NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER

VIA ELECTRONIC MAIL TO: matt@tallgrass.com
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December 22, 2022

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

CPF 3-2022-060-NOPV

Dear Mr. Sheehy:

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.

As a result of the inspection, it is alleged that REX has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected, and the probable violations are:

1. § 192.5 Class locations.

(a) . . . .

(b) Except as provided in paragraph (c) of this section, pipeline locations are classified as follows:

(1) . . . .

(3) A Class 3 location is:

(i) . . . .

(ii) An area where the pipeline lies within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)

REX failed to properly identify a Class 3 location along its pipeline because it improperly excluded a building located within 100 yards of the pipeline that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month- period. (The days and weeks need not be consecutive). The following entry was provided to PHMSA from REX's structure database, which is used by REX to identify class location segments along its pipeline:

- Monroe Local School Bus Depot. This was classified as a 08-Non-Qualifying Commercial. The database notes state, "Petermann Bus Company . . . . Occupied by 4 people M-F. 30 Bus drivers come in for 15 mins in morning and 15 mins. In afternoon . . . ."

During the inspection, REX stated to PHMSA personnel that they only count structures as Class 3 structures under this regulation if 20 or more persons occupy the structure for eight or more hours at a time. This interpretation of the regulation by REX is inconsistent with the plain language of the regulation, the intent of the regulation, and long-standing interpretation by the agency of how to apply the regulation.[1]

Further, REX's interpretation of the regulation is inconsistent with its own procedures. REX procedure "OM220_G Structure Survey for Class Location, HCA, and MCA Determination", states that a Class 3 structure is, "*[a]n area where the pipeline lies within 300-feet of either a building or a small, well-defined outside area (such as a playground, recreation area or other place of public assembly) that is occupied by 20 or more persons at least 5 days a week for 10 weeks in any 12-month period. The days and weeks need not be consecutive. In this case, the Class 3 area ends 300-feet on either side of the qualifying commercial building or outside area*." REX's procedure properly excludes any reference to the building being occupied by 20 or more persons for any threshold amount of time for the location to be considered Class 3. At the conclusion of the inspection, REX stated that they will treat these sites as Class 3 locations in the 2022 analysis, thus, creating a Class 3 location around the Monroe Local School Bus Depot.

2. § 192.179 Transmission line valves.

(a) Each transmission line, other than offshore segments, must have sectionalizing block valves spaced as follows, unless in a particular case the Administrator finds that alternative spacing would provide an equivalent level of safety:

(1) . . . .

(4) Each point on the pipeline in a Class 1 location must be within 10 miles (16 kilometers) of a valve.

REX 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. PHMSA requested records that showed REX's valve locations. In response REX stated, *"REX's recent review of the prior operator's as-built alignment sheets and post-construction PODS, Pipeline Open Database Standard, records for the REX pipeline indicated that the distance between MLV 104 (station: 8788564.4) and the*

[1] *See* Letter of Interpretation to Enterprise Products Co., PI-07-0102 (April 6, 2007) ("Under § 192.5(b)(3)(ii), the 20 or more persons must all be present at the same time. However, this does not require the continuous presence of 20 or more people. For example, the minimum requirement is met if 20 people are present at a convenience store at any one time during the day."),

MLV at the Clarington Hub (station: 8895996.7) is 20.35 miles based on the calculation between stations...The highest class location at the time of construction in 2008-2009 by a prior owner was Class 1, and there have been no class changes in this section of REX since its construction. Tallgrass is evaluating the timing of when a valve can be installed to remediate this issue."

3. § 192.609 Change in class location: Required study.
Whenever an increase in population density indicates 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 indicates 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, the operator shall immediately make a study to determine:

REX 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. PHMSA identified two structures intended for human occupancy near the following location: 39.512170°, -84.076358°. Google Earth shows the structures existed on or before October 2013, far in advance of when these structures were included in REX's class location study, in violation of the regulation requiring an immediate study. The operator stated these two structures were added to its database after evaluating and comparing to a national database and looking for gaps in 2021. These structures triggered a new Class 2 location in the 2022 class study.

4. § 192.905 How does an operator identify a high consequence area?
(a) . . . .
(b)(1) *Identified sites.* An operator must identify an identified site, for purposes of this subpart, from information the operator has obtained from routine operation and maintenance activities and from public officials with safety or emergency response or planning responsibilities who indicate to the operator that they know of locations that meet the identified site criteria. These public officials could include officials on a local emergency planning commission or relevant Native American tribal officials.

REX failed to identify an identified site from information it had obtained from routine operation and maintenance activities and from public officials with safety or emergency response or planning responsibilities which indicate to the operator that it knows of locations that meet the identified site criteria.

The following entry was provided to PHMSA from REX's structure database:

- Rockside Winery and Vineyards. This was classified as an "08-Non-Qualifying Commercial". The database notes state, "Ron Rutter - Owner - 1 employee open Tues. - Thurs. 3-7PM and Fri - Sat 12-8.". Upon field inspection on April 6, 2022, the manager Ron Collage, stated that they typically have 20 plus people in the building 5 days a week.

OM220_G Structure Survey for Class Location, HCA, and MCA Determination, states an identified site, "*is occupied by 20 or more persons at least 5 days a week for 10 weeks in any 12-month period."* The operator stated that they will treat these as identified sites in the 2022 analysis.

Furthermore, PHMSA observed the questioning of the State Highway Patrol Office located within the PIR. They stated while they do not have a prison or holding cell onsite, they do bring suspects back to this location to process their information prior to transfer to a local prison. It was stated the shortest time it takes to process would be one hour and the suspects are handcuffed and detained during this process. Thus, limiting the confined suspects ability to readily evacuate the structure.

REX did not classify this site as a limited mobility identified site, as defined by § 192.903(c). REX stated, "this is not a "facility occupied by persons who are of impaired mobility" or "would be difficult to evacuate" as the highway patrol office does not have holding cells. OM220 does not reference holding cells, but it did reference "prisons", which Merriman Webster dictionary defines as, "a state of confinement or captivity and a place of confinement especially for lawbreakers, *specifically*: an institution (such as one under state jurisdiction) for confinement of persons convicted of serious crimes". The suspected lawbreakers are being placed in a state of confinement or captivity while they are being processed by a state institution and which would make them difficult to evacuate, thus making this location an identified site.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed $239,142 per violation per day the violation persists, up to a maximum of $2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed $225,134 per violation per day the violation persists, up to a maximum of $2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed $222,504 per violation per day the violation persists, up to a maximum of $2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed $218,647 per violation per day the violation persists, up to a maximum of $2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed $213,268 per violation per day, with a maximum penalty not to exceed $2,132,679. For violation occurring on or after November 2, 2015, and before November 27, 2018, the maximum penalty may not exceed $209,002 per violation per day, with a maximum penalty not to exceed $2,090,022.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of $146,000 as follows:

Item number	PENALTY
1	$50,100
3	$40,000
4	$55,900

Proposed Compliance Order

With respect to items 1, 2, and 4, pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Rockies Express Pipeline LLC. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **3-2022-060-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible. If you need assistance in sending large files electronically, please contact us and we will provide a large file transfer link.

Sincerely,

Gregory A. Ochs
Director, Central Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

cc: *Jennifer Eckles, Director Compliance,* jennifer.eckels@tallgrassenergylp.com
Crystal Heter, Chief Operating Officer, crystal.heter@tallgrassenergylp.com

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Rockies Express Pipeline LLC a Compliance Order incorporating the following remedial requirements to ensure the compliance of Rockies Express Pipeline LLC with the pipeline safety regulations:

A. In regard to 1 of the Notice, Rockies Express Pipeline LLC must revise its procedures to adequately address when 20 or more people at one time are considered to be in transit. Utilizing the approved revised procedures, REX must perform and provide to Central Region a full class analysis within **180** days of receipt of the Final Order.

B. In regard to 2 of the Notice, Rockies Express Pipeline LLC must install the necessary valve(s) to meet § 192.179 requirements within **180** days of receipt of the Final Order.

D. In regard to 4 of the Notice, Rockies Express Pipeline LLC must revise its procedures to adequately address facilities occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate. Utilizing the approved revised procedures, REX must perform and provide to Central Region a full HCA analysis within **180** days of receipt of the Final Order.

It is requested that Rockies Express Pipeline LLC maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory Ochs, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses, and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.