



## Filing Receipt

**Received - 2021-07-29 01:46:50 PM**  
**Control Number - 51224**  
**ItemNumber - 100**

**SOAH DOCKET NO. 473-21-1880.WS  
PUC DOCKET NO. 51224**

<b>COMPLAINT OF JOHN BLALOCK</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AGAINST MERCY WATER SUPPLY</b>	<b>§</b>	
<b>CORPORATION</b>	<b>§</b>	<b>OF TEXAS</b>

**COMMISSION STAFF’S RESPONSE TO  
MERCY WSC’S MOTION FOR SUMMARY DECISION**

On August 27, 2020, John Blalock (Mr. Blalock) filed a complaint against Mercy Water Supply Corporation (Mercy WSC) under 16 Texas Administrative Code (TAC) § 22.242 regarding cessation of water service.

On July 12, 2021, Mercy WSC filed its Motion for Summary Disposition (Mercy’s MSD),<sup>1</sup> requesting that Mr. Blalock’s complaint against Mercy WSC be dismissed with prejudice and seeking other relief.

On July 26, 2021, the SOAH administrative law judges (ALJs) filed SOAH Order No. 7, establishing a deadline of July 29, 2021 for the parties to file responses to Mercy’s MSD. Therefore, this pleading is timely filed.

**I. STAFF’S RESPONSE TO MOTION FOR SUMMARY DISPOSITION**

The applicable standard of review for an ALJ to grant a Motion for Summary Disposition is found in 16 Texas Administrative Code (TAC) § 22.182(a), which provides:

The presiding officer, on motion by any party, may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed in accordance with §22.222 of this title (relating to Official Notice), or evidence of record *show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.* [emphasis added]

A party opposing a motion for summary decision must show that there is a genuine issue of material fact for determination at a hearing, or that summary decision is inappropriate as a matter of law.<sup>2</sup> The Texas Supreme Court has determined that when reviewing a decision on a motion

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<sup>1</sup> Mercy Water Supply Corporation’s Motion for Summary Disposition (Jul. 12, 2021).

<sup>2</sup> 16 TAC § 22.182(c).

for summary judgment, all evidence favorable to the nonmovant is taken as true, and the Court indulges every reasonable inference and resolves any doubts in the nonmovant's favor.<sup>3</sup>

The legal basis for Mr. Blalock's complaint is that Mercy WSC improperly shut off his water service at the Northern Tract.<sup>4</sup> PURA provides that a holder of a water certificate of convenience and necessity (CCN) may discontinue service to part of a certified service area for multiple reasons, including nonpayment of charges."<sup>5</sup> Additionally, Commission rules provide that a water utility may not impose any practice, rule, or regulation different from those prescribed in its approved tariff filed with the commission.<sup>6</sup> As discussed in detail in Staff's Supplemental SOP,<sup>7</sup> the crux of the dispute between Mr. Blalock and Mercy WSC relates to whether or not Mr. Blalock was a member of Mercy WSC when his water service was shut off.<sup>8</sup> Membership in Mercy WSC would provide Mr. Blalock with the protections from improper cessation of service afforded to a Mercy WSC ratepayer as found in TWC § 13.250(b). In order to have become a member, Mr. Blalock is required to comply with Mercy WSC's Commission-approved tariff, which contains specific practices, rules, and regulations concerning membership and qualifications for water service.

As extensively discussed in Staff's Supplemental SOP, in order to become a Mercy WSC member, one must complete and sign the application form and pay the requisite fees.<sup>9</sup> It is undisputed by all the parties that Mr. Blalock has not availed himself of the means to become a full member of Mercy WSC, a fact that he himself has admitted at multiple times during this proceeding.<sup>10</sup> Mr. Blalock has been aware of the necessity to complete a membership application form and pay the fees to become a member, both of which are required for membership under the Texas Water Code and Mercy WSC's tariff. Because he has not met the requirements for membership in Mercy WSC's tariff, even when provided the opportunity to do so, he is not and

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<sup>3</sup> *ConocoPhillips Co. v. Koopman*, 547 S.W.3d 858, 865 (Tex. 2018).

<sup>4</sup> 1611 Bowen Loop, Cleveland, Texas (Northern Tract).

<sup>5</sup> TWC § 13.250(b).

<sup>6</sup> 16 TAC § 24.25(a).

<sup>7</sup> Commission Staff's Supplemental Statement of Position (Feb. 8, 2021) (Supplemental SOP).

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.* at 2-4.

<sup>10</sup> *Id.* at 2, footnote 9.

was never a member of Mercy WSC and has therefore never been entitled to water service from Mercy WSC. Further, because Mercy WSC is not obligated under its tariff to provide water service to a nonmember, it did not run afoul of the Texas Water Code or Commission rules when it ceased water service to the Northern Tract.

As stated in Staff's Supplemental SOP, Mr. Blalock's mother, Ms. Reba Ivey, was a member of and received water service from Mercy WSC at the Northern Tract until her passing in 2015.<sup>11</sup> Following her death, Mr. Blalock continued to pay the charges for the ongoing water service provided to the Northern Tract associated with her account, including late fees and reconnection charges, until service was transferred to Mr. Adrian Rodz, owner of the Southern Tract, on August 10, 2020.<sup>12</sup> Mr. Blalock suggests that his payment of the charges under Ms. Ivey's account constitutes an implied-in-fact contract between himself and Mercy WSC. However, this is not the case. In fact, Mercy WSC's tariff provides a mechanism allowing an individual living with a member at a property receiving service a chance to acquire an ownership interest in that membership.<sup>13</sup> It is undisputed that Mr. Blalock did not pursue this avenue. Mercy WSC's tariff specifically lays out the requirements of membership, which have not been met, and no party to this proceeding has disputed this fact. While Mr. Blalock has purportedly made attempts to procure membership, he has admitted that he failed to do the two primary things required for membership – complete an application form and pay the appropriate fees.

In addition to allowing a water utility to discontinue service due to nonpayment of charges, TWC § 13.250(b)(4) provides that a CCN holder may discontinue service for “other similar reasons in the usual course of business.”<sup>14</sup> Staff believes that discontinuing water service to a nonmember's property who has never qualified for water service falls within the purview of this subsection.

In sum, no party to this proceeding disputes that Mercy WSC's membership requirements have not been met. Even more, the complainant in this proceeding has specifically admitted

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<sup>11</sup> Supplemental SOP at 3.

<sup>12</sup> Mercy Water Supply Corporation's Reply to Staff's Position, Affidavit of Kelley Allbright at 23 (Oct. 6, 2020).

<sup>13</sup> Supplemental SOP at 3.

<sup>14</sup> TWC § 13.250(b)(4)

multiple times that he has not met the requirements and will not do so on principle.<sup>15</sup> The legal basis of this complaint rests squarely on whether Mercy WSC improperly discontinued water service to the property of an individual who was entitled to service. As the facts indicate, Mr. Blalock was not entitled to service. Therefore, there are no genuine issues of material fact at issue, and summary dismissal of this complaint is appropriate. Even if the ALJs indulged every reasonable inference and resolve doubts in Mr. Blalock's favor, the undisputed fact remains that the strict requirements of Mercy WSC have not been met. Any obligations Mercy WSC might have had to Mr. Blalock to continue water service are inapplicable as a result.

Therefore, Staff believes that granting Mercy's MSD is warranted. In the alternative, however, while recognizing that all parties must agree, Staff is of the opinion that mediation of this matter may be fruitful and continues to be unopposed to a mediation of this matter.

## **II. CONCLUSION**

For the foregoing reasons, Staff recommends that Mercy WSC has demonstrated the absence of genuine issues of material fact, and as a result, has met its burden for summary disposition. Therefore, Mercy's Motion for Summary Disposition should be granted. In the alternative, should the parties be amenable, Staff recommends that this matter be referred for mediation.

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<sup>15</sup> Supplemental SOP at 2-3.

Dated: July 29, 2021

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF  
TEXAS LEGAL DIVISION**

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**DOCKET NO. 51224  
CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on July 29, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Justin C. Adkins  
Justin C. Adkins