

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, LLC

Docket Nos. CP02-396-007
CP02-397-007
CP02-398-007

ORDER DENYING REHEARING

(Issued March 5, 2004)

1. In this order, the Commission addresses Michelle Bankey's request for rehearing of the letter order issued in this proceeding on November 26, 2003 (November 26 Letter Order) by the Director of the Division of Gas-Environment and Engineering (Director). The November 26 Letter Order grants Greenbrier Pipeline Company, LLC's (Greenbrier) request for an extension of time to file an initial Implementation Plan for the Greenbrier Pipeline Project.
2. For the reasons discussed below, the request for rehearing is denied.
3. On April 9, 2003, the Commission issued an order authorizing the Greenbrier Pipeline Project.¹ Environmental Condition No. 6 in Appendix B of the April 9, 2003 order (April 9 Order) requires Greenbrier to file, within 120 days from accepting the certificate and before beginning construction,² an initial Implementation Plan regarding the specific mitigation measures that will be employed during construction of the Greenbrier Pipeline Project. Greenbrier accepted the certificate issued in the April 9 Order on May 8, 2003. Therefore, the deadline for filing the initial Implemental Plan was September 5, 2003.

¹Greenbrier Pipeline Company, LLC, 103 FERC ¶ 61,024 (2003).

²The April 9 Order provides that construction of the project facilities shall be completed and made available for service by November 1, 2005.

4. On November 5, 2003, Greenbrier filed a request for extension of time until no later than 90 days prior to commencing construction of the Greenbrier Pipeline Project to file its initial Implementation Plan. In its request, Greenbrier stated that due to evolving market conditions it is evaluating other options for serving existing and potential customers in the region to be served by its project. Specifically, Greenbrier stated that it was considering service from Dominion's Cove Point LNG terminal in southern Maryland as an option.

5. The Director's letter order granted Greenbrier an extension of time until April 14, 2004 to file the Implementation Plan. The Director noted in the letter order that the environmental conditions of the April 9 Order require the preparation of a number of environmental and cultural reports, studies, and surveys, some of which have seasonable restrictions. Since the Commission's ability to authorize construction of the Greenbrier Pipeline Project facilities depends on timely completion of these surveys, studies and conditions, the Director chose to extend the time to a date certain rather than an unspecified date, as requested by Greenbrier.

6. Ms. Bankey contends that since Greenbrier's request for extension of time was filed 60 days after its Implementation Plan was due, the Director had no authority under Environmental Condition No. 2 in Appendix B of the April 9 Order to ignore Greenbrier's failure to comply with the order and modify the order's requirements by granting Greenbrier's request.

7. Ms. Bankey states that the affected landowners and businesses "need to know if and when the pipeline project will be constructed in order to plan for their own futures." She states further that the public should have ample time to review the environmental studies. Finally, she contends that the Commission should revoke Greenbrier's certificate for its failure to timely file the initial Implementation Plan.

8. In Environmental Condition No. 2 of the April 9 Order, the Commission delegates to the Director of OEP "authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project," including "the modification of conditions of this order."

9. Moreover, pursuant to Section 375.308(w)(4) of the Commission's regulations³, the Director of the Office of Energy Projects or the Director's designee⁴ is authorized by

³18 CFR §375.308(w)(4).

⁴Under the Director of OEP's official delegation tables, division directors have authority to act on such applications for extension of time.

the Commission to take appropriate action on “applications for extensions of time to file required reports, data, and information and to perform other acts required at or within a specific time by any ... certificate, or order of the Commission.”

10. Thus, Environmental Condition No. 2 and Section 375.308(w)(4) of our regulations provide the Director authority to grant Greenbrier’s requested extension of time, notwithstanding that it was filed after the deadline established in the April 9 Order. Further, while Greenbrier should have filed its request for extension of time before its Implementation Plan was due, we find that the Director’s action was appropriate in view of Greenbrier’s explanation that it was reevaluating its project in view of changing market conditions.

11. As noted above, Greenbrier is required to complete construction of the facilities and have them made available for service by November 1, 2005. Consequently, affected landowners and businesses know the deadline by when the project is to be completed. Moreover, the November 26 Letter Order extended the time to file the Implementation Plan until April 14, 2004, rather than extending it to an unspecified date, thereby providing affected landowners and businesses further certainty.

The Commission orders:

Ms. Bankey’s request for rehearing of the November 26 Letter Order is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary