

March 29, 2022

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

Mr. William Moler
Chief Executive Officer
Tallgrass Powder River Gateway, LLC
4200 W. 115th St. Suite 350
Leawood, Kansas 66211

CPF No. 3-2021-045-NOPV

Dear Mr. Moler:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Tallgrass Powder River Gateway, LLC (Tallgrass), which was executed on March 25, 2022. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission and acknowledgement of receipt, or as otherwise provided under 49 C.F.R. § 190.5.

Sincerely,

Alan K Mayberry
Associate Administrator
for Pipeline Safety

Enclosures: Consent Agreement and Consent Order

Cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Ms. Catherine Little, outside counsel for Tallgrass, catherine.little@troutman.com
Ms. Jennifer Eckels, Compliance Manager, Tallgrass, jennifer.eckels@tallgrass.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 Powder River Gateway, LLC,)	CPF No. 3-2021-045-NOPV
)	
Respondent.)	
)	

CONSENT ORDER

By letter dated November 5, 2021, the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (PHMSA), issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) to Tallgrass Powder River Gateway, LLC (Tallgrass or Respondent).

In response to the Notice, Respondent did not contest Items 1 or 2, requested a reduction in the proposed civil penalty for Item 2, and requested a hearing on Item 3, and asked for the opportunity to meet informally with PHMSA to discuss the issues raised (Response). Respondent and PHMSA (the Parties) subsequently met on several occasions to discuss the issues raised in the Response. As a result of those discussions and without admission, Respondent has agreed to withdraw its hearing request and accept the findings of violation for Items 2 and 3 of the Notice, subject to the clarification for Item 3 as set forth below, pay a reduced civil penalty in the amount of \$25,920 for Item 2, and undertake certain corrective measures.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Order. Tallgrass is hereby ordered to comply with the terms of the Consent Agreement, effective immediately.

Pursuant to 49 U.S.C. 60101, *et seq.*, failure to comply with this Consent Order may result in the assessment of civil penalties as set forth in 49 C.F.R. § 190.223.

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

March 29, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

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

In the Matter of)	
)	
Tallgrass Powder River Gateway, LLC,)	CPF No. 3-2021-045-NOPV
)	
Respondent.)	
)	

CONSENT AGREEMENT

From August 2, 2020, to October 25, 2020, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected Tallgrass Powder River Gateway, LLC's (Tallgrass or Respondent) records and facilities in Lakewood, Colorado.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated November 5, 2021, a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice alleged that Respondent committed probable violations of two provisions of 49 C.F.R. Part 195 (Items 2 and 3), proposed ordering Respondent to take certain measures to correct the alleged violations, and pay a proposed civil penalty in the amount of \$58,400 associated with one item. Another item (Item 1) was brought as a warning requiring no further action by Tallgrass.

In response to the Notice, Respondent did not contest Items 1 or 2, requested a reduction in the proposed civil penalty for Item 2, and requested a hearing on Item 3, and asked for the opportunity to meet informally with PHMSA to discuss the issues raised (Response). Respondent and PHMSA (the Parties) subsequently met on several occasions to discuss the issues raised in the Response. As a result of those discussions and without admission, Respondent has agreed to withdraw its hearing request and accept the findings of violation for Items 2 and 3 of the Notice, subject to the clarification for Item 3 as set forth below, pay a reduced civil penalty in the amount of \$25,920 for Item 2, and undertake certain corrective measures.

Having agreed that settlement of this enforcement action will avoid further administrative proceedings or litigation and will serve the public interest by promoting safety and protection of the environment, pursuant to 49 C.F.R. Part 190, and upon consent and agreement of Respondent and PHMSA, the Parties hereby agree as follows:

I. General Provisions:

1. Respondent acknowledges that as the operator of the pipeline facilities subject to the Notice, Respondent and its referenced hazardous liquid pipeline facilities are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder.

2. After Respondent returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement

3. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except as set forth herein.

4. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

5. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

6. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

7. For all transfers of ownership or operating responsibility of Respondent's pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer. Respondent will provide written notice of the transfer to the PHMSA Central Regional Director no later than 60 days after the transfer occurs.

8. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

10. Respondent neither admits nor denies any allegation or conclusion in the Notice or this Agreement but agrees for purposes of this Agreement to comply with the terms of this Agreement.

11. Upon issuance of the Consent Order, the Parties agree to the following terms.

II. Warning Item:

12. *Item 1: 49 C.F.R. § 195.404(c)(3)*: The Notice alleged that Respondent failed to maintain inspection records for a single calendar year related to the maintenance and testing of two overpressure safety devices as required. Respondent maintained inspection records for the two overpressure safety devices for the other time period requested and has taken steps to correct the underlying causes of the missing records. This item was brought as a warning requiring no further action by Respondent. Respondent did not contest this Warning Item. This Warning Item does not constitute a finding of violation for any purpose, and no further action by Respondent is necessary to achieve compliance.

III. Findings of Violation:

13. *Item 2: 49 C.F.R. § 195.406(b)*: The Notice alleged three instances where Respondent failed to provide adequate controls and protective equipment to ensure that the pressure in its pipelines, during surges or other variations from normal operation, did not exceed 110 percent of the established maximum operating pressure. Respondent did not contest this allegation of violation given that the three instances were self-identified, Respondent took steps to prevent their recurrence, and voluntarily disclosed them to PHMSA in advance of the inspection. As such, PHMSA finds a violation of 49 C.F.R. § 195.406(b). This violation may be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against Respondent.

14. *Item 3: 49 C.F.R. § 195.452(l)(1)(ii)*: The Notice alleged that Respondent failed to maintain records for review during an inspection of actions taken to mitigate the threat of dead legs at the Guernsey and Wyoming terminals. During the informal meetings between the

Parties in March 2022, Respondent provided records confirming the preventative and mitigative measures it took at the relevant facilities for 2019 and 2020. Respondent neither admits nor denies the allegation of violation for this item given the existence of the records at the time of inspection, but, for purposes of settlement, agrees to accept the finding of violation. As such, PHMSA finds a violation of 49 C.F.R. § 195.452(l)(1)(ii) for not making records available at the time of inspection. This violation may be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against Respondent.

IV. Civil Penalty:

15. **Item 2:** The Notice proposed assessing a civil penalty in the amount of \$58,400 for Item 2. In its Response, and during the informal meetings between the Parties, Respondent provided additional information related to measures it undertook prior to the inspection after discovering, and self-reporting, the noncompliance. Based on the information provided, PHMSA agrees to reduce the proposed civil penalty under the culpability factor. As such, Respondent shall pay a reduced civil penalty in the amount of **\$25,920**, to be paid in full no later than 30 days from the **Effective Date** of this Agreement.

V. Compliance Order:

16. **Item 2:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent did not contest the Proposed Compliance Order, but requested clarification that the compliance order actions apply to only the Powder River Gateway pipeline, and that Respondent may prevent MOP exceedance using a range of “adequate controls and protective equipment,” allowed under § 195.406(b), and not only surge relief devices as specified in the Proposed Compliance Order. PHMSA agrees with Respondent’s requests, and clarifies that the proposed actions set forth in this paragraph are limited to the Powder River Gateway pipeline, and that Respondent may use any means of adequate and protective equipment allowed under § 195.406(b) to prevent MOP exceedance. As such, Respondent must undertake the following corrective measures:

- (a) Respondent must evaluate the Powder River Gateway pipeline to ensure that its pipeline system is protected from overpressure using a means of surge protection, such as installing surge relief devices as necessary, or any other appropriate method allowable by the regulation.
- (b) In its evaluation, Respondent must prioritize facilities with repeated occurrences of surge pressure events. Respondent must, within **60** days of the **Effective Date** of this Agreement, provide the results of the evaluation, and a schedule for corrective action to the Director, PHMSA Central Region.

17. **Item 3:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent must, without admitting or denying the allegation of violation, perform the following corrective measures:

- (a) Respondent must, within **60** days of the **Effective Date** of this Agreement, provide to the Director, PHMSA Central Region, a comprehensive list of

facilities documenting the specific location of all “dead leg” pipe segments in HCA facilities on the Powder River Gateway pipeline. The list must include, to the extent available, relevant attributes of each segment (i.e., age of pipe, wall thickness, coating type)).

- (b) Additionally, Respondent must include an outline of planned preventive maintenance activities for each segment for the 12 months after the *Effective Date* of this Agreement.

VI. Enforcement:

18. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$225,134 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with determinations made by the Director, or if appealed, in accordance with decisions of the Associate Administrator. The maximum civil penalty amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

VII. Dispute Resolution:

19. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including but not limited to any decision of the Director. If Respondent and the Director are unable to informally resolve the dispute within 15 calendar days after the dispute is first raised, in writing, to the Director, Respondent may submit a written request for a determination resolving the dispute from the Associate Administrator for Pipeline Safety, PHMSA. Such request must be made in writing and provided to the Director, counsel for the Central Region, and to the Associate Administrator for Pipeline Safety, no later than 10 calendar days from the 15 day deadline for informal resolution referenced in this paragraph. Along with its request, Respondent must provide the Associate Administrator with all information Respondent believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and PHMSA’s consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process, except as agreed by the Director or the Associate Administrator in writing, or ordered by a court of competent jurisdiction.

IX. Effective Date

20. The term "Effective Date," as used herein, is the date on which the Consent Order is issued by the Associate Administrator, PHMSA, incorporating the terms of this Agreement.

X. Modification

21. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

X. Ratification

22. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

23. The Parties hereby agree to all conditions and terms of this Agreement.

[Signature Lines on Following Page]

For Tallgrass Powder River Gateway, LLC:

Date _____

For PHMSA:

Date _____