

July 14, 2023

VIA ELECTRONIC MAIL TO: matt@tallgrass.com, jennifer.eckels@tallgrassenergylp.com, crystal.heter@tallgrassenergylp.com

Matt Sheehy
President and Chief Executive Officer
Tallgrass Energy, LP
370 Van Gordon Street
Lakewood, Colorado 80228

CPF No. 3-2022-060-NOPV

Dear Mr. Sheehy:

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, which was executed on July 12, 2023. 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.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure: Consent Order and Consent Agreement

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Ms. Catherine Little, Counsel, Bracewell, catherine.little@bracewell.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,

Respondent.

)
)
)
)
)
)
)

CPF No. 3-2022-060-NOPV

CONSENT ORDER

By letter dated December 22, 2023, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), 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 Notice Item 2 in full and Notice Item 4 in part. (Response). Tallgrass did not contest the underlying allegation of violation for Notice Item 3 but requested a hearing for a reduction of the civil penalty associated with it. Respondent did not contest Notice Item 1. Tallgrass also asked for the opportunity to meet informally with PHMSA to discuss Items 2, 3, and 4.

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, the Parties have agreed to a Consent Agreement which modifies the required compliance actions for Item 2, reduces the civil penalty associated with Item 3 to \$15,800, withdraws from Item 4 part of the proposed violation and reduces its civil penalty to \$50,100, and finds that the required compliance actions for Items 1 and 4 have been satisfied. The total civil penalty agreed to is **\$116,000**.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. Tallgrass is hereby ordered to comply with the terms of the Consent Agreement pursuant to its terms. 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 U.S.C. § 60122 and 49 C.F.R. § 190.223, or in referral to the Attorney General for appropriate relief in a district court of the United States.

The terms and conditions of this Consent Order are effective upon service in accordance with 49 C.F.R. § 190.5.

July 14, 2023

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. 3-2022-060-NOPV
	)	
Respondent.	)	
	)	

CONSENT AGREEMENT

From March 4 through July 6, 2022, 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 Rockies Express Pipeline, LLC (REX) in Ohio. REX is a subsidiary of Tallgrass Energy Partners, LP¹ (Tallgrass or Respondent). REX is a 1,698-mile natural gas pipeline system that spans from Rio Blanco County, Colorado, to Monroe County, Ohio, with a capacity of 1.8 billion cubic feet per day.²

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated December 22, 2022, a Notice of Probable Violation, Proposed Compliance Order, and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent committed violations of four provisions of 49 C.F.R. Part 192 (Items 1-4), proposed ordering Respondent to take certain measures to correct the alleged violations, and proposed a total civil penalty of \$146,000.

Tallgrass, on behalf of REX, responded to the Notice by letter dated January 23, 2023 (Response). In its Response, Respondent contested Notice Item 2 in full and Notice Item 4 in part. Respondent did not contest the underlying allegation of violation for Notice Item 3 but requested a reduction of the associated civil penalty. Respondent requested a hearing and the opportunity to meet informally with PHMSA to discuss these items. Respondent did not contest Notice Item 1.

PHMSA and Respondent (the Parties) subsequently met to discuss the issues raised in the Response. As a result of those discussions and as explained in more detail below, the Parties have agreed to a Consent Agreement which modifies the required compliance actions for Item 2,

¹ See *Rockies Express Pipeline*, TALLGRASS ENERGY, <https://pipeline.tallgrassenergy.com/Pages/Content.aspx?pipeline=501&type=SMRY> (last accessed June 26, 2023).

² *Id.*

reduces the civil penalty associated with Item 3 to \$15,800, withdraws from Item 4 part of the proposed violation and reduces the associated civil penalty to \$50,100, and finds that the required compliance actions for Items 1 and 4 have been satisfied. The total adjusted civil penalty agreed to is **\$116,000**.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and will serve the public interest by promoting safety and protection of the environment, pursuant to 49 U.S.C. § 60101, *et seq.* and 49 C.F.R. Part 190, and upon consent and agreement, 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 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 Consent Agreement (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 for the Dispute Resolution provisions set forth herein. Respondent agrees to withdraw its request for an administrative hearing regarding the Notice upon receipt of the signed Agreement.

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 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 set forth herein, this Agreement does not constitute a finding of violation of any other federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of a violation of any law, rule, regulation, or requirement, except in a proceeding to enforce the provisions of this Agreement or in future PHMSA enforcement actions.

II. Findings of Violation:

11. ***Item 1 – 49 C.F.R. § 192.5(b)(3)(ii):*** The Notice alleged that Respondent failed to properly identify a Class 3 location along its pipeline because it improperly excluded a building from its class location analysis, the Monroe Local School Bus Depot which is located within 100 yards of the pipeline and occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month-period. Following PHMSA's inspection and prior to receiving the Notice, Respondent modified its procedures to address the issue identified in the Notice, including providing additional guidance to field personnel when gathering structure data for class location analyses and updating its class location analysis to include the Monroe Local School Bus Depot. Without admission, Respondent did not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 192.5(b)(3)(ii).

12. ***Item 2 – 49 C.F.R. § 192.179(a)(4):*** The Notice alleged that Respondent failed to space sectionalizing block valves so that each point on the transmission pipeline in a Class 1

location was within 10 miles of a valve. Respondent contested this Item on the basis that the relevant valves were installed 20 miles apart by the prior owner and operator of REX when measured by the top-of-ground distance between the valves. Following the Parties' informal discussion, Respondent, without admission, agrees to accept the violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 192.179(a)(4).

13. **Item 3 – 49 C.F.R. § 192.609:** The Notice alleged that Respondent failed to immediately make a study whenever an increase in population density indicated a change in class location for a segment of an existing steel pipeline operating at hoop stress that is more than 40 percent of SMYS, or indicated that the hoop stress corresponding to the established maximum allowable operating pressure for a segment of existing pipeline is not commensurate with the present class location. Without admission, Respondent did not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 192.609.

14. **Item 4 – 49 C.F.R. § 192.905(b)(1):** The Notice alleged that Respondent failed to identify two identified sites: the Rockside Winery and Vineyards and a State Highway Patrol Office. Respondent contested this Item in part, contesting the allegation that the State Highway Patrol Office should be classified as an identified site. Respondent did not contest the allegation as it relates to classification of the Rockside Winery and Vineyard as an identified site. Prior to receiving the Notice, Respondent incorporated both locations into its High Consequence Area analysis and 2022 integrity management process. During the Parties' informal discussion, Respondent presented information that the State Highway Patrol Office does not meet the criteria of an identified site as defined by 49 C.F.R. § 192.903. Respondent further provided documentation showing that, without admission, it had voluntarily incorporated the State Highway Patrol Office into its High Consequence Area analysis as an interim measure until this matter was resolved. Based on the information provided, PHMSA agrees to withdraw from Item 4 the allegation that the State Highway Patrol Office should be classified as an identified site. As such, PHMSA finds one instance of violation of 49 C.F.R. § 192.905(b)(1) for Item 4.

15. Items 1, 2, 3, and 4 as modified above, will be considered by PHMSA as prior offenses in any future PHMSA enforcement action taken against Respondent for the five (5)-year period following the ***Effective Date*** of this Agreement.

V. Civil Penalty:

16. **Item 1 – 49 C.F.R. § 192.5(b)(3)(ii):** The Notice proposed assessing a civil penalty in the amount of \$50,100 for Item 1. Respondent did not contest the proposed civil penalty for this Item. As such, Respondent shall pay a civil penalty in the amount of **\$50,100** for Item 1.

17. **Item 3 – 49 C.F.R. § 192.609:** The Notice proposed assessing a civil penalty in the amount of \$40,000 for Item 3. Respondent requested a reduction of the proposed civil penalty in light of the fact that Tallgrass self-identified the relevant structures prior to PHMSA's inspection and incorporated them into its 2022 class location and HCA analysis. After consideration of this additional information, PHMSA agrees to a reduced civil penalty based on

reconsideration of the culpability factor to \$15,800. Respondent agrees to pay the reduced civil penalty of **\$15,800** for the violation in Item 3.

18. **Item 4 – 49 C.F.R. § 192.905(b)(1)**: The Notice proposed assessing a civil penalty in the amount of \$55,900 for Item 4. For the reasons discussed above in Paragraph 14, PHMSA reduces the number of instances of violation from two to one. As such, PHMSA reduces the civil penalty to \$50,100, based on the reduction to the number of instances of violation. Tallgrass agrees to pay the reduced civil penalty of **\$50,100** for the violation in Item 4.

19. Respondent will pay a total adjusted civil penalty in the amount of **\$116,000**, pursuant to the payment instructions at 49 C.F.R. § 190.227(a), to be paid in full no later than 20 days from the ***Effective Date*** of this Agreement.

V. Compliance Order:

20. **Item 1 – 49 C.F.R. § 192.5(b)(3)(ii)**: The Notice proposed certain compliance order actions to address the non-compliance alleged in Item 1. Respondent did not contest the Proposed Compliance Order for Item 1. Respondent submitted revised procedures to PHMSA which provide additional guidance for when 20 or more people at one time are considered to be in transit and its full class analysis utilizing its revised procedures. Based upon review of these records, PHMSA finds that the terms of the compliance order action proposed in the Notice for Item 1 have been satisfied.

21. **Item 2 – 49 C.F.R. § 192.179(a)(4)**: The Notice proposed a compliance order action to address the non-compliance alleged in Item 2. As a result of the Parties' informal discussions, the Parties have agreed to the following:

A. Special Permit Application and Limitations

- i. As soon as practicable but no more than 180 days from the ***Effective Date*** of this Agreement, Respondent will apply for a mainline valve spacing special permit (Special Permit) under 49 C.F.R. § 190.341 to allow for sectionalizing block valves to be spaced outside of the 10 mile (16 kilometer) spacing requirement for certain pipeline segments in a Class 1 location as set forth in 49 C.F.R. § 192.179(a)(4).
- ii. If approved, the proposed Special Permit conditions shall apply, and the obligations set forth in Paragraph B will terminate.
- iii. Unless or until the Special Permit is approved by PHMSA, Respondent will proceed to comply with the obligations set forth in Paragraph B.i.a. If the Special Permit is denied by PHMSA or withdrawn by Respondent, Respondent shall also proceed with the obligations specified in Paragraph B.i.b.

- iv. Respondent reserves the right to seek additional special permits.

B. Compliance Plan

i. In regard to Item 2 of the Notice, Respondent shall perform the following actions, subject to the limitations set forth in paragraph A, applicable to the area identified in the Notice with sectionalizing block valves spaced outside of the 10 mile (16 kilometer) spacing requirements of 49 C.F.R. § 192.179(a)(4):

a. *Interim Actions Until the Grant of the Special Permit Application*

1. *Work Plan.* Within **90** days of the ***Effective Date*** of this Agreement, Respondent will prepare and submit for the Director approval a Work Plan and Schedule to implement the Remedial Measures set forth in paragraph B.i.a.2, unless and until a Special Permit is granted.
2. *Remedial Measures.*
 - A. Conduct documented monthly aerial right-of-way patrols.
 - B. Perform documented leak survey with leak survey equipment at least twice each calendar year but not to exceed 7-1/2 months.
 - C. Documented in-line inspection conducted within 18 months of the ***Effective Date*** of this Agreement.
 - D. A documented close interval survey (CIS) will be conducted within 18 months of the ***Effective Date*** of this Agreement.
3. The Work Plan and Schedule required by paragraph B.i.a.1, may not be implemented until it has been approved, in writing, by the Director.

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

1. In the event the Special Permit is denied or withdrawn, and until Respondent has installed the valves referenced in B.i.b.2 below, Respondent will continue to implement remedial measures as set forth in B.i.a.2 as appropriate and applicable and described in the Work Plan and Schedule pursuant to B.i.a.1 of this Agreement. The Schedule will be updated as necessary.
2. Within **2** years of the date of denial or withdrawal, Respondent will determine a suitable location for, and install, the necessary valve(s) to meet the requirements of 49 C.F.R. § 192.179.
3. Respondent's obligations under B.i.a will terminate upon installation of the valves as required by B.i.b.2 or termination of this Agreement.

C. Respondent shall provide status updates to the Director on a quarterly basis describing the progress on all actions being undertaken pursuant to this Agreement.

D. 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.

22. **Item 4:** The Notice proposed certain compliance order actions to address the non-compliance alleged in Item 4. For the reasons discussed above in Paragraph 14, PHMSA will reduce the number of instances of violation from two to one by withdrawing the allegation of violation with respect to the State Highway Patrol Office. Without admission, Respondent has voluntarily included this location in its High Consequence Area analysis as an interim measure until this matter was resolved. Tallgrass did not contest the allegation as it relates to classification of the Rockside Winery and Vineyard as an identified site. Respondent submitted revised procedures to PHMSA which provide additional information to address facilities occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate. Respondent has also performed a full high consequence area analysis utilizing the approved revised procedures and provided its analysis to PHMSA. Based upon review of these records, PHMSA finds that the terms of the compliance order action proposed in the Notice for Item 4 have been satisfied.

VI. Enforcement:

23. 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 the determinations made by the Director, or in accordance with decisions of the Associate Administrator if resolved pursuant to the Dispute Resolution process herein. The maximum civil penalty amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223. All work plans and associated schedules set forth or referenced in Section V are automatically incorporated into this Agreement and are enforceable in the same manner.

VII. Review and Approval Process:

24. With respect to any submission under Section V (Compliance Order) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission; (b) approve the submission on specified, reasonable conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. If the Director approves, approves in part, or approves with conditions, Respondent will take all actions as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Respondent a written

notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

VIII. Dispute Resolution:

25. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including any decision of the Director under the terms of Section V, Compliance Order. 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.

IX. Effective Date:

26. 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.

X. Recordkeeping and Information Disclosure:

27. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five (5) years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

XI. 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.

XII. Termination:

29. This Agreement will remain in effect until the Compliance Order in Section V is satisfied, as determined by the Director. The Agreement shall not terminate until the Director confirms, in writing, that the Agreement is terminated in accordance with this paragraph. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

XIII. Ratification:

30. 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.

31. The Parties hereby agree to all findings, conditions, and terms of this Agreement.

[Signature Lines on Following Page]

For Tallgrass Energy:

Date

For PHMSA:

Director, Central Region, Office of Pipeline Safety

Date