



**Via Email to Gregory.Ochs@DOT.gov**

October 9, 2023

Mr. Gregory Ochs  
Director, Central Region  
Pipeline and Hazardous Materials Safety Administration  
901 Locust Street, Suite 462  
Kansas City, MO 64106

**RE: CPF No. 3-2023-016-NOPV  
Notice of Probable Violation, Proposed Civil Penalty, and Proposed  
Compliance Order, Request for Settlement Conference and Hearing**

Dear Mr. Ochs,

Tallgrass Energy, LP (Tallgrass or the Company) is in receipt of the above-referenced Notice of Probable Violation (NOPV), Proposed Civil Penalty, and Proposed Compliance Order (PCO) issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) on September 8, 2023. The NOPV was issued following PHMSA's inspection by video conference of the Company's natural gas pipeline Control Room Management (CRM) records during the period of Oct. 3 – Nov. 4, 2022. The inspection included review of CRM activities during the COVID-19 global pandemic and occurred just after a substantive revision of the Company's CRM plan (CRMP). The NOPV alleges eight (8) probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (C.F.R.), Part 192, including four (4) allegations with associated proposed civil penalties totaling \$197,300 (for Items 1, 2, 7, and 8) and PCO items associated with four (4) of the allegations (for Items 3-6).

Tallgrass prioritizes pipeline safety and appreciates the views expressed by PHMSA during the underlying CRM inspection. With the goals of continuous improvement and cooperation, the Company has, without admission, proactively worked to address the concerns raised by PHMSA, both after the inspection and prior to issuance of the NOPV. As set forth in this response, Tallgrass believes that (1) the NOPV allegations require clarification in light of the facts at issue, documentation, and applicable law, and (2) three (3) allegations are unsupported by the facts and the law and should be withdrawn. Because Tallgrass believes these issues are capable of resolution without the need to proceed to a hearing, the Company respectfully requests the opportunity to convene an informal settlement meeting with PHMSA's Central Region in an effort to resolve the NOPV, proposed civil penalties, and PCO pursuant to the Pipeline Safety Act, 49 U.S.C. § 60117(b)(1)(B).

To preserve its rights in the event the parties are unable to resolve this matter via an informal settlement conference, Tallgrass is filing this response pursuant to 49 C.F.R. §§ 190.208 and

190.211 to request a hearing to address the factual and legal issues presented by the NOPV. As set forth below, Tallgrass is contesting three (3) of the eight (8) allegations, Items 2, 3, and 8, including the associated proposed civil penalties for Items 2 and 8. Tallgrass is not contesting the other remaining Items and the Company is moving forward to address PHMSA concerns as set forth in the PCO requirements. Tallgrass is providing clarifications, however, with this response for the record and further discussion with PHMSA. In particular, the associated PCO elements in the NOPV are, in many instances, based on guidance and inspector preference rather than the regulations themselves, as well as what Tallgrass believes to be a misunderstanding of Tallgrass's CRMP.

If the Central Region is amenable to an informal settlement conference, Tallgrass requests that the scheduling of a hearing be postponed to allow sufficient time for settlement meetings. In the event the parties proceed to a hearing, Tallgrass will be represented by in-house counsel as well as outside counsel with Bracewell LLP.

## **I. Overview of Revisions to Tallgrass CRMP and Procedures**

Prior to the PHMSA 2022 gas CRM audit, Tallgrass substantially revised and was in the process of implementing its newly revised CRMP procedures, which became effective on Sept. 1, 2022, just one (1) month before the inspection. Tallgrass Operations Control Center (OCC) personnel worked with an independent third-party expert to improve its program over the course of 2022, the broad scope of which encompassed the following:

- A complete rewrite of the Tallgrass CRMP;
- A complete rewrite of the Tallgrass Alarm Management Plan;
- The creation of documentation and rationalization guidance for all systems;
- An overhaul of the Tallgrass Point to Point process and records;
- A complete redesign of Tallgrass Team Training;
- An overhaul of the Tallgrass Controller Training Program, including the addition of in-person controller CRM training, tabletop drills, and lessons learned programs; and
- A complete documentation and rationalization of the gas alarm database.

With the goal of continuous improvement, Tallgrass continues to strive towards a CRMP and procedures that not only meet the federal regulatory requirements but set best in class industry standards.

## **II. Tallgrass Written Response to PHMSA NOPV Allegations**

### **A. Uncontested Items**

As noted above, Tallgrass has elected not to contest Items 1, and 4-7, including the proposed civil penalty for Items 1 and 7, and Tallgrass has already addressed or is in the process of addressing the PCO requirements. Tallgrass nevertheless believes that there are clarifications which warrant a discussion around the facts and circumstances underlying these uncontested items as well as the

nature of the efforts the Company has taken before, during, and after the inspection which are the subject of the Notice. These are summarized below, by Item number.

***Item 1 (§ 192.631(c)(3) - Test and verify internal communication plan)***

Tallgrass is not contesting Item 1, including the associated civil penalty of \$39,100. For context, Tallgrass offers that the COVID-19 pandemic presented many unanticipated challenges that the Company did not foresee, including federal guidelines coupled with stringent state and local restrictions under which personnel were not authorized to congregate. As a result, and specific to this allegation, controllers were out of necessity required to work in isolated control rooms, which presented a number of limitations when it came to annually evaluating existing processes and procedures. Tallgrass focused its efforts to ensure safe operations were maintained despite the sudden and quickly changing landscape presented by COVID-19 in 2020 and 2021. While the regulations do not require that times for pressures and flows be recorded during the testing and verification of an internal communication plan, Tallgrass has since the inspection proactively updated its manual operations procedure to require this information.

***Item 4 (§ 192.631(e)(2) – Alarm management identification monthly of safety points taken off scan)***

Tallgrass has elected not to contest this Item and is in the process of complying with the associated PCO requirements. Specifically, Tallgrass is proactively working on implementing and preparing updates and enhancements to its Monthly Alarm Review documentation and procedure to address PHMSA's stated concerns, including the time at which (1) points of safety have been taken off scan in the SCADA host, (2) those alarms have been inhibited, generated false alarms, or that have had forced or manual values. Additionally, the documentation and procedure will also include the date and time at which those states have been put back in service, to properly review OCC logs, Management of Change (MOC) notices, and any pertinent documentation to identify cause, and whether the time period exceeded that of required associated maintenance or operating activities. Tallgrass has already made enhancements to its SharePoint Library and form for proper documentation to include the date of review as well as identification of the participants conducting the review. Tallgrass is also in the process of updating and filtering the Master Database to only review relevant information.

***Item 5 (§ 192.631(e)(3) – Verification of safety-related alarm set-point values and descriptions)***

Tallgrass does not contest this alleged violation and the Company is in the process of addressing the elements required by the associated PCO. In particular, Tallgrass has worked to improve upon its annual safety related review and developed within the Alarm Management Plan a specific procedure and process for conducting the review that will provide for proper identification of safety related points and alarms as well setpoint values and descriptions to verify accuracy. Deficiencies will be documented with the resolution and included in the review. Tallgrass is also

creating a specific SharePoint Library for proper preservation and documentation to include but not limited to year, date, corrective actions, participants, and attachments.

***Item 6 (§ 192.631(e)(4) – Effectiveness review of alarm management plan once per year, not to exceed 15 mos.)***

Tallgrass has elected not to contest NOPV Item 6 although Tallgrass believes that PHMSA's allegation is misplaced due to the Company's inability to comply in light of unanticipated COVID-19 impacts as well as to the extent of the regulatory requirement. Toward that end, the Company is in the process of complying with the associated PCO requirement. In particular, Tallgrass is working to further improve its procedure and process for annual review of Alarm Management Plan to include documentation of topics during review as well as improve Table 14. Tallgrass is developing a specific SharePoint library and form for documentation to include but not limited to year, date, effectiveness, plan deficiencies, corrective actions, participants, attachments.

***Item 7 (§ 192.631(h)(6) – Controller program training and exercises)***

Tallgrass does not contest NOPV Item 7 or the associated proposed civil penalty of \$39,100, but the Company believes certain clarifications are appropriate. First, the Company's compliance in 2020 was hindered by unanticipated impacts from COVID in terms of resource constraints. Second, and as stated previously, the Company was substantially revising its CRMP and had not yet conducted team training because it desired to have the first training session to be as effective as possible. To further address these issues, Tallgrass is updating its team training requirements in the CRMP.

**B. Contested Items**

As noted above, Tallgrass respectfully requests that Items 2, 3, and 8 be withdrawn, including the associated proposed civil penalties for Items 2 and 8, on the basis that these items are unsupported by the facts and the law.

***PHMSA Item 2 Allegation (192.631(c)(4) – Test any backup SCADA systems at least once each calendar year, not to exceed 15 months)***

Tallgrass's records did not demonstrate compliance with testing both back-up SCADA control room systems/facilities, local (360) and off site (Fort Collins), at least once each calendar year, but at intervals not to exceed 15 months, to provide adequate information, tools, processes, and procedures to its controllers for them to carry out the roles and responsibilities the operator has defined.

Documentation was provided for back-up control room tests for 4/25/2019, 5/13/2020 and 5/02/2021 for only one location (Fort Collins). On the test form (OCC Backup Site Test Checklist: Gas Pipelines), it is unclear if these tests are for the 360 local backup center or Fort Collins because the file name indicated Fort Collins. At a minimum 6

records should have been provided, one for each location (Fort Collins and 360). A review of the Task Data Base, which documents compliance task completion, shows there were two SCADA Backup System Tests for 2020: 10/27/20 and 5/13/20. There were three dates in 2021: 05/03/21, 04/04/21 (noted as FRII) and 3/23/21(noted as 360).

***Tallgrass Item 2 Response***

Tallgrass respectfully requests that PHMSA withdraw Item 2 of the NOPV and the associated proposed civil penalty of \$36,100. Tallgrass maintains records which demonstrate compliance with the obligation to test both back-up SCADA control room systems/facilities, local (360) and off site (Fort Collins), at least once each calendar year, but at intervals not to exceed 15 months, to provide adequate information, tools, processes, and procedures to its controllers for them to carry out the roles and responsibilities the operator has defined. Records requested by PHMSA during the audit were specific to the Fort Collins backup site, whereas this NOPV speaks to the 360-backup control center. Records for the 360-backup control center were available at the time of inspection for 2019, 2020, and 2021, and are being made available to PHMSA.

The Tallgrass OCC operated from the 360-backup control center for the duration of November 2020 to July of 2021, due to the COVID pandemic. As such, a formalized annual test for 2021 was not required, consistent with Tallgrass's CRMP Section 4.8.2 in place for the time period at issue and documented in the Company's OCC CRM Compliance Tracker.

In a proactive effort to continuously improve, Tallgrass has nevertheless amended its procedure for backup tests to, on a going forward basis, include testing documentation even when utilization of backup control rooms for operational control and/or point to point (P2P) fulfills testing requirements.

***PHMSA Item 3 Allegation (§ 192.631(e)(1) – Review SCADA safety-related alarm operations to ensure accuracy of alarms and support of safe pipeline operations)***

Tallgrass failed to follow the Tallgrass Alarm Management Plan (provided to PHMSA on 10/17/2022) page 28 & 29 of 49 to properly identify safety related points in the database. A review of the point-to-point (P2P) records for REX Cheyenne Hub and REX Connector did not demonstrate adequate implementation of safety-related points. The SCADA tags, verified during the P2P, identified a possible failure to properly identify the safety related points in the database. The Alarm Management Plan, Safety Related Point Section, identified several points that Tallgrass considered safety related but were marked as "False" in the Safety Related Column of the database. The database did not implement the procedure for safety related points. The Safety Related Column in the SCADA database should have been marked "True" to designate the point as safety related. There were 17 points for 51\_REX Cheyenne P2P and 9 points for 51\_REX

Connector P2P, which included Emergency Shut Down (ESD), fire, compressor station suction and discharge pressures, MLV (Main Line Valve) Breaks.

### ***Tallgrass Item 3 Response***

Tallgrass contests the allegation in Item 3. In the spirit of cooperation and continuous improvement, however, Tallgrass has already implemented the measures contained in the PCO.

As explained during the inspection, the Company met all regulatory requirements in following its Alarm Management Plan which along with the P2P database utilize “safety-related” identifiers for ESDs. The P2P database employs datapoints that include both “Parent” and “Child” datapoints, where the “Parent” datapoints constitute a single roll-up alarm which encompasses a multitude of “Child” alarms that are subsequently silent. Without that context, certain “Child” datapoints viewed on the P2P database in isolation from the Alarm Management Plan designation marked as non-safety related could inadvertently appear to be safety related based on the nomenclature in the P2P database. Operationally, that is not possible however given that the “Parent” datapoint was designated as a safety-related point and controlled over the “Child” datapoint. Tallgrass seeks to further clarify PHMSA’s understanding of Tallgrass’s procedures and processes, particularly how Tallgrass’s database operates in connection with its Alarm Management Plan.

Tallgrass was in the process of conducting a full system rationalization during PHMSA’s inspection which has since been completed. Further, Tallgrass has improved its safety-related review documentation records to properly identify points and alarms and to better distinguish between (1) points and alarms that are safety-related and (2) those that are not but have similar if not the same identifying language in the tag or that have a child-parent relationship in the SCADA system. Since that time and to further improve, Tallgrass has also been developing a process and procedure for safety-related reviews to ensure further alignment, alongside the creation of a specific SharePoint Library for proper preservation and documentation.

### ***PHMSA Item 8 Allegation) (§192.631(j)(1) – Maintain records that demonstrate compliance with this section)***

Tallgrass failed to maintain shift change records demonstrating compliance with § 192.631. These records were originally developed in an old application and were not available when the new application was implemented. The format used in 2019 was created in SharePoint. Records were requested for July 8, 2019, for both consoles (4 shift turnover documents). The information was retrieved from an export of data and presented for review in Excel format. All that was available for review in the spreadsheet was the date and time the handover was completed, the controller’s name, and the pipeline system. No other information was available for review. When Tallgrass switched to a new format, away from the SharePoint form, for their shift change documentation, this detail information was not maintained. This violation is a repeat of violations found in CPF # 3-2020-1008 Item # 4.

### ***Tallgrass Item 8 Response***

Tallgrass requests that PHMSA withdraw Item 8 of the NOPV along with the associated proposed civil penalty of \$83,000. These records are outside of the 3-year period required to be maintained pursuant to Tallgrass procedure OM\_1100\_GL and PHMSA regulations do not specify a longer retention period. The Company maintains the requested shift turnover documentation for July 8, 2019, which demonstrates compliance. Tallgrass will provide those records under separate cover.

By way of further explanation, Tallgrass was previously unable to extract the data from the software with which the Tallgrass shift turnover forms were created. The software vendor, Microsoft, abruptly ended support for the software with which the Tallgrass shift turnover forms were created. Until recently, the Company was informed that this end-of-life action would result in an inability to extract any data from the forms. Following PHMSA's inspection, Tallgrass revisited the issue with Microsoft and was able to resolve the issue and successfully extract the data.

### **III. Statement of Issues**

1. Whether PHMSA has met its burden to prove by a preponderance of the evidence that Tallgrass did not comply with 49 C.F.R. § 192.631 as alleged in NOPV Items 2, 3, and 8.
2. Whether PHMSA should consider the policy issues and hardship associated with the unanticipated impacts of the worldwide COVID-19 pandemic with respect to the alleged violations and proposed civil penalty.
3. Whether PHMSA provided due process and fair notice, as required by the U.S. Constitution and the Administrative Procedure Act, in issuing an alleged violation for NOPV Items 2 and 8 based on the facts and the applicable law.
4. Whether PHMSA's allegations of noncompliance under NOPV Items 2, 3, and 8 are 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).
5. Whether the proposed civil penalty associated with NOPV Items 2 and 8 should be withdrawn or reduced to accurately reflect the statutory and regulatory penalty assessment criteria required under 49 U.S.C. § 60122(b) and 49 C.F.R. § 190.225 and to align with penalties issued in prior relevant PHMSA enforcement.
6. Whether the proposed civil penalty and the PCO obligations contradict PHMSA's Pipeline Safety Enforcement Procedures and prior enforcement precedent.

**IV. 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 Items 2, 3, and 8 be withdrawn in their entirety, including the associated proposed civil penalties of \$36,100 (Item 2) and \$83,000 (Item 8). While Tallgrass does not contest Items 1 and 4-7, the Company seeks clarification of these items and the associated PCO obligations.

PHMSA bears the burden of proof of all elements of a proposed violation in an enforcement proceeding. *See, e.g., In re ANR Pipeline Co, Final Order, CPF No. 3-2011-1011 (Dec. 31, 2012).* As set forth above, PHMSA is unable to meet its burden in this action for Items 2, 3, and 8.

Tallgrass believes these issues are capable of resolution without the need to proceed to a hearing and respectfully requests an informal settlement meeting with the Central Region. In advance of the requested settlement meeting or hearing (should it be necessary), 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 Proposed Civil Penalty Worksheet which have already been provided.

Sincerely,

*Kale Stanton*

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Kale Stanton  
Director-Asset Integrity  
370 Van Gordon Street  
Lakewood, CO 80228  
Phone: (303) 763- 3142

CC: Tallgrass: Dave Neal, Ricky Seaton, Jay Meyers, Jarid Kling, Crystal Heter, Nicole Longwell  
Bracewell: Catherine Little  
PHMSA: AJ McKean, Gabe Hodill