

123 FERC ¶ 61,078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Entergy Services, Inc.

Docket No. ER07-682-003

ORDER DENYING REHEARING

(Issued April 25, 2008)

1. On December 3, 2007, the Louisiana Public Service Commission (Louisiana Commission) filed a request for rehearing of the Commission's November 1, 2007 order dismissing Louisiana Commission's prior rehearing request as deficient.¹ As discussed below, we find the Louisiana Commission's request for rehearing to be without merit and, therefore, deny the request.

I. Background

2. In the November 1 Order, the Commission dismissed the Louisiana Commission's request for rehearing of the Commission's May 25, 2007 order² addressing amendments to the Entergy System Agreement (System Agreement) submitted by Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies.³ In its rehearing request, the Louisiana Commission argued, among other things, that the Commission's determination in the May 25 Order is inconsistent with Opinion Nos. 480 and 480-A⁴ because Entergy's filing seeks to retroactively recalculate bandwidth remedy payments

¹ *Entergy Services, Inc.*, 121 FERC ¶ 61,126 (2007) (November 1 Order).

² *Entergy Services, Inc.*, 119 FERC ¶ 61,190 (2007) (May 25 Order).

³ The Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States Inc., Entergy Louisiana LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc. Entergy Gulf States, Inc. recently split into Entergy Gulf States Louisiana, LLC, and Entergy Texas, Inc.

⁴ *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *aff'd*, *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005).

for the calendar year remedy period 2006 and adjust the 2007 remedy payments.⁵ The Commission found the Louisiana Commission's request for rehearing to be deficient because the request for rehearing failed to include a section entitled "Statement of Issues" separate from its arguments as required by Rule 713(c)(2) of the Commission's Rules of Practice and Procedure.⁶ Accordingly, the Commission dismissed the Louisiana Commission's rehearing request. However, the Commission also discussed the Louisiana Commission's arguments and found them to be without merit.

II. Rehearing Request

3. The Louisiana Commission argues that its prior rehearing request did not "substantively violate Rule 713 and does not merit a waiver of its issues."⁷ While it acknowledges that the prior rehearing request did not include a heading entitled, "Statement of Issues," the Louisiana Commission contends that the pleading listed each issue separately along with the authorities and argument relied upon for each issue as required.⁸ Therefore, the Louisiana Commission argues that it substantially met the requirements of Rule 713.⁹

4. The Louisiana Commission claims that Rule 713 does not state that substantial compliance with the rule is insufficient or that the failure to insert a heading is grounds for the Commission to ignore its obligation to protect ratepayers from unjust and unreasonable rates.¹⁰ The Louisiana Commission states that the rehearing request identified and addressed important issues for Commission consideration, which it ignored by dismissing the rehearing request. It argues that it is inconsistent with the intent of the Federal Power Act (FPA) and unfair to those ratepayers to ignore a rehearing request simply because of the failure to include a separate heading.¹¹ Moreover, it notes that federal courts permit minor defects in pleadings to be corrected for resubmission and,

⁵ November 1 Order, 121 FERC ¶ 61,126 at P 8.

⁶ 18 C.F.R. § 385.713(c)(2) (2007). *See Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, FERC Stats. & Regs. ¶ 31,193 (2005), *order on reh'g*, Order No. 663-A, FERC Stats. & Regs. ¶ 31,211 (2006) (amending Order No. 663 to limit its applicability to rehearing requests).

⁷ Louisiana Commission's Request for Rehearing at 2.

⁸ *Id.* at 1-2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.*

given that administrative proceedings are intended to be more informal than federal district or appeal courts, the Louisiana Commission argues that the Commission should not ignore a rehearing request simply because of the failure to include a separate heading.

5. The Louisiana Commission also asserts that the dismissal of its rehearing request violates the FPA.¹² It states that the provision gives explicit authority to the Commission to review rehearing requests and the only basis for the Commission not to consider such requests is for failure to file within 30 days; the provision has no requirement that a separate heading be included. While the statute provides the Commission the authority to grant or deny the petition on its merits, the statute does not give the Commission the option to dismiss it for failure to include a formalistic heading. Therefore, by dismissing the rehearing request, the Louisiana Commission argues that the Commission exceeded its authority under the FPA.¹³

III. Discussion

6. As discussed below, we find that the Louisiana Commission's arguments on rehearing are without merit and, therefore, deny the rehearing request.

7. We disagree with the Louisiana Commission's contention that the prior rehearing request did not substantially violate Rule 713. The Louisiana Commission maintains that while it failed to include a separate heading entitled "Statement of Issues," it listed each issue separately as required under Rule 713, and thus substantially complied with the requirements under Rule 713. The Louisiana Commission misconstrues the requirement under Rule 713.¹⁴

8. Rule 713(c)(2) explicitly requires that a rehearing request "include a *separate section* entitled 'Statement of Issues,' listing each issue in a *separately* enumerated paragraph that includes representative Commission and court precedent on which the party is relying; any issue not listed will be deemed waived. . . ."¹⁵ The Louisiana

¹² *Id.* at 3-4 (citing 16 U.S.C. § 8251 (2000)).

¹³ *Id.* at 4.

¹⁴ We note that over the years, the Louisiana Commission has been a party to many Commission proceedings.

¹⁵ 18 C.F.R. § 385.713(c)(2) (2007) (emphasis added); *see also* November 1 Order, 121 FERC ¶ 61,126 at P 10.

Commission's prior rehearing request failed to include a *separate section* altogether, not, as it claims, just a heading. As we explained in the November 1 Order:

the purpose of this requirement is to benefit all participants in a proceeding by ensuring that the filer, the Commission, and all other participants understand the issues raised by the filer, and to enable the Commission to respond to these issues. Having a clearly articulated Statement of Issues ensures that issues are properly raised before the Commission and avoids the waste of time and resources involved in litigating appeals regarding which the courts of appeals lack jurisdiction because the issues on appeal were not clearly identified before the Commission.¹⁶

Therefore, the Louisiana Commission's pleading did not meet the requirements of Rule 713.

9. Moreover, contrary to the assertions of the Louisiana Commission, the Commission did not ignore the issues raised by the Louisiana Commission. Indeed, the Commission addressed the substantive issues raised by the Louisiana Commission and found them to be without merit.¹⁷

10. Further, we disagree with the Louisiana Commission's claim that the Commission violated the FPA by dismissing its prior rehearing request. The FPA authorizes the Commission to prescribe rules and regulations necessary to carry out the provisions of the statute.¹⁸ One such provision is section 313, which grants the Commission the authority to review requests for rehearing and the power to grant or deny such requests.¹⁹ Accordingly, the Commission adopted, pursuant to the Administrative Procedure Act,²⁰ a rule that would provide the specificity necessary to assist the Commission in granting or

¹⁶ November 1 Order, 121 FERC ¶ 61,126 at n.19 (citing Order No. 663, FERC Stats. & Regs. ¶ 31,193 at P 3-4).

¹⁷ November 1 Order, 121 FERC ¶ 61,126 at P 12-13.

¹⁸ 16 U.S.C. § 825h (2000) ("The Commission shall have power to perform any and all acts, and to prescribe . . . rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. . .").

¹⁹ *Id.* § 8251(a) (2000 & Supp. V 2005).

²⁰ 5 U.S.C. § 551, *et seq.* (2000).

denying requests for rehearing efficiently and judiciously.²¹ Indeed, in Order No. 663-A, the Commission noted that the purpose of its rule was to “ensure that the Commission will adequately address the issues raised in the rehearing request for purposes of judicial review.”²² Because Rule 713 is now final and nonappealable, the Commission has applied it to requests for rehearing that do not conform to its requirements, including the request submitted by the Louisiana Commission. Accordingly, the Commission dismissed the Louisiana Commission’s rehearing request, and we deny its further rehearing request here.²³

The Commission orders:

The Louisiana Commission’s request for rehearing is hereby denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²¹ See 16 U.S.C. § 8251(a) (“the application for rehearing shall set forth specifically the ground or grounds upon which such application is based”); see, e.g., *Allegheny Power v. FERC*, 437 F.3d 1215, 1220 (D.C. Cir. 2006) (noting that objections in a rehearing request must be raised with specificity).

²² Order No. 663-A, FERC Stats. & Regs. ¶ 31,211 at P 4.

²³ November 1 Order, 121 FERC ¶ 61,126 at P 10.