

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

**In the Matter of
Tallgrass Pony Express Pipeline, LLC,

Respondent.**

CPF No. 3-2021-046-NOPV

**REQUEST FOR INFORMAL CONFERENCE, REQUEST FOR HEARING AND
PRELIMINARY STATEMENT OF ISSUES FOR NOPV ITEMS 5 AND 6
WRITTEN RESPONSE TO NOPV ITEMS 1, 2, 3, 4, 7, 8, 9, AND 10**

I. Request for Informal Conference Regarding NOPV Items 5 and 6

Pursuant to 49 U.S.C. § 60117(b)(1)(B), Tallgrass Pony Express Pipeline, LLC (Tallgrass) respectfully requests an informal meeting to discuss the allegations in Items 5 and 6 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 Items 5 and 6 that these portions of the NOPV can be addressed without a hearing.

II. Request for Hearing Regarding NOPV Items 5 and 6

Pursuant to 49 C.F.R. §§ 190.208(a)(4) and 190.211(b), Tallgrass respectfully requests an in-person hearing to discuss the alleged violation and proposed civil penalties for Items 5 and 6. If a hearing is held, Tallgrass will be represented by counsel at the hearing.

III. Preliminary Statement of Issues

Tallgrass respectfully contests the allegations of violation and proposed civil penalties for Items 5 and 6, concerning the Company's Integrity Management Program. At the hearing, Tallgrass intends to raise the following issues:

Item 5 – 49 C.F.R. §§ 195.452(b)(4)(i) and 195.452(f)(6) – Identification of Preventive and Mitigative Measures

- A.** Whether, based on the allegation in the Notice and evidence in the record, PHMSA met its burden of proof and persuasion that Tallgrass committed a probable violation of 49 C.F.R. §§ 195.452(b)(4)(i) and 195.452(f)(6).
- B.** Whether Tallgrass can present evidence that it had a process for identifying preventive and mitigative measures to protect its facilities, as well as documentation that that process was implemented.
- C.** Whether the proposed penalty must be withdrawn.

Item 6 – 49 C.F.R. § 195.452(l)(1)(ii) – Documentation of Information Analysis

- A.** Whether, based on the allegation in the Notice and evidence in the record, PHMSA met its burden of proof and persuasion that Tallgrass committed a probable violation of 49 C.F.R. §§ 195.452(l)(1)(ii).
- B.** Whether Tallgrass can present evidence that it documented its information analyses under §§ 195.452(g) and 195.452(l)(1)(ii), including the integration of Pipe Evaluation Reports in the information analysis, and also into other aspects of its Integrity Management Program.
- C.** Whether the proposed penalty 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. Written Response to NOPV Items 1, 2, 3, 4, 7, 8, 9, and 10

Pursuant to 49 C.F.R. §§ 190.208(a)(2), 190.208(a)(3) and 190.208(b)(3) Tallgrass provides the following written response to Items 1, 2, 3, 4, 7, 8, 9, and 10 of the NOPV.

A. Item 1 – 49 C.F.R. § 195.310(a)

Tallgrass respectfully contests this alleged probable violation. Tallgrass has complete documentation of the pressure test for Tank 3400 at the Natoma Kansas station. PHMSA alleged that Tallgrass did not provide records in accordance with 49 C.F.R. § 195.307 and API Std 650, Sections 7.3.5. and 7.3.6. Specifically, PHMSA asserts that Tank 3400 “did not have a record of

fill level or test duration to confirm the pressure of the hydrotest after construction.” However, Tallgrass does in fact have records of these parameters.

Tallgrass is contesting this violation. API 650 Section 7.3.5 *Testing of the Shell* 7.3.6 *Hydrostatic Testing Requirements* requires the following criteria for a hydrostatic test of a tank:

7.3.5 Testing of the Shell

After the entire tank and roof structure is completed, the shell (except for the shell of tanks designed in accordance with Annex F) shall be strength-tested and the foundation initially loaded by one of the following methods, as specified on the Data Sheet, Line 14:

1. If water is available for testing the shell, the tank shall be filled with water as follows: (1) to the maximum design liquid level, H ;the tank shall be inspected frequently during the filling operation.....

7.3.6 Hydrostatic Testing Requirements

7.3.6.5

1. Shell elevation measurements shall be made at equally-spaced intervals around the tank circumference not exceeding 10 m (32 ft). The minimum number of shell measurement points shall be eight.
2. Observed elevations shall be referred to a permanent benchmark. The level instrument shall be set up at least 1 1/2 times tank diameter away from the tank when tank elevation readings are taken. Six sets of settlement readings are required:
 - a. Before start of the hydrostatic test;
 - b. With tank filled to 1/4 test height (± 600 mm [2 ft]);
 - c. With tank filled to 1/2 test height (± 600 mm [2 ft]);
 - d. With tank filled to 3/4 test height (± 600 mm [2 ft]);
 - e. At least 24 hours after the tank has been filled to the maximum test height.

This 24-hour period may be increased to duration specified on the data sheet if the Purchaser so requires for conditions such as:

 - i. The tank is the first one in the area,
 - ii. The tank has a larger capacity than any other existing tank in the area,
 - iii. The tank has a higher unit bearing load than any other existing tank in the area,
 - iv. There is a question regarding the rate or magnitude of settlement that will take place;
 - f. After tank has been emptied of test water.

With respect to the specific inadequacies alleged in the NOPV, Tallgrass provides the following information:

Fill Height and Elevation Measurements: During the inspection, Tallgrass provided the document titled *Hydrotest Survey Natoma KS 2017-12-21* which indicated that the required elevation measurements were taken at all six (6) fill heights described in API 650 Section 7.3.6.5(b) above, and at a distance around the tank not exceeding 10 m (32 ft.) as required by API 650 Section 7.3.7.5(a). Tallgrass has included *Natoma KS 2017-12-21* in Attachment 1 to this response.

Test Duration: During the inspection, Tallgrass provided the tank inspector's reports from December 1, 2017 through to December 5, 2017, which list the start of the test, the dates and times that the 1/4, 1/2, 3/4 and full levels were reached, when the 24-hour hold began and concluded, when the tank was emptied, and an indication that no leaks were discovered as required by API 650 Section 7.3.6. Tallgrass has included the tank inspector's reports in Attachment 1 to this response.

Test Pressures: PHMSA alleges that Tallgrass failed to confirm the pressure of the hydrotest. However, Natoma Tank 3400 is an atmospheric pressure tank and was therefore hydrostatically tested with a water fill at atmospheric pressure as required by API 650. No pressure measurements are required for an atmospheric tank test. Tallgrass has included a photograph of the tank nameplate in Attachment 1 to this response. This photograph shows that Tank 3400 is an atmospheric pressure tank.

Based on the foregoing, and the records included in Attachment 1, Tallgrass respectfully requests that PHMSA withdraw this Item. While this is a warning item, failure to withdraw it would result in a factual error in the public record. This factual error, if allowed to persist, could have harmful effects on Tallgrass in its future dealings with the public, third parties and regulatory agencies.

Tallgrass also notes that since the inspection, in the spirit of continual improvement, Tallgrass has created a new form to capture and centralize key information from tank pressure test documentation.

B. Items 2 and 10 – 49 C.F.R. §§ 195.402(a) and 195.577(a)

Items 2 and 10 are warning items that relate to external corrosion control. With respect to Item 2, Tallgrass offers the clarification that it discovered in a 2019 cathodic protection (CP) system survey that certain decouplers on the NECL were malfunctioning. Tallgrass corrected the issue and CP system potentials were elevated and met criteria within 15-months. With respect to Item 10, Tallgrass wishes to clarify that there is no stray current interference on the NECL pipeline. Instead, the NECL pipeline had a larger CP current requirement to achieve protection.

C. Item 3 – 49 C.F.R. § 195.406(b)

Tallgrass respectfully requests that PHMSA eliminate two instances of the alleged overpressure violation and reduce the civil penalty for a variety of reasons. Each of the instances of violation is set out below, along with additional information and explanation. Following the discussion of each instance, Tallgrass provides explanation in support of a penalty reduction for this Item.

1. 130% MOP on 08-04-18 for NECL North line at the Noble meter skid due to power loss and ESD at Buckingham (ERL 1356, 1357, 1358).

Tallgrass respectfully requests that PHMSA remove this instance from the alleged violation. The Emergency Response Line (ERL) notification for this event indicated that this was a pressure exceedance of 130% MOP. ERLs are issued quickly in response to an undesired event, and before any detailed investigation occurs. Upon further investigation Tallgrass determined that an alarm had been set to trip based on an ANSI 150 class system, instead of the actual, higher 450 psig MOP at the Noble meter skid. The Noble meter skid is all ANSI 300 rated and Tallgrass has set MOP to 450 psig based on station hydraulics. The pressure at the Noble meter reached approximately 370 psig, below the 450 psig MOP at this location. As a result, what appeared initially to be an MOP exceedance was not, in fact, an exceedance. Tallgrass has reset the alarm to reflect the correct 450 psig MOP for the Noble meter skid.

Please see Attachment 2 for documentation of the 450 psig MOP at the Noble meter skid, and a graph of the pressures during the event that shows the 450 psig MOP was never exceeded. On the basis of these materials, Tallgrass requests that PHMSA remove this instance of violation from Item 3 and reduce the number of instances of violation for this Item for purpose of calculating the civil penalty under the gravity factor.

2. 115% MOP on 07-26-19 during startup on PXP North (ERL 1679).

Tallgrass does not contest this instance of the alleged violation. However, Tallgrass requests that PHMSA provide a reduction in the civil penalty related to this allegation to reflect that Tallgrass identified the causes of the problem and corrected them before the start of PHMSA's inspection in August 2020. Specifically, Tallgrass installed relief at Guernsey station to prevent future overpressure events.

Please see Attachment 2 for the point-to-point verification that was conducted on the new safety relief valve (SRV) installed in April of 2020. This documentation demonstrates that Tallgrass corrected the problem before PHMSA's inspection. On the basis of these materials, Tallgrass requests that PHMSA provide a credit under the gravity assessment criteria, as more fully described below, in the penalty section.

3. 114% MOP on 10-10-19 at Pawnee due to shut down of Hereford Ranch Lateral, no surge relief (ERL 1773).

Tallgrass does not contest this instance of the alleged violation. However, Tallgrass requests that PHMSA provide a reduction in the civil penalty related to this allegation to reflect that Tallgrass identified the causes of the problem and corrected them before the start of PHMSA's inspection in August 2020. Specifically, Tallgrass installed a control valve and relief system at the Pawnee station to prevent future overpressure events.

Please see Attachment 2 for the point-to-point verification that was conducted on the new relief valve in May of 2020. This documentation demonstrates that Tallgrass corrected the problem before PHMSA's inspection. On the basis of these materials, Tallgrass requests that PHMSA provide a credit under the gravity factor, as more fully described below, in the penalty section.

4. 113% MOP on 3-18-20 at McPherson Lateral due to control valve failure (ERL 2018).

Tallgrass respectfully requests that PHMSA remove this instance from the alleged violation. The ERL notification for this event indicated that this was a pressure exceedance of 113% MOP. ERLs are issued quickly in response to undesired events, and before any detailed investigation occurs. Upon further investigation Tallgrass determined that the MOP exceedance only reached 102%, which is below the 110% MOP limit under § 195.406(b). The actual pressure reached 291 psig, and the MOP at this location is 285 psig. Tallgrass has relief in place at this location to prevent the pressure from exceeding the § 195.406(b) limit.

Please see Attachment 2 for a SCADA record that shows that the highest pressure reached during the March 18, 2020, event was 291 psig, in reference to the High and High-High alarms denoted by the red dashed horizontal lines. The High-High is set at 99% MOP, which equates to 282 psig.

On the basis of these materials, Tallgrass requests that PHMSA remove this instance of violation from Item 3 and reduce the number of instances of violation for this Item for purpose of calculating the civil penalty under the Gravity factor.

5. 114.5% MOP on 6-25-20 at Hereford Lateral/Pawnee due to unintended closure of control valve (ERL 2180)

Tallgrass does not contest this instance of the alleged violation. Tallgrass requests adjustment of the civil penalty related to this instance under the gravity factor, as discussed below.

Penalty Reduction for Item 3

Tallgrass respectfully requests that PHMSA reduce the proposed penalty for Item 3 on the basis of the factual information described above and supported in the attached

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documentation. Tallgrass seeks a penalty reduction under the gravity, culpability, and as justice may require factors at 49 C.F.R. §§ 190.225(a)(1), 190.225(a)(2) and 190.225(b)(2), respectively.

First, as explained above, Tallgrass undertook further investigation of the 5 events described above. As a result of that investigation, the Company determined that 2 of the 5 events did not in fact result in an exceedance of 110% MOP, and therefore do not constitute violations of § 195.406(b). On that basis, Tallgrass requests that PHMSA reduce the number of instances of violation from 5 to 3 in the gravity section of the Proposed Civil Penalty Worksheet. Based on that reduction, PHMSA should reduce the “additional gravity points for multiple instances of violation” from 13.6 to 6.8. It is evident from other entries in PHMSA’s Proposed Civil Penalty Worksheet that the agency ascribes 6.8 gravity points to a violation involving 3 instances of violation.¹ At a point value of \$1,728, this instance-based gravity reduction should be \$11,750.

Second, and also with respect to the gravity factor, PHMSA’s Proposed Civil Penalty Worksheet adds 17 gravity points based on an assertion in the Violation Report that the “violation occurred within an HCA or ‘could affect’ HCA.”² This assertion appears to be based on a statement from PHMSA’s Violation Report that “all Tallgrass pipelines in the system contain HCA segments.”³ Tallgrass has evaluated its HCA listings and determined that the facilities where these events took place were not located in, nor could they affect an HCA. Documentation demonstrating the non-HCA status of these facilities is contained in Attachment 3. None of the stations is listed in the attached HCA listings because none are in or could affect an HCA. In addition, regarding PHMSA’s concern that the events at these locations could have resulted in overpressures on connected pipeline segments that are in HCAs, all of the events only affected station piping and none resulted in overpressure of 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.

Station	Station Piping MOP (psig)	Mainline MOP (psig)
Noble Meter (NECL)	450	1440
Guernsey South Terminal (PXP North)	285	1440
Pawnee (Hereford Lateral)	285	1440
McPherson	285	1440

On this basis, Tallgrass requests that PHMSA reduce the gravity points from 17 to 7, which should result in an additional reduction of \$17,280. This adjustment is reasonable and appropriate because none of the locations identified are an HCA facility. This adjustment also reflects that no mainline HCA piping experienced an MOP exceedance as a result of the station piping exceedances at these facilities.

¹ PHMSA Proposed Civil Penalty Worksheet, Columns for Items 5 and 6, depict 3 instances of violation, each with additional gravity points of 6.8.

² PHMSA Proposed Civil Penalty Worksheet, gravity section; PHMSA Violation Report at 15.

³ PHMSA Violation Report at 15.

Third, with respect to the culpability factor, PHMSA provides up to a -15 point credit in circumstances where an operator finds and fixes issues before a PHMSA inspection.⁴ Specifically, such a credit is appropriate if “[a]fter the operator found the non-compliance, the operator took documented action to address the cause of the non-compliance, and corrected the non-compliance before PHMSA learned of the violation.”⁵ As explained above, Tallgrass undertook and completed corrective action with respect to two⁶ of the three remaining instances of violation before the inspection, and therefore the penalty should be reduced accordingly. Given these efforts, PHMSA should provide a -10 point reduction under the culpability factor. At a \$1,728 point value, this results in an additional reduction of \$17,280.

Finally, PHMSA has assigned 40 additional points under the “as justice may require” factor, due to a repeat offense from a 2016 Final Order. Tallgrass does not contest that this is a repeat offense. However, this 40-point assignment is based on an underlying 17-point gravity score. As discussed above, because none of the overpressure events occurred in an HCA or a could affect area, that gravity score must drop from 17 to 7 points. Based on the point ranges for repeat offenses in PHMSA’s Proposed Civil Penalty Worksheet, the “as justice may require” score should also drop, from 40 to 30 points. This adjustment results in an additional \$17,280 reduction in the civil penalty.

Based on the various appropriate penalty adjustments described above, the civil penalty for this item should be adjusted from \$151,300 to \$87,710.

Proposed Compliance Order for Item 3

Tallgrass 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,” pursuant to § 195.406(b), and not only surge relief devices as presently specified in the Proposed Compliance Order.

D. Item 4 - 49 C.F.R. § 195.440(g)

Tallgrass respectfully requests that PHMSA convert this alleged violation into a Notice of Amendment (NOA). Tallgrass acknowledges that it needs to improve its program for communicating with non-English speakers. The Company intends to update its procedures concerning determination of what is a “significant” non-English speaking population. And reflecting PHMSA’s concerns, Tallgrass will rely on Spanish language mailers, instead of just the Spanish language content on its website. PHMSA has the discretion to change this item to an NOA and given the procedure-focused nature of PHMSA’s concern, doing so would be reasonable.

⁴ PHMSA Proposed Civil Penalty Worksheet, culpability section.

⁵ *Id.*

⁶ In the second and third instances of violation, 115% MOP on 07-26-19 during startup on PXP North (ERL 1679) and 114% MOP on 10-10-19 at Pawnee due to shut down of Hereford Ranch Lateral, no surge relief (ERL 1773), Tallgrass corrected the issue through installation of equipment and other actions at these locations. And did so before PHMSA began its inspection in August 2020.

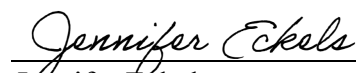
E. Items 7, 8, and 9 – 49 C.F.R. §§ 195.573(a)(1) and 195.573(c)

The above-listed Items all relate to Tallgrass' 2020 self-report of external corrosion control survey and data issues. Tallgrass does not contest these Items. However, Tallgrass respectfully requests that the Final Order in this case reflect the Company's proactive efforts to resolve the underlying issues and improve its practices and procedures. Those efforts are summarized below.

As listed in detail in the Company's self-report communications, after discovering these issues, Tallgrass took steps to verify that they did not present safety concerns. Specifically, Tallgrass conducted un-planned close interval surveys (CIS) and reads of cathodic protection (CP) test stations, as well as an analysis of In-Line Inspection and other inspection and repair data on affected pipeline segments. The results of these efforts confirmed that there were no immediate corrosion-related safety concerns. Tallgrass then began several remedial actions to prevent recurrence of the corrosion survey and data issues, including additional training, improved corrosion data collection and tracking tools, review and amendment of relevant corrosion procedures, establishment of an annual corrosion program performance review meeting, quarterly data reviews, addition of personnel, and additional CIS and CP system improvements.

Tallgrass shares PHMSA's commitment to pipeline safety and appreciates being afforded the opportunity to work with PHMSA to ensure the safe operation of our pipelines. Please do not hesitate to contact me if you have any questions about this response. I will contact you to discuss scheduling an informal conference regarding Items 5 and 6.

Respectfully submitted this 21st day of
January 2022.



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CC: Tallgrass: Byron Gale, Jay Meyers, Jarid Kling, Nicole Longwell, Crystal Heter
PHMSA: Gabe Hodill, AJ McKean

Enclosures: Attachment 1:
Natoma Terminal Tank 3400 Hydrotest Fill Height and Elevation
Measurements
Natoma Terminal Tank 3400 Tank Inspector's Report 12/1/2017

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Natoma Terminal Tank 3400 Tank Inspector's Report 12/2/2017
Natoma Terminal Tank 3400 Tank Inspector's Report 12/3/2017
Natoma Terminal Tank 3400 faceplate

Attachment 2:

SCADA Record of Actual Pressure Reached and Setpoint on 08/04/2018
and Management of Change Notification (Noble Meter)
Point-to-Point Record Confirming Installation of Safety Relief Valve
(Guernsey)
Point-to-Point Record Confirming Installation of Safety Relief Valve
(Pawnee)
SCADA record of Actual Pressure Reached and Setpoint on 03/18/2020
(McPherson)

Attachment 3:

2019 & 2020 Facility Equipment Maintenance Plans (listing HCA facilities)