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**PUC DOCKET NO. 43146**

**COMPLAINT OF CAROL D. GILLESPIE §  
AGAINST AVALON WATER SUPPLY §  
AND SEWER SERVICES §  
CORPORATION §**

**PUBLIC UTILITY COMMISSION 2:53  
OF TEXAS**  
FILING CLERK

**COMMISSION STAFF'S SUPPLEMENTAL RECOMMENDATION**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Supplemental Recommendation, and would show the following:

**I. BACKGROUND**

On August 25, 2014, Carol Gillespie filed a complaint with the Texas Commission on Environmental Quality against Avalon Water Supply and Sewer Services Corporation (Avalon) regarding alleged violations of the Texas Open Meetings Act by Avalon. On September 2, 2015, Order No. 4 was issued, which required Avalon to submit additional information on or before October 2, 2015, and that Staff should file a supplemental recommendation in this proceeding and additional procedural schedule, if appropriate, on or before November 4, 2015. Avalon filed additional information with the Commission on October 6 and 22, 2015. Staff's supplemental recommendation is therefore timely filed.

**II. SUPPLEMENTAL RECOMMENDATION**

The Commission's jurisdiction in this proceeding is based on TEX. WATER CODE § 13.004 (TWC). As noted by Avalon, the TWC "prescribes a narrow jurisdiction" for the Commission over water supply and sewer service corporations.<sup>1</sup> Under TWC § 13.004(a), the Commission has jurisdiction only if the water supply 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)." TWC § 13.002(24) defines a water supply or sewer service corporation as "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."

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<sup>1</sup> Avalon's Response to Order No. 4 at 1 (Oct. 6, 2015).

If Commission Staff were convinced that a complainant had identified violations of TWC §§ 13.002(11) and (24) beyond a mere minor or technical violation, then Commission Staff could file a petition that would request that the water supply and sewer service corporation be found to be out of compliance with TWC § 13.004. Such a petition, if successful, would result in that entity losing its status as a water supply and sewer service corporation and being subject to regulation as a water utility.

Ms. Gillespie, in her original complaint and subsequent filings, including her response to Avalon's response to Order No. 4, alleges that Avalon has violated the Texas Open Meeting Act and other requirements of Avalon's by-laws. After a thorough review of the information submitted by Avalon in its responses, Staff does not believe any violation by Avalon of the Texas Open Meeting Act or Avalon's bylaws exist. Specifically, the complaints made by Ms. Gillespie relating to violations of the Texas Open Meeting Act were either cured by subsequent actions of Avalon's Board, as cited by Avalon under *Markowski v. City of Marlin*, 940 S.W.2d 720 (Tex.Civ.App. - Waco 1997, writ denied),<sup>2</sup> or address issues outside of the Commission's consideration under TWC § 13.004. Based upon Staff's review, Staff recommends that Ms. Gillespie's complaint be dismissed for failure to state a claim for which relief could be granted.

### **III. CONCLUSION**

Staff recommends that Ms. Gillespie's formal complaint be dismissed for failure to state a claim for which relief could be granted. Staff respectfully requests that the ALJ issue an order consistent with the recommendation above.

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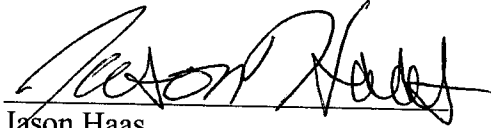
<sup>2</sup> *Id.* at 7,8.

**Dated: November 4, 2015**

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director – Legal Division

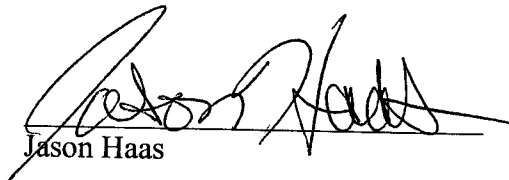
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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on November 4, 2015,  
in accordance with 16 Tex. Admin. Code § 22.74.



Jason Haas