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PUBLIC UTILITY COMMISSION
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January 17, 2016

Public Utility Commission of Texas
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RE: *Docket No. 43146, Complaint of Carol D. Gillespie against Avalon Water Supply and Sewer Service Corp.*
Comments to STAFF'S SUPPLEMENTAL RECOMMENDATION Dated November 4, 2015

Dear Public Utility Commission:

On November 4, 2015 PUC Staff Attorney Jason Haas submitted the following recommendation to the Administrative Law Judge:

"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), 2 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."

In this document, I would like to comment on each issue that Attorney Haas addressed:

- 1) Mr. Haas states that I failed to identify violations of TWC beyond a mere minor or technical violation. However, I cannot find any reference in the TWC that speaks to what a "mere minor or technical violation is." A violation is a violation. The law does not distinguish between minor and major violations.
- 2) Mr. Haas also states that Avalon "cured" any violations of the Texas Open Meetings Act. Avalon Water Supply may have violated the Texas Open Meeting Act on May 8, 2014 when an agenda

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item was placed on the meeting notice with less than 72 hour notice. This violation could have been possibly been "cured" by holding a second meeting on May 15, 2014, and re-doing the resolution. However, a new resolution was not signed. The original document from the May 8th meeting was used. There is no resolution from the May 15th meeting. Therefore, no "cure" took place.

- 3) There are no other "cures" listed in Avalon's responses to other violations of the Texas Open Meetings Act.
- 4) Complaints made by Ms. Gillespie "address issues outside of the Commission's consideration under TWC § 13.004."

Mr. Haas explained to me in a phone conversation on December 14, 2015 that the PUC only has jurisdiction under TWC §13.004 if Avalon Water Supply were violating the bylaws in regards to the annual meeting.

However, I disagree with Mr. Haas's interpretation of the law in regards to jurisdiction. **TWC §13.004 states, "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)."**

Attorney Haas is only addressing TWC §13.004(a)(1) and is failing to consider TWC §13.004(a)(2). There is an "OR" between the two sections. Only TWC §13.004(a)(1) addresses the annual meeting. Section 13.004(a)(2) of the law addresses the requirements for classifications of a non-profit water supply corporation and references TWC §13.002(24). Section 13.002(24) states **"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."**

- 5) There were several items in the judge's order of September 2, 2015 that Avalon Water Supply was to address that did not pertain to the Texas Open Meetings Act. These items had to do with Avalon Water not following their own bylaws:
 - A) Contrary to the bylaws, the General Manager (GM) of the corporation hired the CPA firm sometime around August 2014. The bylaws do not give the GM the authority to hire a CPA firm. The bylaws specifically state that the Board must do so. It is only a Texas Open Meetings Act Violation if the Board hired the CPA outside of the meeting.

It was very surprising that Avalon Water Supply submitted (and the PUC staff attorney did not question) a written document to the PUC and called it "minutes" when Avalon Water Supply claims that they have no written minutes of meetings and states that they only have "digital

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minutes" or recordings. No written minutes have been approved by the Board of Avalon Water Supply since July 2014.

In fact, the very "minutes" that Avalon Water Supply submitted to the PUC as evidence have the sentence "David started the meeting by discussing that the company was going to start recording minutes and no longer doing written minutes." This document itself states that there are no written minutes. Did the PUC staff attorney not see this in his "thorough review?"

And, these "written minutes" do not state that the Board of Directors hired a CPA. The GM in his monthly report stated that the corporation had hired a CPA firm. The Board did not take action on hiring a CPA. The Board took action to accept the consent agenda of which the GM's report was a part of. The CPA was hired prior to the meeting by the GM.

- B) Avalon Water Supply offered no evidence that checks have been signed according to the bylaws. An undated statement signed by the secretary/treasurer of Avalon Water Supply should never have been accepted by the PUC as evidence. However, I have offered proof that checks have been signed in violation of the bylaws.
- C) In the order signed by the judge on September 2, 2015, Avalon Water Supply was to have provided a copy of their bylaws by October 2nd. Avalon Water Supply did not provide the bylaws to the PUC until October 22, 2015.

This bylaws document that Avalon Water Supply submitted is 20 pages of bylaws adopted by the members of the corporation at their annual meeting on Monday, March 10th, 1997. The 21st page is an amendment that was adopted at the annual members meeting held on April 9, 2012. This one page is basically a timeline of events that should happen prior to an election of directors at the annual meeting. This amendment was an addition to the bylaws passed on March 10, 1997. The bylaws adopted on March 10, 1997 were not changed. If changes to the bylaws had been voted on by the members at the annual meeting on April 9, 2012, those changes would be reflected in the 20 pages of bylaws submitted to the PUC.

Interestingly, the next eight pages of the bylaws submitted to the PUC is a copy of a document sent by TRWA to all of their water supply members to be used as an amendment to the bylaws. But apparently, Avalon Water Supply chose to do their own one page amendment rather than use the TRWA form. So, I am not sure why this 8 page blank document was submitted as part of the bylaws. This TRWA form is not completed. The blank for the name of the water supply corporation was not filled in. It is not dated. It is not signed by either the President or the Secretary-Treasurer. There is no corporate seal. On page 5, the name of the district court has been left blank. These eight pages clearly cannot be part of any bylaws that the members of Avalon Water Supply have adopted. Again, did the PUC staff attorney not notice this in his "thorough review?"

- 6) Early in my complaint, I stated that Avalon Water Supply was not following the bylaws in regards to their annual meeting. Article XI, Section 1 of the bylaws (page 13) states, "There shall be a regular meeting of the Members annually, second Monday of March to transact all business that may be properly brought before it."

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The annual meetings have been held on the following dates:

Monday, March 14, 2011

Monday, April 9, 2012

No annual meeting in 2013. Election was held during regular meeting of June 13, 2013.

Thursday, April 10, 2014

Monday, March 9, 2015

Texas Water Code §67.007(a) states, "The annual meeting of the members or shareholders of the Corporation must be held between January 1 and May 1 at a time specified by the bylaws or the Board." Avalon Water Supply's bylaws do state that the meeting is to be held on the 2nd Monday of March. However, the annual meeting for 2016 is scheduled for Monday, April 4th.

The bylaws also state that the Board of Directors shall appoint "a credential's committee of three members one of which the Secretary-Treasurer shall be the chairperson." The credentials committee is appointed at the first meeting of the new Directors after the annual meeting. They are to adopt forms and procedures for the annual election.

Avalon Water Supply appointed a credentials committee after the last annual meeting. However, it has not been active. There was a discussion in the regular monthly meeting on January 14, 2016 about appointing new members to the credentials committee. It seems a little late for this with the annual meeting taking place on April 4th. Lack of a standing credentials committee is more than likely the reason that the annual meeting is not being held on March 14th, as the bylaws require.

The Board also seems very confused about who needs to run for office. There was a long discussion in the last monthly meeting on January 14, 2016. This seems to be caused by Directors resigning and members being appointed to replace them.

I have asked the PUC several times, if the PUC does not have jurisdiction over the bylaws, then who does? I have yet to receive an answer.

I have also asked why this complaint has been allowed to remain open so long if the PUC does not have jurisdiction. The fact that it has remained open, shows that there is a huge question regarding the jurisdiction.

Respectfully,



Carol Gillespie

cc: Jason Haas, PUC Staff Attorney via email

cc: Aimee Hess, Attorney via USPS Certified Mail