

May 10, 2022

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

Mr. William Moler
Chief Executive Officer
Tallgrass Pony Express Pipeline, LLC
4200 W. 115th Street, Suite 350
Leawood, Kansas 66211

CPF No. 3-2021-046-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 Pony Express Pipeline, LLC (Tallgrass), which was executed on May 10, 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 Pony Express Pipeline, LLC,	)	CPF No. 3-2021-046-NOPV
	)	
Respondent.	)	
	)	

CONSENT ORDER

By letter dated November 23, 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 Pony Express Pipeline, LLC (Tallgrass or Respondent).

In response to the Notice, Respondent contested the underlying allegations for Items 1, 5, and 6; offered additional information regarding the facts underlying Items 2 and 10; requested a reduction of the instances of violation for Item 3 along with a corresponding reduction to the proposed civil penalty, and modification of the proposed compliance order; requested conversion of Item 4 to a Notice of Amendment; and requested additional language be added to the Final Order for Items 7, 8, and 9 reflecting Respondent's efforts to improve its practices and procedures (Response). Respondent also requested a hearing and asked for the opportunity to meet informally with PHMSA to discuss Items 5 and 6. Respondent and PHMSA (the Parties) subsequently met to discuss the issues raised in the Response. As a result of those discussions PHMSA has agreed to withdraw the warning in Item 1, and Respondent has agreed to withdraw its hearing request and accept the findings of violation alleged in the Notice, subject to the clarifications as set forth in the Consent Agreement, pay a reduced civil penalty in the amount of **\$385,500** for Items 3, 5, 6, 7, 8, and 9, and to 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.

May 10, 2022

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

**2U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

_____)
In the Matter of)

Tallgrass Pony Express Pipeline, LLC,)

Respondent.)
_____)

CPF No. 3-2021-046-NOPV

CONSENT AGREEMENT

From August 2, 2020, to October 23, 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 Pony Express Pipeline, 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 23, 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 seven provisions of 49 C.F.R. part 195 (Items 3, 4, 5, 6, 7, 8, and 9), proposed ordering Respondent to take certain measures to correct the alleged violations, and proposed a civil penalty in the amount of \$437,300 associated with those items. Three other probable violations (Items 1, 2, and 10) were brought as warnings, advising Respondent to correct them or be subject to potential future enforcement action.

In response to the Notice, Respondent contested the underlying allegations for Items 1, 5, and 6; offered additional information regarding the facts underlying Items 2 and 10; requested a reduction of the instances of violation for Item 3 along with a corresponding reduction to the proposed civil penalty, and modification of the proposed compliance order; requested conversion of Item 4 to a Notice of Amendment; and requested additional language be added to the Final Order for Items 7, 8, and 9 reflecting Respondent's efforts to improve its practices and procedures (Response). Respondent also requested a hearing and asked for the opportunity to meet informally with PHMSA to discuss Items 5 and 6.

PHMSA and Respondent (the Parties) subsequently met to discuss the issues raised in the Response. As a result of those discussions, as explained in more detail below, PHMSA has agreed to withdraw the warning in Item 1, and Respondent has agreed to withdraw its hearing request and accept the findings of violation alleged in the Notice, subject to the clarifications as

set forth below, pay a reduced civil penalty in the amount of **\$385,500** for Items 3, 5, 6, 7, 8, and 9, and to 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. Except as otherwise specified below, 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 Items:

12. ***Item 1: 49 C.F.R. § 195.310(a):*** The Notice alleged that Respondent failed to provide a record documenting pressure tests of its breakout tank in accordance with API Std 650, Sections 7.3.5 and 7.3.6, as required by §§ 195.307 and 195.310(a). This item was brought as a warning. Following discussion with Respondent and Respondent's submission of additional evidence documenting the pressure tests, PHMSA finds that the existing evidence does not support the non-compliance as alleged in the Notice, and PHMSA withdraws Notice Item 1.

13. ***Item 2: 49 C.F.R. § 195.402(a):*** The Notice alleged that Respondent failed to follow its procedure for the design and construction of the cathodic protection (CP) system for its Northeast Colorado Lateral (NECL) pipeline installed in 2015, and failed to follow its procedure to complete a close-interval survey on its NECL pipeline. This item was brought as a warning. This Warning Item does not constitute a finding of violation.

14. ***Item 10: 49 C.F.R. § 195.577(a):*** The Notice alleged that Respondent's program to identify and address interference currents failed to minimize the detrimental effects of such currents. This item was brought as a warning. Following informal discussion and

review of the documents provided by Respondent, PHMSA is clarifying the warning by amending the language of Item 10 to read as follows, reflecting that low cathodic protection was due to shorted decouplers at mainline valve 5 rather than stray current:

Respondent's program to identify and address interference currents failed to minimize the detrimental effects of such currents, as required under § 195.577(a). Specifically, Respondent failed to minimize interference that had caused low cathodic protection levels on the Northeast Colorado Lateral pipeline. From 2016 to 2019, Respondent failed to resolve problems that caused low cathodic protection due to shorted decouplers at main line valve 5. Respondent provided a timeline of actions taken to address the issues. However, at the time of the inspection, Respondent failed to address the shorted power system at main line valve 5. Respondent failed to take corrective action to minimize the detrimental effects on the Northeast Colorado Later pipeline, and at its main line valve 5 since 2016, and therefore failed to comply with § 195.577(a).

This Warning Item does not constitute a finding of violation.

15. For Warning Items 2 and 10, if OPS finds a violation of these provisions in a subsequent inspection, Respondent may be subject to future enforcement actions.

III. Findings of Violation:

16. ***Item 3: 49 C.F.R. § 195.406(b)***: The Notice alleged five 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 100 percent of the established maximum operating pressure. In five (5) instances, the Notice alleged Respondent allowed the pipeline pressure to surge above 110% of the operating pressure limit (MOP), and therefore did not provide adequate controls and protective equipment to control the pressure within the required limit.

Respondent contested two (2) of the five (5) instances of alleged violation. As reflected in documents provided with the Response and discussed during the informal conference, it was confirmed that only three (3) of the five (5) instances identified in the Notice constituted exceedances above 110% of the operating pressure limit (MOP). Having reviewed the additional information provided by Respondent, PHMSA amends Notice Item 3 to remove the following two (2) instances listed in the original Notice as: (a) 130% MOP on 08-04-18 for NECL North line on Pawnee and Noble meter skids due to power loss and ESD at Buckingham (ERL 1356, 1357, 1358); and (d) 113% MOP on 3-18-20 at McPherson Lateral due to control valve failure (ERL 2018). As such, PHMSA finds three (3) instances of violation of 49 C.F.R. § 195.406(b).

17. **Item 4: 49 C.F.R. § 195.440(g):** The Notice alleged that Respondent failed to conduct its public awareness program in other languages commonly understood by a significant number of non-English speaking population in the area of its pipelines. During the records inspection of Respondent's public awareness program, PHMSA requested information regarding any content in languages other than English in the mailing program for the affected public. Respondent previously responded that they did not provide content in other languages, but instead included a link to Spanish content on its website. Following the inspection, Respondent provided records of the Spanish speaking population thresholds for counties in its program that ranged from 13% to 39%, based on census data. In its discussions of the issue, Respondent responded to PHMSA's request for information suggesting that any thresholds less than half of the population were not significant.

Respondent neither admits nor denies the allegation of violation for this item, but for purposes of settlement, agrees to accept the finding of violation. As such, PHMSA finds a violation of 49 C.F.R. § 195.440(g).

18. **Item 5: 49 C.F.R. § 195.452(b)(4)(i):** The Notice alleged that Respondent failed to comply with the requirements of § 195.452(b)(4)(i) by failing to include in its integrity management program (IMP) elements to assess the risk to high consequence areas (HCAs). Specifically, under § 195.452(f)(6), an operator must include in its IMP a process for the identification of preventive and mitigative measures to protect the HCA. Respondent was unable to make the appropriate records available for PHMSA inspection at the time of the inspection, but during the informal conference Respondent provided historical records clarifying that a plan and program was in place prior to 2018 for identifying preventative and mitigative measures to protect the HCA for its covered facilities from 2016 through 2018 as part of its IMP.

Respondent neither admits nor denies the allegation of violation for this item, 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(b)(4)(i).

19. **Item 6: 49 C.F.R. § 195.452(l)(ii):** The Notice alleged that Respondent failed to comply with the record keeping requirements in § 195.452(l)(ii) by not keeping records regarding its § 195.452(g) information analyses using all available information from its corrosion control monitoring program in 2017. Respondent provided documentation showing that the Pipeline Evaluation Reports corrosion data was integrated into its continual process for assessment and evaluation (see § 195.452(f)(5)) of the pipeline's integrity, but was unable to demonstrate to PHMSA's satisfaction that the appropriate weight was assigned to that information.

Respondent neither admits nor denies the allegation of violation for this item, 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)(ii).

20. **Item 7: 49 C.F.R. § 195.573(a)(1):** The Notice alleged that Respondent failed to demonstrate that it had conducted tests on protected pipelines at least once each calendar year, but with intervals not exceeding 15 months as required by § 195.573(a)(1). Respondent self-identified and self-reported missed inspections of certain cathodic protect test stations and breakout tanks. Respondent provided a list of sixty-three (63) cathodic protection test station and breakout tank inspections that were not performed at the required intervals between 2017 and 2020 to insure proper performance. Respondent has undertaken a number of remedial actions including programmatic changes to address these issues.

Respondent did not contest this Item. As such, PHMSA finds a violation of 49 C.F.R. § 195.573(a)(1).

21. **Item 8: 49 C.F.R. § 195.573(c):** The Notice alleged that Respondent failed to electrically check for proper performance of rectifiers at least six times each calendar year, but with intervals not exceeding 2½ months. Respondent self-identified and self-reported two (2) rectifier inspections which were not performed at the required intervals in 2019. Respondent has undertaken a number of remedial actions including programmatic changes to address these issues.

Respondent did not contest this Item. As such, PHMSA finds a violation of 49 C.F.R. § 195.573(c).

22. **Item 9: 49 C.F.R. § 195.573(c):** The Notice alleged that Respondent failed to electrically check for proper performance of other interference bonds at least once each calendar year, but with intervals not exceeding 15 months. Respondent self-identified and self-reported six (6) instances where inspections of other interference bonds were not inspected within the required intervals between 2017 and 2018. In response, Respondent has undertaken a number of remedial actions including programmatic changes to address these issues.

Respondent did not contest this Item. As such, PHMSA finds a violation of 49 C.F.R. § 195.573(c).

23. Items 3, 4, 5, 6, 7, 8, and 9 will be considered by PHMSA as prior offenses in any future PHMSA enforcement actions taken against Respondent for the five (5)-year period following the *Effective Date* of this Agreement.

IV. Civil Penalty:

24. **Item 3:** The Notice proposed assessing a civil penalty in the amount of \$151,300 for Item 3. As discussed in more detail above, Respondent provided additional information supporting a reduction in the number of instances of violation. Based upon the reduction to the number of instances, PHMSA reduces the civil penalty. As such, Respondent shall pay a reduced civil penalty in the amount of **\$110,000** for the violation in Item 3.

25. **Item 5:** The Notice proposed assessing a civil penalty in the amount of \$67,000 for Item 5. Respondent requested a reduction of the proposed civil penalty amount to reflect that it failed to provide records regarding its IMP program at time of inspection. Based upon information received during informal discussions regarding Respondent's program, PHMSA agrees to amend the nature of the violation from an Activity violation to a Records violation, and reduce the civil penalty. Respondent, without admitting nor denying the allegation of violation for this Item, but for purposes of settlement, agrees to pay a civil penalty in the amount of **\$63,000** for the violation in Item 5.

26. **Item 6:** The Notice proposed assessing a civil penalty in the amount of \$63,500 for Item 6. Respondent requested a reduction in the civil penalty amount. Based upon information received during informal discussions, PHMSA agrees to readjust the number of instances to two years and reduce the civil penalty. Respondent, without admitting or denying the allegation of violation for this Item, but for the purposes of settlement, agrees to pay a civil penalty in the amount of **\$57,000** for the violation in Item 6.

27. **Item 7:** The Notice proposed assessing a civil penalty in the amount of \$115,500 for Item 7. Respondent did not contest this amount. Respondent shall pay a civil penalty in the amount of **\$115,500** for the violation in Item 7.

28. **Item 8:** The Notice proposed assessing a civil penalty in the amount of \$14,100 for Item 8. Respondent did not contest this amount. Respondent shall pay a civil penalty in the amount of **\$14,100** for the violation in Item 8.

29. **Item 9:** The Notice proposed assessing a civil penalty in the amount of \$25,900 for Item 9. Respondent did not contest this amount. Respondent shall pay a civil penalty in the amount of **\$25,900** for the violation in Item 9.

30. Respondent shall pay a total civil penalty in the amount of **\$385,500**, to be paid in full no later than 30 days from the **Effective Date** of this Agreement.

V. Compliance Order:

31. **Item 3:** 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 Respondent may prevent MOP exceedance using a range of "adequate controls and protective equipment," pursuant to § 195.406(b), and not only surge relief devices. PHMSA agrees with Respondent's request to clarify the Proposed Compliance Order in this manner. As such, Respondent must undertake the following corrective measures:

Respondent must evaluate each facility to ensure that its pipeline system is protected from overpressure using adequate controls and protective equipment, pursuant to § 195.406(b), to include, but not limited to, surge protection, installing surge relief devices, or other adequate control devices or protective equipment as necessary. 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.

32. **Item 4:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent did not contest the Proposed Compliance Order. As such, Respondent must perform the following corrective measures:

Respondent must update its Public Awareness Program to include materials in Spanish and any other non-English language in areas where there is a significant percentage of non-English speaking populations. Respondent must, within 60 days of the **Effective Date** of this Agreement, provide the Director, PHMSA Central Region for review and approval with its determination of additional languages under which its program will be conducted, and the reasons to include or exclude such languages, and provide a schedule for when the program will be updated.

VI. Enforcement:

33. 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 \$239,142 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:

34. 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.

VIII. Effective Date:

35. 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.

IX. Modification:

36. 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:

37. 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.

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

[Signature Lines on Following Page]

For Tallgrass Interstate Gas Transmission, LLC:

Date _____

For PHMSA:

Director, Central Region, Office of Pipeline Safety

Date _____