

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)	

**MOTION TO RESCHEDULE HEARING AND ESTABLISH
A PROCEDURAL SCHEDULE PERMITTING DISCOVERY**

Pursuant to 807 KAR 5:001, Section 5, East Logan Water District (“East Logan District” or “the District”) moves for an order rescheduling the hearing in this matter and establishing a procedural schedule that will permit the parties to conduct discovery in this matter.

In support of its motion, East Logan District states:

1. On June 17, 2021, Logan Telephone Cooperative, Inc. (“Complainant”) filed with the Commission a complaint against the District alleging that the District is failing to provide reasonable water service due to its alleged inability to locate and mark its water lines to the level of precision that the Underground Facility Damage Prevention Act allegedly requires.
2. On August 30, 2021, the Commission ordered the District to answer the complaint.
3. On September 17, 2021, the District filed with the Commission its answer to the complaint.
4. Since September 17, 2021, no action has occurred in this proceeding other than Commission Staff’s issuance of requests for information to the parties, which the parties have

answered, and a telephone conference between Commission Staff and the parties, which occurred on May 11, 2022.

5. On July 25, 2022, the Commission ordered a hearing to be held in this matter on August 16, 2022. This order makes no provision for discovery. To date, the Commission has not issued any order permitting the parties to conduct discovery in this matter or inviting the parties to request an opportunity to conduct discovery.

6. During the telephone conference conducted on May 18, 2022, Commission Staff was specifically questioned regarding the opportunity to conduct discovery if a hearing was held in this matter and advised that some provision for discovery would be provided in any order setting a hearing.

7. The Due Process Clause of the Fourteenth Amendment to the Federal Constitution requires the Commission provide the District a reasonable opportunity to be heard.¹ Such opportunity exists only when the District has sufficient notice of the issues and evidence against it in advance of a hearing to allow it a meaningful opportunity to test, explain, or rebut the evidence at hearing.²

8. Without an opportunity to conduct discovery on the allegations set forth in the Complaint, the District's ability to effectively cross-examine the Complainant's witnesses and to meaningfully rebut the Complainant's allegation will be severely limited. The Commission has long recognized that discovery was "essential to proper litigation" and necessary "to ensure mutual knowledge of all relevant facts."³ Moreover, discovery increases the likelihood of a full and complete record for the Commission to base its decision.

¹ *Utility Regulatory Commission v. Kentucky Water Service Co., Inc.*, 642 S.W.2d 591, 593 (Ky. 1982).

² *Id.*

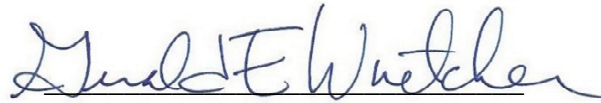
³ *Green River Steel Corp. v. Kentucky Utilities Co.*, Case No. 10300 (Ky. PSC Jan. 6, 1989) at 6.

9. The District requests that the Commission establish a procedural schedule that permits two rounds of discovery and requires the filing of written testimony. A proposed schedule is attached to this motion as Exhibit A.⁴ Such schedule will allow for the discovery of essential facts and identification of principal issues and will ensure a more efficient and meaningful hearing. It will not unduly delay this proceeding.

WHEREFORE, East Logan Water District requests that the Commission enter an Order establishing a procedural schedule in this matter that allows for adequate time for the parties to conduct discovery and submit written testimony in this matter and that the currently scheduled hearing in this matter be rescheduled to a date after such discovery and the submission of written testimony has occurred.

Dated: July 26, 2022

Respectfully submitted,



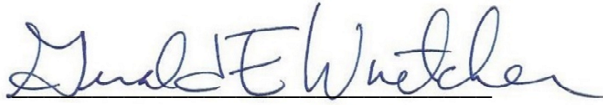
Gerald E. Wuetcher
Stoll Keenon Ogden PLLC
300 West Vine Street
Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3017
Fax: (859) 259-3517
gerald.wuetcher@skofirm.com

Counsel for East Logan Water District

⁴ The proposed schedule assumes the issuance of an order establishing a procedural schedule on August 5, 2022 and allows for 14 days between each procedural event except for the filing of rebuttal testimony and the hearing.

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 July 26, 2022 and that no parties have been excused from electronic filing procedures.

A handwritten signature in blue ink, appearing to read "Gerald E. Wuetcher", is written over a horizontal line.

Gerald E. Wuetcher

EXHIBIT A

PROPOSED PROCEDURAL SCHEDULE

Each Party may file with the Commission its First Request for Information to the opposing party no later than..... 08/19/2022

Responses to First Request for Information shall be filed with the Commission no later than 09/02/2022

Each Party may file with the Commission its Second Request for Information to the opposing party no later than..... 09/16/2022

Responses to Second Request for Information shall be filed with the no later than..... 09/30/2022

Complainant files with the Commission the written testimony of its witnesses 10/14/2022

District files with the Commission the written testimony of its witnesses 10/28/2022

Complainant files with the Commission written rebuttal testimony 11/04/2022

Hearing in this matter shall be held no earlier than 11/08/2022