

May 16, 2022

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

Mr. William Moler
Chief Executive Officer
Tallgrass Energy, LP
4200 W. 115th Street, Suite 350
Leawood, Kansas 66211

CPF No. 3-2022-018-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 Energy, LP (Tallgrass or Respondent), which was executed on May 11, 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 Energy, LP,)	CPF No. 3-2022-018-NOPV
)	
Respondent.)	
_____)	

CONSENT ORDER

By letter dated January 21, 2022, 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 Energy, LP (Tallgrass or Respondent).

In response to the Notice, Respondent requested a hearing on Items 3 and 4, contesting both the underlying violation and proposed civil penalty associated with each; contested warning Item 1 in writing; offered additional information regarding the facts underlying Items 2 and 5; and requested a modification of the proposed compliance order for Item 5 (Response). Respondent also asked for the opportunity to meet informally with PHMSA to discuss all items in the Notice. Respondent and PHMSA (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 certain factual clarifications associated with Items 1, 2, and 3, and Respondent has agreed without admission to withdraw its hearing request and accept the warning items and findings of violation alleged in the Notice, subject to the clarifications as set forth below, pay a reduced civil penalty in the amount of **\$44,800** for Items 3 and 4, 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 16, 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 Energy, LP,)	CPF No. 3-2022-018-NOPV
)	
Respondent.)	
)	

CONSENT AGREEMENT

From May 7 through May 11, 2018, and December 4 through December 6, 2018, 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 Energy, LP (Respondent) records for the hazardous liquid Control Room Management procedures and records in Lakewood, Colorado. This inspection covered Pony Express Pipeline, LLC (OPID 39043) and Tallgrass Midstream, LLC (OPID 39216). The inspection team continued the inspection after receiving items from Respondent through 2019. In addition, while working to complete inspection in 2020, PHMSA became aware of a complaint that had a common area of focus with the prior inspection. For this reason, the inspection and complaint resolution continued from 2019 through October 2021.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated January 21, 2022, 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, proposed ordering Respondent to take certain measures to correct the alleged violations, and proposed a civil penalty in the amount of \$55,200 associated with those items. Two of the probable violations (Items 1 and 2) were brought as warnings, advising Respondent to correct them or be subject to potential future enforcement action.

In response to the Notice, Respondent, for Item 1, stated that its checklist records reflect its command and setpoint process and demonstrate that the command and setpoint entry processes were tested in accordance with its procedures. Respondent did not contest Item 2. Regarding Item 5, Respondent asserted that a compliance order is unnecessary in light of its actions following receipt of the Notice. Respondent also requested a hearing and asked for the opportunity to meet informally with PHMSA to discuss Items 3 and 4. For both of Items 3 and 4, Respondent contested the underlying allegations of violation, as well as the proposed civil penalties and compliance orders.

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 certain factual clarifications associated with Items 1, 2, and 3, and Respondent has agreed without admission to withdraw its hearing request and accept the warning items and findings of violation alleged in the Notice, subject to the clarifications as set forth below, pay a reduced civil penalty in the amount of **\$44,800** for Items 3 and 4, 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. § 195.446(a):** The Notice alleged that Respondent failed to follow its written control room management procedures when implementing the test of any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months, as required by § 195.446(c)(4). During the inspection and informal discussion, Respondent presented records showing testing of the back-up SCADA system was performed, but the records did not include sufficient detail to demonstrate to PHMSA that Respondent's procedures were followed regarding command and setpoints. This item was brought as a warning and does not constitute a finding of violation. Respondent does not contest this Warning Item.

13. **Item 2: 49 C.F.R. § 195.446(a):** The Notice alleged that Respondent failed

to follow its written control room management procedures when implementing methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities by not training controllers to recognize the effects of fatigue, as required by § 195.446(d)(3). This item was brought as a warning and does not constitute a finding of violation. Respondent does not contest this Warning Item and has undertaken certain remedial actions to address the issue identified in the Notice, including the hiring of a training coordinator.

14. For Warning Items 1 and 2, if OPS finds a violation of these provisions in a subsequent inspection, Respondent may be subject to future enforcement actions.

III. Findings of Violation:

15. **Item 3: 49 C.F.R. § 195.446(c)(2):** The Notice alleged that Respondent failed to conduct a point-to-point verification between SCADA displays and related field equipment when field equipment was added or moved, and when other changes that affect pipeline safety were made to field equipment or SCADA displays on its Pony Express pipeline system. During the informal discussions, Respondent presented records showing that it is working to modify its procedures to include required verifications of SCADA displays during point-to-point activities. Respondent does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.446(c)(2).

16. **Item 4: 49 C.F.R. § 195.446(g)(1):** The Notice alleged that Respondent failed to demonstrate that accidents required to be reported pursuant to §§ 195.50 and 195.52 were reviewed to assure that lessons learned from its operating experience are incorporated, as appropriate, into its control room management procedures. Respondent does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.446(g)(1).

17. **Item 5: 49 C.F.R. § 195.446(j)(2):** The Notice alleged that Respondent failed to maintain documentation to demonstrate that any deviation from its control room procedures (CRM) was necessary for the safe operation of the pipeline facility, as required. Respondent does not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.446(j)(2).

18. Items 3, 4, and 5 will be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against Respondent for the five (5)-year period following the *Effective Date* of this Agreement.

IV. Civil Penalty:

19. **Item 3:** Respondent shall pay a civil penalty in the amount of \$22,400 for Item 3.

20. **Item 4:** Respondent shall pay a reduced civil penalty in the amount of \$22,400 for Item 4. During the informal discussion, Respondent presented information in support of its request for a reduced civil penalty. Specifically, Respondent presented information regarding the

companies' efforts to improve its records and alarm system for the tanks at issue in the violation. PHMSA finds that a reduction to the proposed civil penalty is warranted under the gravity factor from "[t]he violation occurred NOT within a HCA or "could affect" HCA, and NOT within an area required to be covered by a gas distribution system integrity management program", to "Pipeline safety was minimally affected, notwithstanding the conditions above."

21. Respondent shall pay a total civil penalty in the amount of **\$44,800**, to be paid in full no later than **20** days from the *Effective Date* of this Agreement.

V. Compliance Order:

22. *Item 3:* The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent requested that the timeframe provided by the Proposed Compliance Order (PCO) associated with Item 3 be extended to allow the company to complete this requirement within 90 days, or to align with a maintenance shutdown to accommodate the work, whichever comes first. PHMSA agrees to this request. Accordingly, in regard to Item 3 of the Notice pertaining to Buckingham Terminal points on the Pony Express pipeline and point-to-point records, Respondent must:

For those safety related points designated in-service when Respondent submitted the 2017 construction notification for the Buckingham Terminal extension, complete a point-to-point for each point from the field end device through to the SCADA system displays within **90** days of the *Effective Date* of this Agreement, or to align with a maintenance shutdown to accommodate the work, whichever comes first, starting with submitting a complete list of all points (tags, point names, descriptors) with an identification of whether or not it is a point that can impact safety. After this designation is provided, Respondent must then submit a list of those points that have safety related alarms and what parameters (attributes) are safety related. The completed point-to-point records for each point that can impact safety, or for safety related alarms, must include at a minimum, and not all inclusive, the following: recording the ranges of equipment (if analog) employed, the confirmation of the event and alarming functions (as maybe relevant), confirmation and testing of any automated logic such as automated pump shutdown upon high discharge or low suction, the relevant alarm setpoint values and alarm descriptors, confirmation of the correct alarm response by color including action (such as blinking) and priority for all relevant displays and alarm summary screens, and record a list of all SCADA displays that have been reviewed to confirm correct display response and correct location of the point (screen shots with listing). The record must include who performs the verification in the field at the end device, identify the end device, and who performs the control room verification on each day along with the relevant date, and must describe the method used for the confirmation (such as pressure switch tripped and valve closed, or pressure transmitter calibrated, simulation of loss of communication at the PLC, etc.). These records must be submitted to the Director, Central region within **30** days of completing the point-to-point confirmation and verification of SCADA displays.

23. **Item 4:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent requested that the timeframe provided by the PCO associated with Item 4 be extended until December 30, 2022, to allow Respondent time to complete its development of a plan to assess the feasibility of a dynamic tank alarming system for tank systems. PHMSA agrees to this request. Accordingly, regarding Item 4 of the Notice and pertaining specifically to the Sterling Tank, Respondent must:

Provide to the Director, Central Region, by December 30, 2022, a summary of what leak alarms have been added for this location for controller use. In addition, by December 30, 2022, provide to the Director, Central Region, a list of all other similar locations and identify either the leak alarms added with the associated dates of implementation, or a proposed plan in place to add similar alarms. If leak alarms have not been added for similar installations at other locations and a plan has not been developed for these to be added, then a plan must be provided to the Director, Central Region regarding planned dates of implementation, or justification for why this was not necessary at various locations for pipeline safety must be provided.

24. **Item 5:** The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent requested that PHMSA remove from the PCO for Item 5 the order to write a deviation for the years under which the Krohnes leak detection system has not been used and update all procedures to remove references to this system. During informal discussion, Respondent provided documentation showing this had been completed. As such, PHMSA finds that Respondent has satisfied the terms of the PCO with respect to this requirement.

Respondent additionally requested that the timeframe for implementing a fully functioning leak system detection be extended until September 30, 2022. PHMSA agrees to this request. Accordingly, regarding Item 5 of the Notice pertaining to a deviation of leak detection procedures, Respondent must:

By September 30, 2022, have a fully functioning CPM leak detection system and have updated all relevant procedures, performed training, and implemented this selected system on all segments of the Hazardous liquid pipeline systems operating in crude or refined products services. For any HVL systems, all procedure must be updated accurately to reflect how a leak will be detected, and training performed by September 30, 2022. Records of each element required in this compliance order (written deviations, procedure updates, training) including testing associated with the new leak detection system (FAT and SAT tests) will be submitted to the Director, Central Region Office within **30** days of completion of that element.

VI. Enforcement:

25. 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:

26. 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:

27. 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:

28. 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:

29. 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.

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

[Signature Lines on Following Page]

For Tallgrass Energy, LP:

Date _____

For PHMSA:

Director, Central Region, Office of Pipeline Safety

Date _____