

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY**

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

**REQUEST FOR INFORMAL CONFERENCE, REQUEST FOR HEARING AND
PRELIMINARY STATEMENT OF ISSUES FOR NOPV ITEM 3
WRITTEN RESPONSE TO NOPV ITEMS 1 AND 2**

I. Request for Informal Conference Regarding NOPV Item 3

Pursuant to 49 U.S.C. § 60117(b)(1)(B), Tallgrass Powder River Gateway, LLC (Tallgrass) respectfully requests an informal meeting to discuss the allegation in Item 3 of the above-referenced Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (NOPV). Tallgrass is hopeful that through further discussion of the facts and circumstances around Item 3 that this portion of the NOPV can be addressed without a hearing.

II. Request for Hearing Regarding NOPV Item 3

Pursuant to 49 C.F.R. §§ 190.208(a)(4), 190.208(b)(4), and 190.211(b), Tallgrass respectfully requests an in-person hearing to discuss the alleged violation, proposed civil penalty, and proposed compliance order for Item 3. If a hearing is held, Tallgrass will be represented by counsel at the hearing.

III. Preliminary Statement of Issues

Tallgrass respectfully contests the allegation of violation, proposed civil penalty and proposed compliance order for Item 3, concerning the Company’s documentation of compliance with PHMSA’s Integrity Management Program requirements at 49 C.F.R. § 195.452(l)(1)(ii). At the hearing, Tallgrass intends to raise the following issues:

A. Whether, based on the allegation in the Notice and evidence in the record, PHMSA met

its burden of demonstrating that Tallgrass committed a probable violation of 49 C.F.R. § 195.452(l)(1)(ii).

- B.** Whether Tallgrass can present evidence that it applied its Integrity Management Program to non-line pipe facilities, took preventive and mitigative actions to address internal corrosion threats on those facilities, and documented those actions.
- C.** Whether a miscommunication may have occurred regarding the nature and scope of Tallgrass' Integrity Management Program.
- D.** Whether the proposed penalty related to Item 3 must be withdrawn.
- E.** Whether the proposed compliance order related to Item 3 is appropriate in scope, consistent with 49 C.F.R. § 195.452, and must be withdrawn.

Tallgrass reserves the right to supplement this preliminary statement of issues in response to any additional information or arguments from PHMSA.

IV. Response to NOPV Items 1 and 2

Pursuant to 49 C.F.R. §§ 190.208(a)(2) and 190.208(a)(3), Tallgrass provides a written response to Items 1 and 2 of the NOPV.

A. Item 1 – 49 C.F.R. § 195.404(c)(3)

Tallgrass does not contest the allegation in Item 1 of the NOPV. Tallgrass has taken steps to correct the underlying causes of the missing pressure transmitter maintenance and inspection records.

B. Item 2 – 49 C.F.R. § 195.406(b)

Tallgrass does not contest the allegation in Item 2 of the NOPV. Tallgrass seeks a reduction of the Proposed Civil Penalty under the gravity and culpability penalty assessment factors at 49 C.F.R. §§ 190.225(a)(1) and 190.225(a)(2).

Regarding the culpability factor, Tallgrass identified the MOP exceedances listed in the Notice and took steps to prevent their recurrence, well in advance of the start of PHMSA's inspection, which began on August 2, 2020. Specifically, with respect to the MOP exceedance at Guernsey South (ERL 1715), Tallgrass investigated the event, imposed a pressure restriction and installed surge relief at Guernsey in April 2020, several months before PHMSA began its

inspection.¹

With regard to the MOP exceedances at the Pronghorn Station (ERL 1802 and ERL 1807), Tallgrass imposed an RPM limit on the mainline pumps via the Management of Change process with a hard setpoint change in its SCADA system on October 31, 2019, in order prevent the sort of transient pressure surges that had occurred. Tallgrass implemented this change well before the start of PHMSA's inspection on August 2, 2020. Documentation of the RPM limit change, as well as pre- and post-RPM limit change data to demonstrate that the change was implemented, is attached.² Prior PHMSA final orders have provided a culpability credit where an operator is able to demonstrate self-identification and correction of non-compliance.³

However, in Part E7 of the Violation Report, PHMSA does not credit Tallgrass' identification and correction of the issue before PHMSA's inspection.⁴ Similarly, PHMSA's Proposed Civil Penalty worksheet does not provide any penalty credit for Tallgrass' identification and correction of the issue.⁵ In accordance with PHMSA's policy on self-identification and correction, as set out in the Proposed Civil Penalty Worksheet and the PHMSA Civil Penalty Summary, PHMSA should provide a -15 point culpability credit for these corrective measures.⁶ At a point value of \$1,728 per point, this should result in a penalty reduction of \$25,920.

Regarding the gravity factor in Part E6 of the Violation Report, PHMSA provides that the "violation occurred within a HCA or "could affect" HCA..."⁷ The Violation Report also provides that the "[p]ressure surge affected multiple segments upstream of the event, including HCA segments."⁸ As a result, in its Proposed Civil Penalty Worksheet, PHMSA added a 17 point gravity adjustment.⁹ However, at the time of the inspection the Pronghorn Station was not located in, nor could it affect an HCA, and this status has not changed since the inspection.¹⁰ Conversely, the Guernsey South Terminal was located in an HCA in 2020. Documentation demonstrating the non-HCA status of the Pronghorn Station is contained in Attachment 2.¹¹ In addition, the MOP

¹ See PHMSA Violation Report, Exhibit A, 20-172259_ExhibitA_MOC4777_RateReduction_02022020; 20-172259_ExhibitA_MOC4893_EndPressureRestriction_04172020; 172259_ExhibitA_MOC4914_SurgeInstall_04302020. These MOC documents identify the steps that Tallgrass took to prevent recurrence of the MOP exceedance at Guernsey South Station.

² Tallgrass Management of Change Notification email (Oct. 31, 2019), pre- and post-RPM limit change data.

³ See e.g. Flint Hills Resources, CPF No. 3-2020-5021, Final Order at 5 (Aug. 23, 2021).

⁴ PHMSA Violation Report p. 17.

⁵ PHMSA Proposed Civil Penalty Worksheet, culpability section.

⁶ PHMSA Civil Penalty Summary (Feb. 7, 2020), available at https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-03/civil-penalty-summary-2-7-2020_0.pdf.

⁷ PHMSA Violation Report p.16, Part E6 – Gravity.

⁸ *Id.*

⁹ PHMSA Proposed Civil Penalty Worksheet, gravity section.

¹⁰ Listing of HCA Facilities for the Powder River Gateway system, Appendix O_F-EMP_PRG 2020. This document shows all of the HCA Facilities on this system. The Pronghorn Station is not listed because it was not in nor could it affect an HCA in 2020.

¹¹ *Id.*

exceedances at both Guernsey South and the Pronghorn station only affected station piping and did not affect any mainline piping. As demonstrated in the table below, the MOPs of the mainlines serving these stations is far above the MOP of the station piping.

Facility	Station Piping MOP (psig)	Mainline MOP (psig)
Guernsey South	285	1052
Pronghorn	285	1480

Tallgrass respectfully requests that PHMSA reduce the gravity points from 17 to 7 points, which would result in an additional reduction of \$17,280. This adjustment is reasonable, appropriate and within PHMSA’s discretion because it would reflect the more limited effect of the MOP exceedances on HCA facilities than what was reflected in the Violation Report and Proposed Civil Penalty Worksheet. The only exceedance at an HCA facility was at Guernsey South; the Pronghorn Station is not an HCA facility. This adjustment would also reflect that no mainline HCA piping experienced an MOP exceedance as a result of the station piping exceedances at either facility.

Finally, Tallgrass requests that PHMSA clarify the Proposed Compliance Order to reflect that it applies only to the Powder River Gateway pipeline. Tallgrass also requests that PHMSA clarify the Proposed Compliance Order to reflect that Tallgrass 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 presently specified in the Proposed Compliance Order.

Respectfully submitted this 4th day of
January 2022.



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Enclosures: Attachment 1: Tallgrass Management of Change Notification email (Oct. 31, 2019), post-MOC pressure limit settings, and pre- and post-RPM limit change data (Documents hard mainline pump RPM limit put in place to prevent future MOP exceedances at Pronghorn Station)

Attachment 2: 2020 Powder River Gateway Facility Equipment Maintenance Plan (Listing of HCA Facilities for the Powder River Gateway System)