the violation was corrected. A reduction in the instances of violation is appropriate, however, because Tallgrass did recover two of the missing records from August and December of 2015. Accordingly, the instances of violation of this Item is reduced from 13 to 11 under the gravity assessment criterion, but no credit is awarded under the culpability assessment criterion.

With respect to good faith, Tallgrass states that several of the records of its monthly SCADA system reviews from 2015 "were lost due to an internal software migration issue" that occurred while transitioning between SCADA and records management systems. During the inspection and in its Response, Tallgrass stated it created and stored the records at issue in an attempt to preserve them during the transition between systems, but a technical error resulted in the loss of the records.²⁶ I have considered Respondent's assertion, but find a good faith credit is not appropriate in this case. First, Respondent's assertion that it performed the monthly review of points affecting safety and created the required records in the first place has already been factored into the civil penalty under the "nature" criterion, resulting in a reduced proposed penalty amount for a "records" violation. Second, Respondent did not provide evidence demonstrating what actions it took to ensure compliance by maintaining the records during the transition.²⁷ Taking appropriate action, such as by backing up records prior to upgrading or making other changes in electronic recordkeeping systems, would be expected of operators in order to preserve records required to be maintained by the code. The loss of records was an unfortunate, but avoidable event. Finally, Respondent's efforts to recover the records and to improve its own recordkeeping processes to ensure future compliance have already been considered and found not to justify a penalty reduction, with the exception of the two records that were eventually located. Accordingly, I find a good faith credit is not warranted.

For the reasons discussed under Item 1, the penalty will not be reduced based on the PHMSA Enforcement Procedures or the Part 5 regulations.

²⁶ Violation Report, at 25; Response, at 13.

²⁷ See *In the Matter of White Cliffs Pipeline, LLC*, CPF No. 3-2011-5012, 2013 WL 1247518, at *5 (Feb. 5, 2013) (determining the good faith factor did not apply where there was no evidence demonstrating what actions the operator took to maintain qualification test records).

Based upon the foregoing, I assess Respondent a reduced civil penalty of \$19,000 for violation of 49 C.F.R. § 192.631(j)(1).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of **\$66,500**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$66,500 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address, no later than 20 days after receipt of service of the Final Order by Respondent. Any petition submitted must contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including any corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

July 2, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued