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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
COMPLAINANT'S REQUEST FOR HEARING

COMES NOW Mercy Water Supply Corporation (Mercy) and files this Response to Complainant's Request for Hearing. 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 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.

Commission Rules require that responses to pleadings must generally be filed within five working days of receipt of the pleading to which the response is made.¹ The deadline to respond to Mr. Blalock's Request for Hearing is February 16, 2021. This pleading is timely filed.

¹ 16 Tex. Admin. Code § 22.78(a) (TAC).

II. RESPONSE TO COMPLAINANT’S REQUEST FOR HEARING

Mercy requests the ALJ deny Mr. Blalock’s request for hearing because: (1) Mr. Blalock’s hearing request is not required to be granted under statute or Commission rules; (2) a hearing is not needed to resolve the fact issues in this Complaint; and (3) the reasons for which Mr. Blalock claims a hearing is required could have been accomplished in written pleadings and in the discovery period that is now closed, and he failed to do both.

A. Hearing Not Required Under Statute or Commission Rules

Chapter 22, Subchapter M, of the Commission’s procedural rules governs complaints such as the one that is the subject of this proceeding. The Commission rules require a hearing be granted and referred to SOAH after a party’s request under only two circumstances: under Section 22.246, governing surplus revenue with wholesalers; and under section 22.251(m), governing review of ERCOT proceedings when there are factual disputes. Neither of these circumstances apply to a complaint regarding water utility service.

The Commission’s rules do not require complaints such as the one filed in this to be referred to the State Office of Administrative Hearings. Rather, these types of complaints are likened to investigations under the Commission Rules.

B. No Outstanding Facts Require Hearing

A hearing not required to resolve this Complaint. The uncontroverted facts establish that Mr. Blalock is not a Member of Mercy and is currently ineligible for service. As such, his requested relief cannot be granted as a matter of law.

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.² As a water supply corporation, Mercy must comply with State

² Mercy Water Supply Corporation’s Response to Complaint at 17, Exhibit A at 7 (Sept. 24, 2020).

law, Commission Orders and Rules, and its Tariff, and may only provide service to its Members or to a Member's renter/lessee.³

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 require Applicants for service to complete a transfer and service application on the corporation's standardized forms and filed with the corporation's office in a timely manner."⁴

Membership Applicants, which includes transferees,⁵ "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."⁶ Specifically, Mercy's "Service Application and Agreement Form shall be completed in full and signed by the Applicant(s)."⁷

Mr. Blalock has repeatedly admitted and maintained he has not complied with the statutory and Tariff requirement to complete and submit Mercy's Service and Application Agreement.⁸ Without this completed Service Application and Agreement and the satisfaction any of the three Membership requirements above, there is no possibility of Membership with Mercy.

³ See 16 TAC § 24.25(b); Mercy Water Supply Corporation's Response to Complaint at 32, Exhibit A at 22.

⁴ TWC § 67.016(c); Mercy Water Supply Corporation's Response to Complaint at 23, Exhibit A at 13.

⁵ 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.

⁶ *Id.* at 28, Exhibit A at 19.

⁷ *Id.* at 28–29, Exhibit A at 18–19.

⁸ 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).

C. Consideration of Additional Information Not Required

Mr. Blalock states that a hearing is required so that he can point to evidence that was not taken into consideration, or at least not mentioned, by Staff in their position such as:

1. The work order included in the records for Gloria Meeks/Hales for the removal of the meter associated with the account dated in 2000, but the removal was completed in 2001.
2. The payments for service made after Reba Ivey's passing in January of 2015 that continued until August 7th of 2020, when the situation leading to this formal complaint began. Which would point to Mercy considering Mr. Blalock a customer/member and waiving the requirements (e.g. fees and paperwork), until it became an issue for them.⁹

Nothing prevents Mr. Blalock from highlighting the evidence and arguing its merit in written pleadings, just as he has done here. A hearing is not necessary to accomplish what he has deemed important.

Further, Mr. Blalock has had ample opportunity to provide additional information about many of the issues he currently claims are in dispute. In fact, he had stated in his responses to Staff's First RFIs that he would provide additional affidavits and statements for Staff's review. He reiterated these arguments in response to Mercy's RFIs. However as much he claims he has statements, he has yet to muster them for Staff's or the Commission's review.

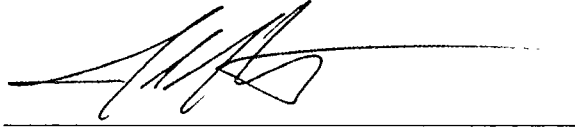
III. CONCLUSION AND PRAYER

Mercy respectfully requests that Mr. Blalock's request for an administrative hearing be denied.

⁹ At 4-5

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