



Control Number: 51224



Item Number: 79

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**Peter M. Lake**  
Chairman  
**Will McAdams**  
Commissioner



**Greg Abbott**  
Governor

2021 APR 26 PM 3:36

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**Thomas J. Gleeson**  
Executive Director

## *Public Utility Commission of Texas*

TO: Chairman Peter M. Lake  
Commissioner Will McAdams  
  
All Parties of Record  
  
FROM: Connor Kilgallen  
Commission Advising  
  
RE: *Complaint of John Blalock Against Mercy Water Supply Corporation*, Docket  
No. 51224, SOAH Docket No. 473-21-1880.WS, Draft Preliminary Order,  
May 6, 2021 Open Meeting, Item No. XX.  
  
DATE: April 26, 2021

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the May 6th, 2021 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the May 6th, 2021 open meeting.

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

|                                   |          |                                  |
|-----------------------------------|----------|----------------------------------|
| <b>COMPLAINT OF JOHN BLALOCK</b>  | <b>§</b> | <b>PUBLIC UTILITY COMMISSION</b> |
| <b>AGAINST MERCY WATER SUPPLY</b> | <b>§</b> |                                  |
| <b>CORPORATION</b>                | <b>§</b> | <b>OF TEXAS</b>                  |

**DRAFT PRELIMINARY ORDER**

On August 27, 2020, John Blalock filed a formal complaint against Mercy Water Supply Corporation for discontinuance of water service. This preliminary order identifies a list of issues that must be addressed in this docket.

**I. The Complaint**

Mercy WSC asserts that it is the water service provider for a tract of land located at 1601 Bowen Loop, Cleveland, Texas. Mr. Blalock asserts that Mercy WSC is also the water service provider for a tract of land on which he resides and claims ownership of, at 1611 Bowen Loop, Cleveland, Texas. The tract of land at 1611 Bowen Loop (the northern tract) is parallel to and abuts the northern boundary of a tract of land located at 1601 Bowen Loop (the southern tract). Mercy WSC operates a meter to provide water service located on the southern tract. On or about August 7th, 2020, Mercy WSC discontinued service to the southern tract following a request from the landowner of the tract at that time, Mr. Adrian Rodz. This discontinuance of service had the effect of cutting off Mr. Blalock's water service which had relied on a connecting line from the meter on the southern tract. Mercy WSC asserts that it has validly discontinued service to Mr. Blalock because he is not a member of Mercy WSC. Mr. Blalock asserts that he is a member of Mercy WSC and that the meter installed on the southern tract was intended to serve the northern tract.

The tracts in question were created following the 1986 partition of a 1.598-acre property located in the L.A. Gosse Survey in San Jacinto County, Texas into two 0.799-acre tracts: the northern tract and the southern tract. Ms. Reba Ivey and Ms. Gloria Meeks took ownership of one tract each, residing on the northern and southern tracts respectively. In March of 1994, Ms. Meeks entered into a service agreement with Mercy WSC. In August 1995, Ms. Ivey entered into a service agreement with Mercy WSC. Neither Mercy WSC's service agreements for the northern nor the

southern tracts contained a complete property address to which the water service would be provided. Ms. Meeks also signed a right-of-way easement granting Mercy WSC an easement for a water pipeline over and across the northern and southern tracts in August of 1995. Mercy WSC installed a water meter on the southern tract in 1995. After Mercy WSC installed the meter on the southern tract, a pipe from behind this meter was constructed to the northern tract. Mercy WSC asserts that the pipeline that supplied water to the northern tract was illegally constructed and that Ms. Ivey's service agreement was for the southern tract.

Ms. Ivey passed away in 2015 and Mr. Blalock took ownership of the northern tract as part of the distribution of Ms. Ivey's estate. Mr. Blalock began residing on the northern tract the same year. Mr. Blalock continued to make payments for Ms. Ivey's account to Mercy WSC from 2015 until the August 2020 disconnection. However, the southern tract went into foreclosure in December 2019, and ownership passed to Mr. Rodz in March 2020. On August 5th, 2020 Mr. Blalock paid an outstanding water bill after receiving a non-payment notice from Mercy WSC. The same day, Mr. Rodz broke the pipeline connecting the northern tract to the water meter on the southern tract. Following Mr. Blalock's repair of the broken pipeline, Mr. Rodz requested Mercy WSC to disconnect the southern tract.

Mr. Blalock began the informal complaint process with the Commission on August 10th, 2020 requesting restoration of water service to the northern tract which, upon the failure of the parties to resolve the matter, culminated in the formal complaint filed August 27th, 2020.

## **II. Procedural History**

On October 1, 2020, Commission Staff filed a statement of position, recommending additional discovery and requesting an extension to file a supplemental statement of position. In Order No. 3 filed on September 14, 2020, the Commission administrative law judge (ALJ) ordered Mercy WSC, under 16 TAC § 24.155(a), to immediately restore water service to Mr. Blalock. Order No. 3 further provided that Mercy WSC must not cease providing continuous and adequate water service to Mr. Blalock pending resolution of this proceeding. The parties filed an agreed proposed discovery schedule and limits on October 23, 2020, which the ALJ adopted on October 26, 2020 in Order No. 7.

Discovery proceeded according to this schedule through November in advance of a December 8, 2020 deadline for parties to respond to discovery requests. On February 16, 2021, Mercy WSC moved for sanctions against Mr. Blalock under 16 TAC § 22.161(b), (c)(2), and (7). In its motion, Mercy WSC asserted that Mr. Blalock had abused the discovery process, which increased the cost of the proceedings, and requested relief of its reasonable expenses.

On February 8, 2021, Commission Staff filed its supplemental statement of position recommending that the ALJ find that Mercy WSC has complied with the law and its tariff in ceasing water service to the northern tract primarily based on a finding that Mr. Blalock has never been a member of Mercy WSC. On February 16th, 2021, Mercy WSC requested an order for summary disposition in its favor and that the restoration of water service ordered in Order No. 3 be discontinued. Further, Mercy WSC reiterated its motion for sanctions and requested Mr. Blalock's request for a hearing be denied.

On April 5, 2021, the Commission referred the proceeding to the State Office of Administrative Hearings (SOAH). Mr. Blalock and Mercy WSC were directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by April 9, 2021. Mr. Blalock, Mercy WSC, and Commission Staff timely filed a list of issues.

### **III. Issues to be Addressed**

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.<sup>1</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. What is the legal description of the property to which Mercy WSC's service agreement with Ms. Ivey dated August 11, 1995 applies?
2. What is the legal description of the property to which Mercy WSC's service agreement with Ms. Meeks dated March 15, 1994 applies?

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<sup>1</sup> Tex. Gov't Code Ann. § 2003.049(e).

3. Does a meter installation for water service for the northern tract require a road bore?
4. Is Mr. Blalock a member of Mercy WSC under Texas Water Code (TWC) § 13.002(11) and 16 TAC § 24.3(19)?
5. Is Mr. Blalock a record owner of a fee simple title to property in an area served by Mercy WSC?
6. Has Mr. Blalock complied with the requirements for membership under Mercy WSC's tariff? In answering this issue, please address 6(a) and (b) below.
  - a. Is Mr. Blalock required to complete and sign Mercy WSC's service application and agreement form to become a member of Mercy WSC? If required, has Mr. Blalock completed and signed Mercy WSC's application and agreement form?
  - b. Is Mr. Blalock required to pay all the membership fees enumerated by the Mercy WSC tariff<sup>2</sup> to become a member of Mercy WSC? If these fees are required, has Mr. Blalock already paid them?
7. Was Ms. Ivey's Mercy WSC membership transferred to Mr. Blalock? In answering this issue, please address 7(a) through (c) below.
  - a. Did Ms. Ivey transfer her membership to Mr. Blalock by will or transfer without compensation under TWC § 67.016(a)?
  - b. Did Ms. Ivey's Mercy WSC membership transfer to Mr. Blalock as part of the conveyance of the northern tract to him under TWC § 67.016(b)?
  - c. Is the alleged transfer of Ms. Ivey's Mercy WSC membership to Mr. Blalock in compliance with the requirements for transfer in the Mercy WSC tariff?<sup>3</sup> Has Mr. Blalock completed the application packet and demonstrated satisfactory evidence of ownership of the northern tract?

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<sup>2</sup> Meter Installation Fee (Tariff Section E, paragraph 27, subsection c), Customer Service Inspection Fee (Tariff Section G, paragraph 4), Membership Fee (Tariff Section G, paragraph 13), Equity Buy-In Fee (Tariff Section G, paragraph 7), and Installation Fee (Tariff Section G, paragraph 10).

<sup>3</sup> Tariff Section E, paragraph 18, subsection c.

8. If Ms. Ivey's membership was transferred to Mr. Blalock, is Mr. Blalock entitled to water service? Has Mr. Blalock met each condition for water service as provided in Mercy WSC's tariff under TWC § 67.016(c)?
9. Was Mercy WSC permitted to cancel Ms. Ivey's membership under TWC § 67.016(e)? If so, please address 9(a) and (b) below.
  - a. Did Mercy WSC cancel Ms. Ivey's membership in compliance with the Mercy WSC tariff?<sup>4</sup>
  - b. Did Mercy WSC appropriately re-assign the membership to Mr. Rodz in compliance with the Mercy WSC tariff?<sup>5</sup>
10. Did Mercy WSC comply with the TWC and Commission Rules when it ceased provision of water service to Mr. Blalock's property? In answering this issue, please address 10(a) through (c) below.
  - a. Was Mercy WSC's discontinuation of service to the northern tract permissible under one of the exceptions enumerated by TWC § 13.250(b)? If so, under which exception did Mercy discontinue service?
  - b. Were Mercy WSC's reasons for and notice of disconnection of service to the northern tract in compliance with 16 TAC § 24.167?
  - c. Was the service connection between the northern tract and the meter on the southern tract connected without authority by a person who has not made application for service?
11. Are Mercy WSC's corporate formalities and its actions regarding Mr. Blalock's complaint in compliance with TWC Chapter 67?
12. Is Mercy WSC's motion for sanctions against Mr. Blalock supported by any of the causes enumerated by 16 TAC § 22.161?
13. If Mercy WSC's motion for sanctions is granted, what sanction under 16 TAC § 22.161, if any, should be imposed?

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<sup>4</sup> Tariff Section E, paragraph 18, subsection f.

<sup>5</sup> Tariff Section E, paragraph 18, subsection g.

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

#### **IV. Effect of Preliminary Order**

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

**Signed at Austin, Texas the \_\_\_\_\_ day of May 2021.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PETER M. LAKE, CHAIRMAN**

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**WILL MCADAMS, COMMISSIONER**