



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

901 Locust Street, Suite 462
Kansas City, MO 64106-2641

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
and
PROPOSED COMPLIANCE ORDER**

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

January 11, 2013

Mr. Dwayne Burton
Vice President, Operations and Engineering
Kinder Morgan Energy Partners, L.P.
One Allen Center
500 Dallas Street, Suite 1000
Houston, Texas 77002

Mr. George Rider
Executive Vice President and General Counsel
Tallgrass Energy Partners, LP
6640 W. 143rd Street, Suite 200
Overland Park, Kansas 66223

CPF 3-2013-1002

Dear Messrs. Burton and Rider:

On February 6, 2006, pursuant to 49 U.S.C. §60118(c) and 49 C.F.R. §190.341, Rockies Express Pipeline, L.L.C. (Rockies Express) filed a special permit request with the Pipeline & Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), for a waiver from certain provisions of 49 C.F.R. Part 192 for its Rockies Express Pipeline running from Wyoming to Ohio (REX Pipeline). PHMSA issues special permits to pipeline operators if the agency determines that a waiver of a particular regulation or standard is not inconsistent with pipeline safety. On July 11, 2006, PHMSA issued an order granting Rockies Express a special permit (SP) for the REX Pipeline with certain

conditions and limitations (SP Order). *See Docket number:* PHMSA-2006-23998 Notice 2. On May 16, 2009, PHMSA was notified of a release of gas from the REX Pipeline downstream of its Bertrand, Nebraska, compressor station which met the reporting criteria of Condition 25 of the special permit. On July 14-16, 2009, a representative of the PHMSA pursuant to Chapter 601 of 49 United States Code, investigated the report involving a release and inspected the pipeline facilities and records of Rockies Express' Bertrand, Nebraska, compressor station to determine the company's compliance with the SP Order.

On April 1-15, and July 11-15, 2011, representatives of PHMSA pursuant to Chapter 601 of 49 United States Code inspected the REX Pipeline from the Mexico, Missouri, Compressor Station to the Indiana/Ohio border facilities to determine the company's compliance with the SP Order.

As a result of the inspections, it appears that Rockies Express has committed probable violations of the SP Order. As stated in 49 C.F.R. §190.203(f), when information obtained from an inspection indicates that further OPS action is warranted, OPS may initiate one or more enforcement proceedings prescribed in §190.207 through §190.235.

The items inspected and the probable violation(s) are:

1. Condition 15.

Overpressure Protection Control: Mainline pipeline overpressure protection must be limited to a maximum of 104 percent MAOP.

Bertrand Compressor Station: Rockies Express allowed its pipeline pressure to exceed 104 percent MAOP by failing to limit its overpressure protection in accordance with SP Condition 15 at the Bertrand Compressor Station. On May 16, 2009, Rockies Express exceeded 104 percent of MAOP in the mainline pipeline segment between its Bertrand Compressor Station and downstream mainline valve number 15. After the unintended closure of valve number 15 at approximately 3:42 a.m., the station compressor units were automatically shut down because of high discharge pressure alarms with a peak pipeline pressure of 104.6 percent. Rockies Express failed to implement the O&M Procedure 703 for operation under the special permit which required the unit shutdowns to be set to 103 percent for all compressors in the REX pipeline. The overpressure protection set points for those units at Bertrand compressor station in place at the time were set at 105 percent MAOP.

2. Condition 15.

Overpressure Protection Control: Mainline pipeline overpressure protection must be limited to a maximum of 104 percent MAOP.

Blue Mound Compressor Station: Rockies Express did not set its overpressure protection at the Blue Mound Compressor Station to limit the pressure to a maximum of 104 percent MAOP in accordance with SP Condition 15. PHMSA discovered during the 2011 inspection of Rockies Express' Blue Mound

Compressor Station that unit shutdown controls were set above 104% of mainline MAOP. The September 15, 2010, inspection records for Blue Mound listed the “as found” and “as left” set points at 105 percent MAOP for all five compressor station units. The Blue Mound unit shutdowns remained out of compliance until they were reset to 103 percent of MAOP on April 20, 2011.

3. Condition 24.

SCADA Procedures: A detailed procedure for establishing and maintaining accurate SCADA set points must be established to ensure the pipeline operates within acceptable design limits at all times.

Rockies Express failed to establish a detailed procedure for establishing and maintaining SCADA set points within acceptable design limits for all operating modes. On May 16, 2009, Rockies Express was allowed to operate under local control at the Bertrand Compressor station. Although SCADA controllers were monitoring the pipeline system, the pipeline was operated above acceptable design limits, ultimately exceeding MAOP and allowable overpressure protection of 104 percent. The procedures (*O&M 703 section 3.3.2.1.d, O&M 1103 section 3, Bertrand unit “Start Procedure”*) did not accurately define SCADA set points for operating within acceptable design limits when in local mode.

4. Condition 28.

Gas Quality Monitoring and Control: An acceptable gas quality monitoring and mitigation program must be instituted to not exceed the following limits:

Special Permit Condition # 28a:

H₂S (4 grains maximum);

Special Permit Condition # 28b:

CO₂ (3 percent maximum);

Special Permit Condition # 28c:

H₂O (less than or equal to 7 pounds per million standard cubic feet and no free water); and

Special Permit Condition # 28d:

Other deleterious constituents that may impact the integrity of the pipeline must be instituted. Filters/separators must be installed at locations where gas is received into the pipeline to minimize the entry of contaminants and to protect the integrity of downstream pipeline segments. Gas quality monitoring equipment must be installed to permit the operator to manage the introduction of contaminants and free liquids into the pipeline.

Rockies Express did not institute its gas quality monitoring and control program in a manner that mitigated the entry of contaminants and ensured that the contaminants did not exceed the limits prescribed in SP Condition 28. The SCADA system recorded a total of 870 alarms indicating the gas quality exceeded the maximum limit, yet no mitigation measures were taken.

5. Condition 24

SCADA Procedures: A detailed procedure for establishing and maintaining accurate SCADA set points must be established to ensure the pipeline operates within acceptable design limits at all times.

Rockies Express failed to establish a detailed procedure to ensure accurate SCADA set points for its gas quality monitoring and control program were maintained. The accuracy of SCADA set points was not verified during, after, or as a result of calibrations on equipment required for monitoring the gas quality limits prescribed in SP Condition 28.

Proposed Civil Penalty

Under 49 United States Code, §60122, you are subject to a civil penalty not to exceed \$200,000 for each violation for each day the violation persists up to a maximum of \$2,000,000 for any related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$67,400 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$28,700
2	\$38,700

Proposed Compliance Order

With respect to item numbers 3, 4 and 5 pursuant to 49 United States Code §60118(b), 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 Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being 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). 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.

In your correspondence on this matter, please refer to **CPF 3-2013-1002** and for each document you submit, please provide a copy in electronic format whenever possible.

Right to Modify, Suspend, or Revoke a Special Permit

Issuance of this enforcement action does not preclude PHMSA's authority to seek modification, suspension or revocation of the special permit issued under PHMSA-2006-23998 Notice 2 at any time, as provided in 49 C.F.R. §190.341(h)(1).(v). If such action is taken, PHMSA will provide Rockies Express Pipeline, LLC with the opportunity to show cause why the proposed action should not be taken.

Sincerely,



David Barrett
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

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

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 compliance with the Special Permit Order issued on July 11, 2006.

1. In regard to Item Number 3 of the Notice pertaining to procedures for SCADA set points and operation within acceptable design limits at all times, Rockies Express Pipeline, LLC must, within 30 days of receipt of the Final Order, develop and implement enhanced procedures for pipeline control which ensure that all methods or modes of operation of the pipeline (manual, local, remote, automatic, emergency) have an equivalent level of safety with respect to maintaining mainline pressure set points, or PHMSA may issue a show cause letter modifying, revoking, or suspending the Order issued under PHMSA-2006-23998 Notice 2.
2. In regard to Item Number 4 of the Notice pertaining to the requirement for Rockies Express to institute an acceptable gas quality monitoring and mitigation program to not exceed the established limits, Rockies Express must, within 90 days of receipt of the Final Order, institute a program to monitor and mitigate gas quality problems which requires a documented investigation and mitigating actions whenever the limits are exceeded, or PHMSA may issue a show cause letter modifying, revoking, or suspending the Order issued under PHMSA-2006-23998 Notice 2.
3. In regard to Item Number 5 of the Notice pertaining to the requirement for Rockies Express to establish and maintain accurate SCADA set points for gas quality, Rockies Express must, within 90 days of the receipt of the Final Order, develop detailed procedures for ensuring that SCADA set points are calibrated on a point-to-point basis with all field equipment used to monitor the pipeline or PHMSA may issue a show cause letter modifying, revoking, or suspending the Order issued under PHMSA-2006-23998 Notice 2.
4. Submit the results of the Proposed Compliance Order Items above to David Barrett, Director, Central Region.

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4. Submit the results of the Proposed Compliance Order Items above to David Barrett, Director, Central Region.

Response Options for Pipeline Operators in Compliance Proceedings

The requirements of 49 C.F.R. Part 190, Subpart B (§§ 190.201–190.237) govern response to Notices issued by a Regional Director, Pipeline and Hazardous Materials Safety Administration (PHMSA).

Be advised that all material submitted by a respondent in response to an enforcement action is subject to being 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).

I. Procedures for Responding to a NOTICE OF PROBABLE VIOLATION:

Within 30 days of receipt of a Notice of Probable Violation, the respondent shall respond to the Regional Director who issued the Notice in the following way:

a. When the Notice contains a proposed CIVIL PENALTY* --

1. If you are not contesting any violations alleged in the Notice, pay the proposed civil penalty and advise the Regional Director of the payment. This authorizes PHMSA to issue an order making findings of violation and upon confirmation that the payment has been received PHMSA will close the case with prejudice to the respondent. Payment terms are outlined below;
2. If you are not contesting any violations alleged in the Notice but wish to submit written explanations, information, or other materials you believe warrant mitigation of the civil penalty, you may submit such materials. This authorizes PHMSA to make findings and to issue a Final Order assessing a penalty amount up to the amount proposed in the Notice. Refer to 49 C.F.R. § 190.225 for assessment considerations, which include the respondent's ability to pay and the effect on the respondent's ability to stay in business, upon which civil penalties are based;
3. If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination or mitigation of the proposed civil penalty; or
4. Request a hearing as described below to contest the allegations and/or proposed assessment of a civil penalty.

b. When the Notice contains a proposed COMPLIANCE ORDER* --

1. If you are not contesting the compliance order, notify the Regional Director that you intend to take the steps in the proposed compliance order;
2. If you are not contesting the compliance order but wish to submit written explanations, information, or other materials you believe warrant modification of the proposed compliance order in whole or in part, or you seek clarification of the terms of the proposed compliance order, you may submit such materials. This authorizes PHMSA to make findings and issue a compliance order;
3. If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part; or
4. Request a hearing as described below to contest the allegations and/or proposed compliance order items.

c. When the Notice contains a WARNING ITEM --

No written response is required. The respondent is warned that if it does not take appropriate action to correct these items, enforcement action will be taken if a subsequent inspection reveals a violation.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

II. Procedures for Responding to a NOTICE OF AMENDMENT*--

Within 30 days of receipt of a Notice of Amendment, the respondent shall respond to the Regional Director who issued the Notice in the following way:

- a. If you are not contesting the Notice, notify the Regional Director of your plans to address the inadequacies identified in the Notice;
- b. If you are not contesting the Notice but wish to submit written explanations, information, or other materials you believe warrant modification of the Notice of Amendment in whole or in part, or you seek clarification of the terms of the

Notice of Amendment, you may submit such materials. This authorizes PHMSA to make findings and issue an Order Directing Amendment;

- c. If you are contesting the Notice of Amendment but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the Notice of Amendment items in whole or in part; or
- d. Request a hearing as described below to contest the allegations in the Notice.

* Failure of the respondent to respond to the Notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the Notice without further notice to the respondent and to issue a Final Order.

III. **Procedure for Requesting a Hearing**

A request for a hearing must be in writing and accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations, new information, or to the proposed compliance order or proposed civil penalty amount. Refer to 49 C.F.R. § 190.225 for assessment considerations upon which civil penalties are based. A respondent's failure to specify an issue may result in waiver of the right to raise that issue at the hearing. The respondent's request must also indicate whether or not respondent will be represented by counsel at the hearing. Failure to request a hearing in writing within 30 days of receipt of a Notice waives the right to a hearing. In addition, if the amount of the proposed civil penalty or the proposed corrective action is less than \$10,000, the hearing will be held by telephone, unless the respondent submits a written request for an in-person hearing. Complete hearing procedures can be found at 49 C.F.R. § 190.211.

IV. **Extensions of Time**

An extension of time to prepare an appropriate response to a Notice may be granted, at the agency's discretion, following submittal of a written request to the Regional Director. The request must indicate the amount of time needed and the reasons for the extension. The request must be submitted within 30 days of receipt of the Notice.

V. **Freedom of Information Act**

Any material provided to PHMSA by the respondent, and materials prepared by PHMSA including the Notice and any order issued in this case, may be considered public information and subject to disclosure under the Freedom of Information Act (FOIA). If you believe the information you are providing is security sensitive, privileged, confidential or may cause your company competitive disadvantages, please clearly identify the material and provide justification why the documents, or portions of a document, should not be released under FOIA. If we receive a request for your material, we will notify you if PHMSA, after reviewing the materials and your provided justification, determines that withholding the materials does not meet any exemption

provided under the FOIA. You may appeal the agency's decision to release material under the FOIA at that time. Your appeal will stay the release of those materials until a final decision is made.

VI. **Small Business Regulatory Enforcement Fairness Act Information**

The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Pipeline and Hazardous Materials Safety Administration, call 1-888-REG-FAIR (1-888-734-3247) or go to http://www.sba.gov/ombudsman/dsp_faq.html.

VII. **Payment Instructions**

Civil Penalty Payments of Less Than \$10,000

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration
Mike Monroney Aeronautical Center
Financial Operations Division (AMZ-341) P.O. Box 269039
Oklahoma City, OK 73125-4915

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

Civil Penalty Payments of \$10,000 or more

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8893, or at the above address.

INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

Block #7 - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "**BNF=/ALC-69-14-0001**". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "**AC-payment for PHMSA Case # /** To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

NOTE: A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8893 at the time you send the wire transfer.

February 2009