



Control Number: 51224



Item Number: 67

Addendum StartPage: 0

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

COMMISSION STAFF'S SUPPLEMENTAL STATEMENT OF POSITION

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 water service.

On January 12, 2021, the administrative law judge (ALJ) filed Order No. 10, establishing a deadline of February 8, 2021 for Staff to file a supplemental statement of position. Therefore, this pleading is timely filed.

I. SUPPLEMENTAL STATEMENT OF POSITION

Mr. Blalock and Mercy WSC have not come to an agreement regarding the restoration of water service to Mr. Blalock's property, the Northern Tract,¹ nor to the payment of charges relating to such restoration and the provision of water service. Staff has reviewed the voluminous documentation filed in this docket and recommends that the ALJ find that Mercy WSC has complied with the law and its tariff in ceasing water service to the Northern Tract. Staff additionally recommends that the ALJ find that Mr. Blalock is and has never been a member of Mercy WSC entitled to receive water service, and that if he desires to obtain such service, he complete and submit to Mercy WSC its "Service Application and Agreement Form" (Application Form) and pay all necessary charges and fees relating to a establishment of a new membership.

A. Mr. Blalock's lack of membership with Mercy WSC

The crux of this dispute relates to whether Mr. Blalock is a member of Mercy WSC. If Mr. Blalock is a member as defined by the legally and in Mercy WSC's Tariff², he is entitled to ongoing water service from Mercy WSC should he meet the requisite membership conditions.

¹ 1611 Bowen Loop, Cleveland, TX 77328 (Northern Tract).

² Mercy Water Supply Corporation's Response to Complaint, Exhibit A, Tariff for Mercy Water Supply Corporation (Sep. 24, 2020) (Tariff).

However, if Mr. Blalock is not a member, Mercy WSC is not obligated to provide water service to the Northern Tract. Staff recommends that the ALJ find that Mr. Blalock has never been and is not currently a member of Mercy WSC entitled to water service to his property.

The Texas Water Code (TWC) 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) is someone who is granted a membership and currently receives or is eligible to receive water from the corporation.³

Additionally, the Tariff provides that a member must be qualified for service and be certified as a member in accordance with the Corporation's Tariff."⁴ 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."⁵

Service Application and Agreement Form

In order to obtain a membership and water service, an applicant to Mercy WSC must complete and sign Mercy WSC's Application Form."⁶ Each individual seeking to become a member of Mercy WSC 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.⁷ Furthermore, an applicant for service must provide proof of ownership to the property for which they wish to receive water service.⁸

Mr. Blalock has stated multiple times in this docket that he has never completed, signed, and submitted the Application Form.⁹ He has refused to sign the form because he believes he

³ TWC § 13.002(11).

⁴ Tariff, Section C at 21.

⁵ *Id.*, Section E, paragraph 25 at 38.

⁶ *Id.*, Section E, paragraph 27 at 38-39.

⁷ *Id.*

⁸ *Id.*, Section E, paragraph 27, subsection b at 39.

⁹ *See* Mr. Blalock's Response to Commission Staff's First Request for Information to John Blalock at 22 (Nov. 30, 2020) (Blalock Response) ("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]..."); Filled Out Copies of Mercy's Application and Agreement for Service and Membership Transfer at 1 (Oct. 9, 2020) (Blalock Application); and Letter to All Parties From Mr. Blalock at 4 (Dec. 8, 2020) (Blalock Letter)

should not be responsible for additional charges relating to the installation of a new water meter on the Northern Tract, membership fees, and a membership transfer fee.¹⁰

Mr. Blalock has stated that, at the time his mother Ms. Reba Ivey (Ms. Ivey) signed up for service and acquired membership with Mercy WSC on August 11, 1995, his legal address was listed as the Northern Tract, the same as Ms. Ivey's.¹¹ He later lived on the property from January or February 1996, until the summer of 1998, at which point he moved away.¹² He then came back to live at the property in January 2015, following the death of Ms. Ivey.¹³

As described above, the Tariff provides a mechanism by which an individual living with a member at a property receiving service can acquire an ownership interest in that membership.¹⁴ Mr. Blalock did not avail himself of this opportunity. Ms. Ivey initially applied for Mercy WSC membership on August 11, 1995.¹⁵ Of note, Ms. Ivey's application provides a household size of one, with only one person listed under "Number in Family."¹⁶ Most importantly, there are no other signatures besides Ms. Ivey's.¹⁷

At no point following Mr. Blalock's move to the Northern Tract in January 2015, did he submit a completed and signed Application to Mercy WSC to become a member.

Membership and Other Fees

An applicant for water service from Mercy WSC must also pay all requisite fees and charges to begin and continue service.¹⁸ In order to be eligible for water service on the Northern

("I have contended their points on the paperwork...by filling out the paperwork with certain conditions tied to when and how it can be considered binding...if I had been informed of what paperwork I needed to fill out, then I would have done it and paid the fees required.").

¹⁰ Blalock Application at 1; Blalock Letter at 4.

¹¹ Mr. Blalock's Responses as Required by Order No. 9 at 1-2 (Jan. 13, 2021).

¹² *Id.*

¹³ *Id.*

¹⁴ Tariff, Section E, paragraph 27 at 38-39.

¹⁵ Mercy Water Supply Corporation's Reply to Staff's Position at 27 (Oct. 6, 2020) (Mercy Reply).

¹⁶ *Id.*

¹⁷ *Id.* at 27-28, 30.

¹⁸ "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." Tariff, Section E, paragraph 18, subsection b at 33.

Tract, Mr. Blalock would be responsible for payment of a meter installation fee,¹⁹ a customer service inspection fee,²⁰ a Membership Fee,²¹ Equity Buy-in Fee,²² and Installation Fee.²³ If Mr. Blalock had transferred Ms. Ivey's membership to himself, he would be responsible for a transfer fee.²⁴ Mr. Blalock has paid none of these fees and contends that he should not be responsible for payment of these fees and charges.²⁵ However, as a non-member of Mercy WSC, Mr. Blalock is not exempt from the usual fees and charges associated with the establishment of water service under a new membership.

Ms. Reba Ivey's Membership Was Not Transferred to Mr. Blalock

Ms. Ivey first became a member of Mercy WSC in August 1995.²⁶ She passed away on January 21, 2015.²⁷ As acknowledged by Mr. Blalock, water service to the Northern Tract continued under her membership for a period of time following her passing.²⁸ On August 7, 2020,

¹⁹ The Tariff specifies "On the request by the property owner...the Corporation shall install individual meters owned by the Corporation. .The Corporation shall be entitled to the payment of costs, including the costs of individual meter installations...The cost of individual meter installation shall be prepaid by the property owner as well as the cost of any additional facilities or supply occasioned by the total water service demand..." Tariff, Section E, paragraph 27, subsection c at 39.

²⁰ "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." *Id.*, Section B, paragraph 10 at 18.

²¹ "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." *Id.*, Section G, paragraph 13 at 49.

²² "...each Applicant for new service that requires a new service tap shall be required to achieve parity with the contributions to the construction or acquisition of the Corporation assets...made previously by existing Members. This fee shall be assessed immediately prior to providing service on a per-service unit basis for each service requested..." *Id.*, Section G, paragraph 7 at 47.

²³ The Installation Fee is related to the installation of a new meter on the Northern Tract. The Tariff provides that the Installation Fee for Standard Service includes a Tap Fee, Engineering Fee, Legal Fee, Customer service inspection fee, Administrative Costs, and any additional site-specific equipment or appurtenances necessary to provide water service. *Id.*, Section G, paragraph 10, subsection a at 48.

²⁴ "A Fee of \$20.00 shall be assessed for the transfer of any membership." *Id.*, Section G, paragraph 25 at 51.

²⁵ Blalock Application at 1-2.

²⁶ Mercy Reply at 27-30.

²⁷ Blalock Response at 1.

²⁸ *Id.*

Ms. Ivey's membership was cancelled due to policy non-compliance, on the basis that Ms. Ivey was "not a record owner of a fee simple title" to the Northern Tract.²⁹

A member of a water supply corporation may transfer their membership or other right of participation by will to a testator within the second degree by consanguinity or by transfer without compensation to a person who is related to the owner within the second degree of consanguinity.³⁰ The Tariff also contemplates the transfer of memberships, including with the above circumstances that situation in which a membership is transferred "as a part of the conveyance of real estate from which the Membership arose."³¹

Limitations on transfer exist in both the TWC and Tariff. A transferee is not entitled to water service unless "each condition for water...service is met as provided in the corporation's published rates, charges, and conditions of service."³² Notably, "[a] *transfer and service application must be completed* on the corporation's standardized forms *and filed with the corporation's office in a timely manner* [emphasis added]"³³ Furthermore, the Corporation must approve a transfer, and the transferor must provide "satisfactory evidence to the Corporation of such transfer."³⁴ Mirroring TWC 67.016(c), to be qualified for service, a transferee must complete the required application packet and demonstrate satisfactory evidence of ownership of the property.³⁵

There is no evidence to suggest that Ms. Ivey meant to transfer her membership to Mr. Blalock. While Mr. Blalock provided a Small Estate Affidavit and Order and Warranty Deeds demonstrating he possesses an undivided interest in the Northern Tract,³⁶ there is no will or other estate planning or probate documents indicating a transfer of the membership to Mr. Blalock.

²⁹ Mercy Water Supply Corporations Responses to Staff's First Request for Information at 74-75 (Dec. 4, 2020) (Mercy Responses to Staff RFIs).

³⁰ TWC § 67.016(a)(1)-(2).

³¹ Tariff, Section E, paragraph 18, subsection c(1)(d) at 33.

³² TWC § 67.016(c)

³³ *Id.*

³⁴ Tariff, Section E, paragraph 18, subsection c(2) at 33.

³⁵ *Id.*, Section E, paragraph 18, subsection c(3)(a), (c).

³⁶ Blalock Response at 1-18.

There are no letters or other documents illustrating such an intent. In addition, while it is disputed whether Mr. Blalock personally appeared at the Mercy WSC office to transfer the membership, there is no positive indication that Mr. Blalock attempted to transfer Ms. Ivey's account. Kelley Allbright, Office Manager for Mercy WSC, attested that she never received a transfer request from Mr. Blalock, nor were there any records that Mr. Blalock presented the required documents and application for a transfer.³⁷ Mr. Blalock has produced no records or notarized affidavits from Mercy WSC employees who would attest that he personally appeared to transfer the membership. While Mr. Blalock appears to possess the Northern Tract legally, he has still failed to comply with the conditions on transfer laid out in the TWC and Tariff. As such, Mr. Blalock cannot be said to have obtained Ms. Ivey's membership through transfer.

In sum, Mr. Blalock has not complied with the TWC or Mercy WSC's Tariff to effectuate either the establishment of a new membership nor transfer of Ms. Ivey's membership to himself. As such, he cannot be considered a member and is therefore not entitled to water service from Mercy WSC at the Northern Tract.

B. Other Considerations

Both Mr. Blalock and Mercy WSC have each presented arguments concerning the intended service location of water meter installed on the Southern Tract.³⁸ Mr. Blalock has stated the meter was installed on the Southern Tract to service the Northern Tract.³⁹ Mercy WSC has stated the meter was installed to service the Southern Tract.⁴⁰ Mercy WSC filed documents showing that Ms. Gloria Meeks, owner of the Southern Tract and sister of Ms. Ivey, had a Mercy WSC membership in 1988, 1991, and 1994.⁴¹ Mercy WSC produced an Application Form for service at

³⁷ Mercy Reply at 23-24.

³⁸ 1601 Bowen Loop, Cleveland, TX 77328 (Southern Tract).

³⁹ John Blalock's Response to Mercy Water Supply Corporation's Response to Order #3 in Docket 51224 at 2 (Sep. 17, 2020).

⁴⁰ "No approval to place the meter on the Southern Tract exists in Mercy's records for Ms. Ivey's account...It is Mercy's practice to place the meter at a location where the customer requests, unless that location is infeasible... Mercy would not have placed the meter at its current location on the Southern Tract unless the applicant specifically requested it to be placed there." Mercy Responses to Staff's RFIs at 7.

⁴¹ *Id.* at 3.

the Southern Tract, signed by Ms. Meeks and dated March 15, 1994,⁴² as well as membership logs with usage and charges under Ms. Meeks' membership from 1994 and early 1995.⁴³

Staff is of the opinion that this evidence strongly suggests that the water meter installed on the Southern Tract was intended to service the Southern Tract, prior to Ms. Ivey's application for service in 1995. However, even if the reverse were true, it would not change the fact that Mr. Blalock has not complied with legal or Tariff requirements to obtain or transfer a Mercy WSC membership.

Therefore, Staff recommends that Mercy WSC should not be compelled to restore water service to the Northern Tract, nor install a new meter at no cost to Mr. Blalock. Additionally, Staff recommends 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.

II. CONCLUSION

Based on the foregoing considerations, Staff respectfully requests that an order be filed consistent with the above recommendations.

⁴² *Id.* at 19-22.

⁴³ *Id.* at 23, 28.

Dated: February 8, 2021

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Rachelle N. Robles
Division Director

Rashmin J. Asher
Managing Attorney

/s/ Justin C. Adkins
Justin C. Adkins
State Bar No. 24101070
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7289
(512) 936-7268 (facsimile)
Justin.Adkins@puc.texas.gov

**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 February 8, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Justin C. Adkins
Justin C. Adkins