

**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, INC.) | | |
| |)) | | |
| | DEFENDANT) | | |

**LOGAN TELEPHONE COOPERATIVE, INC.’S RESPONSE TO EAST LOGAN
WATER DISTRICT’S MOTION FOR EXTENSION OF TIME**

Logan Telephone Cooperative, Inc. (“LTC”), by counsel, files the following response in opposition to the motion for extension of time to respond to LTC’s first requests for information (the “Motion”) filed by East Logan Water District (“ELWD”). In support of its response, LTC states as follows.

Despite its protestations to the contrary, it is clear that ELWD seeks only to further delay the inevitable resolution of this one-issue complaint that has already been undisputedly proven by ELWD’s answer to the complaint, its responses to the Commission Staff’s requests for information, and the several extension requests it has made throughout this proceeding. ELWD has conceded the material allegations in LTC’s complaint: that ELWD has systematically refused to mark and locate its facilities, and even if it wanted to locate them, it lacks sufficient mapping, staffing, or internal policies or procedures to comply with its obligations under 807 KAR 5:006 § 23; KRS 367.4909; and other applicable Kentucky law. (*See Answer at ¶¶ 19, 23, 29, 31, and 38*); (ELWD’s Responses to Commission Staff’s requests for information at A-2, A-3, A-4, and A-7); (Exhibit 1 of the Complaint, August 25, 20220 Board Minutes) (ELWD’s Board of Commissioners

agreed that ELWD “should not put marking on the ground if ‘guessing’ where the line is, which would be the situation for [East Logan’s] water lines.”)

Despite ELWD’s concessions, it has demanded two rounds of discovery and a formal hearing that at this point serves no basis other than to further delay resolution of the complaint that was filed nearly 18 months ago. This unnecessarily delays the necessary change and oversight that the district desperately needs (and which the Commission can provide), including guidance and oversight over ELWD’s implementation of policies, procedures, and trainings to bring the district in step with its obligations under the Commission’s regulations and other applicable Kentucky law. No amount of additional discovery or a formal hearing will change the established material facts in this case, and the Commission should act swiftly to correct ELWD’s deficiencies.

The Motion, which fails to establish good cause for an extension, does nothing but further underscore the lack of value in further discovery. Again, ELWD demanded “that parties be allowed to conduct 2 rounds of pre-hearing discovery” with “broad discovery to identify all issues between the parties.” (*See* PSC Memo regarding IC held on August 17, 2022; *see also* Joint Motion to Amend Order of November 3, 2022 at ¶ 2.) “East Logan Water District requested two opportunities for discovery,” and specifically selected the deadlines for these rounds of “broad discovery.” ELWD offered these deadlines 31 days before its responses were due and 30 days before it sought this extension. (*See* Joint Motion to Amend Order of November 3, 2022) (filed on November 7, 2022.)

Even taking ELWD’s proffered justification as accurate (merely for purposes of argument), those circumstances existed several months before ELWD selected the deadline that it now seeks to extend. The reasons offered by ELWD for its failure to comply with the Commission’s Order were: (i) its employees “primarily responsible” for its “administrative and field operations,” Linda

Alexander and Stephen Taylor, retired and resigned on August 12 and September 9, 2022, respectively; (ii) an ELWD administrative assistant that “maintained the District’s records related to locate requests” in her email account (clearly not an appropriate means to store district records) “suddenly quit” on September 12, 2022 and “[p]rior to leaving her employment, she deleted all records in her mail account and other files on her computer workstation. As a result, the District currently lacks the records of locate requests prior to August 2022”; and (iii) the ELWD employees now currently primarily or solely responsible for administrative and field operations were only hired in October 2022 and “have limited knowledge of the District’s operations prior to their appointments.” (See Motion at ¶ 3(a)-(e) (emphasis added).)

These issues clearly existed several months before ELWD proposed the same deadlines it now claims it cannot meet. Even if ELWD were given additional time, these excuses establish that ELWD will not have the ability to provide any relevant information other than perhaps a list of locate requests given to it by the 811 call center. Thus, ELWD has failed to establish the “good cause” necessary for an extension that the “Commission does not look favorably upon.” (See Nov. 3, 2022 Commission Order at ¶ 4.)

Moreover, the Motion further admits the very facts (and the same ones ELWD has admitted several times over during this proceeding) that allow the Commission to reach a determination that ELWD has violated and continues to violate 807 KAR 5:006 § 23, KRS 367.4909, and other applicable Kentucky law, and it lacks any institutional records or staffing to defend itself in this case, or to effectively remedy its admitted failures to comply with 811 laws.

Accordingly, ELWD’s Motion should be denied; LTC should be granted the relief requested in the complaint; and the Commission should direct that ELWD comply with 807 KAR 5:006 § 23, KRS 367.4909, and other applicable Kentucky law. If the Commission believes that a

focused management audit of ELWD is appropriate, then LTC would support that relief, and it further requests that it be permitted to conference with any auditor in order to help ensure that ELWD's mapping and locating deficiencies are promptly and effectively corrected.

Filed: December 15, 2022.

Respectfully submitted,

/s/ Christopher S. Zelli
John E. Selent
Edward T. Depp
Christopher S. Zelli
DINSMORE & SHOHL LLP
101 South Fifth Street, Suite 2500
Louisville, Kentucky 40202
john.selent@dinsmore.com
tip.depp@dinsmore.com
christopher.zelli@dinsmore.com
Telephone: (502) 540-2300
Facsimile: (502) 585-2207

*Counsel to Logan Telephone
Cooperative, Inc.*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001(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 December 15, 2022 and that no parties have been excused from electronic filing procedures.

/s/ Christopher S. Zelli
Christopher S. Zelli