



January 23, 2023

Mr. Gregory Ochs
Director, Central Region
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
901 Locust Street, Suite 462
Kansas City, MO 64106

**Re: Tallgrass Energy, LP
Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance
Order, CPF 3-2022-060-NOPV Request for Settlement Conference and Hearing**

Dear Mr. Ochs:

Tallgrass Energy, LP (Tallgrass or the Company) is in receipt of the above-referenced Notice of Probable Violation (NOPV), Proposed Civil Penalty, and Proposed Compliance Order (PCO) issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) dated December 22, 2022. The NOPV is associated with the Company's Rockies Express Pipeline (REX). The NOPV alleges four (4) probable violations under 49 C.F.R. Part 192 primarily regarding class location, including three (3) allegations with associated proposed civil penalties (totaling \$146,000) and PCO items associated with three (3) of the allegations.

Tallgrass prioritizes pipeline safety and appreciates the feedback provided by PHMSA during the underlying inspection. With the goal of continual improvement and in the spirit of cooperation, the Company has, without admission, already proactively worked to address the concerns raised by PHMSA prior to issuance of the NOPV. These efforts include detailed review and updating of relevant procedures in consultation with PHMSA, training on those revised procedures, updating of class location and high consequence area (HCA) analysis based on revised procedures, and engagement of a third-party consultant to further verify structure counts and confirmation of occupancy information.

In light of the issues raised by the NOPV, however, the Company respectfully requests the opportunity to convene an informal settlement meeting with PHMSA in an effort to resolve the NOPV, proposed civil penalties, and PCO pursuant to the Pipeline Safety Act, 49 U.S.C. § 60117(b)(1)(B). Specifically, Tallgrass is contesting NOPV Item 2 in full, including the proposed compliance order, and NOPV Item 4 in part. Without admission, Tallgrass is not contesting NOPV Items 1 and 3, while respectfully requesting a penalty reduction to reflect Tallgrass's self-identification of the issue underlying Item 3 prior to the PHMSA inspection. In the event that the parties are unable to resolve the issues and in order to preserve Tallgrass's rights, the Company is timely filing a request for hearing and statement of issues pursuant to 49 C.F.R. §§ 190.208 and 190.211. Tallgrass also respectfully requests that PHMSA refrain from scheduling a hearing to provide the parties with sufficient time to attempt to resolve these issues.



Tallgrass Written Response to PHMSA NOPV Allegations

NOPV Item 1 - 49 C.F.R. § 192.5(b)(3)(ii) (Proposed Civil Penalty \$50,100)

§ 192.5 Class locations.

(b) Except as provided in paragraph (c) of this section, pipeline locations are classified as follows:

(3) A Class 3 location is:

(ii) An area where the pipeline lies within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)

REX failed to properly identify a Class 3 location along its pipeline because it improperly excluded a building located within 100 yards of the pipeline that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month- period. (The days and weeks need not be consecutive). The following entry was provided to PHMSA from REX's structure database, which is used by REX to identify class location segments along its pipeline:

- Monroe Local School Bus Depot. This was classified as a 08-Non-Qualifying Commercial. The database notes state, "Petermann Bus Company Occupied by 4 people M-F. 30 Bus drivers come in for 15 mins in morning and 15 mins. In afternoon"

During the inspection, REX stated to PHMSA personnel that they only count structures as Class 3 structures under this regulation if 20 or more persons occupy the structure for eight or more hours at a time. This interpretation of the regulation by REX is inconsistent with the plain language of the regulation, the intent of the regulation, and long-standing interpretation by the agency of how to apply the regulation. [footnote omitted]

Further, REX's interpretation of the regulation is inconsistent with its own procedures. REX procedure "OM220_G Structure Survey for Class Location, HCA, and MCA Determination", states that a Class 3 structure is, "[a]n area where the pipeline lies within 300-feet of either a building or a small, well-defined outside area (such as a playground, recreation area or other place of public assembly) that is occupied by 20 or more persons at least 5 days a week for 10 weeks in any 12-month period. The days and weeks need not be consecutive. In this case, the Class 3 area ends 300-feet on either side of the qualifying commercial building or outside area." REX's procedure properly excludes any reference to the building being occupied by 20 or more persons for any threshold amount of time for the location to be considered Class 3. At the conclusion of the inspection, REX stated that they will treat these sites as Class 3 locations in the 2022 analysis, thus, creating a Class 3 location around the Monroe Local School Bus Depot.



Tallgrass Response to NOPV Item 1

Tallgrass is not contesting NOPV Item 1. In advance of receiving the NOPV, Tallgrass modified its procedure to provide additional guidance to field personnel when gathering structure data for class location analysis, *OM220_G – Structure Survey for Class Location, HCA, and MCA Determination* (effective Aug. 11, 2022). This procedure was shared with PHMSA in August 2022.

Tallgrass now classifies the Monroe Local School Bus Depot as a class 3 location, and the Company updated its class analysis to include this structure in 2022. Tallgrass has also performed training of relevant operations personnel on the revised procedures. These efforts have been underway since the inspection and before issuance of the NOPV. Through Tallgrass’s actions performed to date, it has satisfied the PCO requirement to revise its procedures and the Company is scheduled to perform a class analysis based on the updated procedures in the second quarter of 2023.

NOPV Item 2 - 49 C.F.R. § 192.179(a)(4)

§ 192.179 Transmission line valves.

(a) Each transmission line, other than offshore segments, must have sectionalizing block valves spaced as follows, unless in a particular case the Administrator finds that alternative spacing would provide an equivalent level of safety:

(1)

(4) Each point on the pipeline in a Class 1 location must be within 10 miles (16 kilometers) of a valve.

REX failed to space sectionalizing block valves so that each point on the transmission pipeline in a Class 1 location was within 10 miles of a valve. PHMSA requested records that showed REX’s valve locations. In response REX stated, “*REX’s recent review of the prior operator’s as-built alignment sheets and post-construction PODS, Pipeline Open Database Standard, records for the REX pipeline indicated that the distance between MLV 104 (station: 8788564.4) and the MLV at the Clarington Hub (station: 8895996.7) is 20.35 miles based on the calculation between stations...The highest class location at the time of construction in 2008-2009 by a prior owner was Class 1, and there have been no class changes in this section of REX since its construction. Tallgrass is evaluating the timing of when a valve can be installed to remediate this issue.*”

Tallgrass Response to NOPV Item 2

Tallgrass requests that PHMSA withdraw Item 2 of the NOPV and the proposed compliance order. The regulation PHMSA cites for this allegation, 49 C.F.R. § 192.179(a)(4), is a pipeline component design requirement for valve installation spacing to be employed during construction. The REX pipeline was designed and constructed by the previous owner in 2008-2009 and Tallgrass did not acquire the asset until 2012. Tallgrass understands that the highest class location at the time



of REX's design and construction was Class 1 in this section, and there have been no class changes since.

The valves are properly installed on this Class 1 location pipeline to ensure that "[e]ach point on the pipeline in a Class 1 location [is] within 10 miles (16 kilometers) of a valve" as required by 49 C.F.R. § 192.179(a)(4). This design and construction regulation does not specify how this distance is to be measured. The Issued for Construction (IFC) alignment sheets for the relevant pipeline segment indicate that the distance between the MLV 104 (station: 8788564.4) and the MLV at the Clarington Hub (station: 8895996.7) is 19.97 miles. Additionally, this section of pipeline is located in extremely hilly terrain where elevations vary significantly. When measuring the top of ground distance based on elevation models between the two (2) valves, the distance is calculated to be less than 20 miles. The 2D distance (a geographical flat measurement) shows that the distance between the valves is 18.3 miles. As such, Tallgrass believes that its valves were installed consistent with 49 C.F.R. § 192.179(a)(4).

In addition, PHMSA's enforcement of this design regulation comes well over a decade after REX's design and construction and well past the applicable five (5) year statute of limitations for the Pipeline Safety Act. *See* 28 U.S.C. § 2462 (emphasis added) (providing that enforcement "shall not be entertained unless commenced within five years from the date when the claim first accrued"); *see also Gabelli v. SEC*, 568 U.S. 442, 453-54 (2013) (declining to apply the discovery rule which would have allowed the SEC to bring a civil penalty enforcement action from the date the SEC discovered the underlying conduct – more than five (5) years from the date that the underlying conduct occurred). Similarly, PHMSA is precluded from seeking this enforcement action due to the equitable doctrines of laches and waiver.

In addition, Tallgrass believes the proposed compliance order would unnecessarily require significant environmental impact and disturbance at an otherwise settled site for little safety benefit. Based on the measurements referenced by PHMSA in the NOPV, each point on the pipeline in a Class 1 location is within 10.17 miles of a valve, which is only an additional 916.15 feet.

For these reasons, Tallgrass respectfully requests the opportunity to discuss the allegation and the proposed compliance order during an informal settlement meeting.



NOPV Item 3 - 49 C.F.R. § 192.609 (Proposed Civil Penalty \$40,000)

§ 192.609 Change in class location: Required study.

Whenever an increase in population density indicates a change in class location for a segment of an existing steel pipeline operating at hoop stress that is more than 40 percent of SMYS, or indicates that the hoop stress corresponding to the established maximum allowable operating pressure for a segment of existing pipeline is not commensurate with the present class location, the operator shall immediately make a study to determine:

REX failed to immediately make a study whenever an increase in population density indicated a change in class location for a segment of an existing steel pipeline operating at hoop stress that is more than 40 percent of SMYS, or indicated that the hoop stress corresponding to the established maximum allowable operating pressure for a segment of existing pipeline is not commensurate with the present class location. PHMSA identified two structures intended for human occupancy near the following location: 39.512170°, -84.076358°. Google Earth shows the structures existed on or before October 2013, far in advance of when these structures were included in REX's class location study, in violation of the regulation requiring an immediate study. The operator stated these two structures were added to its database after evaluating and comparing to a national database and looking for gaps in 2021. These structures triggered a new Class 2 location in the 2022 class study.

Tallgrass Response to NOPV Item 3

Well in advance of the underlying PHMSA inspection and through its own quality assurance review, Tallgrass self-identified the two (2) structures at issue in 2021 and promptly incorporated the structures into its 2022 class location and HCA analysis. Tallgrass regularly gathers updated information on structures through various operations and maintenance activities, including right-of-way foot patrols and flyovers, which had not identified the structures prior to 2021. Tallgrass supplemented its structure information with data provided by a third-party resource, which confirmed the existence of the two (2) structures in 2021, both of which are located in a heavily wooded area. Tallgrass complied with the regulation by timely conducting the required study as soon as these structures were identified and there was an indication of an increase in population density surrounding the pipeline.

Despite these actions, in the spirit of cooperation and without admission, Tallgrass is not contesting NOPV Item 3. With respect to the proposed civil penalty of \$40,000, Tallgrass respectfully requests a substantial reduction to more accurately reflect the civil penalty factors under 49 C.F.R. § 190.225 for circumstances, culpability, number of instances of violation, good faith, and other matters as justice may require. In particular, the proposed civil penalty should be adjusted to reflect that the Company self-identified the structures prior to PHMSA's inspection. Going forward, Tallgrass has engaged a third party to assist in confirming its occupancy and structure information and the Company is evaluating potential additional quality assurance measures to supplement its class location and HCA identification data collection.



NOPV Item 4 - 49 C.F.R. § 192.905(b)(1) (Proposed Civil Penalty \$55,900)

§ 192.905 How does an operator identify a high consequence area?

(a)

(b)(1) *Identified sites.* An operator must identify an identified site, for purposes of this subpart, from information the operator has obtained from routine operation and maintenance activities and from public officials with safety or emergency response or planning responsibilities who indicate to the operator that they know of locations that meet the identified site criteria. These public officials could include officials on a local emergency planning commission or relevant Native American tribal officials.

REX failed to identify an identified site from information it had obtained from routine operation and maintenance activities and from public officials with safety or emergency response or planning responsibilities which indicate to the operator that it knows of locations that meet the identified site criteria.

The following entry was provided to PHMSA from REX's structure database:

- Rockside Winery and Vineyards. This was classified as an "08-Non-Qualifying Commercial". The database notes state, "Ron Rutter - Owner - 1 employee open Tues. - Thurs. 3-7PM and Fri - Sat 12-8.". Upon field inspection on April 6, 2022, the manager Ron Collage, stated that they typically have 20 plus people in the building 5 days a week.

OM220_G Structure Survey for Class Location, HCA, and MCA Determination, states an identified site, "*is occupied by 20 or more persons at least 5 days a week for 10 weeks in any 12-month period.*" The operator stated that they will treat these as identified sites in the 2022 analysis.

Furthermore, PHMSA observed the questioning of the State Highway Patrol Office located within the PIR. They stated while they do not have a prison or holding cell onsite, they do bring suspects back to this location to process their information prior to transfer to a local prison. It was stated the shortest time it takes to process would be one hour and the suspects are handcuffed and detained during this process. Thus, limiting the confined suspects ability to readily evacuate the structure.

REX did not classify this site as a limited mobility identified site, as defined by § 192.903(c). REX stated, "this is not a "facility occupied by persons who are of impaired mobility" or "would be difficult to evacuate" as the highway patrol office does not have holding cells. OM220 does not reference holding cells, but it did reference "prisons", which Merriman Webster dictionary defines as, "a state of confinement or captivity and a place of confinement especially for lawbreakers, *specifically*: an institution (such as one under state jurisdiction) for confinement of persons convicted of serious crimes". The suspected lawbreakers are being placed in a state of confinement or captivity while they are being processed by a state institution and which would make them difficult to evacuate, thus making this location an identified site.



Tallgrass Response to NOPV Item 4

Tallgrass is contesting NOPV Item 4 in part. While Tallgrass is not contesting the NOPV as it relates to classification of the Rockside Winery and Vineyard as an identified site, the Company is contesting the allegation that the State Highway Patrol Office is classified as an identified site.

Tallgrass believes the item related to the State Highway Patrol Office should be withdrawn, Tallgrass did not classify it as an identified site based on confirmation with the patrol office that the facility did not have holding cells. Tallgrass's determination that this site should not be classified as an identified site is consistent with the regulatory requirements at 49 C.F.R. §§ 192.903 and 192.905. Tallgrass's O&M Procedure, OM220_G - Structure Survey for Class Location, HCA, and MCA Determination, in place at the time of the inspection required field operations personnel to classify sites as identified sites if occupants are confined, have impaired mobility, or would be otherwise difficult to evacuate. This procedure expressly included jails and prisons as identified sites, consistent with the regulatory requirements at 49 C.F.R. § 192.903. Upon inquiry of the State Highway Patrol Office, Tallgrass was informed that individuals detained at this location are not confined but are processed pending transfer to a local prison. For these reasons, Tallgrass believed that the detainees would not be difficult to evacuate, nor would they have impaired mobility under 49 C.F.R. Part 192 or Tallgrass procedures. There is no regulatory requirement which states that identified sites include areas where individuals are temporarily processed (rather than confined within a holding cell) before they are transferred to another facility.

After the inspection and in the spirit of cooperation, Tallgrass promptly incorporated both sites – without admission – into its HCA analysis and 2022 IMP process prior to issuance of the NOPV. In addition, Tallgrass modified its procedures prior to issuance of the NOPV to include sites where persons may be processed and/or detained without the use of a holding cell and shared those procedures with PHMSA. *OM220_G – Structure Survey for Class Location, HCA, and MCA Determination*, Section 3.9 (effective Aug. 11, 2022). In August 2022, Tallgrass enrolled in the Pipeline Association for Public Awareness Identified Sites Registry to further bolster its information collection efforts. In November 2022, Tallgrass provided training to field operations personnel on identified sites to ensure that sites where individuals are confined, have limited mobility, or are otherwise difficult to evacuate are properly identified consistent with the updated procedures.

For the reasons set forth above, Tallgrass requests that PHMSA withdraw Item 4 as it relates to the State Highway Patrol Office and reduce the associated proposed civil penalty accordingly as well as to more accurately account for the Company's good faith effort to comply with the requirements at 49 C.F.R. § 192.905(b)(1) and for other matters as justice may require. With respect to the associated PCO item, Tallgrass has satisfied the requirement to revise its procedures and the Company is scheduled to perform an updated HCA analysis based on those procedures in the second quarter of 2023.



Thank you for your consideration of this request for a settlement meeting and request for hearing, and for your continued efforts to discuss these issues with Tallgrass. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Eckels". The signature is written in a cursive, flowing style.

Jennifer Eckels
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cc: Crystal Heter, Tallgrass Chief Operating Officer
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