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COMPLAINT OF JOHN BLALOCK AGAINST MERCY WATER SUPPLY CORPORATION	§ § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**MERCY WATER SUPPLY CORPORATION’S REPLY TO COMPLAINANT’S
EXCEPTION TO THE PROPOSAL FOR DECISION**

COMES NOW, Mercy Water Supply Corporation (“Mercy”) and files this Reply (“Reply”) to Complainant John Blalock’s (“Blalock”) (with Mercy, the “Parties”) Exception to the Proposal for Decision (the “Exception”).¹ Pursuant to correspondence filed by Commission Counsel , Mercy had a deadline of October 22, 2021 to file a reply to any exceptions or corrections to the Proposal for Decision (“PFD”) filed by Blalock or Commission Staff.² This Reply is timely filed.

I.

INTRODUCTION

The PFD recommends 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.³ The Honorable Administrative Law Judge Hunziker (“ALJ”) agreed with Mercy and Commission Staff that Blalock has not, and cannot, carry his burden of proof that he is entitled to water service from Mercy at Mercy’s expense because he is not, has never been, and is not currently eligible to be, a member of Mercy.⁴ The ALJ found that Mr. Blalock’s lack of membership in Mercy provides a “basis for discontinuance/disconnection of service to his residence under both the Water Code and

¹ John Blalock’s Exception to the Proposal for Decision (Oct. 12, 2021).

² Memorandum from Stephen Journey, Office of Policy and Docket Management, Public Utility Commission of Texas to All Parties of Record (Oct. 1, 2021) (filed in the docket).

³ Proposal for Decision (“PFD”) at 13 (Sept. 30, 2021).

⁴ See PFD at 12; *id.* at Proposed Conclusion of Law 9 (“Mr. Blalock has not met the requirements for membership as required under Mercy’s Tariff and is therefore not a member of Mercy.”) (citing TWC § 13.002(11); 16 TAC § 24.3(19)).

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.”⁵

Blalock’s Exception attacks the PFD from all angles. Blalock argues that the PFD is procedurally improper.⁶ Blalock attacks the ALJ’s fact findings,⁷ alleges that Mercy violated legal duties owed to him,⁸ that Mercy employees Kelley Allbright and Randall Baker violated 16 TAC § 24.25,⁹ that Mercy is “illegally holding \$200 USD,”¹⁰ and that the case is mooted due to his willingness to sign paperwork with Mercy.¹¹ Blalock argues that the ALJ was incorrect to hold that he has not stated a claim upon which relief can be granted because, among other reasons, he “has claimed and showed” that Mercy failed to inform him of his membership obligations, improperly shut off water service to his residence, failed to follow its tariff, has improperly kept \$200.¹²

II.

ARGUMENT

Respectfully, Mercy submits that Blalock’s Exception is without merit and the PFD should be approved by the Commission. Blalock, as Complainant in this proceeding, had the burden of proof to establish that his water service was improperly terminated.¹³ However, as stated in the

⁵ *Id.* at 13.

⁶ See Exception at 1 (Blalock claims that the ALJ was required to enter a signed order denying his Motion for Reconsideration of Order No. 8 with “a full explanation for the denial.”). Blalock’s Motion for Reconsideration was properly denied in the PFD. See PFD at 2 (“The ALJ 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.”).

⁷ See Exception at 2 (arguing that the meter on the Southern Tract was meant to serve the Northern Tract, where Blalock lives); 3 (arguing that Mercy “has not contested/denied” that Blalock was denied the opportunity to fill out membership paperwork); 5 (arguing that the ALJ erred when stating that Blalock did not support his arguments with evidence); *id.* (arguing that the ALJ erred in not finding that Mercy “should have known” of his mother’s death);

⁸ See Exception at 5 (arguing that Mercy has an affirmative legal duty to provide Blalock with free water service due to a “verbal agreement” or because Mercy “failed to notify” Blalock of membership requirements).

⁹ 16 TAC § 24.25 provides rules governing the form and filing of tariffs.

¹⁰ Exception at 6.

¹¹ See Exception at 4 (notably, Blalock states that “he was signing [the paperwork] as long as Mercy did not try to charge him for a meter, membership fees, or the fees for an application filing.”).

¹² *Id.* at 6-7.

¹³ Under 16 Texas Administrative Code (“TAC”) §24.12, “In any proceeding involving any proposed change of rates, the burden of proof shall be on the provider of water and sewer services to show that the proposed change, if proposed by the retail public utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable.

PFD, he undisputedly is not and has never been a member and did not take the necessary steps to transfer a membership to his name.¹⁴ Blalock essentially argues that the fact that he received water service when he should not have proves that he is entitled to continue receiving water service without becoming a member of Mercy. In his direct testimony, he indicated that he knew Mercy's membership requirements before filing the informal complaint that initiated this proceeding, but simply did not want to follow them or pay membership or transfer fees.¹⁵

As Mercy discussed in detail in briefing, Blalock's argument that Mercy had a "duty to inform" him of its membership requirements, which he has made before,¹⁶ is not supported by the law and fails to establish that he is entitled to water service.¹⁷ Mercy operates under Chapter 67 of the Texas Water Code ("TWC"). The chapter imposes no "duty to inform" on a water supply corporation ("WSC")—in fact, to the contrary, the TWC is clear that those who receive water service must meet the WSC's membership requirements. As regards any "verbal contract," Blalock's direct testimony or other pleadings did not establish that any contract existed. On the contrary, Kelley Allbright, Mercy's office manager, stated in her affidavit, "I have not entered into

In any other matters or proceedings, the burden of proof is on the moving party." As Complainant in this proceeding, which is not a rate appeal, Blalock is the moving party and bears the burden of proof.

¹⁴ See PFD at 11-12 ("Mr. Blalock admitted that he has never completed, signed, or submitted the application or membership transfer forms required . . . 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."); *id.* ("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.").

¹⁵ See Complainant's Direct Testimony at 2 (July 12, 2021) ("Following the aforementioned shut-off of service, members of my household and myself tried to work with Mercy to find a solution that *did not involve us paying for a new meter[.]*") (emphasis added). It is worth mentioning that the voluminous factual record in this case is, in part, a result of Blalock's reluctance to respond to basic discovery and tendency to file baseless and duplicative pleadings, which led to the ALJ sanctioning Blalock \$250. See Order No. 6 – Memorializing Preliminary Hearing; Granting, in Part, and Denying, in Part, Mercy's Motion for Sanctions; Adopting a Procedural Schedule and Procedures; Setting Zoom Hearing; and Requiring Procedures at 2 (June 24, 2021) (sanctioning Blalock for failing to comply with ALJ Ta's Order No. 8 that compelled responses to Mercy's RFI 1-13).

¹⁶ See, e.g., Motion for Reconsideration at 2 (Aug. 16, 2021) (stating, "one of the ALJs asked if Mr. Blalock was stating that Mercy had a duty to act/inform, to which Mr. Blalock's child answered that with a 'Yes'"); Mr. Blalock's Response to Commission Staff's Response to Mercy's MSD at 3 (Aug. 2, 2021) (arguing, "As with Mercy, Commission Staff is leaving out Mercy's duty to act to inform Mr. Blalock . . . of Mercy's tariff or the full requirements required by said tariff."); *id.* (arguing, "As stated by Mr. Blalock in multiple filings, it would be unjust to victimize Mr. Blalock due to Mercy's failure to act."); Mr. Blalock's Response to Mercy Water Supply Corporation's Motion for Summary Disposition (July 29, 2021) (arguing, "Mercy has never denied that Mr. Blalock inquired about transferring the membership, creating a duty to act for Mercy's office manager and staff to inform Mr. Blalock of the paperwork and policies relevant to membership and account transfer.").

¹⁷ See, e.g., Reply in Support of Mercy Water Supply Corporation's Motion for Summary Disposition at 3-6 (Aug. 4, 2021) (responding to Blalock's argument at length).

a verbal agreement on behalf of Mercy to permit to provide water service to Mr. Blalock[, and] I have also not found any records indicating any agreement or discussion with Mr. Blalock involving his continued use of the account without transferring it to his name.”¹⁸ Moreover, even if a verbal contract existed, which it did not, TWC § 67.015(c) provides:

The corporation may cancel a person’s or other entity’s stock, membership, or other right of participation if the person or entity fails to:

- (1) meet the conditions for water or sewer service prescribed by the corporation’s published rates, charges, and conditions of service; or
- (2) comply with any other condition placed on the receipt of water or sewer service under the stock, membership, or other right of participation.¹⁹

Mercy has a tariff, the operating policies, service rules, service extension policy, service rates, water use restriction policies, sample application packet, and miscellaneous transaction forms adopted by the Board of Directors. Mercy’s tariff provides that a member must be “qualified for service and be certified as a member in accordance with the Corporation’s Tariff.”²⁰

Mercy’s tariff defines “Member” as:

Any person, partnership, cooperative corporation, corporation, agency, or public or private organization who holds a membership [with Mercy] and who is a record owner of fee simple title to the property in an area served by [Mercy] or a person who is granted a membership and who either currently receives or will be eligible to receive water utility service from [Mercy]. The member shall be qualified for service and been certified as a member in accordance with [Mercy’s] Tariff.²¹

¹⁸ Mercy Water Supply Corporation’s Response to Complaint (Aug. 5, 2020) at 140, Ex. B (Affidavit of Kelley Allbright) ¶ 11.

¹⁹ TWC § 67.015(c).

²⁰ 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).

²¹ Mercy Water Supply Corporation’s Response to Complaint (Sept. 24, 2020), Ex. A - Tariff (Mercy’s Tariff).

An applicant for water service is 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.”²² 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.²³ Furthermore, an applicant for service must provide proof of ownership to the property for which they wish to receive water service.²⁴

Mercy’s tariff expressly states regarding membership transfer that, “Eligibility for Membership shall not guarantee service to the Applicant or Transferee; however, qualification for service is a prerequisite to Membership eligibility for new Applicants or continued Membership for Transferees.”²⁵ Membership Applicants, which include transferees, “shall be considered qualified and entitled to water utility service when [1] proper application has been made, [2] terms and conditions of Service and Membership have been met and continue to be met, and [3] all fees have been paid as prescribed.”²⁶ Specifically, Mercy’s “Service Application and Agreement Form shall be completed in full and signed by the Applicant(s).”²⁷

Blalock’s Exception fails to refute the PFD’s holding that there are no material facts at issue and Mercy is entitled to judgment as a matter of law. The Exception restates arguments that have already been rebutted and determined to be meritless by the ALJ. The following holdings in the PFD establish that Blalock is not entitled to water service from Mercy :

- Blalock “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”;²⁸

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ PFD at 12.

- Even if Blalock’s “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”,²⁹
- “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.”³⁰

Blalock’s Exception reiterates his previous argument that Mercy either knew or should have known about his mother’s death.³¹ He cites no evidence and no explanation as to why Mercy would “know,” without being informed, of the death of one of its members. In fact, Kelley Allbright has stated in her sworn affidavit that “unless Mercy is informed or notified by a landowner, it will not know whether a landowner has passed.”³²

In sum, Mercy properly shut off water service to Blalock’s residence because is not and has never been a member of Mercy. Mercy does not have a duty to inform and does have the right to terminate service if its membership requirements are not met. As stated in the PFD, 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.” Mercy, Commission Staff, and the ALJ agree that, “if Mr. Blalock desires to obtain water service from Mercy WSC that he apply for membership and complete the requisite steps and pay the associated charges, as provided for in Mercy WSC’s Tariff.”³³ Additionally, Mercy “should not be compelled to restore water service to the Northern Tract, nor install a new meter at no cost to Mr. Blalock.”³⁴ Accordingly, the PFD’s

²⁹ *Id.* at 12.

³⁰ *Id.*

³¹ Motion at 3; *John Blalock’s Response to Mercy’s Motion for Summary Disposition* at 2.

³² *See Mercy’s Response to Complaint* (Sept. 24, 2020) at Ex. B (Affidavit of Kelley Allbright) ¶ 14.

³³ *Commission Staff’s Supplemental Statement of Position* at 7 (Feb. 8, 2021).

³⁴ *Id.*; *see also Commission Staff’s Response to Mercy WSC’s Motion for Summary Disposition* (July 29, 2021) at 3 (noting that “no party to this proceeding disputes that Mercy WSC’s membership requirements have not been met”); 4 (“As the facts indicate, Mr. Blalock was not entitled to service”).

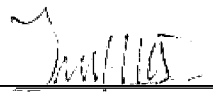
recommendation that the Commission grant summary disposition in this case is well-founded and should be approved by the Commission as written.

III.

CONCLUSION

For the reasons discussed herein, Mercy respectfully requests that the Commission overrule Blalock's exceptions, approve the PFD as written, dismiss this matter for failure to state a claim for which relief can be granted and mootness, and vacate Commission Order No. 3, requiring Mercy to restore and provide water service to Mr. Blalock. Mercy also requests all other relief in law or equity to which it may be entitled.

Respectfully submitted,

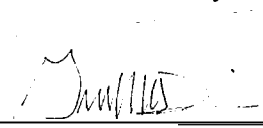
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ATTORNEYS FOR MERCY WATER
SUPPLY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 21st day of October 2021.

 _____

Grayson E. McDaniel