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COMPLAINT OF JOHN BLALOCK	§	PUBLIC UTILITY COMMISSION
AGAINST MERCY WATER SUPPLY	§	
CORPORATION	§	OF TEXAS

**COMMISSION STAFF’S REPLIES TO EXCEPTIONS TO THE PROPOSAL FOR
DECISION**

I. INTRODUCTION

The conclusions reached by the Administrative Law Judge (ALJ) in the Proposal for Decision (PFD) are correct and should be maintained over John Blalock’s (Mr. Blalock) objections. Staff remains grateful for the reasoned consideration of the ALJ, and Staff supports the recommendations and analysis contained in the PFD.

Staff files this reply to Mr. Blalock’s exceptions to the ALJ’s decision that the complaint should be dismissed for failure to state a claim.

II. ARGUMENT

Mr. Blalock excepts to numerous recommendations made in the PFD. Staff is of the opinion that the majority of these exceptions are identical arguments reiterated from many of Mr. Blalock’s filings made prior to the filing of Order No. 8, in which the ALJ granted Mercy Water Supply Corporation’s (Mercy) Motion for Summary Disposition. For the most part, these exceptions do not concern the fundamental issue of whether Mr. Blalock properly completed Mercy’s Service Application and Agreement (Application Form) and paid the required fees for membership.¹ However, Staff provides the following responses to select exceptions.

¹ Arguments regarding the intended service location of the water meter; the alleged implied verbal contract, or “constructive membership,” between Mr. Blalock and Mercy WSC; availability of the tariff; and service disconnection under 16 Texas Administrative Code (TAC) § 24.167(c)(2) are all either irrelevant to the completion of the Application Form and payment of fees and/or were thoroughly addressed in the PFD.

A. The intended service location of the water meter is irrelevant to the dispositive issues in this case

In his exceptions to the PFD filed on October 12, 2021,² Mr. Blalock excepts to the ALJ's holding that he used water service provided by Mercy to 1601 Bowen Loop. Mr. Blalock claims that the water meter which provided him service was installed to provide service to 1611 Bowen Loop, rather than 1601 Bowen Loop.³ Mr. Blalock has maintained this position throughout this proceeding. However, this argument is moot in relation to the dispositive issue. Regardless of whether the water meter was originally installed at its current location to service 1611 or 1601 Bowen Loop, the dispositive issue in this proceeding is whether Mr. Blalock properly completed and submitted the Mercy Application Form. Whether or not the water meter was installed to provide service to 1611 Bowen Loop at the request of Mr. Blalock's mother Reba Ivey, Mr. Blalock has still failed to complete and submit the Application Form and pay any of the requisite fees to become a member of Mercy.

Staff is in agreement with the PFD, which correctly provides that "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."⁴

B. Any duty Mercy WSC had to inform Mr. Blalock of the tariff and Application Form is inapplicable to the facts and dispositive issue in this case

Mr. Blalock claims that he was "refused/denied the opportunity to fill out the paperwork" and that Mercy had a "duty to inform" him, ostensibly of his need to complete the Application Form and other paperwork.⁵ However, as detailed below, Mr. Blalock has been fully aware of the necessity to fill out membership paperwork for a transfer or new membership since at least October 2020 and has failed to do so since then, on the basis that he should not be responsible for any fees relating to membership. Mr. Blalock completed an Application Form and filed it to the docket, specifically stating that he was providing it to show he was willing to complete a form as

² John Blalock's Exception to the Proposal for Decision at 3 (Oct. 12, 2021) (Blalock's Exceptions).

³ See PFD at 3 and Blalock's Exceptions at 1-2.

⁴ PFD at 12.

⁵ Mr. Blalock discusses Mercy's failure to follow the practices of their tariff by not having a copy of the tariff available during business hours and on their website, but it appears he is alluding to Mercy failing to inform him of the Application Form requirement. See Blalock's Exceptions at 2.

long as he would not be charged any fees.⁶ Mr. Blalock's arguments that Mercy failed to inform him that he needed to complete the paperwork for membership are unavailing in light of his apparent knowledge of the form and its use for essentially the entirety of this proceeding.⁷ Mr. Blalock was in possession of the form and could have completed and submitted the form at any time during this proceeding after October 2020, but failed to do so because he believes he should not be responsible for any membership fees.

C. Mr. Blalock did not possess a constructive membership in Mercy

Mr. Blalock again argues that he had a "constructive membership" with Mercy, because Mercy accepted payments for water service from him from 2015 to 2020.⁸ As the PFD correctly provides, "there is no such thing as constructive membership."⁹ Staff concurs with the PFD that in order for Mr. Blalock to be entitled to water service at any point, he would have had to be a member of Mercy, as defined in the Texas Water Code (Water Code) and in Mercy's tariff. Specifically, the Water Code states that in order to have the status of a member, one must have been granted a membership.¹⁰ In order to be granted a membership by Mercy, Mr. Blalock would have had to complete and sign the Application Form and pay the required fees.¹¹ Mercy is and should not be obligated to continue providing water service to Mr. Blalock merely because it allowed Mr. Blalock to receive service, in his mother's name, following her passing, especially in light of Mr. Blalock continued refusal to adhere to the policies governing Mercy members.

Mr. Blalock's reliance on 16 TAC § 24.167(c)(2) is misplaced.¹² A water meter is not "merchandise" as contemplated under the rule, and a water service application fee can hardly be called a charge for "non-utility service provided by the utility." Notwithstanding, because Mr.

⁶ Filled Out Copies of Mercy's Application and Agreement for Service and Membership Transfer at 1-2 (Oct. 9, 2020).

⁷ This formal complaint was filed on August 28, 2020, and the form was filed on October 9, 2020.

⁸ Blalock's Objections at 3.

⁹ PFD at 12.

¹⁰ As provided in the PFD, a member is "someone who is granted a membership and ... is eligible to receive water from the corporation." 16 TAC § 13.002(11).

¹¹ See PFD at 11.

¹² Blalock's Exceptions at 3.

Blalock was never a member of Mercy, service could be appropriately disconnected under 16 TAC § 24.167(b)(2), as the PFD provides.¹³

D. Mr. Blalock's filed Application Form does not meet the requirements of the Water Code and Mercy's Tariff.

In Blalock's Exceptions, he states that he has already filled out an Application Form and Membership Transfer Authorization and filed both to the Interchange.¹⁴ Mr. Blalock explains that "he was signing it as long as Mercy did not try to charge him for a meter, membership fees, or the fees for an application filing."¹⁵ The Application Form was indeed filed to this docket on October 9, 2020, albeit partially-completed.¹⁶ However, as Mr. Blalock acknowledges, the form was only filed only to provide proof that he was willing to complete and submit the form to Mercy on the condition that he not be charged any fees relating to membership.¹⁷ Mr. Blalock has continued to pay no fees relating to a new or transferred membership.

As mentioned above, Mr. Blalock's October 2020 submission of the Application Form clearly indicates Mr. Blalock's awareness of the form and the necessity to submit it to Mercy to receive service for over a year, contrary to his assertion that he was "refused/denied the opportunity to fill out paperwork"¹⁸ and that he cannot be held responsible because "[s]omeone cannot fail to do something that they did not know needed to be done."¹⁹ While he may or may not have been aware of the necessity to sign and submit the Application Form prior to the initiation of this complaint, he has been aware of the form requirement during the pendency of this complaint and could have completed the form and submitted it to Mercy at any point during this proceeding. As such, arguments concerning Mr. Blalock's lack of awareness of the necessity of submitting the Application Form for membership are inapplicable in this matter.

¹³ Staff agrees with the analysis in the PFD and will not reiterate it here. *See* PFD at 12-13.

¹⁴ Blalock's Exceptions at 3.

¹⁵ *Id.*

¹⁶ Filled Out Copies of Mercy's Application and Agreement for Service and Membership Transfer (Oct. 9, 2020).

¹⁷ "Mr. Blalock is willing to send a copy to Mercy...only after there is documentation...stating that Mr. Blalock is protected from the clauses requiring him to pay for meter installation, membership fees for a new membership, or the fees to transfer his deceased mother's membership into his name." *Id.* at 1-2.

¹⁸ *See* Blalock's Exceptions at 3.

¹⁹ *Id.* at 4.

The PFD correctly concludes that Mr. 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.²⁰

E. Any funds held by Mercy will not suffice to pay all membership fees nor negate the Application Form requirement for membership

Mr. Blalock claims that Mercy is currently “illegally holding \$200 USD, which would cover the cost for a transfer of Membership and the Application fees.”²¹ As Staff understands and as represented by Mercy, this amount would be insufficient to cover the fees for membership, which include: (1) a membership fee of \$250.00; (2) tap fees of \$786.00; (3) an equity buy-in of \$1,000.00; and (4) a road bore cost of \$1,000.00.²² Regardless of the amount of these fees, Mr. Blalock has stated numerous times he will not pay any fees, nor has Mr. Blalock signed and submitted the Application Form. Therefore, the application of the alleged illegally held \$200.00 to any membership fees is a moot point in this proceeding.

In sum, as thoroughly analyzed by the ALJ in the PFD, the dispositive issue in this matter is whether Mr. Blalock has complied with the membership requirements supported by both the Water Code and Mercy’ Tariff of signing the Mercy Application Form and paying the required membership fees in order to become a member of Mercy. Staff is in agreement with the ALJ’s conclusions and recommendations regarding this issue.

III. CONCLUSION

As stated in this pleading, Staff supports the PFD’s recommendations, including the ultimate recommendation that summary decision in favor of Mercy is appropriate in this proceeding as a matter of law.

²⁰ PFD at 12.

²¹ Blalock Exceptions at 5.

²² Mercy Water Supply Corporation’s Response to Complaint at 7-8 (Sep. 24, 2020).

Dated: October 22, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 October 22, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Justin C. Adkins
Justin C. Adkins