



Control Number: 51224



Item Number: 125

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

**COMPLAINT OF JOHN BLALOCK
AGAINST MERCY WATER SUPPLY
CORPORATION**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER

This Order addresses the complaint of John Blalock against Mercy Water Supply Corporation (Mercy). Mr. Blalock alleges that Mercy disconnected his water service without notice and refused to restore it—asserting ongoing violations. The matter was referred to the State Office of Administrative Hearings (SOAH) for a contested-case hearing. However, before the hearing on the merits, the SOAH administrative law judge (ALJ) granted Mercy’s motions for summary decision. The SOAH ALJ then drafted a proposal for decision. The Commission adopts the proposal for decision with the modifications included in this order.

The Commission makes the following changes to the proposal for decision. Findings of fact two and three should be modified for accuracy and completeness. Mercy did not provide service to 1611 Bowen Loop. Mercy provided service to 1601 Bowen Loop through a meter located at that address. Mr. Blalock connected piping to the meter located at 1601 Bowen Loop to connect his residence at 1611 Bowen Loop to Mercy’s water system. The Commission adds findings of fact 12A and 12B for accuracy and completeness to account for Mr. Blalock’s non-membership of Mercy. New finding of fact 23A is added to support why Mr. Blalock is not entitled to water service. Conclusion of law 10 is split into conclusion of law 10 and 10A to distinguish the bases for discontinuance of service to Mr. Blalock and disconnection of Mercy’s water system.

Finally, the Commission makes other non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I. Findings of Fact

The Commission adopts the following findings of fact to the extent provided in this order.

Applicant

1. John Blalock owns a residence in Cleveland, Texas, at 1611 Bowen Loop, that he inherited upon his mother's death.
2. Mercy Water Supply Corporation provided water service to 1601 Bowen Loop. Mr. Blalock and his son connected piping to the system at 1601 Bowen Loop to provide water to his residence at 1611 Bowen Loop.
3. Water service to Mr. Blalock's residence was discontinued on or about August 7, 2020 when Mercy disconnected service to 1601 Bowen Loop.
4. On August 27, 2020, Mr. Blalock filed a formal complaint with the 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, and 29, 2020; October 7 and 9, 2020; November 24 and December 8, 2020; and January 13, February 8, April 8, July 12, and July 20, 2021.
6. In Order No. 3 filed on September 14, 2021, the Commission ALJ 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 SOAH for a contested-case hearing.
8. On June 18, 2021, SOAH ALJs Heather D. Hunziker and Meaghan Bailey convened a prehearing conference via the Zoom videoconferencing platform.
9. At the prehearing conference, Mr. Blalock appeared and represented himself; Mercy was represented by attorney Grayson McDaniel; and Commission Staff was represented by Commission 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.
- 12A. Mr. Blalock admitted that he has never completed, signed, or submitted the application or membership transfer forms required to become a member of Mercy.
- 12B. Mr. Blalock has refused to sign the application on the basis that he should not be responsible for the fees required for membership in Mercy.
13. On July 12, 2021, Mercy filed a motion for summary decision 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 late, on July 12, 2021, after the July 8, 2021 deadline set in SOAH Order No. 6 filed on June 24, 2021.
15. On July 15, 2021, Mercy filed objections and a motion to strike Blalock's direct testimony in its entirety, to which Mr. Blalock responded that same day and again on July 21, 2021.
16. In SOAH Order No. 7 filed on July 26, 2021, the SOAH 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 Commission Staff timely filed responses to Mercy's motion on July 29, 2021; Mr. Blalock timely filed a response to Commission 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 filed on August 11, 2021.
20. Commission Staff supports Mercy's motion.
21. In SOAH Order No. 8 filed on August 11, 2021, the SOAH 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. In the proposal for decision filed on September 20, 2021, the SOAH ALJ denied Mr. Blalock's motion for reconsideration.
23. Mr. Blalock is not a member of Mercy, and Mr. Blalock is not entitled to Mercy water service.
- 23A. Mercy discontinued water service to non-member Mr. Blalock in the usual course of business.
24. Commission Order No. 3 requiring Mercy to restore and provide water service to Mr. Blalock's should be vacated.

II. Conclusions of Law

The Commission adopts the following conclusions of law to the extent provided in this order.

1. The Commission has authority over this matter under Texas Water Code (TWC) § 13.041(b) and (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, under 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 under 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 under 16 TAC § 22.181(d).
5. In a motion for summary decision, the burden of proof is on the movant under 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 in accordance with 16 TAC § 24.12.
7. Membership can be transferred to close family members by will under 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 under 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 of service to his residence under TWC § 13.250(d)(3).
- 10A. Mr. Blalock's lack of application for service from Mercy is a basis for disconnection of the pipeline he constructed to his residence under 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 TWC 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.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission adopts the proposal for decision.
2. The Commission grants Mercy's motion for summary decision.

3. The Commission dismisses Mr. Blalock's claim of disconnection and discontinuation of service against Mercy.
4. The Commission vacates Order No. 3 requiring Mercy to restore and provide water service to Mr. Blalock.
5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 19th day of November 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER