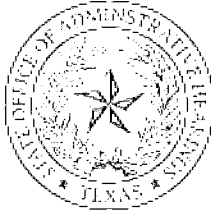




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# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

September 30, 2021

**TO: Stephen Journey, Commission Counsel  
Commission Advising and Docket Management  
William B. Travis State Office Building  
1701 N. Congress, 7th Floor  
Austin, Texas 78701**

**VIA EFILE TEXAS**

**RE: SOAH Docket No. 473-21-1880.WS  
PUC Docket No. 51224**

***JOHN BLALOCK AND MERCY WATER SUPPLY CORPORATION V.  
PUBLIC UTILITY COMMISSION OF TEXAS***

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. There is no deadline in this case. Please notify me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Hunziker".

Heather Hunziker  
Administrative Law Judge

HH/tl  
Enclosure  
xc: All Parties of Record

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

<b>COMPLAINT OF JOHN BLALOCK</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>AGAINST MERCY WATER SUPPLY</b>	<b>§</b>	<b>OF</b>
<b>CORPORATION</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

John Blalock filed a complaint against Mercy Water Supply Corporation (Mercy) over Mercy's disconnection of water service. After considering Mercy's motion for summary disposition, the Administrative Law Judge (ALJ) recommends that the complaint be summarily decided under 16 Texas Administrative Code (TAC) § 22.182 and dismissed for failure to state a claim for which relief can be granted under 16 TAC § 22.181(d).

As such, it is unnecessary to convene the scheduled October 26, 2021 hearing; therefore, the hearing is **CANCELED**.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

Mr. Blalock filed a formal complaint against Mercy on August 27, 2020. The Public Utility Commission of Texas (Commission) referred the case to the State Office of Administrative Hearings (SOAH) on April 5, 2021.<sup>1</sup> There are no contested issues of notice or jurisdiction. Therefore, these matters are addressed in the findings of fact and conclusions of law without further discussion.

On May 6, 2021, the Commission issued a Preliminary Order listing thirteen issues to be addressed by the ALJs.<sup>2</sup> ALJs Heather D. Hunziker and Meaghan Bailey convened a prehearing conference via the Zoom videoconferencing platform on June 18, 2021. Mr. Blalock appeared and

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<sup>1</sup> Before referral to SOAH, the Commission ALJ ordered Mercy to restore and provide water service to Mr. Blalock's residence pending resolution of this proceeding. Commission Order No. 3 (Sept. 14, 2020).

<sup>2</sup> The Commission's issues concern, generally: which properties various service agreements apply to; technical aspects of water meter installation; Mr. Blalock's property ownership and membership status; membership transfer and cancellation; water service discontinuation requirements; and sanctions.

represented himself; Mercy was represented by Grayson McDaniel; and Commission Staff was represented by attorneys Justin Adkins and Rashmin Asher. Following the prehearing conference, the ALJs adopted a procedural schedule.<sup>3</sup>

Mr. Blalock did not file direct testimony by the July 8 deadline. Four days later, on July 12, 2021, Mercy filed a motion for summary disposition (Mercy's Motion). Later that same day, Mr. Blalock filed direct testimony (Blalock's Direct). Mercy timely filed an objection and motion to strike Blalock's Direct in its entirety, to which Mr. Blalock responded. The ALJs overruled Mercy's objections; denied Mercy's motion to strike, with a minor exception; and set deadlines to respond to Mercy's Motion by July 29, 2021 and reply by August 4, 2021. Mr. Blalock responded in opposition to the motion and Staff responded in support of the motion. Mr. Blalock timely filed a reply to Staff's response. Mercy timely filed its reply on August 4, 2021, and the record closed that day.<sup>4</sup>

After considering Mercy's Motion, responses, and replies, the ALJs notified the parties that Mercy's Motion had merit and would be granted in a subsequent proposal for decision (PFD) because all contested issues would be resolved by summary decision.<sup>5</sup>

Mr. Blalock filed a Motion for Reconsideration. Mercy responded and Mr. Blalock replied. The ALJ<sup>6</sup> concludes that the arguments presented in Mr. Blalock's Motion for Reconsideration are not novel and were fully considered prior to the issuance of SOAH Order No. 8. Accordingly, Mr. Blalock's Motion for Reconsideration is **DENIED**.

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<sup>3</sup> SOAH Order No. 6 (June 24, 2021).

<sup>4</sup> Mr. Blalock filed an unauthorized sur-reply to Mercy's reply on August 5, 2021, which was stricken for untimeliness in SOAH Order No. 8 (Aug. 11, 2021).

<sup>5</sup> SOAH Order No. 8 (also suspending ruling on outstanding discovery motions due to the pending PFD on summary decision).

<sup>6</sup> Previously, ALJs Hunziker and Bailey co-presided over this case; however, ALJ Bailey was unassigned from this proceeding prior to the drafting or issuance of the PFD. ALJ Hunziker is the only ALJ assigned to this proceeding.

## II. BACKGROUND

Mercy is a member-owned water service corporation, under Texas Water Code (TWC or Water Code), chapter 67. Its tariff requires individuals seeking water service to apply for membership.<sup>7</sup> Membership can be transferred to close family members by will, but such transfers still require a service application.<sup>8</sup> Eligibility for membership does not guarantee service to applicants or transferees.<sup>9</sup>

Mr. Blalock owns a residence in Cleveland, Texas, at 1611 Bowen Loop.<sup>10</sup> He inherited the residence upon his mother's death;<sup>11</sup> and he continued using the water service provided by Mercy to the adjoining tract at 1601 Bowen Loop,<sup>12</sup> until it was disconnected on or about August 7, 2020.<sup>13</sup>

### A. Mr. Blalock's Complaint

Mr. Blalock filed a formal complaint against Mercy on August 27, 2020, alleging that Mercy disconnected his water service without notice and refused to restore it—asserting that the violations were ongoing.<sup>14</sup> He seeks a Commission order requiring Mercy to restore water service to his residence and to put the meter back in his use or, in the alternative, install a new meter at no cost to him.<sup>15</sup> Mr. Blalock filed voluminous subsequent statements and information about his

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<sup>7</sup> Mercy's tariff was filed as an attachment to its response to Mr. Blalock's complaint. Mercy Water Supply Corporation's Response to Complaint (Sept. 24, 2020), Ex. A: Tariff (Mercy's Tariff), Section E, paras. 25, 27.

<sup>8</sup> TWC § 67.016(a)(1), (c); Mercy's Tariff, Section E, para 18(c).

<sup>9</sup> Mercy's Tariff, Section E, para 18(a).

<sup>10</sup> Complaint (Aug. 27, 2020) at 1.

<sup>11</sup> Blalock's Direct at 1-2.

<sup>12</sup> Complaint at 1.

<sup>13</sup> *Id.*; Blalock's Direct at 2.

<sup>14</sup> Complaint at 1.

<sup>15</sup> *Id.*

complaint.<sup>16</sup> The filings include information about his property and history with Mercy, including that his mother, Reba Ivey, was a member of Mercy and received water service from Mercy;<sup>17</sup> that he attempted to notify Mercy of his mother's death;<sup>18</sup> and that Mercy treated him as a customer and continued service to the meter previously used by his mother for several years after her death.<sup>19</sup>

Mr. Blalock claims to be a member of Mercy, although he admits that he has not completed and submitted Mercy's Application and Agreement for Service or its Membership Transfer form.<sup>20</sup> Mr. Blalock confirmed this during the June 18, 2021 prehearing conference, as reflected in the following dialogue:<sup>21</sup>

JUDGE HUNZIKER: Ms. McDaniel stated that it was uncontested that Mr. Blalock hasn't signed the commitment papers or fulfilled the necessary requirements to be a member of Mercy. What is your response to that, Mr. Blalock? Is that, indeed, uncontested? Sounds like maybe there's some nuance there.

MR. BLALOCK, JR.: No, ma'am, it's contested on the fact that Mercy Water Supply Corporation had a duty to act in informing [Mr. Blalock, Sr.] of their policies and what paperwork needed to be done and filled out when he informed them of my grandmother's passing in January of 2015 and then went back up there

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<sup>16</sup> Mercy Water Supply Corporation's Arguments from the Informal Complaint and the Evidence Debunking Them (Sept. 10, 2020); John Blalock's Response to Mercy Water Supply Corporation's Response to Order #3 in Docket 51224 (Sept. 17, 2020); John Blalock's Response to Mercy Water Corporation's Response to Complaint (Sept. 24, 2020); Evidence Against Mercy's Claim of the Connection Being Without Authority and Not for 1611 Bowen Loop (Sept. 28, 2020); Picture Evidence Towards How Long it Should Take Mercy Water Supply Corporation to Restore Water Service to John Blalock (Sept. 29, 2020); Mr. Blalock's Response to Mercy Water Supply Corporation's Reply to Staff's Position (Oct. 7, 2020); Mr. Blalock's Comments on the Formal Complaint in its Current State (Oct. 7, 2020); Filled-Out Copies of Mercy's 'Application and Agreement for Service' and 'Membership Transfer' (Oct. 9, 2020); Agendas for Mercy's Board Meetings from August and September of 2020 (Nov. 24, 2020); John Blalock's Response to Mercy's Amended Motion to Compel Response (Dec. 8, 2020); Responses as Required by Order No. 9 (Jan. 13, 2021); John Blalock's Response to Commission Staff's Supplemental Statement of Position and Request for Hearing (Feb. 8, 2021); Issues Needing to be Addressed According to John Blalock (Apr. 8, 2021); Blalock's Direct; John Blalock's Response to Mercy Water Supply Corporation's Objection to his Direct Testimony (July 20, 2021).

<sup>17</sup> Blalock's Direct at 2; Responses as Required by Order No. 9 at 1-2.

<sup>18</sup> Blalock's Direct at 1.

<sup>19</sup> *Id.* at 1-2; John Blalock's Response to Mercy Water Supply Corporation's Objection to his Direct Testimony at 2; John Blalock's Response to Mercy's Motion for Summary Disposition at 2-3 (July 29, 2021).

<sup>20</sup> Filled-Out Copies of Mercy's 'Application and Agreement for Service' and 'Membership Transfer' at 1.

<sup>21</sup> Mr. Blalock's son, John Blalock, Jr., actively participated in the prehearing conference on his father's behalf.

following the end of the probate. . . . At that point they still failed to act on their duty to inform him of their policies and of their tariffs. . . .

JUDGE HUNZIKER: So it sounds like it's your position that Mercy had a duty to inform you of what paperwork was necessary and they didn't do that. Is that right?

MR. BLALOCK, JR.: That's correct, your Honor. . . .

[. . .]

JUDGE HUNZIKER: I did want to get a little more detail from you or your son about Ms. McDaniel's statement about, that it was uncontested that you haven't signed the commitment papers. So, I understand that it's your position that it was on Mercy to tell you what paperwork to fill out. But I would like to know if you contest, or don't contest—have you signed any paperwork with Mercy, to date?

MR. BLALOCK, SR.: Okay, that's kind of a double-edged sword because, at the time that the meter was switched to me and I began paying the bills, I never signed any paperwork because I didn't know I needed to. It was after the fact, that's when it became a problem.

JUDGE HUNZIKER: And so—to date—have you signed any paperwork that we've been talking about?

MR. BLALOCK, SR.: No, I have not.

JUDGE HUNZIKER: And you don't contest the fact that you haven't signed papers?

MR. BLALOCK, SR.: I don't contest the fact that I haven't signed papers . . . .

## **B. Mercy's Dispositive Motion**

Mercy's Motion argued that—based on Mr. Blalock's never having applied for new or transfer membership as required by Mercy's Tariff—he is not a member and, therefore, is not entitled to receive water service.<sup>22</sup> Mercy requested the dismissal of Mr. Blalock's complaint and

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<sup>22</sup> Mercy's Motion was alternatively based on Mr. Blalock having filed no direct testimony. However, that basis was rendered moot by Mr. Blalock's late-filed testimony and SOAH Order No. 7, in which the ALJs overruled Mercy's objections to Blalock's Direct and denied Mercy's request to strike it, with a minor exception.

the withdrawal of Commission Order No. 3, requiring Mercy to restore and provide water service to Mr. Blalock.

Mercy's Motion and reply referred to the following summary decision evidence:

- A. Mercy's Tariff;
- B. Mr. Blalock's written admissions, in his Response to Commission Staff's First Request for Information to John Blalock;
- C. Mr. Blalock's statements made on the record during the June 18, 2021 prehearing conference;
- D. Blalock's Direct; and
- E. Kelley Allbright's affidavit.<sup>23</sup>

### III. APPLICABLE LAW

A party may file a motion for summary decision as to some or all issues when there is no genuine issue as to any material fact and the moving party is entitled to a decision in its favor as a matter of law. The motion must specifically describe the facts upon which the request for summary decision is based, the information and materials that demonstrate those facts, and the laws or legal theories that entitle the movant to summary decision.<sup>24</sup> A party opposing the motion must show, by affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record, that there is a genuine issue of material fact for determination at the hearing, or that summary decision is inappropriate as a matter of law.<sup>25</sup>

The Commission's rule regarding summary decision is similar to Rule 166a of the Texas Rules of Civil Procedure regarding motions for summary judgment. Under Rule 166a, "[a]

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

<sup>24</sup> 16 TAC § 22.182(b).

<sup>25</sup> 16 TAC § 22.182(c).



summary judgment may be based on uncontroverted testimonial evidence of an interested witness . . . if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.”<sup>26</sup> In reviewing a summary judgment, all evidence in favor of the non-movant must be accepted as true, and every reasonable inference and all doubt must be resolved in the non-movant’s favor.<sup>27</sup>

The Commission’s rules also authorize a party to file a motion to dismiss for various reasons, including moot questions, failure to state a claim for which relief can be granted, and other good cause shown.<sup>28</sup> A response to a motion to dismiss must contain a statement of reasons the party contends the motion to dismiss should not be granted, and if necessary, identify material contested facts and be supported by evidence.<sup>29</sup>

For motions for summary decision and dismissal, the burden of proof is on the movant.<sup>30</sup> If all issues will be resolved by summary decision or dismissal, the ALJ must issue a PFD.<sup>31</sup>

The Water Code and the Commission’s rules allow discontinuance of service, or disconnection, only for specific reasons.<sup>32</sup> One of the allowable grounds under the Water Code for discontinuance of service is “other similar reasons in the usual course of business.”<sup>33</sup> The Commission’s rules, which fall under the subchapter entitled “Customer Service and Protection,” are more specific but allow for disconnection of service “where service is connected without authority by a person who has not made application for service.”<sup>34</sup>

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<sup>26</sup> Tex. R. Civ. P. 166a(c).

<sup>27</sup> *Park Place Hosp. v. Estate of Milo*, 909 S.W.2d 508, 510 (Tex. 1995).

<sup>28</sup> 16 TAC § 22.181(d).

<sup>29</sup> 16 TAC § 22.181(e)(3).

<sup>30</sup> 16 TAC § 24.12.

<sup>31</sup> 16 TAC §§ 22.181(f), 182(f).

<sup>32</sup> TWC § 13.250(d); 16 TAC § 24.167.

<sup>33</sup> TWC § 13.250(d)(3).

<sup>34</sup> 16 TAC § 24.167(b)(2).

#### IV. DISCUSSION

Mr. Blalock alleges disconnection and discontinuation of water service without notice.<sup>35</sup>

##### A. Scope of Review

By moving for summary decision, Mercy has the burden to show that there is no genuine issue of material fact regarding Mr. Blalock's claims. While the scope of Mr. Blalock's claims would typically be defined by his complaint and direct testimony,<sup>36</sup> Mercy cites to Mr. Blalock's complaint, testimony, and certain supplemental filings. Given Mercy's reference to these documents, and recognizing Mr. Blalock is not an attorney, the ALJ looked beyond his complaint and direct testimony to include the supplemental filings. The ALJ notes, however, that allegations are not evidence and, therefore, are not sufficient to rebut evidence.<sup>37</sup>

Under the Commission's rules, "[a] party opposing the motion shall show, by affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record, that there is a genuine issue of material fact for determination at the hearing, or that summary decision is inappropriate as a matter of law."<sup>38</sup> Accordingly, the ALJ turns to whether Mercy has shown that there is no genuine issue of material fact as to the issues raised by Mr. Blalock's complaint.

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<sup>35</sup> Complaint at 1 ("workers hired by [the neighbor] busted one of the pipes connecting the meter to my house . . . . It took my son and I going to purchase the supplies needed and waiting for the coolness of the night to be able to fix it. From there, [the neighbor] kept turning the meter off. This was going on for 2 or 3 days. I then woke up to my water not working, and when I went out to the meter to turn the water back on I discovered that I had been locked out by Mercy Water Supply Corporation, without any kind of notice.").

<sup>36</sup> See *Erisman v. Thompson*, 167 S.W.2d 731, 733 (Tex. 1943) ("The purpose of the pleading is to put such party on notice of the character of evidence that he will be called upon to meet."); Tex. Gov't. Code § 2001.051 (each party is entitled to an opportunity to respond and to present evidence and argument on each issue involved in the case).

<sup>37</sup> While pleadings are not evidence, they can be admitted against the pleader as an admission against interest. *Myers v. Continental Panhandle Lines*, 278 S.W.2d 365, 368 (Tex. App.—Amarillo 1954, no writ).

<sup>38</sup> 16 TAC § 22.182(c).

**B. Mercy's Position**

Mercy argues that: (1) Mercy's Tariff requires certain forms to be completed and submitted in order to apply for membership; (2) Mr. Blalock never filled out the requisite application forms; and therefore, (3) Mr. Blalock is not a member of Mercy, is ineligible for service from Mercy, and is not protected from disconnection of service by Mercy.

In support of its argument that certain forms must be completed for membership, Mercy referred to Mercy's Tariff, which states that membership applicants "shall be considered qualified and entitled to water utility service when proper application has been made, terms and conditions of Service and Membership have been met and continue to be met, and all fees have been paid as prescribed," and that "[Mercy's] Service Application and Agreement Form shall be completed in full and signed by the Applicant(s)."<sup>39</sup>

As evidence that Mr. Blalock never completed the necessary membership application forms, Mercy referred to multiple items. First, Mercy referred to Mr. Blalock's admission that he has not completed and submitted to Mercy a Service Application and Agreement to acquire water service and/or transfer Ms. Ivey's Mercy WSC account to himself.<sup>40</sup> Second, Mercy referred to Mr. Blalock's statements during the June 18, 2021 prehearing conference (quoted above). Third, Mercy referred to Blalock's Direct, which states "At this time, I had no other knowledge of Mercy's policies concerning the transfer of memberships or accounts."<sup>41</sup> Finally, Mercy referred to the affidavit of Kelley Allbright, Mercy's office manager, which states that Mr. Blalock never applied to become a member of Mercy and never applied to have a membership transferred to him.<sup>42</sup>

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<sup>39</sup> Mercy's Tariff, Section E, paras. 25, 27.

<sup>40</sup> Mr. Blalock's Response to Commission Staff's First Request for Information to John Blalock No. 1-10 (Nov. 30, 2020).

<sup>41</sup> Blalock's Direct at 2.

<sup>42</sup> Allbright Affidavit, para. 10.

**C. Mr. Blalock's Response**

Mr. Blalock does not deny that he has never completed the necessary membership application. Instead, Mr. Blalock argues that: (1) his mother had a membership in Mercy that transferred to him or, alternatively, Mercy had a duty to inform him of what to do to become a member and failed to notify him of the application requirements until after his complaint was filed; and (2) for years after his mother's death Mercy continued to provide water service to Mr. Blalock's residence, charged him reconnection and late fees, and took his payments. Mr. Blalock essentially argues that he has constructive membership as a result of the above, and it is too late for Mercy to deny him membership status.<sup>43</sup> Mr. Blalock does not support his assertions with reference to any evidence.<sup>44</sup>

**D. Staff's Position**

In support of the motion for summary decision, Staff's position is best captured by the following direct quote:

Because [Mr. Blalock] has not met the requirements for membership in [Mercy's Tariff], even when provided the opportunity to do so, he is not and 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 [Mr. Blalock's property].<sup>45</sup>

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<sup>43</sup> In his response to Staff's response to Mercy's Motion, Mr. Blalock extensively discusses verbal agreements and contracts, and implies that he had a verbal agreement of some sort—albeit unexplained—with Mercy. However, such verbal agreement or contract is not supported by record evidence.

<sup>44</sup> Pleadings are merely a statement of facts to be proved. Pleadings are not considered evidence except when admitted against the pleader as an admission against interest. *Myers v. Continental Panhandle Lines*, 278 S.W.2d 365, 368 (Tex. App.—Amarillo 1954, no writ).

<sup>45</sup> Commission Staff's Response to Mercy WSC's Motion for Summary Decision at 2-3 (July 29, 2021).

## **E. ALJ's Analysis and Conclusion**

The Water Code, to which the Commission's rules are materially equivalent, provides that a member is: (1) someone who holds a membership in a water supply corporation and is record owner of a fee simple title to property in the water supply corporation's service area; or (2) someone who is granted a membership and currently receives or is eligible to receive water from the corporation.<sup>46</sup> Additionally, Mercy's Tariff provides that a "member shall be qualified for service and been [sic] certified as a member in accordance with the Corporation's Tariff."<sup>47</sup>

In order to obtain a new or transfer membership, an applicant must complete and sign Mercy's application form.<sup>48</sup> Each individual seeking to become a member of Mercy must sign the application form if they wish to have an ownership interest in the membership, even if they are receiving service at the same location as another member.<sup>49</sup> An applicant for water service from Mercy must also pay certain fees to begin or continue service.<sup>50</sup> At a minimum, transferees must pay a transfer fee and fees for new members include a customer service inspection fee and a membership fee.<sup>51</sup>

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<sup>46</sup> TWC § 13.002(11); 16 TAC § 24.3(19).

<sup>47</sup> Mercy's Tariff, Section C at 21.

<sup>48</sup> *Id.* at Section E, paras 18(c)(3) ("Qualifications for service upon transfer of Membership . . . shall be recorded . . . only upon the following terms and conditions: (a) The Transferee has completed the required Application Packet including granting [Mercy] with a private utility easement on the form provided.") and 27 ("The Corporation's Service Application and Agreement Form shall be completed in full and signed by the Applicant(s).").

<sup>49</sup> *Id.* at Section E, para 27 ("Where applicable, in addition to the applicant, any other person sharing an ownership interest in and receiving service at that property shall sign the Service Application and Agreement Form . . .").

<sup>50</sup> *Id.* at Section E, para 18(b) ("Upon qualification for service, qualification for Membership, payment of the required fees, and any debt owed to the Corporation, the Corporation shall certify the Applicant as a Member.").

<sup>51</sup> *Id.* at Section G, para. 25 ("A Fee of \$20.00 shall be assessed for the transfer of any membership."); Section B, para 10 ("The Corporation requires that a customer service inspection certification be completed . . . for all new members as part of the activation of standard and some non-standard service."); and Section G, para. 13 ("At the time the application for service is approved, a refundable Membership Fee must be paid for each service requested before service shall be provided or reserved for the Applicant by the Corporation. . . . The Membership Fee for water service is \$250.00 for each service unit.").

Mr. Blalock admitted that he has never completed, signed, or submitted the application or membership transfer forms required to become a member of Mercy.<sup>52</sup> Indeed, he has refused to sign the application on the basis that he should not be responsible for charges relating to the installation of a new water meter, membership fees, or a membership transfer fee.<sup>53</sup> In short, Mr. Blalock has not complied with Mercy's Tariff to establish membership in Mercy; and, as such, he is not a member and is not entitled to water service from Mercy.

Mr. Blalock did not present any evidence to refute Mercy's assertions. As such, Mercy's evidence is uncontroverted. Mr. Blalock's defensive responses to Mercy's Motion do not address the legal requirements for membership in Mercy. Even if his mother was a member while he lived with her, that would not change the fact that Mercy's Tariff requires Mr. Blalock to have either signed her application or completed his own application and paid fees to become a member himself. Similarly, his prior lack of knowledge of the application requirements and Mercy's continuation of service to the residence after his mother's death have no effect on Mercy's Tariff's membership requirements. In short, there is no such thing as constructive membership.

Commission rules allow for disconnection of service "where service is connected without authority by a person who has not made application for service."<sup>54</sup> Mr. Blalock admits to having made no application for service; and his complaint, on its face, states that he and his son—not Mercy employees—reconnected the pipes between the water meter and his residence before Mercy disconnected him.<sup>55</sup> Additionally, the Water Code allows discontinuance of service for "other

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<sup>52</sup> Mr. Blalock's statements made on the record during the June 18, 2021 prehearing conference ("I don't contest the fact that I haven't signed [commitment papers to be a member of Mercy]"); Mr. Blalock's Response to Commission Staffs First Request for Information to John Blalock at 22 ("Mr. Blalock has to deny that he has [completed and submitted to Mercy WSC a Service Application and Agreement to acquire water service and/or transfer Ms. Ivey's Mercy WSC account to yourself]..."); John Blalock's Response to Commission Staff's Supplemental Statement of Position and Request for Hearing at 2 ("APPLICATION AND AGREEMENT FOR SERVICE: Mr. Blalock did not fill out and submit the paperwork with Mercy as he . . . "); Filled Out Copies of Mercy's 'Application and Agreement for Service' and 'Membership Transfer' at 1 ("While Mr. Blalock has recently refused to fill out the paperwork for Mercy to file . . . ").

<sup>53</sup> Filled Out Copies of Mercy's 'Application and Agreement for Service' and 'Membership Transfer' at 1.

<sup>54</sup> 16 TAC § 24.167(b)(2).

<sup>55</sup> Complaint at 1.

similar reasons in the usual course of business.”<sup>56</sup> It is in the usual course of business to discontinue water service to a nonmember who has never even applied for membership, such as Mr. Blalock.

For these reasons, the ALJ finds that Mr. Blalock’s lack of membership in Mercy provided a basis for discontinuance/disconnection of service to his residence under both the Water Code and Commission rules; and because Mr. Blalock is not a member of Mercy, nor entitled to protection from discontinuance of service, no legal basis for this complaint exists. For this reason, the ALJ does not address the issues in the Commission’s Preliminary Order, which was based on the presumption of a legitimate complaint.<sup>57</sup> The issues in the Preliminary Order are thus moot.<sup>58</sup>

Accordingly, the ALJ concludes that there is no genuine issue as to any material fact and Mercy is entitled to a decision in its favor as a matter of law as to Mr. Blalock’s lack of membership in Mercy. Consequently, based on the foregoing conclusions, the ALJ concludes that this matter should be dismissed for failure to state a claim for which relief can be granted and mootness; and Commission Order No. 3, requiring Mercy to restore and provide water service to Mr. Blalock, should be vacated.

## V. FINDINGS OF FACT

1. John Blalock owns a residence in Cleveland, Texas, at 1611 Bowen Loop, that he inherited upon his mother’s death.

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<sup>56</sup> TWC § 13.250(d)(3).

<sup>57</sup> See, e.g., *Complaint of Silverleaf Resorts, Inc. Against Liberty Utilities (Silverleaf Water) LLC, f/k/a Algonquin Water Resources of Texas, LLC*, Docket No. 46642, SOAH Order No. 7 (June 29, 2017) (“SRI and Staff argue that the issues in the Commission’s Preliminary Orders go beyond SRI’s complaint; therefore, those issues must be addressed in this hearing. However, the foundation for the Commission’s Preliminary Order s was SRI’s complaint.”).

<sup>58</sup> Were it otherwise, even if a complainant had already received all relief it sought, the parties would go on expending resources unnecessarily litigating issues raised only by the Preliminary Order; and no complaint could be dismissed on grounds of withdrawal, want of prosecution, or sanction. 16 TAC §§ 22.181(d)(6), (10); 22.161(c)(4), (d)(1)-(2); and see *Complaint of Trisha Lares Against Briarwest Apartments and Realpage Utility Management, Inc.*, Docket No. 49847, SOAH Order No. 4 (May 12, 2020) (dismissing complaint based on withdrawal); *Complaint of Cassandra Denis Harris against the Landings at Willowbrook and Realpage Utility Management*, Docket No. 49370, Order (June 12, 2020) (dismissing complaint for want of prosecution).

2. The water service to 1611 Bowen Loop was provided by Mercy Water Supply Corporation (Mercy).
3. Water service to Mr. Blalock's residence was disconnected/discontinued on or about August 7, 2020.
4. On August 27, 2020, Mr. Blalock filed a formal complaint with the Public Utility Commission of Texas (Commission) against Mercy, alleging that Mercy disconnected his water service without notice and refused to restore it—asserting ongoing violations.
5. Mr. Blalock filed additional statements and information about his complaint on September 10, 17, 24, 28, 29, 2020; October 7, 9, 2020; November 24, and December 8, 2020; and January 13, February 8, April 8, July 12, and July 20, 2021.
6. Commission Order No. 3, issued September 14, 2020, required Mercy to restore and provide water service to Mr. Blalock's residence pending resolution of this proceeding.
7. On April 5, 2021, Mr. Blalock's complaint was referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing.
8. Administrative Law Judges (ALJs) Heather D. Hunziker and Meaghan Bailey convened a prehearing conference via the Zoom videoconferencing platform on June 18, 2021.
9. At the prehearing conference, Mr. Blalock appeared and represented himself; Mercy was represented by attorney Grayson McDaniel; and staff for the Commission (Staff) was represented by Staff attorneys Justin Adkins and Rashmin Asher.
10. To become a member of Mercy and be eligible to receive water service, Mercy's Tariff requires an applicant to complete and sign Mercy's application form and pay certain fees to begin or continue service.
11. Mr. Blalock has had the opportunity to complete Mercy's application form and pay the fees required for membership in Mercy.
12. Mr. Blalock has not completed Mercy's Application and Agreement for Service or its Membership Transfer form.
13. On July 12, 2021, Mercy filed a motion for summary decision (Mercy's Motion) requesting dismissal of all of Mr. Blalock's claims in this proceeding and requesting that Commission Order No. 3 requiring Mercy to restore and provide water service to Mr. Blalock be withdrawn.
14. Mr. Blalock filed his direct testimony (Blalock's Direct) late, on July 12, 2021, after the July 8, 2021 deadline set in SOAH Order No. 6, issued June 24, 2021.



15. On July 15, 2021, Mercy filed objections and a motion to strike Blalock's Direct in its entirety, to which Mr. Blalock responded that same day and again on July 21, 2021.
16. In SOAH Order No. 7, issued July 26, 2021, the ALJs overruled Mercy's objections; denied Mercy's motion to strike, with a minor exception; and set deadlines to file responses to Mercy's Motion by July 29, 2021, and replies by August 4, 2021.
17. Mr. Blalock and Staff timely filed responses to Mercy's Motion on July 29, 2021; Mr. Blalock timely filed a response to Staff's response on August 2, 2021; and Mercy timely filed its reply on August 4, 2021.
18. The evidentiary record closed on August 4, 2021, with the filing of Mercy's reply.
19. Mr. Blalock filed an unauthorized response to Mercy's reply on August 5, 2021, which was stricken for untimeliness in SOAH Order No. 8, issued August 11, 2021.
20. Staff supports Mercy's Motion.
21. In SOAH Order No. 8, the ALJs concluded that Mercy's Motion should be granted and a proposal for decision should be issued because all contested issues were resolved.
22. On August 16, 2021, Mr. Blalock filed a Motion for Reconsideration of SOAH Order No. 8. Mercy responded on August 19, 2021, and Mr. Blalock filed a reply later that day. Mr. Blalock's Motion for Reconsideration was denied.
23. Mr. Blalock is not a member of Mercy; Mr. Blalock is not entitled to Mercy water service.
24. Commission Order No. 3 requiring Mercy to restore and provide water service to Mr. Blalock's should be vacated.

## VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Texas Water Code (TWC) § 13.041(b)-(c), and 16 Texas Administrative Code (TAC) §§ 22.242 and 24.155.
2. SOAH has jurisdiction over matters related to the hearing of this case, including consideration of a motion for summary decision and preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code § 2003.049 and 16 TAC § 22.182.
3. When there is no genuine issue as to any material fact as to some or all issues, a moving party is entitled to a decision in its favor. 16 TAC § 22.182(a).

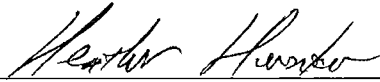
4. One or more issues in a proceeding may be dismissed for various reasons, including moot questions, failure to state a claim for which relief can be granted, and other good cause shown. 16 TAC § 22.181(d).
5. In a motion for summary decision, the burden of proof is on the movant. 16 TAC § 24.12.
6. Mercy met its burden to prove there are no genuine issues of material fact as to the issues raised by Mr. Blalock's complaint. 16 TAC § 24.12.
7. Membership can be transferred to close family members by will. TWC § 67.016(a)(1).
8. The transfer of membership by will does not entitle the transferee to water or sewer service unless each condition for water or sewer service is met as provided in the corporation's published rates, charges, and conditions of service and a transfer and service application is completed in a timely manner. TWC § 67.016(c).
9. Mr. Blalock has not met the requirements for membership as required under Mercy's Tariff and is therefore not a member of Mercy. *See* TWC § 13.002(11); 16 TAC § 24.3(19).
10. Mr. Blalock's lack of membership in Mercy is a basis for discontinuance/disconnection of service to his residence. TWC § 13.250(d)(3); 16 TAC § 24.167(b)(2).
11. Mr. Blalock is not entitled to water service from Mercy or protection from discontinuance of such service. *See* TWC § 13.250(d)(3).
12. Mercy is not obligated under its Tariff to provide water service to Mr. Blalock; and Mercy did not violate the Texas Water Code or the Commission's rules when it ceased water service to Mr. Blalock's residence.
13. The issues to be addressed listed in the Commission's Preliminary Order are moot.
14. Mr. Blalock's complaint failed to state a claim for which relief can be granted.

## VII. PROPOSED ORDERING PARAGRAPHS

1. Mercy's motion for summary decision is granted.
2. Mr. Blalock's claim of disconnection and discontinuation of service against Mercy is dismissed.

3. Commission Order No. 3 requiring Mercy to restore and provide water service to Mr. Blalock is vacated.
4. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief that have not been expressly granted are denied.

**SIGNED September 30, 2021.**



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**HEATHER HUNZIKER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**SERVICE LIST**

**AGENCY:** Public Utility Commission of Texas (PUC)  
**STYLE/CASE:** JOHN BLALOCK AND MERCY WATER SUPPLY CORPORATION  
**SOAH DOCKET NUMBER:** 473-21-1880.WS  
**REFERRING AGENCY CASE:** 51224

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ HEATHER HUNZIKER**

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**REPRESENTATIVE / ADDRESS**

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