

**Before the U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety
Washington, D.C.**

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In the Matter of	)	
	)	
Tallgrass Energy, LP	)	CPF No. 3-2022-040-NOPV
	)	Notice of Probable Violation
	)	
Respondent.	)	
_____	)	

Request for Hearing, Statement of Issues, and Response to NOPV

I. Introduction

The Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) issued a Notice of Probable Violation (NOPV) and proposed compliance order (PCO) to Tallgrass Energy, LP (Tallgrass or the Company) on February 17, 2022. The NOPV alleged a single violation of 49 C.F.R. § 192.611 related to class location changes and included a PCO, which would require Tallgrass to prepare a work plan and schedule to lower the pressure of its Rockies Express Pipeline (REX) to ensure that the corresponding hoop stress does not exceed 72 percent of the specified minimum yield strength (SMYS) in Class 2 locations. As provided by 49 C.F.R. § 190.208, Tallgrass has 30 days to respond to the allegations in the NOPV and, therefore, this response is timely.

The NOPV was issued as a result of an inspection initiated in March 2020 by the PHMSA Central Region. The allegations relate to a history of authorizations, exchanges, and coordination with PHMSA going back 16 years in connection with the operation of the REX pipeline and a special permit issued to REX by PHMSA in July 2006. Tallgrass is committed to maintaining the safe operation of its pipeline assets in compliance with the federal pipeline safety regulations, including 49 C.F.R. § 192.611, and pursuant to the terms of the special permit issued in July 2006, as affirmed by PHMSA and in reliance upon those clarifications. For this reason, Tallgrass is contesting the allegations in the NOPV and the PCO.

At the same time, and in coordination with PHMSA and without admission, Tallgrass has a supplemental special permit application pending with PHMSA which would address the issue raised in the NOPV and more explicitly provide for the operation of the REX pipeline in Class 2 locations. Tallgrass took this step after lengthy discussions with PHMSA personnel over the past year in an effort to resolve the class location change issue to PHMSA's satisfaction.

Pursuant to 49 C.F.R. § 190.211, Tallgrass is filing this response to request an in-person hearing to address the factual and legal issues in the NOPV under 49 C.F.R. § 192.611 and the PCO. At a

hearing, Tallgrass will be represented by in-house counsel as well as outside counsel with Troutman Pepper.

II. Background

REX is one of the largest natural gas pipelines in the U.S., stretching 1,700 miles between northwestern Colorado, Wyoming, and eastern Ohio. REX transports critical east-west bi-directional supply between the Rocky Mountain and Appalachian regions to serve energy markets across the United States. As such, REX provides access to abundant natural gas sources in both basins, increasing the reliability, security, and supply to many high demand centers and large end-users with direct connections to power plants, local distribution companies, and industrial facilities. Derating the REX pipeline, as proposed in the PCO, would have a direct negative impact on critical natural gas supplies, reliability and energy security for major demand centers across the country.

Tallgrass is committed to the safe operation of the REX pipeline in compliance with the federal pipeline safety regulations and the conditions in the special permit issued by PHMSA in July 2006.¹ The special permit was issued prior to construction of the REX pipeline and authorizes its operation at hoop stresses up to 80% SMYS in Class 1 locations and at a maximum allowable operating pressure (MAOP) of 1,480 psig. The special permit imposes a variety of integrity measures that exceed the federal pipeline safety standards, including increased construction and design measures, hydrostatic pressure testing, and increased integrity management requirements. The special permit was the first issued by PHMSA of a series of special permits authorizing certain pipelines to operate at 80% SMYS. These special permits were the basis for a rule change in 2008, allowing pipelines that comply with certain design, construction and operational requirements to operate at an alternate MAOP up to 80% SMYS.

Since issuance of the special permit, approximately 3.52 miles of the REX pipeline (across various short segments) have changed from Class 1 to Class 2 locations. Although the special permit does not address class change locations specifically, the prior operator of the REX pipeline implemented the “one class bump” provision as provided by 49 C.F.R. §§ 192.611(a) and 192.620(c)(8) to continue operating the Class 2 locations pursuant to the terms of the special permit and with affirmation from PHMSA in 2009. Both Tallgrass and the prior operator of the REX pipeline also provided notice of this practice to PHMSA yearly through two separate annual reporting obligations (specified by the special permit and by the 49 C.F.R. Part 191 regulations) and in correspondence in 2014. Further, PHMSA has consistently recognized the use of the “one class bump” provision in its regulatory approach with respect to other existing special permits and its promulgation of the alternate MAOP regulations in 2008.

It was not until over a decade after PHMSA affirmed the practice in writing, that representatives of the Central Region assumed oversight of REX in January 2020 and inquired about Tallgrass’s reliance on the “one class bump” provision. Since that time, Tallgrass has been actively working with PHMSA to provide more information about the operation of its pipeline under the special permit. To address the Agency’s concern and in coordination with PHMSA, Tallgrass has been,

¹ Pipeline Safety: Grant of Waiver; Rockies Express Pipeline, 71 Fed. Reg. 39,141 (Jul. 11, 2006).

without admission, working since March 2021 to prepare a supplemental special permit to more expressly authorize the continued operation of applicable Class 2 locations on the REX pipeline at 80% SMYS and an MAOP of 1,480 psig. The supplemental special permit application is pending as of the time of this filing.

III. Response to NOPV Item 1 (49 C.F.R. § 192.611) and PCO

A. PHMSA NOPV Allegation

§ 192.611 Change in class location: Confirmation or revision of maximum allowable operating pressure.

(a) If the hoop stress corresponding to the established maximum allowable operating pressure of a segment of pipeline is not commensurate with the present class location, and the segment is in satisfactory physical condition, the maximum allowable operating pressure of that segment of pipeline must be confirmed or revised according to one of the following requirements:

(1) If the segment involved has been previously tested in place for a period of not less than 8 hours:

(i) The maximum allowable operating pressure is 0.8 times the test pressure in Class 2 locations, 0.667 times the test pressure in Class 3 locations, or 0.555 times the test pressure in Class 4 locations. The corresponding hoop stress may not exceed 72 percent of the SMYS of the pipeline in Class 2 locations, 60 percent of SMYS in Class 3 locations, or 50 percent of SMYS in Class 4 locations.

The REX Pipeline has operated at a pressure that exceeds the maximum pressure allowed in a Class 2 location. The REX Pipeline is a 42-inch diameter pipeline that was permitted to operate up to 80 percent of SMYS in Class 1 locations only pursuant to a Special Permit. The maximum allowable operating pressure (MAOP) of the REX Pipeline in Class 1 locations is 1480 psig, which produces a potential impact radius (PIR) of at least 1115 feet. REX failed to confirm or revise the MAOP for segments of the REX Pipeline in Class 2 locations to ensure that they were commensurate with the present class location. Specifically, REX failed to ensure the corresponding hoop stress did not exceed 72 percent of the specified minimum yield strength (SMYS) of the REX Pipeline in Class 2 locations. PHMSA reviewed the REX 2017-2019 Change Studies per §§ 192.609 and 192.611, and SCADA alarm records. The records confirmed that the REX pipeline had been operating at above 72 percent SMYS in Class 2 locations. All of the pipeline segments located in Class 2 locations that were operating at above 72 percent of SMYS were previously tested in place for a period of not less than 8 hours. REX was not operating with an alternative MAOP under § 192.620 such that § 192.611(a)(ii) could apply. As such, REX was required to limit its MAOP so that the corresponding hoop stress would not exceed 72 percent of SMYS of the pipe in Class 2 locations. The

following 46 Class 2 locations were operated above 72 percent SMYS, in violation of the regulations, as identified in 2021:

[. . .]

Additional segments may currently be operating in non-compliance, which must be addressed by Tallgrass or they could be the subject of a future enforcement action.

B. Tallgrass Response

Tallgrass requests that NOPV Item 1 be withdrawn as a matter of fact and law. Tallgrass has and continues to operate the REX pipeline consistent with the terms of its special permit and the federal pipeline safety regulations, as affirmed by PHMSA. Given that the special permit is silent regarding class location changes, and pursuant to prior direction and affirmation from PHMSA, both the prior operator and Tallgrass provided notice to PHMSA of their reliance on the “one class bump” provision as provided in 49 C.F.R. §§ 192.611 and 192.620 to continue operating portions of the REX pipeline that changed to Class 2 locations pursuant to the terms of its special permit.

In addition, the prior operator and Tallgrass regularly notified the Agency of the operation of the REX line in Class 2 locations in accordance with the special permit through its special permit and 49 C.F.R. Part 191 annual reporting obligations and expressly referred to this practice in a 2014 letter to the Agency. In response and for over a decade, PHMSA acknowledged and authorized Tallgrass’s operational practices in previous communications. Tallgrass has in good faith relied on PHMSA’s prior representations and has operated the REX pipeline in accordance with those representations. Moreover, Tallgrass’s application of the “one class bump” provision is consistent with PHMSA’s representations and filings related to other similar special permits and PHMSA’s promulgation of the alternate MAOP regulations at 49 C.F.R. §§ 192.611 and 192.620.

As proposed, the PCO would require Tallgrass to lower the pressure of the REX pipeline in Class 2 locations, without providing any other options for compliance, and would directly and negatively impact commerce by reducing the availability, reliability, and security of supply to critical demand centers across the country.

For these reasons, Tallgrass requests that the PCO be withdrawn because PHMSA cannot establish that the Company committed a violation of 49 C.F.R. § 192.611.

IV. Preliminary Statement of Issues

- A.** Whether PHMSA is precluded from seeking this enforcement based on the applicable statute of limitations.
- B.** Whether PHMSA should be equitably estopped from seeking enforcement against Tallgrass, where the Agency previously approved of Tallgrass’s operation of segments in Class 2 locations in compliance with its special permit and in accordance with the “one class bump” provision and Tallgrass’s operation of the Class 2 segments was consistent with PHMSA’s established regulatory practice.

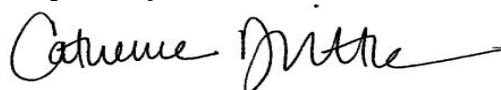
- C. Whether PHMSA is precluded from seeking this enforcement based on the equitable doctrines of laches or waiver, where the Agency previously approved of Tallgrass's operation of segments in Class 2 locations in compliance with the special permit and in accordance with the "one class bump" provision and Tallgrass's operation of the Class 2 segments was consistent with PHMSA's established regulatory practice.
- D. Whether PHMSA has met its burden to prove by a preponderance of the evidence that Tallgrass did not comply with requirements 49 C.F.R. §§ 192.611, 192.620(c)(8) or the conditions of its existing special permit, as clarified by PHMSA's representations.
- E. Whether PHMSA's allegation of noncompliance is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2), constitutes disparate treatment of similarly situated parties without reasoned explanation and substantial evidence in the record, and/or violates requirements of due process and fair notice.
- F. Whether the PCO associated with NOPV Item 1 should be withdrawn because there is no violation and/or in light of the pending supplemental special permit application; or, in the alternative, whether the PCO should be modified to provide for alternative means of compliance with the federal pipeline safety regulations.
- G. Whether PHMSA PCO would unduly burden interstate commerce or unreasonably impact Tallgrass's ability to comply with its contractual obligations related to provision of gas.
- H. Whether the NOPV and PCO are consistent with PHMSA's Pipeline Safety Enforcement Procedures policy manual with respect to fair, consistent, and timely enforcement.

Tallgrass reserves the right to supplement this statement of issues in response to any additional evidence and argument provided by PHMSA.

V. Summary and Request for Relief

For all of the reasons identified above, and in consideration of other matters as justice may require, Tallgrass respectfully requests that NOPV Item 1 and the PCO be withdrawn. In advance of the requested hearing, and pursuant to 49 C.F.R. § 190.209, Tallgrass requests a copy of the complete case file in this matter, beyond the Pipeline Safety Violation Report and its exhibits which have already been provided.

Respectfully submitted,



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