

174 FERC ¶ 61,100
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

PP&L Industrial Customer Alliance

Docket No. EL20-48-001

v.

PPL Electric Utilities Corporation

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued February 18, 2021)

1. On November 16, 2020, PPL Electric Utilities Corporation (PPL) filed a request for rehearing of the Commission's October 15, 2020 order¹ addressing PP&L Industrial Customer Alliance's (PPLICA) complaint filed pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA)² and Rule 206 of the Commission's Rules of Practice and Procedure,³ which established hearing and settlement judge procedures and set a refund effective date of May 21, 2020.

2. Pursuant to *Allegheny Defense Project v. FERC*,⁴ the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by

¹ *PP&L Indus. Customer All. v. PPL Elec. Utils. Corp.*, 173 FERC ¶ 61,042 (2020) (Order on Complaint).

² 16 U.S.C. §§ 824e, 825e, 825h.

³ 18 C.F.R. § 385.206 (2020).

⁴ *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc).

section 313(a) of the FPA,⁵ we are modifying the discussion in the Order on Complaint and continue to reach the same result in this proceeding, as discussed below.⁶

I. Background

3. On May 21, 2020, PPLICA filed a complaint (Initial Complaint) alleging that PPL's 11.18% base return on equity (ROE) was unjust and unreasonable and contending that, under the Commission's Opinion No. 569 ROE methodology,⁷ a reduced base ROE of 8.0% was just and reasonable.⁸ On June 10, 2020, PPLICA filed a supplement to the Initial Complaint (Supplement) to reflect the revisions to the Commission's ROE methodology set forth in Opinion No. 569-A.⁹ In its Supplement, PPLICA maintained its argument that PPL's 11.18% ROE was unjust and unreasonable and recommended a replacement ROE of 8.5%.¹⁰ In the Order on Complaint, the Commission found that because PPLICA's Initial Complaint was complete when it was filed, consistent with the Commission's general policy of providing maximum protection to ratepayers, the refund effective date would be set at the earliest date possible – May 21, 2020 – the date of PPLICA's Initial Complaint.¹¹

⁵ 16 U.S.C. § 825l(a) (“Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

⁶ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Order on Complaint. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁷ *Ass'n of Bus. Advocating for Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.* Opinion No. 569, 169 FERC ¶ 61,129 (2019), *order on reh'g, Ass'n of Bus. Advocating for Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.* Opinion No. 569-A, 171 FERC ¶ 61,154 (2020), *appeal pending sub nom. MISO Transmission Owners v. FERC*, No. 20-1182 (D.C. Cir. filed June 1, 2020).

⁸ Order on Complaint, 173 FERC ¶ 61,042 at PP 4-10.

⁹ See *Ass'n of Bus. Advocating for Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.* Opinion No. 569-A, 171 FERC ¶ 61,154.

¹⁰ *Id.* PP 11-15.

¹¹ Order on Complaint, 173 FERC ¶ 61,042 at P 74.

II. Discussion

4. PPL asserts that the Commission's determination that the Initial Complaint was complete when filed was arbitrary and capricious, as PPL contends it was unsupported by record evidence and Commission precedent.¹² PPL argues that, as PPLICA's "Initial Complaint was based solely on the [ROE] methodology established by the Commission in Opinion No. 569," which was then modified in Opinion No. 569-A, "PPLICA could not move forward with the Initial Complaint when filed" and "required an amendment to allow it to continue."¹³ As PPLICA "substantially altered its Initial Complaint . . . to address a new analysis, include revised testimony, new exhibits and a different result," PPL asserts that "the Commission would likely have rejected PPLICA's [Initial] Complaint absent the amendments made in the Amended Complaint because it was based on a methodology that the Commission had changed."¹⁴

5. We continue to find, as set forth in the Order on Complaint, that PPLICA's Initial Complaint was complete when filed.¹⁵ As an initial matter, the Commission's issuance of Opinion No. 569-A did not render PPLICA unable to "move forward with the Initial Complaint" or make it "likely" that the Commission would "have rejected PPLICA's Complaint" without PPLICA's Supplement.¹⁶ While PPLICA supplemented its Initial Complaint to incorporate the Commission's updated ROE methodology, PPLICA's Supplement did not impact PPLICA's assertion that PPL's existing ROE of 11.18% was excessive and unjust and unreasonable.¹⁷ Aside from asserting that PPLICA's Initial Complaint was incomplete because it did not incorporate Opinion No. 569-A's ROE methodology, PPL provides no support for its claim that PPLICA's Initial Complaint was incomplete. PPL has not identified any data, cost support, or testimony missing from the Initial Complaint demonstrating that it was not complete.¹⁸ That the Initial Complaint did not reflect the Opinion No. 569-A ROE methodology is not, on its own, sufficient to

¹² PPL Rehearing Request at 3.

¹³ *Id.* at 4.

¹⁴ *Id.* at 4-5.

¹⁵ Order on Complaint, 173 FERC ¶ 61,042 at P 74.

¹⁶ PPL Rehearing Request at 4-5.

¹⁷ *See* PPLICA's June 10, 2020 Supplement at 1-2.

¹⁸ PPL Rehearing Request at 4-5.

support a finding that the entire Initial Complaint is incomplete.¹⁹ In instances such as the instant proceeding, where a complainant's initial complaint is complete when filed but later supplemented or amended, the Commission has set the date of the initial, complete complaint as the refund effective date.²⁰ This approach encourages complainants to provide the most accurate, up-to-date information possible and is consistent with our general policy of providing maximum protection to ratepayers.²¹ Accordingly, the Commission in the Order on Complaint appropriately found that PPLICA's Initial Complaint, although later supplemented, was complete at the time of filing.²²

6. PPL contends that Commission precedent supports its argument that the date of the Supplement should establish the refund effective date²³ and that this proceeding has not been distinguished from other Commission proceedings in which the date an initial complaint was supplemented was used as the refund effective date.²⁴ PPL states that, in

¹⁹ See *N.C. E. Mun. Power Agency v. Duke Energy Progress, LLC*, 172 FERC ¶ 61,030, at PP 61-64 (2020) (setting for hearing an FPA section 206 complaint based on the Commission's pre-Opinion No. 569-A methodologies, despite the fact that Opinion No. 569-A was issued between the filing of the complaint and the issuance of the hearing order).

²⁰ See *Midcontinent Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,057, at PP 59-61, 89 (2014) (setting the refund effective date as the date of the initial complaint where the initial complaint was later supplemented to include more accurate cost-of-service information, as doing so is consistent with the Commission's general policy of providing maximum protection to customers); see also *Am. Mun. Power, Inc. v. Midwest Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,148, at P 97 (2019) (noting the Commission's general policy of providing maximum protection to ratepayers and therefore setting the refund effective date at the earliest possible date); *Calpine Corp.*, 163 FERC ¶ 61,236, at P 174 (2018) (stating that because the Commission seeks to give maximum protection to ratepayers, it establishes the refund effective date at the earliest possible date (the date the initial complaint was filed) even where the initial complaint was later amended); *Alliant Energy Corp. Servs. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,499, at P 24 (2005) (similarly setting the refund effective date as the date the initial complaint was filed and later amended).

²¹ Order on Complaint, 173 FERC ¶ 61,042 at P 74.

²² *Id.*

²³ PPL Rehearing Request at 5-6.

²⁴ *Id.* (citing *Villages of Jackson Center v. Dayton Power & Light Co.*, 90 FERC ¶ 61,237, at 61,756 n.8, 61,759 (2000) (*Villages of Jackson Center*); *Allegheny Elec.*

Louisiana Public Service Commission v. Entergy Services, Inc.,²⁵ the Commission stated that a complaint is complete when the complainant “has submitted all required data and cost support” and that, when a complaint is amended with new data and cost support, the date of the amended complaint serves as the refund effective date.²⁶ PPL avers that because PPLICA’s Initial Complaint had to be amended, it was not complete when filed, and, consistent with *Louisiana PSC*, the Commission must use the date of PPLICA’s Supplement as the refund effective date.²⁷

7. As we discuss above, contrary to PPL’s assertions, PPLICA’s complaint was complete when filed and, consistent with *Louisiana PSC*,²⁸ the Commission set the date of the Initial Complaint as the refund effective date. The facts that led to the Commission’s determination in *Louisiana PSC* distinguish it from the instant proceeding. In *Louisiana PSC*, the complainant (the Louisiana Public Service Commission) filed a complaint under FPA section 206, alleging that the 14% ROE included in formula rates in a system agreement between Entergy Services, Inc. (Entergy) and its four operating affiliates (System Agreement) was excessive and not just and reasonable, and the complainant asserted that a 12.05% ROE was just and reasonable.²⁹ The initial complaint in *Louisiana PSC*, however, only contained testimony and evidence used in a different complaint proceeding in which the Louisiana Public Service Commission alleged that

Coop., Inc. v. Niagara Mohawk Power Corp., 58 FERC ¶ 61,096, at 61,349-61,350 (1992) (*Allegheny*). The facts of these proceedings are distinguishable from the instant proceeding. In *Villages of Jackson Center*, after the filing of the initial complaint by three municipalities under section 206 of the FPA, a supplemental complaint was filed by eight additional municipalities raising new arguments. See *Villages of Jackson Center*, 90 FERC at 61,756-61,757. In *Allegheny*, the complainant in an FPA section 206 complaint proceeding supplemented its initial complaint to include materials that were “inadvertently missing at the time of filing.” 58 FERC at 61,344 n.1. Unlike the instant proceeding, the initial complaint in *Villages of Jackson Center* and *Allegheny* was not complete at the time it was filed, and the date of the supplemental complaint was appropriately set as the refund effective date.

²⁵ 54 FERC ¶ 61,162 (1991) (*Louisiana PSC*).

²⁶ PPL Rehearing Request at 5 (citing *Louisiana PSC*, 54 FERC at 61,502).

²⁷ *Id.* at 5-6.

²⁸ *Louisiana PSC*, 54 FERC at 61,502 (stating that a complaint is not complete until “all required data and cost support which constitute the [complaint] are provided to the Commission”).

²⁹ *Louisiana PSC*, 54 FERC at 61,500.

Entergy's ROE in its User Power Sales Agreement, a different agreement altogether, was similarly excessive and not just and reasonable.³⁰ In response to Entergy's protest that the initial complaint should be rejected for only offering testimony from a separate proceeding, the complainant submitted an amended complaint which, for the first time, included testimony regarding the ROE for Entergy's System Agreement and asserted that a reduced ROE of 12.05% under Entergy's System Agreement would be just and reasonable.³¹

8. Thus, as the initial complaint in *Louisiana PSC* failed to include required support for its complaint regarding Entergy's System Agreement, it demonstrably was not complete. Only when the complainant amended its complaint to provide the necessary testimony, data, and cost support regarding its specific complaint did the Commission determine its complaint was complete, and appropriately set the refund effective date as the date the amended complaint was filed.³²

9. PPL further contends that this proceeding is very similar to, and should be given the same treatment as, *California Public Utilities Commission v. Pacific Gas and Electric Company*.³³ PPL asserts that, in *California PUC*, the Commission "reset the refund effective date" after complainants amended their initial complaint "to address a Commission order issued after the complainants submitted their original complaint" and

³⁰ See Louisiana Public Service Commission's October 24, 1990 Amended Complaint at 1-2, in Docket Nos. EL90-16-000 and EL90-45-000.

³¹ *Id.*

³² *Louisiana PSC*, 54 FERC at 61,502. We further note that the determination in *Louisiana PSC* that complaints under FPA section 206 should be treated the same as filings under FPA section 205 (where the Commission treats the date an amended filing is submitted as the effective date) in order to "preserve[] the parity between [FPA] section 205 and [FPA] section 206 that the Regulatory Fairness Act sought to achieve[]" is an outdated notion which the Commission has ceased to endorse. *Id.* As the Commission has later clarified, "[s]imply put, the statutory requirements of [FPA] sections 205 and 206 are different and therefore it is not inconsistent for the Commission to impose different effective dates based on whether the filing is made under [FPA] section 205 or [FPA] section 206." *Entergy Serv., Inc.*, 128 FERC ¶ 61,005, at P 9 (2009). Accordingly, any assertions that *Louisiana PSC* establishes the proposition that, whenever an FPA section 206 complaint is amended, the date of the amended complaint serves as the refund effective date, are without merit.

³³ 163 FERC ¶ 61,113 (2018) (*California PUC*).

that the Commission therefore determined that the initial complaint was incomplete when filed.³⁴

10. PPL mischaracterizes the circumstances in *California PUC*. In *California PUC*, the complainant (the California Public Utilities Commission) submitted an FPA section 206 complaint alleging that Pacific Gas and Electric Company (PG&E) did not justify a proposed FPA section 205 rate increase.³⁵ The complainant then amended its initial complaint, but not to supplement its complaint “as a result of an order modifying the Commission’s evidentiary standards” issued after the initial complaint was filed, as PPL asserts.³⁶ Rather, the complainant supplemented the complaint to allege “for the first time” that as part of PG&E’s proposed rate increases, PG&E’s federal corporate income tax rate must be decreased as a result of the Tax Cuts and Jobs Act of 2017.³⁷ As the complainant’s initial complaint did not challenge PG&E’s federal corporate income tax rate, the date of the amended complaint in *California PUC* represented the first instance parties to that proceeding had notice of this allegation and an opportunity to comment on it. By contrast, as discussed above, PPLICA’s Supplement was limited to incorporating the Commission’s newly announced ROE methodology in Opinion No. 569-A; PPLICA’s central assertion that PPL’s existing ROE was excessive and unjust and unreasonable was unchanged, and PPLICA’s Supplement added no new allegations.³⁸ Accordingly, PPL’s arguments that the Commission’s findings in *California PUC* must necessarily extend to this proceeding are unavailing.

³⁴ *Id.*

³⁵ *California PUC*, 163 FERC ¶ 61,113 at PP 2-6.

³⁶ PPL Rehearing Request at 6-7.

³⁷ *California PUC*, 163 FERC ¶ 61,113 at P 17.

³⁸ *See supra* P 3.

The Commission orders:

In response to PPL's request for rehearing, the Order on Complaint is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.