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DOCKET NO. 51224

COMPLAINT OF JOHN BLALOCK
AGAINST MERCY WATER SUPPLY
CORPORATION

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PUBLIC UTILITY COMMISSION
OF TEXAS



**MERCY WATER SUPPLY CORPORATION'S RESPONSE TO
STAFF'S SUPPLEMENTAL STATEMENT OF POSITION**

COMES NOW Mercy Water Supply Corporation (Mercy) and files this Response to Staff's Supplemental Statement of Position. In support thereof, Mercy respectfully shows as follows:

I. PROCEDURAL HISTORY

On August 27, 2020, John Blalock (Complainant or Mr. Blalock) filed a complaint against Mercy under 16 Texas Administrative Code (TAC) Section 22.242 regarding water service.

On October 1, 2020, Commission Staff (Staff) filed a Statement of Position, recommending additional discovery and requesting an extension to file a Supplemental Statement of Position. On October 23, 2020, the Parties filed an Agreed Proposed Discovery Schedule and Limits, which the ALJ adopted on October 26, 2020 in Order No. 7. On January 7, 2021, Staff filed an unopposed request for extension to file a supplemental statement of position by February 8, 2021, which the ALJ granted on January 8, 2021 in Order No. 9. On January 12, 2021, the ALJ issued Order No. 10, setting forth the revised and remaining deadlines for this proceeding. On February 8, 2021, Staff filed their Supplemental Statement of Position. That same day, Mr. Blalock filed his Response to Commission Staff's Supplemental Statement of Position and Request for Hearing.

As established by Order No. 10, the deadline to respond to Staff's Supplemental Statement of Position is February 16, 2021. This pleading is timely filed.

II. INTRODUCTION

Although Mercy generally agrees with Staff's Supplemental Statement of Position, two points of clarification relating to the lack of evidence of intent to transfer and the facts surrounding multiple meters set on a single property are required and more fully set forth in Section III.

**Mercy Water Supply Corporation's Response to
Staff's Supplemental Statement of Position**

Additionally, based on Staff's Supplemental Statement of Position and the discovery in the record, Mercy requests an order for summary disposition in accordance with Commission Rule 22.182. In the alternative, Mercy requests an order dismissing this Complaint with prejudice in accordance with Commission Rule 22.181(d)(8) for failing to state a claim for which relief may be granted. Mercy further requests reconsideration and withdrawal of Order No. 3, regarding interim service. Finally, Mercy incorporates into this Pleading its Response to Mr. Blalock's Request for Hearing, and additionally requests Mr. Blalock's request for hearing be denied.

III. CLARIFICATIONS TO STAFF'S SUPPLEMENTAL STATEMENT OF POSITION

Two points in Staff's Supplemental Statement of Position require clarification. First, evidence or lack thereof of an intent to transfer service on Ms. Ivey's part is dispositive in this proceeding.¹ Even if Ms. Ivey had wanted to transfer her Membership to any or all of her four children, she did not make efforts to demonstrate her intent to transfer the Membership in her last will and testament, as provided for in the Texas Water Code.² Further, Mr. Blalock has repeatedly admitted he failed to submit a completed Service and Application Agreement³ to Mercy as required to complete any purported transfer under Mercy's Tariff and the Texas Water Code.

Specifically, Section 67.016 of the Texas Water Code permits the transfer of a Membership "(1) **by will** to a person who is related to the testator within the second degree by consanguinity."⁴ Mr. Blalock submitted evidence that Ms. Ivey died without a will and with no mention of any transfer of her Membership, leaving her assets to be divided equally among her four children

¹ Staff's Supplemental Statement of Position at 4–6 (Feb. 8, 2021).

² Tex. Water Code § 67.016(a)(1) (TWC).

³ See, e.g., Complainant's Response to Commission Staff's Supplemental Statement of Position and Request for Hearing at 2–3 (Feb. 8, 2021); Complainant's Response to Staff's First RFIs at 22 (Nov. 30, 2020); Complainant's Filled Out Copies of Mercy's 'Application and Agreement for Service' and 'Membership Transfer' at 1–2 (Oct. 9, 2020).

⁴ TWC § 67.016(a)(1).

intestate.⁵ However, even if the first prong of transference could be met without a will, neither Mr. Blalock nor any of his siblings satisfied the statutory and Tariff requirement to complete the transfer process.⁶ As such, none of Ms. Ivey's children, including Mr. Blalock are Members of Mercy. Mercy discusses Mr. Blalock's Membership status more thoroughly in Section IV of this Pleading, below.

Second, and contrary to Mr. Blalock's belief, Mercy's Tariff does not state there may only be one meter per property. Staff's Supplemental Statement of Position briefly discusses the installation of multiple meters on the Southern Tract.⁷ Mr. Blalock seized on this discussion to argue an inference that after one of two meters for the Southern Tract had been removed, the second must have been meant for service for the Northern Tract.⁸ He provides no proof for this claim.

In fact, Mercy's Tariff requires a separate meter for each residential or commercial structure.⁹ If a property, such as the Southern Tract, has more than one residential or commercial structure, then multiple meters would generally be required. Here, Mr. Blalock admitted the Southern Tract often had more than one dwelling structure on it.¹⁰ Considering Mercy places meters where landowners request,¹¹ it was reasonable for Mercy's operator and contractors to believe that the meter was installed on Southern Tract to provide service to one of the several

⁵ Complainant's Response to Staff's First RFIs at 18–19, 2–7 (Nov. 30, 2020)

⁶ *See, e.g.*, Complainant's Response to Commission Staff's Supplemental Statement of Position and Request for Hearing at 2–3 (Feb. 8, 2021); Complainant's Response to Staff's First RFIs at 22 (Nov. 30, 2020); Complainant's Filled Out Copies of Mercy's 'Application and Agreement for Service' and 'Membership Transfer' at 1–2 (Oct. 9, 2020).

⁷ Staff's Supplemental Statement of Position at 7–8 (Feb. 8, 2021).

⁸ Complainant's Response to Staff's Supplemental Statement of Position and Request for Hearing at 3 (Feb. 8, 2021).

⁹ Mercy's Response to Complaint at 37–38, Exhibit A at 27–28 (Sept. 24, 2020).

¹⁰ Complainant's Responses as Required by Order No. 8 at 4 (Dec. 28, 2020).

¹¹ Unless that location is infeasible for safety or other legal reasons. Mercy's Response to Staff's First RFI at 7 (Dec. 4, 2020).

structures on the Southern Tract.¹² The presence of multiple meters on a single property is not abnormal, nor would it support the argument that a remaining meter would be meant for another property.

IV. MOTION FOR SUMMARY DISPOSITION

Mr. Blalock is not a Member of Mercy and is currently ineligible for service. The record shows there is no genuine issue as to any material fact regarding Mr. Blalock's Membership with Mercy, and as such, Mercy requests the ALJ grant Mercy's Motion for Summary Disposition in its favor as a matter of law.

According to Commission Rule 22.182:

The presiding officer, on motion by any party, may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed in accordance with §22.222 of this title (relating to Official Notice), or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.¹³

Mercy is a Member-owned, non-profit corporation incorporated pursuant to the Texas Water Code Chapter 67, and the provisions of the Texas Business Organizations Code applicable to member owned member controlled non-profit corporations for the purpose of furnishing potable water and or sewer utility service.¹⁴ Mercy must comply with State law, Commission Orders and Rules, and its Tariff, and may only provide service to its Members or to a Member's renter/lessee.¹⁵

¹² Mercy's Response to Complaint at 144, Exhibit C (Sept. 24, 2020).

¹³ 16 Tex. Admin Code § 22.182 (TAC).

¹⁴ Mercy Water Supply Corporation's Response to Complaint at 17, Exhibit A at 7 (Sept. 24, 2020).

¹⁵ See 16 TAC § 24.25(b); Mercy Water Supply Corporation's Response to Complaint at 32, Exhibit A at 22.

Commission Rules define “Member” as:

[a] person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property within a water supply or sewer service corporation’s service area, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation.¹⁶

Mercy’s Tariff mirrors the Commission’s Rules and 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.¹⁷

While Mr. Blalock may be eligible for Membership, such eligibility does not guarantee service to him by Mercy or any water supply corporation. The Water Code and Mercy’s Tariff expressly state this:

Texas Water Code Section 67.016: “The transfer of . . . membership . . . 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. 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.”¹⁸

Mercy’s Tariff: “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.”¹⁹

¹⁶ 16 TAC § 24.3(38).

¹⁷ Mercy Water Supply Corporation’s Response to Complaint at 21, Exhibit A at 11.

¹⁸ TWC § 67.016(c).

¹⁹ Mercy Water Supply Corporation’s Response to Complaint at 23, Exhibit A at 13.

Membership Applicants, which include transferees,²⁰ “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.”²¹ Specifically, Mercy’s “Service Application and Agreement Form shall be completed in full and signed by the Applicant(s).”²²

Mr. Blalock has repeatedly admitted and maintained he has not complied with the statutory and Tariff requirements to fill out and submit Mercy’s Service and Application Agreement.²³ Without this completed Agreement and the satisfaction any of the three Membership requirements above, there is no possibility of Membership with Mercy. As such, Mercy requests a summary decision in its favor.

V. MOTION TO DISMISS COMPLAINT WITH PREJUDICE

Because Mr. Blalock is not a Member of Mercy, the claim he alleges and the relief he seeks cannot be granted by law. Accordingly, Mercy requests Mr. Blalock’s Complaint be dismissed without additional hearing and with prejudice in accordance with Commission Rule 22.181. In support of this Motion to Dismiss, Mercy incorporates all facts and arguments set forth in Section V of this Pleading.

Commission Rule Section 22.181, governing motions to dismiss, states:

(a) Dismissal of a proceeding. Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission

²⁰ Mercy’s Tariff defines a Transferee as “[a]n *Applicant* receiving a Mercy WSC Membership by legal means from a Transferor desiring to forfeit and transfer current rights of Membership to another person or entity,” and Transferor as “[a] *Member* who transfers Membership by legal means to another person or entity desiring to qualify for service at a property for which the Membership is currently issued or to [Mercy].” *Id.* at 23, Exhibit A at 13. These definitions make clear that a transferee is not automatically a member—a transferee is an applicant who is requesting service.

²¹ *Id.* at 28, Exhibit A at 19.

²² *Id.* at 28–29, Exhibit A at 18–19.

²³ *See, e.g.*, Complainant’s Response to Commission Staff’s Supplemental Statement of Position and Request for Hearing at 2–3 (Feb. 8, 2021); Complainant’s Response to Staff’s First RFIs at 22 (Nov. 30, 2020); Complainant’s Filled Out Copies of Mercy’s ‘Application and Agreement for Service’ and ‘Membership Transfer’ at 1–2 (Oct. 9, 2020).

dismiss, with or without prejudice, any proceeding for any reason specified in this section.

...

(c) Dismissal without hearing. A dismissal under this section requires a hearing unless the facts necessary to support the dismissal are uncontested or are established as a matter of law.

(d) Reasons for dismissal. Dismissal of a proceeding or one or more issues within a proceeding may be based on one or more of the following reasons:

...

(8) failure to state a claim for which relief can be granted;

(9) gross abuse of discovery consistent with §22.161(b)(2) of this title (relating to Sanctions)²⁴

In Mr. Blalock's Complaint, he states that "My relief would be my water being turned on. Either by the meter being put back in my use, or Mercy Water Supply Corporation installing a meter at no cost to me."²⁵ Such requested relief cannot be granted as a matter of law. Mercy is only authorized to provide service to its Members.²⁶ Mr. Blalock has admitted he has not met the requirements for Membership, and accordingly he is not a Member.²⁷ For this reason and in accordance with Commission Rule 22.181(d)(8), Mercy requests the ALJ issue an order dismissing this Complaint with prejudice and without further hearing.

²⁴ 16 TAC 22.181(c)–(d).

²⁵ See Formal Complaint Against at 1 (Aug. 27, 2020).

²⁶ See, e.g., Complainant's Response to Commission Staff's Supplemental Statement of Position and Request for Hearing at 2–3 (Feb. 8, 2021); Complainant's Response to Staff's First RFIs at 22 (Nov. 30, 2020); Complainant's Filled Out Copies of Mercy's 'Application and Agreement for Service' and 'Membership Transfer' at 1–2 (Oct. 9, 2020).

²⁷ See, e.g., Complainant's Response to Commission Staff's Supplemental Statement of Position and Request for Hearing at 2–3 (Feb. 8, 2021); Complainant's Response to Staff's First RFIs at 22 (Nov. 30, 2020); Complainant's Filled Out Copies of Mercy's 'Application and Agreement for Service' and 'Membership Transfer' at 1–2 (Oct. 9, 2020). See also TWC § 67.016(c); Mercy's Response to Complaint at 28–29, Exhibit A at 18–19.

VI. MERCY'S REQUEST FOR RECONSIDERATION OF ORDER NO. 3

Mercy incorporates the facts and arguments set forth Sections III, IV and V of this Pleading in support of this Request for Reconsideration of Order No. 3. As a matter of law, Mr. Blalock is not a Member of Mercy.²⁸ As Mercy is only authorized to provide service to its Members, continued service to Mr. Blalock is a violation of Mercy's Tariff and the Texas Water Code.²⁹ For this reason, Mercy requests the ALJ reconsider the Order No. 3 and withdraw it.

VII. CONCLUSION AND PRAYER

Based on Staff's Supplemental Statement of Position, the discovery in the record, and Mr. Blalock's undisputed lack of Membership status as a matter of law, Mercy respectfully requests the following:

1. An order for summary disposition in Mercy's favor in accordance with Commission Rule 22.182, or in the alternative, an order dismissing this Complaint with prejudice in accordance with Commission Rule 22.181(d)(8) for failing to state a claim for which relief may be granted; and
2. Mercy further requests Order No. 3, regarding interim service, be reconsidered and withdrawn.

Mercy also respectfully requests the following relief related to the two other pleadings filed by Mercy this same day:

1. Mr. Blalock's request for hearing be denied; and
2. Sanctions be ordered against Mr. Blalock in accordance with Mercy's Motion for Sanctions.

²⁸ See *supra* Section IV.

²⁹ See TWC § 67.016(c); 16 TAC § 24.25(b); Mercy Water Supply Corporation's Response to Complaint at 32, Exhibit A at 22.

Respectfully submitted,

By:



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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 16th day of February, 2021.



John J. Carlton