

106 FERC ¶ 61, 165
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.	CP02-396-006 CP02-397-006 CP02-398-006
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ORDER DISMISSING PLEADING

(Issued February 18, 2004)

1. In this order, the Commission addresses Mr. Jim Williams' pleading filed on December 13, 2003 and styled as a request for rehearing of the order issued in this proceeding on November 13, 2003 (November 13 Order).¹
2. On April 9, 2003, the Commission issued a certificate of public convenience and necessity to Greenbrier Pipeline Company, LLC (Greenbrier) in this proceeding authorizing it to construct and operate the Greenbrier Pipeline Project. On July 28, 2003, the Commission issued an order denying and dismissing in part requests for rehearing of the April 9 Order. Mr. Williams filed a request for reconsideration of that order, which was denied by the order issued November 13. For reasons discussed below, the Commission is dismissing Mr. Jim Williams' December 13, 2003 pleading.
3. The November 13 Order denied Mr. Williams' request to reconsider the issuance of the certificate of public convenience and necessity that the Commission issued to Greenbrier. The November 13 Order also noted that Mr. Williams' pleading also requested rehearing of the July 28 Order, however, the pleading was filed outside the 30-day period within which rehearing requests must be filed. Consequently, the Commission denied Mr. Williams' rehearing request.
4. In his request to reconsider the July 28 Order, Mr. Williams submitted all the pleadings and exhibits relating to an action for injunctive relief filed against him by

¹ Greenbrier Pipeline Company, LLC, 105 FERC ¶ 61,188 (2003).

Greenbrier and Dominion Transmission, Inc. (Dominion) in the Circuit Court of Mercer County, West Virginia on September 20, 2001.

5. Specifically, Greenbrier and Dominion filed a complaint for injunctive relief against Mr. Williams in order to gain entry onto Mr. Williams' land for surveying and examination in order to route its Greenbrier Pipeline Project. Mr. Williams filed an answer to the complaint for injunctive relief, in which Mr. Williams included a number of affirmative defenses, including claims that his property is a wilderness tract protected by the federal Endangered Species Act, as well as West Virginia's Natural Streams Preservation Act. Mr. Williams' answer also affirmatively alleged that there are alternative routes for the pipeline which should be preferred under either a balance of hardship test or greater public interest test.

6. On March 3, 2003, Mr. Williams filed, pursuant to West Virginia's rules of civil procedure, a motion to dismiss the civil action for failure to prosecute. An order granting Mr. Williams' motion to dismiss for want of prosecution was entered on or about March 18, 2003. Because the state court granted his motion to dismiss, with prejudice, Mr. Williams contended that the affirmative defenses he raised in this state court proceeding should be viewed by the Commission as defenses against Greenbrier's proposal to construct the 279-mile Greenbrier Pipeline Project through the states of West Virginia, Virginia, and North Carolina.

7. In the November 13 Order, the Commission explained that in the April 9 Order, after completing its environmental analysis, the Commission issued a certificate of public convenience and necessity to Greenbrier authorizing it to construct and operate the Greenbrier Pipeline Project. Moreover, in the July 28 Order, the Commission stated that it addressed requests for rehearing of the April 9 Order and comments on the Final Environmental Impact Statement regarding whether routing alternatives were adequately considered, and the Commission determined that all reasonable alternatives were sufficiently considered.²

8. The Commission denied Mr. Williams' request for reconsideration, concluding that "Mr. Williams' request for reconsideration provides no new evidence warranting reconsideration of that finding. Indeed, the merits of the affirmative defenses that Mr. Williams raised in the civil action were never addressed by the state court, since the action was never prosecuted."³

² See 104 FERC at 61,521-2.

³ 105 FERC at 62,007-008.

9. In his request for rehearing of the November 13 Order, Mr. Williams contends that since the state court dismissed the civil action filed by Greenbrier with prejudice, and Greenbrier failed to appeal or reinstate its action, the dismissal is a final decision on the merits. Consequently, argues Mr. Williams, his affirmative defenses “had perfect merit and finality.”

10. Mr. Williams argues that since the state circuit court’s dismissal was a final judgment, the doctrine of res judicata coupled with the full faith and credit clause of the United States Constitution preclude Greenbrier from relitigating the “[t]he issue of an interstate construction project and if it would be harmonious with the environment, not damage habitats of endangered species, or violate state and federal environmental laws.”

11. Under the Natural Gas Act (NGA), Congress gave the Commission the sole responsibility of evaluating applications filed for authorization to construct and operate interstate natural gas pipeline facilities. In meeting this responsibility, the Commission, in compliance with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations for implementing NEPA,⁴ and the Commission’s regulations,⁵ prepared an Environmental Impact Statement (EIS) to assess the environmental impacts associated with the construction and operation of the proposed Greenbrier Pipeline Project. The principal purposes of the EIS for the Greenbrier Pipeline Project were (a) to identify and assess potential impacts on the natural and human environment; (b) to assess reasonable alternatives to the proposed project that would avoid or minimize adverse impacts on the environment; (c) to identify and recommend specific mitigation measures to minimize environmental impacts; and (d) to encourage and facilitate public involvement in identifying significant environmental impacts.

12. While the doctrine of res judicata might operate to preclude Greenbrier from bringing a new civil action in West Virginia to survey and examine Mr. Williams’ land for purposes of routing its proposed pipeline, it does not defeat the Commission’s jurisdiction under the NGA to act on Greenbrier’s application for a certificate of public convenience and necessity to construct interstate natural gas transportation facilities.

13. In any event, the Commission has already denied Mr. Williams’ earlier request for rehearing for failing to meet the statutory deadline. Consequently, pursuant to

⁴ 40 C.F.R. §§1599-1508.

⁵ 18 C.F.R. §380.

Section 19(a) of the NGA, Mr. Williams is precluded from bringing an action to obtain judicial review of the July 28 Order. Under these circumstances, the Commission is likewise dismissing Mr. Williams' December 13 petition.

The Commission orders:

The request for rehearing of the November 13 Order in this proceeding is dismissed.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.