



October 4, 2024

Mr. Gregory Ochs
Director – Central Region
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
901 Locust Street, Suite 480
Kansas City, MO 64106
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[Via Email]

RE: CPF 3-2024-040-NOPV – Rockies Express Pipeline LLC Request for Hearing and Settlement Conference

Director Ochs,

The Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) issued a Notice of Probable Violation (NOPV), Proposed Civil Penalty, and Proposed Compliance Order (PCO) to Rockies Express Pipeline LLC (REX), a subsidiary of Tallgrass Energy, LP (Tallgrass or the Company) on September 6, 2024. The NOPV was issued following PHMSA's inspection of REX, from Mexico, Missouri to Powhatan Point, Ohio from Feb. 2, 2023 to Jan. 25, 2024. As a result of the inspection, PHMSA alleged six (6) probable violations under the 49 C.F.R. Part 191 and Part 192 regulations. REX's responses to the allegations in the NOPV are due on Oct. 6, 2024; therefore, this response is timely.

Tallgrass is a responsible operator, committed to prioritizing pipeline safety and integrity, and the Company appreciates the views expressed by PHMSA during the underlying inspection. With the goals of continuous improvement and cooperation in mind, Tallgrass has, without admission, proactively worked to address concerns raised and provide all relevant information requested by PHMSA both during and after the inspection, and in advance of receiving the NOPV. As set forth in this response, Tallgrass accepts two (2) of the probable violations – NOPV Items 1 and 2, including the associated Proposed Civil Penalty for Items 1 and 2– and provides responses and clarifications to each of these items below.

For the remaining four (4) NOPV Items 3-6, Tallgrass believes these alleged violations are unwarranted in light of the facts at issue, documentation provided, and the applicable law. Tallgrass believes these issues are capable of resolution, and thus respectfully requests an informal settlement meeting with the Central Region. 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. Tallgrass is specifically contesting Items 3, 4, 5, and 6 of the NOPV, including the Proposed Civil Penalty for Item 6 and the associated PCO requirements for Items 3, 4, and 6, and requests that they be withdrawn in their entirety.

If the Central Region is amenable to an informal settlement conference, Tallgrass requests that the scheduling of a hearing be postponed to allow 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. Tallgrass Written Response to PHMSA NOPV Allegations

A. Uncontested Items

Tallgrass has elected not to contest Items 1 and 2, including the Proposed Civil Penalty for both Items. Clarifications for these Items are provided below, including a description of the efforts taken by the Company during and after the inspection.

Item 1 (§ 191.22(c)(1)(i) – 60-day advance notification of planned modification to pipeline costing more than \$10 million)

Tallgrass does not contest this allegation or the associated Proposed Civil Penalty. Per the Company's letter to the Central Region dated November 20, 2023, regarding the 60-Day Event Notification, the Company has instituted training to ensure all appropriate project management personnel are aware of the required construction notification requirements. The Company also updated its procedures and created a new form that project management personnel must complete when they are responsible for a construction project that meets the requirements of 49 C.F.R. §192.22(c)(1)(i).

Item 2 (§ 192.5(b)(3)(ii) – Class 2 and 3 location identification)

Tallgrass does not contest the allegation or the Proposed Civil Penalty associated with the class location identification requirements of 49 C.F.R. § 192.5(b)(3)(ii) at two sites on the REX/Kinetrex Interconnect lateral pipeline. With respect to the Class 2 location identification at issue, Tallgrass has made improvements to its internal class location process for proper structure identification and analysis. With respect to the Class 3 location identification at issue, Tallgrass employed a third party to perform a class location analysis which did not properly identify the extent of the Class 3 location. The Company has reviewed its standards and procedures and reiterated the importance of using the Company's Geographic Information System (GIS) Department to review and, where appropriate, update class location analyses prepared by third party engineering personnel.

B. Contested Items

Tallgrass respectfully requests that Items 3, 4, 5, and 6, including the associated Proposed Civil Penalty for Item 6 and the PCO requirement for Item 3, be withdrawn, on the basis that these items are unsupported by the facts and the law.

Item 3 (§ 192.195(a) – Protection against accidental overpressure)

PHMSA Allegation

REX failed to install adequate pressure relieving or limiting devices meeting the requirements of §§ 192.199 and 192.201 on its REX/Kinetrex Interconnect (RKI) pipeline, which was connected to a source of gas that could exceed its MAOP of 1475 psig. From records reviewed during the inspection, PHMSA identified that the MAOP of the REX 42-inch mainline exceeded the MAOP of the downstream RKI pipeline by five psig (1480 psig). As a result of this finding, REX lowered the discharge pressure at its Hamilton Compressor Station to 1475 psig and adjusted high-pressure alarms at mainline valve 80. However, PHMSA also identified that the REX mainline pipeline is configured to operate directionally and has multiple compressor stations that are upstream of the RKI. Due to this configuration and option to move gas bidirectionally, PHMSA requested clarification concerning other upstream stations on the mainline that could cause overpressure; however, REX did not confirm that the discharge pressure limits at any additional upstream stations, or group of stations were adjusted. Because additional stations are still configured to operate at the REX mainline MAOP of 1480 psig, RKI is not adequately protected from overpressure, and therefore, REX is in violation of § 192.195(a).

Tallgrass Response

Tallgrass contests this allegation and the PCO requirements as duplicative of Item 2, and respectfully requests that they be withdrawn. Tallgrass followed the regulations and its procedures in evaluating and providing adequate protection from overpressure on the Kinetrex Interconnect lateral pipeline. The alleged violation is inappropriate because it is entirely premised on, and relies on the same evidentiary basis for, the noncompliance alleged in Item 2 above for failure to properly identify a Class 3 location, which Tallgrass does not contest. Tallgrass followed its procedures and 49 C.F.R. §192.195(a), relying on an inaccurate input for class location based on an inadvertent error (acknowledged in response to Item 2 above) which resulted in the overpressure protection settings.

When the class location identification error addressed in Item 2 above was identified, Tallgrass updated the relevant overpressure protection device settings. Further, since the inspection, the Company has trained Engineering Project Management Department personnel to reinforce the importance of following the Company's Engineering Design and Construction standards.

Item 4 (§ 192.491(c) – Requiring operators to maintain records of each test, survey, or inspection required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist)

PHMSA Allegation

REX failed to maintain a record of each test, survey, or inspection required by subpart I, in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist, per the requirements of § 192.491(c). PHMSA reviewed REX's cathodic protection records containing over 180 alternating current (AC) mitigation devices in Ohio and found that AC mitigation devices were connected during annual monitoring tests on the REX Ohio corridors. PHMSA found that during testing these devices discharged current that affected the voltage shift (e.g., "IR drop") recorded during the surveys. Specifically, REX stated through its data review, it had found voltage readings appearing approximately 50-150mV more electronegative where AC mitigation devices were left connected during annual inspections. The survey readings affected by these devices are therefore unreliable and the values cannot be used for valid interpretation of the protective polarized voltage measurement across the structure-electrolyte boundary at these locations. As a result, REX's records also did not provide sufficient detail to demonstrate the adequacy of corrosion control measures at locations with results affected by the current discharge from AC mitigation devices. Because of the lack of sufficient data and detail, adequate corrosion control was not demonstrated, and REX is in violation of § 192.491(c).

Tallgrass Response

There is no basis for NOPV Item 4, and the Company contests the allegation. Tallgrass maintains data which sufficiently demonstrate that the cathodic protection (CP) levels were adequate throughout the REX pipeline and meet the negative 850mV criteria, as required by 49 C.F.R. § 192.491(c). The documents requested and reviewed by PHMSA during the course of the inspection were the annual survey and 2023 close interval survey (CIS) data for a segment of the REX pipeline. Those records are but only a portion of data which REX gathers, reviews, and integrates to evaluate CP, all of which were available for review at the time of the inspection.

To maintain pipeline safety and the integrity of the identified segment of the REX pipeline at issue with this alleged NOPV Item, Tallgrass applies other effective methods for evaluating the adequacy of the corrosion control measures, which includes integrating all relevant available data which may affect the system. Through the gathering and analysis of robust and comprehensive data, Tallgrass validated with sufficient data and detail that the CP levels were adequate throughout the REX pipeline and met the negative 850mV criteria required by PHMSA regulation and Tallgrass procedures. For these reasons, Tallgrass respectfully requests that this Item be withdrawn.

Item 5 (§ 192.619(a)(1) – Establishing maximum allowable operating pressure for steel or plastic pipelines using design pressure of the weakest element in the segment)

PHMSA Allegation

REX established the MAOP of its RKI pipeline at a pressure that exceeded the design pressure of its weakest element, per the requirements of § 192.619(a)(1). PHMSA determined after reviewing as-built records and Class determination records that the RKI pipeline was placed into service on or about July 28, 2022, and that REX failed to extend the 0.5 Class 3 design factor

along two segments where the RKI pipeline lies within 100 yards of the Class 3 well-defined outside area of public assembly established by the Danville Sports fields.

Subpart C, §192.111 - Design factor (F) for steel pipe.

(a) Except as otherwise provided in paragraphs (b), (c), and (d) of this section, the design factor to be used in the design formula in § 192.105 is determined in accordance with the following table:

Class location	Design factor (F)
1	0.72
2	0.60
3	0.50
4	0.40

REX's incorrect classification in these areas as Class 2 pipe, resulted in a design factor of 0.6 to establish the intended MAOP of 1,480 psig. The approximate stations of the segments are from 228+32 to 236+68 and from 251+82 to 253+74. The pipe used at these Class 3 locations was 6" x 0.188"w.t. X52M ERW. The correct 0.5 design factor applied to these segments limits the operating pressure to an MAOP of 1,475 psig per the design formula in § 192.105.

As a result of PHMSA's findings, REX completed an operational management of change at one of its pressure regulating stations on August 15, 2023, to revise MAOP to 1,475 psig on the RKI lateral.

Tallgrass Response

Tallgrass contests this allegation, and respectfully believes it should be withdrawn. Maximum allowable operating pressure (MAOP) was established in accordance with the regulations and Tallgrass procedures. Similar to Item 3 above, the alleged violation is inappropriate because it is entirely premised on, and relies on the same evidentiary basis for, the noncompliance alleged in Item 2 above for failure to properly identify a Class 3 location, which Tallgrass does not contest. Tallgrass followed its procedures and 49 C.F.R. § 192.619(a)(1), relying on an inadvertently inaccurate input for class location (acknowledged in response to Item 2 above) which resulted in the MAOP analysis.

When the class location identification error was identified, Tallgrass reestablished MAOP for the pipeline segment at issue. In addition, the Company has reviewed its standards and procedures and reiterated to Project Management Department personnel the importance of accurate class location identification to inform MAOP calculations and adherence to relevant MAOP procedures.

Item 6 (§192.705(c) – requires patrolling of transmission lines using methods of walking, driving, flying or other appropriate means of traversing the right-of-way)

PHMSA Allegation

REX failed to patrol its right-of-way (ROW) using an appropriate means, per the requirements of § 192.705(c). Specifically, REX used aerial patrols at locations where surface conditions (e.g., trees and vegetation) did not allow for adequate observation of the ROW.

Tallgrass Response

The Company contests this allegation, which is primarily based on PHMSA's review of Google Earth imagery, and in one instance an inspection from a location more than 1000 feet away, rather than an on-site, close visual inspection. The four (4) areas at issue in the NOPV are water crossings at Class 1 locations where the REX pipeline was installed by horizontal directional drill (HDD) 30-80 feet underground.

They are effectively patrolled by Tallgrass via aerial patrols once per calendar year not to exceed 15 months, pursuant to 49 C.F.R. § 192.705(b). The aerial patrols fly at 300 feet and in February of each year when the tree canopy is minimal, allowing for more than adequate observation of the ROW. In contrast, the Google Earth imagery primarily relied upon by PHMSA as a basis for this allegation was viewed at a higher altitude of 1000 feet with imagery resolution that cannot consistently identify features as small as a pipeline marker and does not accurately depict the view as observed from an aerial patrol pilot at 300 feet. Further, many of the images were reviewed on Google Earth during times of the year where the tree canopy is more prevalent. Moreover, these pipeline segments were installed at water crossings via horizontal directional drilled (HDD), which presents a decreased risk of third party damage given the depths at which they are installed. Based on the above, the Company requests that this allegation be withdrawn.

II. Statement of Issues

1. Whether based on the facts and applicable law, PHMSA has met its burden to prove by a preponderance of the evidence that REX did not comply with 49 C.F.R. §§ 192.195(a), 192.491(c), 192.619.1(a)(1), and 192.705(c) as alleged in NOPV Items 3, 4, 5, and 6, respectively.
2. Whether NOPV Items 2, 3, and 5 rely on the same evidence and are so related that they must be considered a single offense, and whether NOPV Items 3 and 5 should be withdrawn as a result.
3. Whether PHMSA provided due process and fair notice, as required by the U.S. Constitution and the Administrative Procedure Act, in issuing alleged violations for NOPV Items 4 and 6 based on the facts and the applicable law.
4. Whether PHMSA has made available a copy of the complete case file in this matter, beyond the Proposed Civil Penalty Worksheet and the Pipeline Safety Violation Report, pursuant to 49 C.F.R. § 190.209.
5. Whether PHMSA's allegations of noncompliance under NOPV Items 3, 4, 5, and 6 are arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law in violation of the Administrative Procedure Act.
6. Whether the Proposed Civil Penalty associated with NOPV Item 6 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.
7. Whether NOPV Items 3, 4, 5, and 6, the proposed civil penalty for Item 6, and the PCO requirements for Items 3, 4, and 6, contradict PHMSA's Pipeline Safety Enforcement Procedures and prior enforcement precedent.

III. Summary and Request for Relief

For the reasons identified above, and in consideration of other matters as justice may require, Tallgrass respectfully requests that NOPV Items 3, 4, 5, and 6 be withdrawn in their entirety including the Proposed Civil Penalty for Item 6 of \$58,000 and the associated PCO obligations for Items 3, 4, and 6.

As noted above, 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 Proposed Civil Penalty Worksheet and the Pipeline Safety Violation Report which have already been provided.

Tallgrass remains committed to operating its pipeline systems safely and in compliance with all applicable regulations. If you have further questions, please feel free to contact me at the email or phone number provided below.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Stephens', enclosed within a thin yellow rectangular border.

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CC: Tallgrass: Kale Stanton, Jay Meyers, Jarid Kling, Crystal Heter, Nicole Longwell, Esq.
Bracewell LLP