

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Greenbrier Pipeline Company, L.L.C.                      Docket No. CP02-396-009

ORDER DENYING CLARIFICATION

(Issued May 9, 2005)

1. On October 19, 2004, Michelle Bankey filed a request for clarification of the order issued in this proceeding on September 20, 2004.<sup>1</sup> The September 20, 2004 Order denied requests for rehearing and reconsideration of a letter order issued in this proceeding on April 30, 2004 (April 30 Order) by the Director of the Office of Energy Projects granting Greenbrier Pipeline Company, L.L.C.'s (Greenbrier) request for an extension of time to construct and make available for service the Greenbrier Pipeline Project.<sup>2</sup>
2. For reasons discussed below, the Commission denies the request for clarification of the September 20, 2004 Order.

**Background**

3. On October 31, 2002, the Commission issued a preliminary determination on non-environmental issues,<sup>3</sup> finding that the Greenbrier Pipeline Project was required by the public convenience and necessity. On December 2, 2002, Michelle Bankey filed a request for rehearing of the October 31, 2002 Preliminary Determination in which she raised issues of the project's cost impact on local communities, actual need for the project, and lack of public benefit to local communities.

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<sup>1</sup> *Greenbrier Pipeline Company, L.L.C.*, 108 FERC ¶ 61,255 (2004).

<sup>2</sup> The Greenbrier Pipeline Project consists of 279 miles of pipeline, two compressor stations, and related facilities, located in West Virginia, Virginia, and North Carolina, to provide up to 600,000 dekatherms per day of firm transportation service.

<sup>3</sup> *Greenbrier Pipeline Company, L.L.C.*, 101 FERC ¶ 61,122 (2002).

4. On April 9, 2003, the Commission issued an order<sup>4</sup> authorizing Greenbrier to construct and operate the Greenbrier Pipeline Project. The April 9, 2003 Order also addressed, and denied, Ms. Bankey's request for rehearing of the October 31, 2002 Preliminary Determination. On May 9, 2003, Ms. Bankey filed a request for rehearing of the April 9, 2003 Order. In that rehearing request, Ms. Bankey asserted that the Commission discounted the adverse economic impacts and costs to the communities affected by the project, reasserted her contention that there was no actual need for the project, and maintained that the Commission did not adequately address the project's adverse impacts on aquifers, aquifer recharge areas and drinking water.

5. On July 28, 2003, the Commission issued an order<sup>5</sup> denying Ms. Bankey's request for rehearing of the April 9, 2003 Order.

6. On April 14, 2004, Greenbrier filed a request for a two-year extension of time to construct and make its project available for service and a second extension of time to file its initial Implementation Plan. In support of its request, Greenbrier stated that due to evolving conditions in the energy market, it needed the additional time to explore market opportunities for its project.

7. In an April 30, 2004 Letter Order, the Director of the Office of Energy Projects granted Greenbrier a two-year extension of time, until November 1, 2007, to construct and make the Greenbrier Pipeline Project available for service. The April 30 Letter Order also granted Greenbrier's request to file its construction plan no later than 90 days prior to commencement of the project's construction.<sup>6</sup>

8. On May 28, 2004, Michelle Bankey filed a request for reconsideration of the April 30 Letter Order. In that request, Ms. Bankey alleged that (1) there is no actual need for the Greenbrier Pipeline Project; (2) objectives supporting the pipeline routing no longer exist; (3) seasonal time restrictions for various environmental reports and studies were ignored; (4) potential catastrophic impacts have never been addressed; (5) costs to communities and changes in land use have never been addressed adequately; and (6) landowners and small businesses are entitled to know if and when the pipeline will be built.

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<sup>4</sup> *Greenbrier Pipeline Company, L.L.C.*, 103 FERC ¶ 61,024 (2003).

<sup>5</sup> *Greenbrier Pipeline Company, L.L.C.*, 104 FERC ¶ 61,145 (2003).

<sup>6</sup> As explained in the April 30 Letter Order, the plan to be filed is not the originally contemplated Implementation Plan.

9. On September 20, 2004, the Commission issued an order<sup>7</sup> denying Ms. Bankey's request for reconsideration of the Director's April 30 Letter Order. The September 20 Order noted that for the most part, Ms. Bankey's request was, as she admitted in her May 28, 2004 Filing, a reassertion of arguments already raised in her rehearing request of the April 9, 2003 Order and addressed by the Commission in its July 28, 2003 Order. Since the July 28 Order addressed her claims that there is no actual need for the project, that project objectives no longer exist, that the final environmental impact statement (FEIS) failed to adequately address catastrophic impacts, and that costs to the communities have not been adequately addressed, the Commission stated in the September 20 Order that it stood by the July 28 Order's responses to those claims.<sup>8</sup>

### **Ms. Bankey's Request for Clarification**

10. In her October 19, 2004 Filing, Ms. Bankey asserts, first, that the July 28 Order failed to address her claim that there is no actual need for the project, and further, that the Commission used incorrect gas usage data to support its finding that there is a need for the Greenbrier Pipeline Project. Second, Ms. Bankey states that potential impacts on aquifers and drinking water that might be caused by catastrophic events, such as ruptures, have never been taken into account. Third, Ms. Bankey contends that the July 28 Order fails to address the issue of the impact on local tourism and recreation resulting from degradation of the environment. Fourth, Ms. Bankey contends that the September 20 Order did not address her claim that the FEIS was based on data taken from 1990 and 2000 censuses, which might be outdated by the extended November 2007 date for completion of the project. Finally, Ms. Bankey claims that we did not address her concern that landowner agreements and easement options will have long expired before November 2007.

### **Discussion**

11. Ms. Bankey seeks in her request for clarification to sustain her longstanding dispute with our determination that there is an actual need for the Greenbrier project sufficient to warrant the project's approval. We have, as detailed above, thoroughly addressed the issue of actual need for the Greenbrier Pipeline Project. Insofar as Ms. Bankey continues to dispute the gas usage data cited in the July 28 Order, her proper

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<sup>7</sup> *Greenbrier Pipeline Company, L.L.C.*, *supra*, n.1.

<sup>8</sup> See 104 FERC ¶ 61,145 at P 12-30.

course was to seek judicial review of the July 28, 2003 Order.<sup>9</sup> Similarly, Ms. Bankey's arguments relating to adverse impacts on aquifers and drinking water, as well as economic impacts on tourism and recreation, have already been addressed in rehearing orders.<sup>10</sup>

12. As the September 20, 2004 Order noted, the Commission has on numerous occasions granted similar and longer extensions of time to complete projects. We will not speculate at this juncture on the circumstances that may exist in 2007 and thus find no need to reconsider the conclusions in the FEIS that relied on 1990 and 2000 census data. Finally, we will not reconsider the extension of time granted to Greenbrier in the April 30 Order because negotiations with landowners for easements may have stalled or because many easement options may have expired by March 15, 2005. As we explained in our July 28, 2003 Order, while we prefer that project sponsors work cooperatively with landowners in acquiring easement agreements, Greenbrier may rely on its certificate to obtain eminent domain through the state courts,<sup>11</sup> to the extent cooperative agreements cannot be reached.

The Commission orders:

Michelle Bankey's request for clarification of the order in this proceeding issued on September 20, 2004 is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>9</sup> Nonetheless, we have reviewed again the gas usage data relied on in the July 28, 2003 Order. *See* 104 FERC ¶ 61,145 at P 18. We are satisfied that our conclusions in the July 28 order regarding the localized gas consumption in North Carolina and Virginia were accurate.

<sup>10</sup> *See* 104 FERC ¶ 61,145 at P 27-36.

<sup>11</sup> 104 FERC ¶ 61,145 at P 21.