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SOAH DOCKET NO. 473-21-1880.WS

PUC DOCKET NO. 51224

2021 APR 14 PM 12:05

COMPLAINT OF JOHN BLALOCK
AGAINST MERCY WATER SUPPLY
CORPORATION

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 1
FILING DESCRIPTION; JURISDICTION; SETTING PREHEARING CONFERENCE;
PROCEDURAL REQUIREMENTS; DENYING SUMMARY DISPOSITION;
DENYING MOTION TO DISMISS; AND DENYING RECONSIDERATION OF
COMMISSION ORDER NO. 3**

I. FILING DESCRIPTION

On August 27, 2020, John Blalock (Complainant) filed with the Public Utility Commission of Texas (Commission) a formal complaint against Mercy Water Supply Corporation (Mercy). Complainant alleges that Mercy disconnected his water service without notice and refuses to restore it. He seeks a Commission order requiring Mercy to restore his water service and put his meter back in his use or, in the alternative, install a new meter at no cost to him.

On October 1, 2020, Commission staff (Staff) filed a statement of position, which discussed Commission jurisdiction over the complaint and recommended discovery be conducted before referral to the State Office of Administrative Hearings (SOAH), with additional time for Staff to supplement its statement of position. In an order issued October 26, 2020, a Commission administrative law judge (ALJ) set discovery deadlines, as well as a January 8, 2021 deadline for Staff's supplemental statement of position and a January 22, 2021 deadline for responses thereto. Discovery ensued. Commission ALJ orders issued January 8, 2021 and January 12, 2021 ruled on discovery disputes and extended the deadlines for Staff's supplemental statement of position and responses thereto—to February 8, 2021 and February 16, 2021, respectively. Staff's February 8, 2021 supplemental statement of position recommends that the ALJ find that: (1) Mercy has complied with the law in ceasing water service to Complainant; and (2) Complainant has never been a member of Mercy entitled to receive water service, and if he desires to obtain such service he must submit an application to Mercy and pay all necessary charges and fees relating to establishment of a new membership. On February 8, 2021, Complainant filed a response to

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Staff's supplemental statement of position in which Complainant: (1) admits that he has never submitted an application to Mercy; (2) argues that Mercy's prior service of water to him indicates the paperwork requirements were waived and he was recognized as a member customer; and (3) requests a hearing. On February 16, 2021, Mercy filed its: (1) response to Staff's supplemental statement of position, generally agreeing with Staff's recommendations; (2) motion for summary disposition based on Complainant not being a member of Mercy; (3) motion to dismiss the complaint for failure to state a claim for which relief can be granted; (4) second request for reconsideration of the Commission ALJ's Order No. 3; and (4) motion for sanctions, for discovery abuse.

II. JURISDICTION

The Commission has jurisdiction over this matter pursuant to 16 Texas Administrative Code § 22.242. The Commission referred this case to SOAH on April 5, 2021, requesting assignment of an ALJ to conduct a hearing and issue a proposal for decision (PFD), if necessary. In its referral order, the Commission set a deadline of April 9, 2021, for filing lists of issues to be addressed in this proceeding, and stated that it will consider and possibly adopt a preliminary order at the open meeting scheduled to convene on April 22, 2021. SOAH has jurisdiction over matters relating to conducting the hearing in this proceeding pursuant to Texas Government Code § 2003.049.

III. PREHEARING CONFERENCE

The undersigned ALJ will convene a **prehearing conference at 9:30 a.m. on May 4, 2021**,¹ via Zoom videoconferencing platform.²

¹ If no preliminary order is adopted at the April 22, 2021 Commission meeting, the ALJ will re-set this pre-hearing conference to a later date.

² In response to the COVID-19 pandemic, SOAH has temporarily discontinued most non-emergency, in-person hearings, and hearings are being convened remotely. Accordingly, this hearing will be convened using the Zoom videoconferencing platform. The audio recording of the hearing will be the official record of the proceeding.

Access via computer: To access the prehearing conference, go to <https://soah-texas.zoomgov.com/> or the Zoom application on your mobile device, then select “Join a Meeting” and enter the following information when prompted:

Meeting ID: 160 375 1700

Passcode: wX7hDd

Access via telephone: If you do not have access to a device that would allow videoconferencing capabilities, you may join by telephone by calling either number below and entering the following Meeting ID and passcode. Note that the passcode to join by telephone is different than the passcode to join via a computer or smart device.

(669) 254-5252 or (646) 828-7666

Meeting ID: 160 375 1700

Passcode: 745546

The following matters will be discussed at the prehearing conference:

1. Mercy’s motion for sanctions filed February 16, 2021;
2. Any other pending motion filed and emailed to the ALJ’s administrative assistant³ **by April 30, 2021;**
3. The burden of proof;
4. Whether the parties are interested in mediating this dispute;⁴
5. Whether this case may be efficiently resolved in whole or in part by stipulation of facts or determination of threshold issues;

³ Taryn.Lovett@soah.texas.gov.

⁴ Information about mediation at SOAH is available at <http://www.soah.texas.gov/Hearings-And-Mediation/mediation.html>.

6. A procedural schedule, including deadlines for dispositive motions, prefiled testimony, prefilings of parties' exhibits and witness lists; a date for the hearing on the merits; and deadlines for post-hearing briefs; and
7. Any other matter that may assist in the disposition of this case in a fair and efficient manner.

The parties are strongly encouraged to confer with each other in advance about the procedural schedule and other matters to be discussed at the prehearing conference. In developing a proposed procedural schedule, the parties shall anticipate a record close date that ensures the ALJ has 60 days to write and issue the PFD.

IV. PROCEDURAL REQUIREMENTS

Except as modified by the Commission or SOAH, the Commission's procedural rules govern this case.⁵ Routine procedural and logistical questions may be directed to the ALJ's administrative assistant, Taryn Lovett, at 512-475-4725 or Taryn.Lovett@soah.texas.gov. SOAH support personnel may not provide advice or interpret orders or regulations for the parties.

A. Filing

The parties should be aware that, in response to COVID-19, the Commission has ordered that all parties must file any pleading or document solely through the Interchange on the Commission's website and provide notice, by email, to all other parties that the pleading or document has been filed, unless otherwise ordered by the presiding officer.⁶ Other procedures regarding filing are specified in Subchapter E of the Commission's procedural rules and apply in this proceeding. Parties are expected to know those procedures and comply with them fully.

⁵ The Commission's procedural rules are available at: <https://www.puc.texas.gov/agency/ruleslaws/procrules/Procedural.aspx>.

⁶ The Commission's order is available at: http://interchange.puc.texas.gov/Documents/50664_205_1075813.PDF. The parties should review the Commission's website, <https://www.puc.texas.gov/>, and SOAH's website, <http://www.soah.texas.gov/>, for the latest information on how COVID-19 is impacting Commission and SOAH procedures.

All pleadings must contain both the SOAH and Commission docket numbers to allow for efficient processing.

B. Service of Filed Documents on All Parties

Note that all documents filed in this case must also be delivered or “served” to all other parties. **At this time, due to COVID-19, service must be accomplished by email.** Any party to this proceeding who has not previously provided an email address **SHALL, no later than 7 days after the date of this order**, file a notice informing the parties of the email address to be used for service.

Parties will be served with SOAH’s orders electronically at the email address they provide. Only one address per party will be included on the official service list maintained by SOAH, pursuant to 16 Texas Administrative Code § 22.74(b). Corrections to the service list should be directed to the ALJ’s administrative assistant, Taryn Lovett.

C. Motions and Responses to Motions and Other Pleadings

Unless otherwise specified, responses to any motion or other pleading shall be filed within **five working days** from receipt of the pleading to which the response is made. Such responsive pleadings shall state the date of receipt of the pleading to which a response is made. Failure to file a timely response will be considered acquiescence to the relief requested.

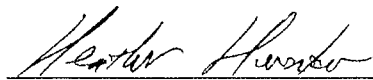
V. RULINGS ON MERCY’S MOTIONS

Having considered Mercy’s motions for summary disposition and dismissal, Complainant’s response, and the applicable law, the ALJ finds the motions procedurally inapt at this juncture. Therefore, Mercy’s motions for summary disposition and dismissal are **DENIED**.

Mercy's request for reconsideration of Commission ALJ Order No. 3, filed February 16, 2021, is substantially identical to its initial request for reconsideration that was denied by the Commission ALJ in Order No. 5, issued September 28, 2020. For this reason, the undersigned ALJ will refrain from reconsidering Commission ALJ Order No. 3 at this time. Therefore, the request for reconsideration is **DENIED**.

The ALJ will not rule on Mercy's motion for sanctions until after the prehearing conference set in this order.

SIGNED April 14, 2021.



**HEATHER HUNZIKER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**