

146 FERC ¶ 61,057
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Kentucky Utilities Company

Docket No. ER13-2428-001

Frankfort Electric and Water Plant Board and the
Cities of Barbourville, Bardstown, Bardwell, Benham,
Berea, Corbin, Falmouth, Madisonville, Nicholasville,
Paris, and Providence, Kentucky

v.

Docket No. EL14-5-001

Kentucky Utilities Company

ORDER GRANTING REHEARING AND CLARIFICATION

(Issued January 31, 2014)

1. In this order, we grant rehearing and clarification of the Commission's November 22, 2013 order¹ in these proceedings and establish a refund effective date of October 17, 2013 for the complaint (Complaint) filed by 12 municipal customers (Municipal Customers)² against Kentucky Utilities Company (KU).

I. Background

2. On September 23, 2013, KU filed in Docket No. ER13-2428-000 unexecuted Revised Agreements for each of the Municipal Customers to which it provides full requirements service. In that filing, KU proposed, among other substantive changes to both the rates and non-rate terms and conditions in the existing agreements, to

¹ *Kentucky Utils. Co.*, 145 FERC ¶ 61,161 (2013) (November 22 Order).

² The Municipal Customers are: Frankfort Electric and Water Plant Board, and the Cities of Barbourville, Bardstown, Bardwell, Benham, Berea, Corbin, Falmouth, Madisonville, Nicholasville, Paris, and Providence, Kentucky.

prospectively lower its return on equity (ROE) from the previously-approved 11 percent to 10.7 percent. KU requested an effective date for the Revised Agreements of November 23, 2013.³

3. On October 17, 2013, Municipal Customers separately filed a protest of the Revised Agreements (in Docket No. ER13-2428-000) that challenged KU's proposed revisions to both the rates and non-rate terms and conditions in each of the Revised Agreements, and a Complaint (in Docket No. EL14-5-000), which in substance largely mirrored its protest, but challenged KU's existing rates. With respect to the ROE for the Revised Agreements, Municipal Customers alleged that KU's proposed 10.7 percent ROE was too high and should instead be set at 8.3 percent. In their protest, Municipal Customers requested that the Commission suspend the Revised Agreements for five months (i.e., to April 23, 2014). In their Complaint, they requested that the Commission establish a refund effective date of October 17, 2013 (i.e., the date the Complaint was filed).⁴

4. The Commission accepted the Revised Agreements for filing and suspended them for a five-month period, to become effective on April 23, 2014, subject to refund, and set them for hearing and settlement judge procedures. With respect to the Complaint, which the Commission also set for hearing and settlement judge procedures, the Commission established a refund effective date of March 17, 2014 (i.e., five months after the date that Municipal Customers filed the Complaint), in order to align that date as closely as possible with the ordered effective date for the Revised Agreements, and because of "our general policy of providing maximum protection to customers."⁵ The Commission consolidated the two proceedings for purposes of settlement judge and hearing procedures.

II. Requests for Rehearing and Clarification

5. Municipal Customers dispute that the March 17, 2014 refund effective date for the Complaint provides them maximum protection and request that the Commission set the refund effective date as October 17, 2013, as they requested in their Complaint. Municipal Customers explain that, while their protest in Docket No. ER13-2428-000 challenged KU's *proposed* rates and terms, their Complaint in Docket No. EL14-5-000 challenged the excessiveness of KU's *existing* rates, particularly its existing ROE of 11 percent. Municipal Customers argue that, if the Commission ultimately concludes that KU's existing ROE is unjust and unreasonable, customers would be best protected by

³ November 22 Order, 145 FERC ¶ 61,161 at PP 3-4.

⁴ *Id.* PP 10-16.

⁵ *Id.* PP 32-37.

receiving refunds starting at the earliest statutorily-allowed date. They further argue that the difference between the October 17, 2013 and March 17, 2014 refund effective dates amounts to roughly \$270,000.⁶ Alternatively, Municipal Customers request that the Commission defer setting a refund effective date until the record is further developed.⁷

6. KU requests that the Commission clarify that: (1) it has instituted only one refund effective period in this proceeding under section 206 of the FPA; and (2) assuming that the parties do not reach resolution any earlier, such refund-effective period will expire after 15 months as provided for under section 206(b) of the FPA. KU argues that Municipal Customers have filed only one Complaint, and therefore that only one refund effective date and one 15-month refund period is allowed under the FPA.⁸

III. Discussion

7. We will grant Municipal Customers' request for rehearing and KU's request for clarification.

8. While the Commission's intent in the November 22 Order was, consistent with its general policy,⁹ to establish a refund effective date that provided maximum protection to Municipal Customers,¹⁰ Municipal Customers have now established that they would be better protected by an earlier refund effective date of October 17, 2013 compared to the date ordered by the Commission. Accordingly, we will grant rehearing of the November 22 Order and establish a refund effective date of October 17, 2013 for Municipal Customers' Complaint.

9. We also affirm, as requested by KU, that the Commission in the November 22 Order established a single refund effective date under section 206 of the FPA – a date now revised to October 17, 2013 – and that the refund effective period under section 206 of the FPA will expire 15 months after the revised refund effective date, as provided for in section 206(b) of the FPA.

⁶ Municipal Customers Request for Rehearing at 3-4.

⁷ *Id.* at 4-5.

⁸ KU Request for Clarification at 3-4 (citing 16 U.S.C. § 824e(b) (2012)).

⁹ *See, e.g., Seminole Elec. Coop., Inc. v. Florida Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

¹⁰ November 22 Order, 145 FERC ¶ 61,161 at P 37.

The Commission orders:

(A) Municipal Customers' request for rehearing and KU's request for clarification are hereby granted, as discussed in the body of this order.

(B) The refund effective date established in Docket No. EL14-5-000 pursuant to section 206(b) of the Federal Power Act is hereby established as October 17, 2013.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.