



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

September 12, 2022

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

William Moler
President and Chief Executive Officer
Tallgrass Energy, LP
2400 W. 115th Street, Suite 350
Leawood, KS 66211

CPF 3-2022-040-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 Rockies Express Pipeline, LLC, a subsidiary of Tallgrass Energy, LP, which was executed on September 8, 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 KRAMER MAYBERRY
Digitally signed by ALAN
KRAMER MAYBERRY
Date: 2022.09.12
11:02:18 -04'00'

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

Rockies Express Pipeline, LLC
a subsidiary of Tallgrass Energy, LP

Respondent.

CPF No. 3-2022-040-NOPV

CONSENT AGREEMENT

From March 2 through March 6, 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 the records of Rockies Express Pipeline, LLC (REX or Respondent), a subsidiary of Tallgrass Energy, LP, in Lakewood, Colorado. PHMSA also reviewed additional information provided by Respondent after March 6, 2020, as part of this inspection.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent by letter dated February 17, 2022, a Notice of Probable Violation and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice alleged that Respondent committed a probable violation of 49 C.F.R. part 192 and proposed ordering Respondent to take certain measures to correct the alleged violation.

In response to the Notice, Respondent contested the allegation of violation, requested a hearing, and asked for the opportunity to meet informally with PHMSA to discuss the alleged violation (Response). The allegation relates to operation of certain pipeline segments on REX covered by a special permit issued by PHMSA in 2006 and the course of dealing and exchange of information between PHMSA and REX (the Parties) under that special permit.

The Parties subsequently met to discuss the allegation of violation. As a result of those discussions and as explained in more detail below, PHMSA has agreed to certain factual clarifications associated with the allegation of violation and Respondent, without admission, has agreed to withdraw its hearing request and accept the finding of violation as alleged in the Notice, subject to the clarifications as set forth below, 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 gas 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. 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. Finding of Violation

12. ***Item 1: 49 C.F.R. § 192.611(a)(1)(i)***: The Notice alleged Respondent failed to confirm or revise the maximum allowable operating pressure (MAOP) for segments of REX in certain Class 2 locations to ensure that they were commensurate with the present class location. Specifically, the Notice alleged that Respondent failed to ensure the corresponding hoop stress did not exceed 72 percent of the specified minimum yield strength (SMYS) of REX in certain Class 2 locations. In its Response, Respondent contested the allegation of violation in its entirety. Respondent holds an existing special permit that was issued by PHMSA in 2006 which, in relevant part, authorizes REX to operate up to 80% SMYS in Class 1 locations. The special permit does not address changes in class location. Since placing the pipeline into service, the prior operator of REX and Respondent provided periodic updates to PHMSA with updates regarding class location changes and operating pressure. Respondent maintains that communications and course of dealings between Respondent and PHMSA about operation of certain segments of REX at 80% SMYS in Class 2 locations, which are subject to the special permit conditions, evidenced approval of such operating conditions. PHMSA maintains that it never approved operation of the special permit segments above 72% SMYS in areas other than Class 1 locations as set forth in the special permit conditions. Upon further discussions between the Parties, Respondent, without admission and for purposes of settlement, has agreed to accept

a finding of violation and withdraw its hearing request upon execution of this Agreement. As such, PHMSA finds a violation of 49 C.F.R. § 192.611(a)(1)(i).

13. Item 1 will be considered by PHMSA as a prior offense in any future PHMSA enforcement action taken against Respondent for the 5-year period following the *Effective Date* of this Agreement.

III. Special Permit Application and Limitations

14. The Notice proposed certain compliance order actions to address the non-compliance alleged in Item 1. As a result of the Parties' informal discussions, the Parties have agreed to the following:

- A. Respondent has, without admission, applied for a supplemental class location special permit (Special Permit application) under 49 C.F.R. § 190.341 for certain pipeline segments in Class 2 locations to allow for continued operation above 72% SMYS, including the very same segments in the Notice. The public comment period for this Special Permit application ended on June 27, 2022. *See* 87 Fed. Reg. 32233 (May 27, 2022); PHMSA Docket No. 2022-0044.
- B. If approved, the proposed Special Permit conditions shall apply, and this Agreement will terminate.
- C. Unless or until the Special Permit application is approved by PHMSA, Respondent will proceed to comply with the obligations set forth below in Paragraph 15, except for Paragraph 15.B. If the Special Permit application is denied by PHMSA or withdrawn by Respondent, Respondent shall also proceed with the obligations specified in Paragraph 15.B.
- D. Respondent reserves the right to seek additional special permits or pursue conversion to alternative MAOP per 49 C.F.R. § 192.620.

IV. Compliance Plan

15. In regard to Item 1 of the Notice, Respondent shall perform the following actions, subject to the limitations set forth in Paragraph 14, applicable to the areas identified in the Notice operating above 72% SMYS in Class 2 locations:

A. *Intermediate Actions Until the Grant or Denial of the Special Permit.*

- i. *Work Plan.* Within **45 days** of the *Effective Date* of this Agreement, Respondent will prepare and submit for Director approval a Work Plan and Schedule to implement the following remedial measures.
- ii. *Procedural Development.* Within **90 days** of the *Effective Date* of this Agreement, Respondent will modify existing procedures or create new

procedures, where necessary, through its Management of Change process to address how pressure will be temporarily reduced in the segments identified in the Notice that are operating above 72% SMYS in Class 2 locations, as addressed in 15.A.iii. below.

- iii. *Temporary Pressure Reduction.* Within **180 days** of the ***Effective Date*** of this Agreement, Respondent will reduce operating pressure to 76% SMYS (1406 psig) in the segments identified in the Notice that are operating above 72% SMYS in Class 2 locations.
- iv. *Segment Risk Criteria.* Pipeline segments identified in the Notice that meet any of the following criteria will have additional measures performed according to Paragraph 15.A.v.a.-d. of this Agreement:
 - a. Greater than 10 structures intended for human occupancy contained within the potential impact radius of the pipe segment (as defined in 49 C.F.R. § 192.903);
 - b. Anomalies:
 - 1. A dent with a depth greater than 6% of the pipeline diameter;
 - 2. A dent with a depth greater than 2% of the pipeline diameter that affects pipe curvature at a girth weld or longitudinal or helical (spiral) seam weld;
 - 3. Metal loss anomalies in excess of 40% depth;
 - 4. Any anomalies with an effective area burst pressure of less than 1.25 times MAOP; and/or
 - 5. Any bending strain anomalies above 0.5% strain.
- v. *Additional Measures.*
 - a. Weekly right-of-way patrols;
 - b. Monthly leak surveys with leak survey equipment;
 - c. Close interval survey to be completed within **180 days** of the ***Effective Date*** of this Agreement; and
 - d. On-the-ground inspection by a geologist for any potential geohazards to be completed within **180 days** of the ***Effective Date*** of this Agreement.

B. *Additional Actions Upon Special Permit Denial or Withdrawal.*

- i. *Work Plan.* Within **45 days** of the denial or withdrawal of the Special Permit application, Respondent will amend and submit for Director approval a revised Work Plan and Schedule previously submitted pursuant to Paragraph 15.A.i. of this Agreement to implement additional remedial measures as set forth in 15.B.ii-iv.

- ii. *Risk Prioritization.* Respondent shall complete the actions contained in the approved revised Work Plan and Schedule required by Paragraph 15.B.i. of this Agreement based on risk prioritization, taking into account the pipeline segments that meet the Segment Risk Criteria set forth in Paragraph 15.A.iv.
 - iii. *Implementation of Work Plan.* For segments identified in the Notice that are operating above 72% SMYS in Class 2 locations, Respondent shall complete the actions required by the revised Work Plan and Schedule pursuant to Paragraph 15.B.i. within **24 months** from the ***Effective Date*** of this Agreement.
 - iv. *Remedial Measures.* The measures implemented under this Section, such as pressure reduction or pipe replacement, must be consistent with 49 C.F.R. § 192.611 for all segments identified in the Notice that are operating above 72% SMYS in Class 2 locations, except as noted herein. Any necessary procedural revisions shall be addressed accordingly.
- C. The Work Plan and Schedule required by the **Compliance Plan**, under either Paragraph 15.A.i. or 15.B.i. of this Agreement, may not be implemented until it has been approved, in writing, by the Director.
 - D. Respondent shall provide status updates to the Director on a quarterly basis describing the progress of all actions being undertaken pursuant to this Agreement.
 - E. The Director may grant an extension of time for compliance with any of the terms of the Agreement upon a written request timely submitted demonstrating good cause for an extension. The Director shall respond in writing to any such request.

V. **Enforcement**

16. 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.

VI. Force Majeure

17. Respondent agrees to perform all the terms of this Agreement within the timeframes established within this Agreement, including pursuant to extensions under Paragraph 15.E or modifications under Section IX, unless performance is delayed by a force majeure. For purposes of this Agreement, a force majeure is defined by an event arising from causes beyond the control of the Respondent, or any entity controlled by Respondent or Respondent's contractors, which delays or prevents performance of any obligation under this Agreement despite Respondent's commercially reasonable efforts to fulfill the obligation.

18. If a force majeure event occurs or has occurred that may delay the performance of any term of this Agreement beyond the approved timeframe, Respondent shall notify the Director, in writing, within 5 business days of when Respondent knew that the event might cause a delay. Such notice shall identify the cause of the delay or anticipated delay and the anticipated duration of the delay, state the measures taken or to be taken to prevent or minimize the delay, and estimate the timetable for implementation of those measures. Failure to comply with the notice provision of this Paragraph and to undertake reasonable efforts to avoid and minimize the delay shall waive any claim of force majeure by Respondent.

19. If the Director determines, upon notification by Respondent, that a delay or anticipated delay in performance is or was attributable to a force majeure, then the Director will extend the time period for the performance of that term for a reasonable period. The Director will notify Respondent, in writing, of the length of any extension of performance of such terms affected by the force majeure. Any such extensions shall not alter Respondent's obligation to perform or complete other terms of this Agreement which are not affected by the force majeure.

VII. Dispute Resolution

20. 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

21. 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

22. 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

23. 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.

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

[Signature Lines on Following Page]

For Rockies Express Pipeline, LLC:



Date: September 8, 2022

For PHMSA:

GREGORY ALAN OCHS  Digitally signed by GREGORY ALAN OCHS
Date: 2022.09.08 15:50:07 -05'00'

Director, Central Region, Office of Pipeline Safety

Date: September 8, 2022