

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LOGAN TELEPHONE COOPERATIVE, INC.)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2021-00248
)	
EAST LOGAN WATER DISTRICT)	
)	
DEFENDANT)	

ANSWER

In accordance with the Public Service Commission’s Order of August 30, 2021, Defendant East Logan Water District (“the District” or “Defendant”) submits this Answer to the Complaint.

1. Defendant admits the allegations contained in paragraph 1 of the Complaint.
2. Defendant admits the allegations contained in paragraph 2 of the Complaint.
3. Defendant admits the allegations contained in paragraph 3 of the Complaint.

Defendant affirmative states that: (a) it supplies water service to a substation that Complainant operates; and (b) Complainant generally purchases less than 2,000 gallons of water monthly from Defendant for that facility.

4. As to the first and second sentences of paragraph 4 of the Complaint, KRS 278.015 and KRS 278.040 speak for themselves and Defendant denies any characterization inconsistent with same. The allegation in the third sentence of paragraph 4 is a legal conclusion to which no response is required.

5. As to the allegations contained in paragraph 5 of the Complaint, KRS 278.260(1) speaks for itself.

6. As to the the allegations contained in paragraph 6 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to Complainant's efforts to deploy a fiber optic network in Logan County, Kentucky. It affirmatively states that because more than 95 percent of Defendant's facilities were constructed prior to 2013 and were not required by law to have metallic tracer wire, it is unable to accurately locate those facilities from field location records and has informed Complainant and Complainant's contractors of its inability to do so as permitted by KRS 367.4903(11) and KRS 367.4909(6). Such response is not a refusal to mark or locate its water lines. Defendant further states that its actions regarding the location of its facilities has not affected the "purity, pressure, and quantity of water" provided to Complainant or prevented it from providing adequate, efficient, or reasonable water service to Complainant.

7. Defendant admits the allegations contained in paragraph 7 of the Complaint.

8. Defendant admits the allegations contained in the first sentence of paragraph 8 of the Complaint to the extent that (a) it supplies water service to a substation that Complainant operates; and (b) Complainant generally purchases less than 2,000 gallons of water monthly from Defendant for that facility. Defendant is without sufficient knowledge and information to form a belief as to number of Complainant's customers to whom it provides water service.

9. Defendant is without sufficient knowledge and information to form a belief as to the allegations in the paragraph 9 of the Complaint and therefore denies the allegation.

10. Defendant admits the allegations contained in paragraph 10 of the Complaint.

11. Defendant is without sufficient knowledge or information to form a belief as to the allegations in paragraph 11 of the Complaint and, therefore, denies same.

12. Defendant admits the allegations contained in paragraph 12 of the Complaint to the extent that Complainant and Complainant's contractors have submitted facility locate requests to Defendant regarding planned excavations in Defendant's territory.

13. Defendant denies the allegation contained in paragraph 13 of the Complaint.

14. Defendant denies the allegation contained in paragraph 14 of the Complaint.

15. As to the allegations contained in paragraph 15 of the Complaint, Defendant denies that its responses to the requests of Complainant and Complainant's contractors were inconsistent with its obligations under KRS 367.4903(11) and KRS 367.4909(6).

16. As to allegations contained in the first sentence of paragraph 16, Defendant denies that the exhibit marked as "Exhibit 1" and attached to the Complaint is email correspondence concerning four locate requests made in the fall of October 2020. Defendant admits that on occasion after notifying Complainant's contractors that it could not accurately locate its facilities, it has offer to make its field maps available to those contractors to ascertain a general, but not approximate, location of Defendant's facilities. Defendant affirmatively states that, because more than 95 percent of its facilities were constructed prior to 2013 and were not required to have metallic tracer wire, it is unable to accurately locate those facilities from field location records and has informed Complainant and Complainant's contractors of its inability to do so as permitted by KRS 367.4903(11) and KRS 367.4909(6). Defendant further states that representatives of Kentucky Underground Protection, Inc., which administers the Kentucky Contact Center, has advised it that such response was acceptable and consistent with existing Kentucky law.

17. Defendant denies the allegation contained in paragraph 17 of the Complaint.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint, but affirmatively states that its responses to requests to locate water line were based upon its ability to determine the approximate location of such water line from field records and on guidance from representatives of Kentucky Underground Protection, Inc. as to its obligations under KRS 367.4909(6).

19. As to the allegations contained in paragraph 19 of the Complaint, Defendant states that because more than 95 percent of its facilities were constructed prior to 2013 and lack metallic tracer wire, it is unable to accurately locate those facilities from field location records and has informed Complainant and Complainant's contractors of its inability to do so as permitted by KRS 367.4903(11) and KRS 367.4909(6). Such response is not a refusal to mark or locate its water lines. Upon receipt of such response, KRS 367.4911(10) required Complainant or Complainant's contractor to hand-dig or use nonintrusive means to avoid damage to water lines. Defendant is without knowledge or information sufficient to form a belief as to whether Complainant or Complainant's contractors complied with KRS 367.4911(10) or whether any breakage was the result of the contractor's negligence or willful refusal to hand-dig or use nonintrusive means to avoid damage.

20. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in the first sentence of paragraph 20 of the Complaint. As to the remaining allegations contained in paragraph 20 of the Complaint, the record of Case No. 19-M-612 speaks for itself. Defendant affirmatively states that any action taken by Mr. Browning in the alleged incident was not taken in his official capacity as a member of East Logan Water District's Board of Commissioners nor was it sanctioned or authorized by East Logan Water District's Board of Commissioners.

21. Defendant admits the allegations contained in paragraph 21 of the Complaint to the extent that prior to June 2021 representatives of Complainant and Defendant conferred about their respective responsibilities under KRS 367.4909, but denies the remainder. Defendant affirmatively states that in many of those discussions Complainant repeatedly insisted that Defendant assume responsibilities for locating facilities not required by KRS 367.4909 and that are the excavator's responsibility. Defendant further states that it has offered to engage in pre-

design and preconstruction meetings with the representatives of Complainant and Complainant's contractors in an effort to avoid or reduce excavation damage and Complainant has failed to respond to or refused such offers.

22. Defendant denies the allegations contained in paragraph 22 of the Complaint.

23. As to the allegations contained in paragraph 23 of the Complaint, Defendant states that because more than 95 percent of its facilities were constructed prior to 2013 and were not required by law to have tracer wire, it is unable to accurately locate those facilities from field location records and has informed Complainant and Complainant's contractors of its inability to do so as permitted by KRS 367.4903(11) and KRS 367.4909(6). Such response is not a refusal to mark or locate its water lines. Defendant denies that its actions fail to comply with its statutory obligations under KRS 367.4909. At no time has the damage caused by Complainant or Complainant's contractors resulted in the loss or impairment of water service to Complainant's facilities by Defendant. As Defendant's total water loss due to excavation damage in 2020 represented less than 0.9 percent of Defendant's water purchases and approximately 3.4 percent of Defendant's total water loss in 2020, Complainant's assertion that excavation damage has "caused excessive water loss" is erroneous and unsupported by records on file with the Public Service Commission.

24. Defendant denies the allegations contained in paragraph 24 of the Complaint.

25. As to the allegations in paragraph 25 of the Complaint, the record of Cases No. 2020-00220 and No. 2021-00063 speak for themselves.

26. As to the allegations in paragraph 26 of the Complaint, the annual reports and water loss reports that Defendant files with the Public Service Commission speak for themselves.

27. As to the allegations in paragraph 27 of the Complaint, the records of Cases No. 2020-00220 and No. 2021-00063 and the annual reports and water loss reports that Defendant files with the Public Service Commission speak for themselves.

28. As to the allegations in paragraph 28 of the Complaint, the record of Case No. 2019-00295 speaks for itself and Defendant denies any characterization inconsistent with same.

29. As to the allegations contained in paragraph 29 of the Complaint, the minutes of the August 25, 2020 meeting of the East Logan Water District Board of Commissioners speak for itself and Defendant denies any characterization inconsistent with same.

30. As to the allegation contained in the first sentence of paragraph 30 of the Complaint, KRS 367.4917 speaks for itself. As to the allegation contained in the second sentence of paragraph 30, Defendant lacks sufficient knowledge or information sufficient to form a belief.

31. Defendant admits the allegations contained in paragraph 31 of the Complainant to the extent that, as an “operator” as defined in KRS 367.4903(5), Defendant must comply with KRS 367.4909(6), but denies that any provision of KRS Chapter 278 imposes an obligation upon a public utility to locate its facilities for the benefit of a private corporation.

32. As to the allegations contained in paragraph 32 of the complaint, KRS Chapter 278 speaks for itself. Defendant denies that it has acted in an unreasonable or unlawful manner in responding to the requests for facility location from Complainant or Complainant’s contractors.

33. Regarding the allegations contained in paragraph 33, Defendant adopts and incorporates its answer to paragraphs 1 through 32 of the Complaint.

34. Regarding the allegations contained in paragraph 34 of the Complaint, KRS 278.030 speaks for itself and Defendant deny any characterization inconsistent with same.

35. Regarding the allegations contained in paragraph 35 of the Complaint, KRS 278.260 speaks for itself and Defendant deny any characterization inconsistent with same.

36. Defendant denies the allegations contained in paragraph 36 of the Complaint and affirmatively states that because more than 95 percent of its facilities were constructed prior to 2013 and were not required by law to have metallic tracer wire, it is unable to accurately locate those facilities from field location records and has informed Complainant and Complainant's contractors of its inability to do so as permitted by KRS 367.4903(11) and KRS 367.4909(6). Such response is not a refusal to mark or locate its water lines.

37. Defendant denies the allegations contained in paragraph 37 of the Complaint.

38. As to the allegations contained in the first sentence of paragraph 38 of the Complaint, Defendant admits experiencing water line breaks in 2019 and 2020 but denies these breaks were the result of any failure to comply with KRS 367.4909. Defendant affirmatively states that because more than 95 percent of its facilities were constructed prior to 2013 and were not required by law to have metallic tracer wire, it is unable to accurately locate those facilities from field location records and has informed Complainant and Complainant's contractors of its inability to do so as permitted by KRS 367.4903(11) and KRS 367.4909(6). Such response is not a refusal to mark or locate its water lines.

39. Defendant denies the allegations contained in the second sentence of paragraph 38 of the Complaint and affirmatively states at no time in 2019 or 2020 was water service to Complainant's facilities or the rates for such service adversely affected or impaired by any water line break caused by Complainant's contractors and that the rate for water service provided to Complainant was reduced by 6.8 percent on August 1, 2020 and that prior to that date the rate for water service provided to Complainant had not changed since March 1, 2013.

40. As to the allegations contained in paragraph 39 of the Complaint, Defendant states that, because more than 95 percent of its facilities were constructed prior to 2013 and were not required by law to have metallic tracer wire, it is unable to accurately locate those facilities from

field location records and has informed Complainant and Complainant's contractors of its inability to do so as permitted by KRS 367.4903(11) and KRS 367.4909(6). Such response is not a refusal to mark or locate its water lines. Defendant is without sufficient knowledge or information to form a belief as to Complainant's efforts to deploy a fiber optic network in Logan County, Kentucky.

41. All allegations not specifically admitted are denied.

First Affirmative Defense

The Complaint fails to set forth any claim upon which the Public Service Commission can grant relief.

Second Affirmative Defense

The Public Service Commission lacks jurisdiction over the matters complained as those matters do not involve the rates or service of a utility or a violation of any provision of KRS Chapter 278 or Commission regulation.

Third Affirmative Defense

The Public Service Commission lacks jurisdiction to enforce the provisions of KRS 367.4901-.4917 or to assess a penalty for a violation of those statutes unless the facilities in question are underground facilities used to transport gas or hazardous liquid subject to the federal pipeline safety laws. The facilities that are the subject of the Complaint do not involved the transportation of any gas or hazardous liquid subject to the federal pipeline safety laws.

Fourth Affirmative Defense

To the extent that the Complaint involves the Defendant's current level of water loss and seeks the implementation of practices and training procedures to minimize unaccounted-for water loss, the Public Service Commission has already initiated an investigation into Defendant's water

loss and another proceeding regarding that issue is duplicative and unnecessarily wastes the valuable resources of the Public Service Commission and the Defendant.

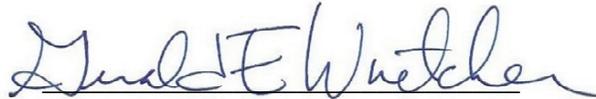
Fifth Affirmative Defense

Complainant lacks any standing to assert any claims on behalf of or to represent the interests of its customers with regard to Defendant's rates for water service or the quality of that service.

WHEREFORE, East Logan Water District requests that the Commission enter an Order dismissing the Complaint with prejudice.

Dated: September 17, 2021

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8 and the Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Public Service Commission on September 17, 2021 and that no parties have been excused from electronic filing procedures.



Gerald E. Wuetcher