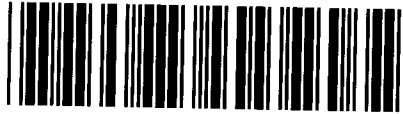


Control Number: 43146



Item Number: 15

Addendum StartPage: 0

Docket #
43146

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CAROL D. GILLESPIE
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214 536-1784

March 24, 2015

Public Utility Commission of Texas
Central Records
1701 N Congress PO Box 13326
Austin, Texas 78711-3326

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PUBLIC UTILITY COMMISSION
FILING CLERK

RE: Docket No. 43146, Complaint of Carol D. Gillespie against Avalon Water Supply and Sewer Service Corp.
Response to Order No. 3

I appreciate the Commission giving me an opportunity to respond and clarify my complaint. While not an attorney, it is my belief that the Public Utility Commission of Texas has jurisdiction over the issues that I have raised in my complaints against Avalon Water Supply. The jurisdiction of the Commission is detailed in Texas Water Code, Section 13.004:

Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS.

(a) Notwithstanding any other law, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has under this chapter over a water and sewer utility if the utility commission finds that the water supply or sewer service corporation:

- (1) is failing to conduct annual or special meetings in compliance with Section 67.007; or
- (2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).

Sec.13.002(11) "Member" means a person who holds a membership in a water supply or sewer service corporation and is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation 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. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

Sec.13.002(24) "Water supply or sewer service corporation" means a nonprofit corporation organized and operating under Chapter 67 that provides potable water service or sewer service for compensation and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member-controlled.

My complaints primarily address the bylaws of the corporation. Section 13.004(2) states, "is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed in Sections 13.002(11) and (24). According to Section 13.002(24), a nonprofit water supply or sewer service corporation organized and operating under Chapter 67 that provides potable water service or sewer service for compensation and that "has

15

adopted and is operating in accordance with bylaws or articles of incorporation which ensure that it is member-owned and member-controlled."

When Avalon Water Supply and Sewer Services Corporation was first formed sometime about 1970, the bylaws were adopted and voted on by the members. Over the course of the years, the bylaws have been changed and updated. However, every change has to be approved by a vote of the members of the corporation. The Board of Directors have a duty to the members of the corporation to run the corporation following those bylaws and the tariff. The bylaws ensure that the corporation is member-controlled. Otherwise, it is a director-controlled corporation.

If the Board of Directors is not holding their monthly directors meetings and special meetings in accordance with the Texas Open Meetings Act, then they are not operating in accordance with the bylaws. Article V, Section 4 of the bylaws state:

"The Board of Directors shall ensure that all meetings comply with the requirements of the Open Meetings Act, Article 6252-117, Tex. Rev. Div. Stat., including any subsequent amendment thereto. In the event of any conflict between the provisions of these bylaws and the requirements of the Open Meetings Act, the provisions of the Open Meetings Act shall prevail."

My complaints address many times where AWS has not operated within the bylaws of the corporation. However, my complaints do not specifically address the annual meeting referenced in Texas Water Code 67.007, since my complaints were filed beginning in July 2014 and ending in January 2015. There was no annual or member meeting during that time frame. The annual audit, which is usually a part of the annual meeting, was a portion of my complaint. So, I will address the annual meetings:

Most water supply corporations have their annual audit for the previous year completed for the annual meeting in the spring. An audit is a requirement of the bylaws, and the only member meeting is the annual meeting. AWS seems to have problems getting their audits completed in time for the annual members' meeting.

At the 2012 annual meeting held on April 9, 2012, the audit for 2011 was presented by Hilco (AWS's former management company). Since then the annual audit for the previous year has not been available at annual meetings.

The annual meeting for 2013 was scheduled for June 3, 2013. However, there was no quorum of directors. The annual meeting and the monthly meeting were then combined and held on June 13, 2013. I complained to the TCEQ regarding the issues with the annual meeting for 2013. (I have included a copy of my original complaint to TCEQ dated July 23, 2013.) TCEQ closed this issue on August 25, 2014 after AWS completed training and submitted meeting notices/agendas and minutes to the TCEQ for a period of several months.

The 2012 audit was finally completed on December 9, 2013 by Kendall Stone, AWS's long-time auditor. It was presented by Ed Hettinger at a monthly meeting in early 2014 as well as the Annual Meeting on April 10, 2014. By that time it was rather dated information.

The audit for 2013 was not yet available at the annual meeting for 2014 on April 10, 2014. The audit for the year ending December 31, 2013 was not complete until sometime in November 2014. It was announced in a meeting that it was complete, but it was not reviewed.

For the annual meeting on March 9, 2015 the agenda states, "Review 2013 Auditor's Report." It was not reviewed. It was stated that it is unqualified, and that copies were available for members for 10 cents a page who wished to go by the office and pick up. As of this writing, members of AWS are still awaiting the audit for the year ending December 31, 2014.

The bylaws state that the annual meeting shall be held on the second Monday of March to transact all business that may be properly brought before it. The annual meeting in 2013 was held in June. The annual meeting in 2014 was held in April. And, the annual meeting in 2015 was held on the second Monday of March as the bylaws require. So, while AWS had a rough time for a couple of years with the annual meeting, they are showing improvement.

Another item that does concern me is the fact that with the exception of the update to the bylaws in 2012 regarding the annual meeting law changes, the bylaws don't appear to have been updated since March 1997. Most water supply corporations have very similar bylaws (TRWA provides assistance). The AWS look dated compared to other water supply corporations.

Again, thank you for the opportunity to provide additional information.

Sincerely,


Carol Gillespie

cc: Ms. Aimee Hess (via email and USPS)

cc: Ms. Katherine Gross (via email)

Docket #
43146

(4)

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July 23, 2013

Tammy Holguin-Benter, Manager
Utilities and Districts Section
TCEQ
MC 153
P.O. Box 13087
Austin, TX 78711-3087

Dear Ms. Benter:

I am a member of Avalon Water Supply and Sewer Services Corporation (AWS&SSC). I would like to request an investigation of AWS&SSC by the Texas Commission on Environmental Quality (TCEQ) under the Texas Water Code, Section 13.004:

Sec. 13.004. JURISDICTION OF COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a) Notwithstanding any other law, the commission has the same jurisdiction over a water supply or sewer service corporation that the commission has under this chapter over a water and sewer utility if the commission finds that the water supply or sewer service corporation:

- (1) is failing to conduct annual or special meetings in compliance with Section 67.007; or
- (2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).

AWS&SSC scheduled their annual members' meeting for June 3, 2013. This is clearly outside the timeframe specified by Section 67.007, which states it must be between January 1 and May 1. The Board will state that they did not have enough time to prepare for the meeting given their other issues. However, the annual meeting was a topic at their February 14th meeting as shown by their notice/agenda. (See Attachment #1) Given that the meeting was a topic on the notice/agenda, the Board knew about the requirements for the meeting as far back as early February, and had time to schedule the meeting during the required time frame.

Furthermore, the meeting was not held on June 3rd due to a lack of quorum of the Board of Directors. Only three directors were present, so there was no quorum. One more was needed. Two directors were unable to be at the meeting because they were working in recently storm damaged Oklahoma. However, that still leaves two other directors who did not bother to attend such an important meeting. One absent director was up for re-election! When the meeting was cancelled, no new date was announced to the members present.

On Monday, June 10, 2013 a notice was posted in the window of the Avalon Post Office announcing a meeting of AWS&SSC to be held on Monday, June 13, 2013. **There is no such date as Monday, June 13, 2013.** Also, the notice heading states it is a "monthly" meeting, but the opening paragraph states it is an "annual" meeting. **Which is it?** This notice clearly does not meet the criteria of a legal notice of a meeting. (See Attachment #2) The Board actually combined **BOTH** the annual members' meeting and the director's regular monthly meeting into one agenda. During the actual meeting, they started the items related to the regular meeting without determining the outcome of the election and later returned to it.

Also, this notice does not meet the criteria established in AWS&SSC's ByLaws. I am including a copy of the Bylaw section concerning the election procedures that were handed out during a discussion of the annual members'

meeting during a regular monthly meeting. (See Attachment #3) These ByLaws were voted on by members at the 2012 annual members' meeting based on Senate Bill 333 that went into effect on September 1, 2011. Texas Water Code Sections 67.0051, 67.0052, 67.0053, and 67.0054 were created from that bill. All Sections relate to the annual election of officers for a non-profit water supply corporation.

The ByLaws state, *"The first business meeting of the new board of directors will be held on the same day and immediately following a director election. A separate agenda will be posted for this first meeting, as required by the Open Meetings Act, where business will include electing new officers from among the board of directors and appointing a Credentials Committee for the next election year. The board will also designate those directors who have authority to sign checks on the behalf of the Corporation, if not otherwise designated by the Corporation's ByLaws."*

If you look at the posted agenda, you will notice there no agenda items in the regular meeting section required by the ByLaws. There is no election of new officers, there is no appointing a Credentials Committee for the next election, and there is no item regarding authority to sign checks.

Also, one notice/agenda was posted, but a different one was used for the meeting. (See Attachments #2 and #4) I have attached copies of both. I took the picture of the posted notice/agenda on Tuesday, June 11th, at 1PM. The posted agenda has "Discuss and take action on Matilda Williams membership." That has been removed from the agenda used in the meeting (See Attachment #4) and replaced with, "Discuss and take action on base rate change." I do not believe a change to the tariff should be added to the agenda that was not legally posted.

In addition, the Bylaws state (as does Texas Water Code 67.0053) that at least 30 days before the date of a member meeting where an election will be held, the corporation shall mail to each voting membership of the Corporation the meeting packets, which will contain as applicable: 1) Official Ballot, 2)Biographical information about each candidate, 3)detailed explanation of any issue that members are being asked to vote on, 4) if ByLaw changes are being proposed, a copy of specific changes, 5) an envelope to return the ballot, and 6) the meeting notice and the agenda.

The Bylaws further state that for member meetings with no elections that, the corporation will mail meeting packets containing the meeting notice and agenda, along with the reason for the meeting at least 10 days in advance of the meeting. This 30 or 10 day notice is a legal requirement of the Texas Business Organizations Code, Chapter 22 Nonprofit Corporations. Specifically, Section 22.156 Notice of Meetings. This law requires that notice of the meeting must be personally delivered, mailed, faxed, or emailed. AWS&SSC only posted the notice of the re-scheduled meeting, thereby violating both their own Bylaws and the law.

I have attached the mailing from AWS&SSC that included the written notice of the meeting, the election ballot, and the biographical information. (See Attachment #5) If the meeting had been held on June 3rd, this notice would have been sufficient. However, the meeting was not held on June 3rd. It was held on June 13th. A new notice should have been "mailed" to the members with 30 days' notice. Also, please note the statements of each candidate's qualification, including biographical information for each candidate. There is no biography or qualifications for Mr. Rodriguez. Mr. Rodriguez is the brother-in-law of the Board President, David Waishes.

I also question the content of the annual meeting. AWS&SSC only included the election of Directors in their annual members' meeting. No other business was on the agenda (please reference the mailed agenda, the posted agenda, and the agenda handed out in the actual meeting). No update reports are included on any of the agendas.

In my previous experiences with annual members' meetings, they are usually a "state of the union" type meeting for members to learn what has happened to the corporation during the past year, what is currently happening, and the Board's plans for the future. Yet there were no update reports listed on the agenda from the president, the manager, the operator of the systems, the engineer, or the auditor. These updates have been part of

AWS&SSC's past annual members' meetings. (See Attachment #6) In fact, all other Water Supply Corporations who posted the agendas for their annual members' meeting on the Internet, have update reports included.

If no updates are included in the annual members' meeting, then **WHEN** is the appropriate time? The last annual meeting was held on April 9, 2012, and a lot has happened since then. AWS&SSC still does not have a valid permit for the waste water plant, since theirs expired on December 1, 2011. And, their long-time management company (Hilco) chose not to renew their contract with AWS&SSC late last year. The corporation has another violation from TCEQ regarding the influent lines to the waste water plant. They've been investigated by the District Attorney for Texas Open Meetings Act violations. Three of the seven Board members have been replaced. It has been the most tumultuous year in the history of AWS&SSC!

Failure to include updates at the annual members' meeting is a continuation of the behavior that the Board demonstrated from March 2012 through December 2012 when they placed items under closed session or moved items to closed session that are not allowable topics for closed session under the Texas Open Meetings Act. (See Attachment #7) These topics include waste water plant update, the hiring of consultants, hiring land appraisers, designating a general manager, and accounting issues.

In addition to the updates missing from the annual members' meeting agenda, also missing is approving the minutes from last year's meeting and approval of the annual audit by Board Directors. Both are critical to an annual members' meeting.

Texas Water Code 36.153 states that, "Annually and subject to Subsection (c), the board shall have an audit made of the financial condition of the district.

Texas Water Code 49.194. FILING OF AUDITS, AFFIDAVITS, AND FINANCIAL REPORTS. (a) After the board has approved the audit, it shall submit a copy of the report to the executive director for filing within 135 days after the close of the district's fiscal year.

The annual audit for 2013 has never been discussed or approved by the Board of Directors of AWS&SSC in an open meeting. It does not appear on any agenda or in the minutes of any meeting in 2013. I do have in my personal notes from the March 14, 2013 meeting, Dean Carrell states, "Annual audit is finished. The books have been returned to McDonnell." Kevin McDonnell is the corporation's CPA. The annual audit has always been discussed and approved in previous annual members' meetings.

There were no amendments to the corporation's by-laws on the ballot this year. However, AWS&SSC does not always follow the by-laws of the corporation. In July 2012, the Board voted to allow a member to move his water meter to a non-adjointing property across the road. This is against the by-laws of the corporation, and it was discussed as such in the meeting. However, the Board voted to allow the member to move the meter when other members have been denied the same in the past. This action was requested by the former Board President. (See Attachments #8.)

In addition to the issues with the annual members' meeting, I would like to bring another issue to the TCEQ's attention regarding AWS&SSC. Despite requests from the Texas Secretary of State for information in December 2012 and January 2013, AWS&SSC failed to respond. The corporation's right to conduct affairs was forfeited on January 17, 2013. On May 24, 2013 the corporation was involuntarily terminated by the Secretary of State. (See Attachment #9) Without the legal protection that a corporation affords, the directors placed themselves and the members in a difficult position regarding liability. This has since been corrected, but only after I brought it to the Board's attention at the June 13th meeting.

In summary, the lack of a timely annual members' meeting, the lack of legally required notice for the meeting, the disregard for the ByLaws of the corporation, the lack of relevant issues on the agenda for the annual meeting, and the involuntary termination of the corporation, all speak volumes as to the ability of AWS&SSC's Board of Directors

to run a non-profit corporation with the best interest of their members. AWS&SSC is no longer a member-owned and member-controlled non-profit corporation.

If you have any questions, my contact information is included at the top of page one.

Sincerely,

Carol Gillespie

cc: Senator Brian Birdwell
Gregory Wilhelm, JD, PA