Control Number: 43146

Item Number: 29

Addendum StartPage: 0

P.U.C. DOCKET NO. 43146
SOAH DOCKET NO. 473-16-2033.WS

COMPLAINT OF CAROL D.	§	PUBLIC UTILY COMMISSION
GILLESPIE AGAINST AVALON	§	OF
WATER SUPPLY AND SEWER	§	TEXAS
SERVICE CORPORATION (37985-1)	§	

LIST OF ISSUES SUBMITTED BY AVALON WATER SUPPLY AND SEWER SERVICE CORPORATION

To the Public Utility Commission of Texas:

By order of Public Utility Commission (the "Commission") signed on January 25, 2016 Avalon Water Supply and Sewer Services Corporation ("Avalon") has been requested to file a List of Issues to be addressed by the Commission docket. This office and the undersigned attorney represent Avalon in this matter.

I. BACKGROUND

Avalon is a small rural water supply and sewer service company located in the community of Avalon, Texas. Avalon currently has approximately 340 customers. The community of Avalon is an unincorporated farming community located at the intersection of F.M. 55 & Texas Highway 34 in southern Ellis County, Texas. Avalon is a Texas Water Code Chapter 67 rural water company and a Class C utility as defined by Texas Water Code Chapter 13. It has seven members on its Board of Directors, a president, vice president, secretary, treasurer, general manager, bookkeeper and operator. All directors and officers are unpaid volunteers. The general manager, bookkeeper and operator are paid part-time employees. Avalon is very sensitive to the requirements of the Open Meetings Act and the Public Information Act. All directors and officers have taken the required training and they are diligent in making sure their activities comport with the law at all times.

Ms. Gillespie has a meter from Avalon but it is not an active meter. She does

not live in the Avalon community nor does she receive water or sewer service from Avalon. She and her sister live in Addison, Texas and have for some time. She has been filing complaints against Avalon with the TCEQ and the Ellis County District Attorney for several years. None of these complaints has ever resulted in a finding of wrongdoing or malfeasance on Avalon's part. Avalon has very limited resources and the thousands of dollars spent to reply to Ms. Gillespie's repeated complaints have been a substantial burden on the company and its members. The nature and tenor of Ms. Gillespie's complaints suggest that she may be maintaining her water meter (and thus her membership) for the sole purpose of continuing her campaign of groundless complaints against Avalon. Regardless of her motivation, Avalon welcomes the chance to clarify the misunderstandings and inaccurate facts upon which these complaints are based.

It must be noted that at all times, Avalon has responded in a timely fashion to each complaint received from Mrs. Gillespie, even when these complaints were (as was the case for most complaints) based upon incorrect facts, a misunderstanding of the relevant law or simply frivolous and brought for the purpose of harassment.

II. THE SOLE ISSUE IN THIS MATTER IS WHETHER THE COMMISSION HAS JURISDICTION OF THE GILLESPIE COMPLAINTS PURSUANT TO TEXAS WATER CODE §13.004

Chapter 13 of the Texas Water Code prescribes a very specific and narrow jurisdiction for the Public Utility Commission of Texas over Chapter 67 water supply or sewer service corporations. That jurisdiction is defined by Section 13.004:

§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).*

House Bill No. 1600 modified this jurisdictional statute somewhat, but not in a way that affects the Commission's jurisdiction over Ms. Gillespie's particular complaints. The relevant section of House Bill No. 1600 reads as follows:

SECTION 2.09. Section 13.004, Water Code, is amended to read as follows:

§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).

(b) If the water supply or sewer service corporation voluntarily converts to a special utility district operating under Chapter 65, the utility commission's jurisdiction provided by this section ends.

§ 13.002(11) *provides that: "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.*

§ 13.002(24) *provides that: "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. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold.*

§67.007 *provides that:*

(a) 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.

(a-1) A quorum for the transaction of business at a meeting of the members or shareholders is a majority of the members and shareholders present. In determining whether a quorum is present, all members and shareholders who mailed or delivered ballots to the independent election auditor or the corporation on a matter submitted to a vote at the meeting are counted as present.

(b) The board shall adopt written procedures for conducting an annual or special meeting of the members or shareholders in accordance with this section and Sections 67.0052, 67.0053, and 67.0054. The procedures shall include the following:

(1) notification to eligible members or shareholders of the proposed agenda, location, and date of the meeting;

(2) director election procedures, including candidate application procedures;

(3) approval of the ballot form to be used; and

(4) validation of eligible voters, ballots, and election results.

(c) The board shall adopt an official ballot form to be used in conducting the business of the corporation at any annual or special meeting. No other ballot form will be valid. Ballots from members or shareholders are confidential and are exempted from disclosure by the corporation until after the date of the relevant election.

(d) The board shall select an independent election auditor not later than the 30th day before the scheduled date of the annual meeting. The independent election auditor is not required to be an experienced election judge or auditor and may serve as an unpaid volunteer. At the time of selection and while serving in the capacity of an independent election auditor, the independent election auditor may not be associated with the corporation as:

(1) an employee;

(2) a director or candidate for director; or

(3) an independent contractor engaged by the corporation as part of the corporation's regular course of business.

(e) This section applies only to a corporation that provides retail water or sewer service.

None of Ms. Gillespie's complaints deal with items within the scope of §67.007 or with the requirements for classification as a nonprofit water supply or sewer service corporation in Sections 13.002(11) and (24). Therefore, the Commission does not have jurisdiction over any of her complaints.

III. EVEN IF THE COMMISSION HAS JURISDICTION OF THE GILLESPIE COMPLAINTS UNDER §13.004, NONE OF THE REMAINING ISSUES PRESENTED BY THE GILLESPIE COMPLAINTS HAVE MERIT

Avalon, for the record and strictly without waiver of Avalon's position that the Commission does not have jurisdiction of any of the Gillespie complaints, will list each issue raised by these complaints and respond briefly. Each of these issues will be addressed in turn and in chronological order. Because many of the issues were raised multiple times in multiple letters, Avalon's response to those issues will not be repeated.

1. Ms. Gillespie alleges that an agenda item regarding the purchase of land for the May 8, 2014 board meeting did not constitute an emergency and so the notice given for this agenda item was insufficient.

   The need for this meeting was, in fact, an emergency and the emergency was caused by Ms. Gillespie's own behavior. Specifically, the following behavior by Ms. Gillespie caused a situation of urgent public necessity: 1) Ms. Gillespie's refusal to recognize the valid effluent line easement that was granted to Avalon by her father; 2) Ms. Gillespie's refusal to allow Avalon on their easement to repair the effluent line; 3) the time and expense necessary to respond to Ms. Gillespie's complaint to the TCEQ about the effluent line; 4) the time needed to respond to a TCEQ Notice of Potential Violation regarding the unrepaired effluent line; 5) Ms. Gillespie's opposition to Avalon's request for an amended TCEQ permit and for permission to upgrade its facilities, for which the repair of the effluent line was a requirement; and 6) the exceedingly contentious and drawn out negotiations with Ms. Gillespie for the subsequent purchase by Avalon of

the property upon which the easement was located.

Avalon's effluent line is located on a very small strip of land that is owned by Ms. Gillespie and her two sisters. Avalon has a recorded easement upon this property that was given to them by Ms. Gillespie's father many years ago. A copy of that easement and an option for an additional easement are attached as Exhibits A and B. The effluent line began to break down and was in need of repair. However, Ms. Gillespie categorically denied the validity of the easement and refused to allow Avalon employees to enter the property where the effluent line was located to repair the line. At the same time, Ms. Gillespie and her sisters filed complaints with the TCEQ regarding a number of items, including the lack of repairs to the effluent line. Copies of two of her complaints are attached as Exhibits C and D. In addition, Ms. Gillespie and her sisters also retained an attorney and threatened litigation against Avalon.

Avalon received notice of a potential violation of TCEQ regulations from the TCEQ on April 17, 2014. A copy of that notice is attached hereto as Exhibit E. The potential violation was the need to repair the effluent line. The deadline for compliance was May 17, 2014. In phone conversations, the TCEQ staff acknowledged the extraordinary circumstances faced by Avalon due to Ms. Gillespie's behavior, but said they felt constrained to issue a notice because of the pressure they were receiving from the federal Environmental Protection Agency.

Diligent attempts by Avalon to negotiate with the Gillespie sisters and their attorney for access to the property failed. Rather than escalate the conflict with Ms. Gillespie and her sisters by means of expensive and time-consuming litigation, (which would have been the next step and in which Avalon believed it would prevail), and given the pending TCEQ potential violation notice and the short deadline, Avalon instead opened negotiations with Ms. Gillespie and her sisters to purchase the area where the effluent line was located (which was the same property for which they'd already been given an easement by Ms. Gillespie's father).

Unfortunately, Ms. Gillespie and her sisters were contentious throughout the negotiations and as a result the negotiations were unnecessarily complex, difficult and drawn out. Finally, on or about May 4, 2014, an agreement between Ms. Gillespie and her sisters and Avalon was reached for the purchase of the property and the signed contract was sent to the designated title company. Avalon and its attorney did not receive a copy of the conformed title commitment and the title company's closing requirements until late in the afternoon on May 13, 2014. One of the title company's requirements was a corporate resolution signed by Avalon's directors authorizing the sale. I immediately notified the Avalon general manager of the need for these corporate resolutions.

The two hour notice of this agenda item by Avalon was done on my recommendation and advice to Avalon. While the substance of my discussions with Avalon's representatives is privileged and confidential, I can tell you that my advice was based upon: 1) the specific language of the Open Meetings Act; 2) the court decisions construing that Act; 3) the pressing TCEQ mandate with a deadline of May 17, 2014 and the potential for substantial fines which Avalon could not afford; and 4) the failing waste effluent line which in the opinion of Avalon constituted an imminent threat to public health and safety, the noticing of this meeting as an emergency meeting fell squarely within the language of Texas Government Code §551.045.

When friends of Ms. Gillespie, Chris and Candice Brewster, complained to Avalon about the two-hour notice, and in an effort to mollify their concerns, I personally contacted the TCEQ to request additional time to cure the potential violation and Avalon re-noticed this agenda item for a subsequent date, giving full notice of the subsequent meeting. The TCEQ did not respond. The second, full, notice was not done by Avalon as any kind of admission that the original notice was illegal or deficient in any way, because it was not. Instead, the re-notice was done in an attempt to avoid further time-consuming and expensive extraneous conflicts with Ms. Gillespie and the Brewster's. At the second meeting, the corporate

resolution was again presented and agreed upon. The resolution was unanimous.

Texas Government Code §551.045 provides in pertinent part:

(a) In an emergency or when there is an urgent public necessity, the notice of a meeting or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter is sufficient if it is posted for at least two hours before the meeting is convened.

(b) An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of:

(1) an imminent threat to public health and safety; or

(2) a reasonably unforeseeable situation.

In this particular situation, given the facts that I describe above, it is obvious that there was indeed an urgent public necessity due to a reasonably unforeseeable situation. There were breaks in the effluent line that had to be repaired *but Ms. Gillespie would not allow access to the Avalon operator to repair the line* and so this situation is also one which presented an imminent threat to public health and safety.

Not only is it important to look at the language of the statute itself, but it is also instructive to review Texas court decisions that construe §551.045. For example, substantial compliance with the notice requirements is in compliance with the statute. *Creedmoor Maha WSC. v. Barton Springs Conservation District*, 784 S.W.2d 79 (Tex.Civ.App.- Austin 1989, writ denied); *McConnell v. Alamo Heights ISD*, 576 S.W.2d 470 (Tex.Civ.App.- San Antonio 1978, writ ref'd n.r.e.); *Burton v. Ferrill*, 531 S.W.2d 197 (Tex.Civ.App.- Eastland 1975, writ dism'd); *Stelzer v. Huddleston*, 526 S.W.2d 710 (Tex.Civ.App.- Tyler 1975, writ dism'd). There is at least one

Texas court that considered a substantially similar fact situation and determined that a two-hour notice was valid. See, e.g., *Markowski v. City of Marlin*, 940 S.W.2d 720 (Tex.Civ.App. - Waco 1997, writ denied). In the *Markowski* case, the Court noted that: "The city council found itself in the unexpected situation of being sued the day before a public hearing concerning Appellants' status was to be held. Appellants unexpectedly filed their lawsuit the day before (the) meeting, which they requested be open, was to be held. ... Consequently, this unforeseeable action by Appellants placed the council in a position of needing immediate advice from counsel because the council's actions at the public hearing could directly affect the lawsuit". In the Avalon case, it was a title commitment, not a lawsuit, that was delivered the day before the meeting, but I do not find this to be a legally significant difference and I believe the court decision in *Markowski* applies here.

As indicated previously, Avalon re-noticed the execution of the corporate consent required by the title company, and at the second meeting the corporate resolution was again presented, decided upon and signed. Texas courts have determined that a subsequent, full notice will cure any defect in the original notice and eliminate any violation. *Markowski v. City of Marlin*, 940 S.W.2d 720 (Tex.Civ.App. - Waco 1997, writ denied).

The Texas Government Code does not, as Ms. Gillespie alleges, state that the purchase of land is not an emergency item. To the contrary, Texas Government Code §551.045 specifically provides that an emergency meeting, with a two hour notice, is allowed if immediate action is required because of an imminent threat to public health or safety or a reasonably unforeseeable situation. As just described, both a threat to public health threat and a reasonably unforeseeable situation were presented by the situation.

Finally, it is important to note that Ms. Gillespie and Mr. and Mrs. Brewster presented this exact same complaint to the Ellis County District Attorney, and the District Attorney concluded that no violation of law occurred.

Ms. Gillespie, although not present at the May 8, 2014 meeting, alleges that another member addressed the Board of Directors and was not treated with respect.

This allegation is false and without any basis. Avalon and its staff and directors and officers go out of their way to treat all members with courtesy and respect, even when, as sometimes occurs, comments addressed to the board are delivered in a loud and insulting manner. Ms. Gillespie does not give any details regarding the alleged disrespect and so no further response is possible.

2. Ms. Gillespie alleges that Avalon learned of her complaint to the Ellis County District Attorney and that was the reason that Avalon re-noticed the meeting regarding the purchase of her property by Avalon for May 15, 2014.

This allegation is false and without any basis. Avalon did not learn of the Public Information Act complaint filed at Ms. Gillespie's request with the Ellis County District Attorney by her friends, Chris and Candice Brewster, at her request until Avalon's attorney received a phone call from the District Attorney on May 21, 2014 describing the complaint. Neither Avalon nor its attorney were given a copy of the actual complaint. A copy of an email to the District Attorney confirming that phone conversation and a copy of the response by Avalon to that complaint are attached hereto as Exhibits F and G. Obviously, Avalon and its attorney did not know of this complaint until long after the May 8 and May 15, 2014 meetings.

3. Ms. Gillespie alleges that not all seven directors were present at both the May 8 and May 15, 2014 meeting but the Avalon corporate resolution authorizing the purchase of property for Ms. Gillespie and her sisters was signed by all seven directors.

This allegation is groundless. The number of directors who signed the

resolution on May 8, 2014 constituted a quorum and the resolution was therefore binding and effective as of that date. That one director who was not at the May 8, 2014 meeting but who attended the May 15, 2014 meeting signed the resolution at that second meeting presents no violation of Texas corporate law and is entirely consistent and compliant with the corporate statues governing nonprofit corporations in Texas. In fact, Texas law specifically allows consents to be signed by the directors whether they are present at the meeting deciding on the resolution or not.

4. Ms. Gillespie complains that no meeting was held on June 12, 2014.

The meeting that would ordinarily have been held on June 12, 2014 had to be rescheduled for June 19, 2015. Ordinarily, this is due to issues beyond the control of individual directors that results in the lack of a quorum. In this particular case, Avalon does not have records that indicate why this particular rescheduling was necessary. The rescheduling of this meeting for one week later does not violate any applicable statute or rule.

5. Ms. Gillespie complains that the Avalon meeting agendas changed the name of the member and public input section of the meeting from "Visitor Comments and Concerns" to "Open Forum".

This basis for this complaint is not clear. Avalon sets aside a portion of every meeting for input and comments by members or visitors. There is no statute or administrative rule that dictates what this portion of the meeting is called. At no time has Avalon attempted to prohibit someone from speaking during this portion of the meeting. Of necessity, a time limit is imposed. Imposition of a time limit for public comment is well within the purview of the board and its presiding officer. The Avalon Bylaws provide, in Section 4, that the Avalon directors shall establish reasonable rules for member and public comment. A copy of the bylaws is attached as Exhibit H.

6. Ms. Gillespie complains that the notice for the Avalon meeting on July 10,

2014 included "assignment of responsibilities of personnel "as an agenda item but she believes that when the board voted to allow one of the directors to also function as a part-time, unpaid general manager, this was a violation of the Open Meetings Act.

This allegation is groundless. The action of the board in directing that one of the directors take on the responsibility of a volunteer, part-time, general manager is precisely within the parameters of the agenda item.

7. Ms. Gillespie complains that she has had difficulty obtaining financial reports from Avalon.

This complaint is groundless. Except for rare occasions when there was a computer or printer malfunction, financial reports are provided for members attending each Board of Directors meeting or can be requested directly from Avalon.

8. Ms. Gillespie complains that Avalon's 2012 audit was presented twice and that the 2013 audit was not done by July 14, 2014.

Avalon's former office manager failed to maintain some financial data in an organized way and he also made some errors in his accounting entries. Shortly thereafter, he terminated all connection with Avalon. In 2013, Avalon hired a new CPA and it took some time for the volunteer directors and the part-time employees to gather and reorganize financial data for the CPA and correct the errors. Finally, all information was gathered and organized, the errors were corrected and everything was given to the CPA. Subsequently, Avalon was given a complete and clean audit.

9. Ms. Gillespie complains that a certificate of deposit containing member deposits was pledged as collateral for a United States Department of Agriculture loan to Avalon and that one of Avalon's USDA loans is not fully secured.

This complaint is groundless. There is no statute or administrative rule that prohibits member deposits from being used as collateral for a loan for plant improvements. In fact, according to the USDA, this is *exactly* one of the appropriate uses of member deposits.

One of Avalon's loans has been fully paid. Avalon's remaining loan to the USDA is in good standing and fully secured as required by the terms of the loan. Obviously, a loan balance, and therefore the requisite security, decreases over time as payments are made.

10. Ms. Gillespie complains that on June 23, 2014, Avalon voted to accept a bid for repairs to one of its wells but did not have this full amount of money in their bank account at this time. She also complains that state law requires water supply corporations to have two working wells at all times.

This complaint is groundless. As a small rural water company, Avalon often struggles to make ends meet. Avalon's original equipment is quite old and is regularly in need of replacement and repair. The thousands of dollars that Avalon has incurred in attorney's fees over the last two years to respond to Ms. Gillespie's repetitive and groundless complaints to the TCEQ, the Ellis County District Attorney and now to the Public Utilities Commission, siphons away money that Avalon badly needs for water and sewer plant improvements and repairs. The community of Avalon is not a wealthy community and there is an upper limit to the amount that the Avalon's members can pay for water and sewer service.

There is no statute or administrative rule that requires that a water company have the full cost of a repair in the bank to pay for a repair at the time the repair is authorized by the Board of Directors. In addition, there is no legal requirement that Avalon have two working water wells at all times. The well that Ms. Gillespie references in her complaint was in fact repaired and the bill for the repair was paid in full.

11. Ms. Gillespie complains that Avalon's capital buy-in fee was $3500.00 in

the past but was changed in November 2013 to $1858.64 and was changed in February 2014 to $1304.00.

This complaint is groundless. What Ms. Gillespie is referring to is the "Equity Buy-In Fee". As specifically explained in Avalon's Tariff, each applicant for new service with Avalon must pay an equity buy-in fee to achieve parity with the investment in equipment already paid for by existing members of Avalon. The formula for calculation of the Equity Buy-In Fee is described in paragraph 5 of Section G of Avalon's Tariff. The amount of the Equity Buy-In Fee changes from time to time as the value of assets, the amount of debt, the accumulated depreciation, the amount of developer contributions and the total number of members changes. A copy of Avalon's Tariff that contains this formula is attached as Exhibit I.

12. Ms. Gillespie complains that she has seen a copy of an older Avalon check that was signed by one person in one case, and in the another case was signed by two people but one of the signatories was not an officer. She states that the Bylaws require checks be signed by the secretary treasurer and the president or vice president.

The Bylaws of Avalon provide that the directors may appoint an employee to assist the Secretary-Treasurer in all official duties (which would include signing checks) and they did so. The signature of Teresa Wimbish on one of these checks, and the sole signature of the Treasurer, Robin Donaldson, on the other are based on this delegation of authority by the Board of Directors. However, since the current directors and officers have been in office (approximately March 2012), all checks are signed by the Secretary-Treasurer and the President or Vice-President.

13. Ms. Gillespie states that she fears that Avalon is becoming insolvent and that the members cannot afford to pay the legal expenses incurred by the Board of Directors.

While Avalon does indeed struggle from time to time, especially with some of the capital requirements imposed in the past by the TCEQ, Avalon is not insolvent. Ironically, the exhibits Ms. Gillespie attaches to her letter demonstrate that Avalon is not insolvent. However, Avalon's financial situation is severely exacerbated by the legal expenses incurred to respond to Ms. Gillespie's complaints. In fact, the *only* legal expenses incurred by Avalon in the last few years have been legal expenses incurred to respond to Ms. Gillespie's complaints. Ms. Gillespie is correct that the members of Avalon cannot afford legal expenses incurred in responding to repetitive, duplicative and groundless complaints.

It is important to note that the only complaints that Avalon has received are from Ms. Gillespie and her friends the Brewster's. No other members of Avalon have agreed with her frivolous complaints. In fact, many Avalon members have expressed anger at Ms. Gillespie's behavior, at the unnecessary expense to Avalon as a direct result of her behavior and at the time and effort spent responding to her complaints by Avalon's directors, officers and employees, time and effort which could be spent on the many legitimate challenges that Avalon and any small rural water company face.

14. Ms. Gillespie states that she has filed several complaints with the Ellis County District Attorney but that the District Attorney "chose not to prosecute".

Ms. Gillespie is not being truthful. As she is well aware, the District Attorney "chose not to prosecute" because he found no violation of the Open Meetings Act or the Public Information Act. Ms. Gillespie also indicates that "others have filed complaints, too." Again, Ms. Gillespie is being less than forthright. The truth is that the only other complaint filed has been one complaint filed by her friends, Chris and Candice Brewster, at Ms. Gillespie's request. As with Ms. Gillespie's complaints, no violation of law was found by the District Attorney.

15. Ms. Gillespie claims no copies of the agenda were available at the Avalon August 14, 2014 meeting.

While there is no requirement to do so in the Open Meetings Act or anywhere else for that matter, as a courtesy Avalon always makes copies of the meeting notice or agenda available for members attending the meeting. Occasionally, more people attend a meeting than expected and there are not enough copies to go around. On rare occasion, Avalon may experience a computer or printer problem that prevents bringing copies of the notice to the meeting.

16. Ms. Gillespie claims that the use of a "consent agenda" format was not discussed in open meeting or voted on and that the use of the consent agenda is a "drastic change away from transparency."

There is no requirement for any specific meeting format in the Open Meetings Act or anywhere else for that matter. In addition, it is not a violation of law for the Avalon Board of Directors to hold a simple vote on items where no discussion is necessary, such as for approval of a financial report or minutes of a prior meeting. If a member has a question, that question can always be posed during the Open Form segment of the meeting or it can be provided to the directors in writing at the meeting or it can be addressed to the company in correspondence. There is nothing about this procedure that is un-transparent.

One of the problems that give rise to many of Ms. Gillespie's complaints is that she misconstrues the role of the Board of Directors during a directors meeting. The directors are present to consider (in some cases with discussion and in some cases without), on occasion to openly discuss (except in the case of confidential matters as defined by the Open Meetings Act), and then to vote, upon those matters listed on the meeting notice. Ms. Gillespie's behavior at meetings and her complaints reflect that she believes that the directors are there to explain every nuance in every

document to her, to answer unlimited questions about items on the agenda, to respond to her contentious and argumentative comments, to obtain either her approval or her permission for actions taken by the Board of Directors, and to be available to be grilled by her about perceived slights from the past.

Even though there is no requirement that directors read out loud and discuss each item they vote on (although they often do), that does not mean that members do not have input, because they clearly do. Members can express their positions and ask questions during the "Open Forum" segment of the meeting, they can present written questions to the board either at the meeting or at any other time, or they can address the Board of Directors with their views or questions by written correspondence. Obviously, some questions cannot be addressed if to do so would violate the Open Meetings Act. As is illustrated by the exhibits attached to some of Ms. Gillespie's letters on file with the Commission, she has regularly communicated with the Avalon board through correspondence.

17. Ms. Gillespie complains that reports by the president, the general manager and the operator were verbal rather than written and that the meeting does not follow her concept of a consent agenda.

These reports are not required to be delivered in writing. All meetings are recorded and so a record of the report is made and available to the member. The format of the meeting is not unlawful simply because it does not follow Ms. Gillespie's preconceived idea of how the Avalon directors meetings should proceed. So long as the requirements of the Open Meeting Act are met, the format to be used is up to the discretion of the directors and the presiding officers.

18. Ms. Gillespie complains that the Avalon directors should have been required to discuss and vote on the format of the meeting prior to their August 14, 2014 meeting. Then, incredibly, she states that this behavior would have been a violation of the Open Meetings Act.

This complaint is groundless and irrational and Avalon is unable to respond.

19. Ms. Gillespie complains that Avalon began in August 2014 to keep a record of its meetings in electronic format on a CD. She notes that the Avalon Bylaws require that the Secretary-Treasurer shall keep regular books and shall keep minutes of all meetings.

Nothing in the Open Meetings Act or any other statute or rule prohibits maintaining records electronically. With written minutes, someone must transcribe the contents of the meeting, which is time-consuming. Because Avalon only has only two part time office employees, a general manager and a bookkeeper, transcribing minutes takes time away from their many other duties, such as assisting members with questions and requests, assembly of member usage information, preparing and transmitting bills to members, and organizing and preparing Avalon's bills for payment. Any member is free to request a copy of the CD containing the minutes at any time.

Avalon's Bylaws, in Article III, state that the Secretary-Treasurer "shall keep minutes of all meetings of Members and Directors". The Bylaws do not specify any specific form for the minutes. Consequently, electronic recording and storage of minutes in no way violates the Bylaws.

20. Ms. Gillespie complains that she has not received a copy of the July 2014 directors meeting minutes.

All copies of minutes that have ever been appropriately requested by Ms. Gillespie have been delivered to her in a timely manner.

21. Ms. Gillespie complains that Avalon is trying to keep members from having copies of the directors meeting minutes so members can use the minutes for their complaints to the Ellis County District Attorney and

TCEQ.

To our knowledge, Ms. Gillespie and her friends, Chris and Candice Brewster, are the only members who have filed any complaints regarding Avalon with the TCEQ or the Ellis County District Attorney. Once again, all copies of minutes that have ever been appropriately requested by Ms. Gillespie or any other member have been furnished to them in a timely manner.

22. Ms. Gillespie complains that the agenda for the August 14, 2014 meeting lists the approval of the "Minutes of June 10, 2014" meeting. She points out that there was no meeting on June 10, 2014.

This notice for the August 14, 2014 meeting does appear to contain a typographical error. Avalon's volunteer officers and directors (who all have full-time jobs aside from their volunteer positions with Avalon) and the part-time office employees are often spread quite thin. Being human, they do make errors occasionally. This error does not violate any relevant statute or rule.

23. Ms. Gillespie complains that the financial report given during the August 14, 2014 meeting did not meet her criteria for a financial report.

The fact that the financial report given at this or any other directors meeting does not meet Ms. Gillespie's personalized requirements for financial report does not violate any statute or law. Copies of financial reports are customarily available to members at monthly meetings, barring computer or printer problems. There is no requirement that the report be "read into the record" and that the amount of money held in Avalon's bank accounts be publicly announced.

24. Ms. Gillespie complains that there was no financial report given to members at the August 14, 2014 meeting and that the financial report was not read aloud.

Please see response in Paragraph 9 above.

25. Ms. Gillespie complains that the financial report was controversial and should have been a major topic on the Avalon directors meeting agenda.

As previously discussed, while the directors usually honor occasional questions from a member, there is no legal requirement that the directors engage in an extended discussion with members in the audience regarding a financial report.

26. Ms. Gillespie complains that the Avalon financial reports (which she previously claimed she was not given a copy of) show a deposit for an even amount of $10,000. She states that deposits are never for even amounts and are never that large.

The $10,000 deposit represented the proceeds from an Avalon certificate of deposit. Ms. Gillespie in fact, accurately characterizes this deposit as proceeds from a certificate of deposit. (See Gillespie correspondence to the Commission, dated September 29, 2014, page 2, second paragraph). It is unclear why she claims ignorance about where the deposit comes from.

27. Ms. Gillespie complains that she does not know the source of the $10,000 deposit.

Please see response in Paragraph 26 above.

28. Ms. Gillespie complains that the deposit she questions may have been from a loan or a renegotiated loan that Avalon did not decide upon in the meeting.

Please see response in Paragraph 26 above.

29. Ms. Gillespie complains that she did not think an audit had been done for Avalon for calendar year 2013.

Please see response in Paragraph 8 above.

30. Ms. Gillespie complains that someone's meter was removed without notice and when they were not delinquent.

Avalon's previous operator removed the meter. When questioned, he said that he was given verbal direction by the previous volunteer general manager. When questioned, the volunteer general manager said that he did not direct the operator to remove the meter. During the same meeting in which this error was brought to their attention, the directors instructed its current operator to reinstall the meter immediately. The meter was restored within 24 hours. There was no active service to the residence where the meter was located at the time this occurred. Neither the operator nor the volunteer general manager involved in this error work for Avalon any longer.

31. Ms. Gillespie complains that an agenda item pertained to the discussion of compensation to employees as a group and that this should not have been done in a closed session.

Both the agenda item and the discussion in closed session dealt with compensation to specific, individual, employees. As Ms. Gillespie is well aware, Avalon does not have "groups" of employees. It has three part-time employees. The closed session was to discuss compensation for those three individual employees. The Open Meeting Act specifically authorizes this procedure and Texas Attorney General Opinions approve of this procedure.

32. Ms. Gillespie complains that when the board came back to the open session after the closed session, they voted on the new compensation but did not announce to her what the amount of the compensation for certain

employees was.

There is nothing in this procedure that violates any relevant statute or rule.

33. Ms. Gillespie complains that: 1) she is not always given a copy of the financial report which prohibits her from asking the board about the report; 2) Avalon called the sheriff because she was disorderly during the June 2012 meeting; and 3) she is now afraid to address the board.

As indicated previously, financial reports are made available to members at monthly meetings and are also available by appropriate request by a member. Secondly, a board of directors meeting is not a forum for Ms. Gillespie to argue with directors about the financial report, which she commonly attempts to do anyway. Finally, Ms. Gillespie has never been shy about expressing her opinions or asking questions at board meetings and so it appears that she is not, in fact, "afraid to address the board".

34. Ms. Gillespie complains that in the August 14, 2014 meeting, she did not get the financial report until after the meeting which prohibited her from questioning the directors about it. She also complains that Avalon gave contradictory information about whether a member had to make a Public Information Act request to obtain a copy of the financial report.

See response to paragraph 15 above.

35. Ms. Gillespie complains that the Avalon board of directors should not be approving raises to the employees when Avalon has very little money.

The Avalon Board of Directors is aware that they are the custodian of members' funds and they are very careful in how the funds of Avalon are spent. Avalon's part-time employee salaries are extremely modest. However, one of the most important expenses that Avalon incurs is for competent, part time employees to prepare members bills, to see that bills are sent out promptly and correctly, to make sure that bills that Avalon

owes are timely paid, etc. These responsibilities are critical to the proper functioning of a water company and to compliance with all relevant rules and statutes, and therefore these three employees are critical to Avalon's operation. They deserve to be paid a reasonable amount.

36. Ms. Gillespie complains that the Avalon Bylaws require that the date of the next subsequent meeting should be announced at each meeting.

Ms. Gillespie is not being forthright in this complaint. The Avalon Bylaws do not "require" that the time and place of the next meeting be announced at the end of each meeting. In fact, what the Bylaws actually state is that "Regular meetings... shall be held at such time and place as the Board may determine at the next previous regular meeting..." (Emphasis added). Notwithstanding the permissive language of the Bylaws, it is the practice of the Avalon Board of Directors to announce the date of the next meeting at the end of each meeting.

37. Ms. Gillespie complains that: 1) Avalon attempted to use eminent domain to "take" her land illegally; 2) the discussions about this illegal procedure were held in closed session and were not voted on in open session; 3) this illegal action was retaliation for her meetings with the TCEQ regarding the renewal of Avalon's wastewater permit; and 4) she did not receive an answer to her letter requesting information about the Avalon 2012 tax return.

Regarding Ms. Gillespie's claim of illegal eminent domain, as a Texas Water Code Chapter 67 water supply company, Avalon does have the power of eminent domain to acquire property necessary for its operation. Therefore, should it have decided to do so, Avalon could have proceeded legally with condemnation procedures to acquire this property.

The fact is, however, that this Board of Directors has never discussed acquiring Ms. Gillespie's property by eminent domain. Therefore, there were no "closed session discussions" and no votes on eminent domain.

Similarly, no funds have been expended for attorney's fees for eminent domain. However, substantial funds have been expended for the required responses to Ms. Gillespie's complaints to the Ellis County District Attorney, the TCEQ and now the Public Utilities Commission of Texas.

38. Ms. Gillespie claims that the mythical threats of eminent domain were retaliation for her complaints regarding Avalon filed with the Ellis County District Attorney.

Regarding her claim of retaliatory action, Avalon is not aware of any retaliatory action taken by Avalon directors or employees against Ms. Gillespie or her family at any time or for any reason. She has every right to meet with the TCEQ. Avalon was not even aware that she had done so until sometime after her meeting occurred.

39. Ms. Gillespie claims that she has not gotten a response to her most recent Public Information Act request and to her questions about Avalon's 2012 tax return.

Avalon responded to Ms. Gillespie's last Public Information Act request through its attorney's letter to her dated September 12, 2014. A copy of that letter is attached hereto as Exhibit J. In addition, Avalon responded to Ms. Gillespie's questions about the 2012 tax return in its attorney's letter dated September 12, 2014, a copy of which is attached hereto as Exhibit K.

There are several reasons that Avalon is responding to requests by Ms. Gillespie through its attorney. First, the Avalon Bylaws, in Article V, Section 5, provide that the Avalon directors shall be entitled to rely on the opinions of Avalon's attorney. That the directors and employees of Avalon rely on the recommendation by their attorney that all communications with Ms. Gillespie and her family be routed through Avalon's attorney is their right. Secondly, the Avalon directors and employees are not tax professionals. They rely on Avalon's CPA to prepare and file accurate and

appropriate tax returns to the state and the federal government. Therefore, it is not appropriate to require them to answer Ms. Gillespie's tax return questions directly. Third, Avalon's directors and employees have almost continually operated under the burden of a pending complaint by Ms. Gillespie and the threat of potential fines and liability sought by Ms. Gillespie as a result of those complaints. Some of the Gillespie complaints, such as the Open Meetings Act and Public Information Act complaints to the Ellis County District Attorney, carry potential individual criminal penalties, including incarceration and monetary fines. Because of the pending adversary proceedings over the past two years, and because so many statements they have made in the past to Ms. Gillespie have been misconstrued, mischaracterized, twisted or taken out of context, Avalon and its attorney determined that all communications to and from Ms. Gillespie must go through their attorney.

Ms. Gillespie was informed of the requirement that she communicate with Avalon through me in my letter to Ms. Gillespie and her sisters dated September 12, 2014. A copy of that letter is attached hereto as Exhibit L. This action was necessary as a direct result of Ms. Gillespie's own actions.

Ms. Gillespie can obtain the answers to her questions about the Avalon tax return by consulting her own tax professional. If she wants to talk to the CPA retained by Avalon, Avalon is glad for her do so. However, the CPA charges for his time. It is not fair for other members of Avalon to pay for Ms. Gillespie to get answers to her tax questions that she could easily get from her own tax professional's review of Avalon's return. Because of the pending adversarial proceedings, it is necessary that I be present to monitor the discussion. As already indicated, it is not fair for other members of Avalon to pay this cost on behalf of Ms. Gillespie.

Ms. Gillespie appears to assert that Avalon's tax returns should be discussed and analyzed in an open meeting before they are filed. This is simply not the case. Tax returns are not based on the consensus of the

organization that files them, but instead are based on specific federal law and IRS rules. The tax returns are prepared by a tax professional knowledgeable in these areas and retained by Avalon.

40. Ms. Gillespie complains that a waterline was laid on her property without her permission.

The water line in question was entirely laid in the Ellis County 30 foot right-of-way and was not on Ms. Gillespie's property. Every Texas county has a 30 foot right-of-way or easement on each side of all roads within the county that are maintained by the county. That is simply the law, whether Ms. Gillespie agrees with it or not. The purpose for the right-of-way is for road expansion and for utilities.

41. Ms. Gillespie complains that the line was not installed in a quality manner.

The contractor hired by Avalon installed the line in a good and workmanlike manner and in compliance with all relevant statutes and rules.

42. Ms. Gillespie complains that a new water company membership was not discussed in an open meeting, but merely voted on.

There is no requirement in any relevant statute or rule that applications for new memberships be "discussed". In fact, since a rural water company is required by Texas law to provide water service to each applicant within its CCN, assuming no capacity issue, there really is nothing to discuss. The application for new service was approved by a vote in an open meeting, as is required.

Avalon has been repeatedly puzzled by the more or less continuous barrage of complaints by Ms. Gillespie, especially when the complaints are sometimes contradictory and mutually exclusive. While it may not be directly relevant, we have wondered at her motive for this course of action. The only evidence we have with

respect to her motive comes from statements by Ms. Gillespie and her sisters. The statements were made during a settlement conference with the Gillespie's attorney in their attorney's office and were made to Avalon's attorney. Specifically, Ms. Gillespie and her sisters told this attorney that they hated Avalon because they believed that, long ago, Avalon caused the premature death of their father by harassing him, that Avalon has "turned members of the community of Avalon against them" and that as a result they are committed to "making Avalon pay" for these perceived misdeeds.

Wherefore Premises considered Avalon requests that the Commission dismiss the complaints of Carol Gillespie, and for such other and further relief to which Avalon may be entitled.

Respectfully submitted,

Law Offices of Aimee Hess P.C.

Aimee Hess

By: _____
Aimee Hess
State Bar No.: 09548500
6967 S E County Rd. 2385
Streetman, Texas 75859
Telephone: 1-888-818-5880
Facsimile: 1-888-818-5860
Email: aimeehess@aimeehesspc.com

ATTORNEY FOR AVALON WATER SUPPLY AND SEWER SERVICE CORPORATION

Certificate of Service

I certify that the foregoing pleading has been served on the following parties in the following manner on February 11, 2016 in compliance with 16 TAC §22.74:

VIA EMAIL: caroldgillespie@earthlink.net
Carol d. Gillespie
3921 Bobbin Lane
Addison, TX 75001
214 536-1784

VIA FACSIMILE: 512-936-7268
Mr. Jason Haas
Attorney; Legal Division
State Bar No.: 24032386
Public Utilities Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Aimee Hess

By: _____
Aimee Hess