

Control Number: 43146



Item Number: 4

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43146

CAROL D. GILLESPIE

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Addison, TX 75001

2014 SEP 30 AM 9: 11

RECEIVED

PUBLIC UTILITY COMMISSION FILING CLERK

September 29, 2014

Public Utility Commission of Texas Central Records 1701 N Congress, Suite 8-100 Austin, Texas 78711

RE: Docket #43146 (Avalon Water Supply and Sewer Services Corporation)

Dear PUC:

After a phone call with Mr. Fred Bednarski on Friday, I felt that I needed to submit some additional information and clarify other issues that I had reported to the TCEQ prior to the transfer of jurisdiction to the PUC on September 1st. I am also concerned that a letter to TCEQ dated July 14, 2014 and a DVD with audio/video of the August 14th meeting of Avalon Water Supply and Sewer Services Corporation (AWS&SSC) is missing from the information that I submitted to TCEQ.

My motivation for bringing these issues to the attention of the TCEQ, and now the PUC is primarily one of concern for the financial well-being of AWS&SSC. It is my opinion that since March 2012, the Board of Directors has not been acting in the best interest of the corporation and its' members. During the March 2012 meeting the Board went into closed session to discuss purchasing land from my family and instead came out of close session and announced that they were going to "take" our land by eminent domain. There was no vote in open session, the Board had no legal need for our land, had never made a bona fide no offer to purchase our land, and were attempting to "take" more land than TCEQ required for restrictive easements which was the stated reason for "taking" our land. And, the Board of Directors only mentioned my family's land. If they had truly needed land for restrictive easements as they stated, they would have needed land from three other land owners. However, the Board only targeted my family's land. At that same meeting in March 2012, the Board hired the grandson of the Board President as their attorney. The attorney's uncle was also on the Board. Both Directors resigned in late April after I complained of nepotism to the District Attorney.

While I have no proof, I have been told that attempted "taking" our land was a form of retaliation because I had met with TCEQ in Austin in October 2011 to discuss AWS&SSC's waste water permit renewal application. In the application, AWS&SSC stated that they were in negotiations to obtain land from my family. The application was submitted in June 2012, and I didn't learn about restrictive easements until September 2012. There were no ongoing negotiations to purchase land from my family. From March 2012 through May 2014, our family was forced to spend thousands of dollars in legal fees.

The legal fees that AWS&SSC incurred during this failed, illegal attempt to use eminent domain to take our land, and the subsequent actions of the Board during the following years have dramatically hurt the financial well-being of the corporation. At this time, the Board is continuing to conduct meetings that do not comply with the Texas Open Meetings Act (TOMA) or the bylaws of the corporation. Until the meetings are held according to the law and the bylaws, I will continue to have concerns since I am not only a member of the corporation but an adjoining land owner to the waste water facility. This is not a grudge as AWS&SSC has claimed in their meetings. This is about making sure that my family's land is not a target of another attempted illegal "taking" in the future costing my family tens of thousands of dollars in additional legal fees. I need reassurance that any future attempt to obtain our land will be done legally. And, until the meetings are held legally I have no such assurance.

As a member, I am very concerned about how this mismanagement (in my opinion) by the Board of Directors has impacted the financial well-being of the corporation. They have spent well over \$30,000 in legal fees as a result of this failed eminent domain attempt, a later threat of adverse possession, and to fight allegations of TOMA violations. The money could have been better used to repair the aging water and sewer facilities.

Financial reports show that the corporation only had \$6,938 in the bank at the end of January 2013. In November of 2013, the Board borrowed \$35,000 using the certificate of deposit containing members' deposits as collateral. They had to do this in order to pay their current attorney \$20,500 to represent them in mediation and a possible contested hearing at TCEQ.

This mediation and hearing was a direct result of the Board's attempt to "take" our land using eminent domain and later adverse possession. After borrowing the \$35,000 and paying their attorney \$20,500, AWS&SSC ended the month of November 2013 with \$21,470 in the bank account.

In June of 2014 they paid \$22,500 to repair a water storage facility. In August 2014, they paid \$44,709 to repair one of their two wells which had not been pumping since July of 2013. (State law requires that a water supply of AWS&SSC's size have two working wells.) This left AWS&SSC with \$17,256 in the bank. However, \$10,000 of this \$17,256 is proceeds from a certificate of deposit that was not going to mature until October 2014. Apparently, this \$10,000 was withdrawn by the Board of Directors in July 2014 without the Board discussing it or voting on it in a public meeting. In their April 10, 2014 meeting, the Board voted to leave the money in the certificate of deposit until it matured. Then they went against what they voted on, and withdrew the funds three months later.

The last financial report that I have is dated August 14, 2014 and it shows a \$17,256 balance in the bank account. I do not have a more recent financial statement because the September 11, 2014 monthly meeting was cancelled and not rescheduled. But the storage tank that was repaired in June of 2014 is still not being used and the second storage tank is leaking. The community's rates for water and sewer are one of the highest in the area. And, there is already talk of another increase. The members simply cannot afford another increase.

AWS&SSC has changed management several times in the past twenty-two months:

- 1) Hilco from 2001 until November 30, 2012. Hilco chose not to renew their contract when it expired.
- Dean Carrell from December 1, 2012 until July 11, 2013. Although Mr. Carrell holds four licenses with TCEQ, he is on probation for theft from the city where he was employed.
- 3) Jan and Ed Hettinger took over on July 11, 2013. They are members of the corporation and volunteered to run the office and act as General Manager since AWS&SSC did not have the funds to pay anyone else.
- 4) Gary Low was appointed General Manager in July 2014 after the Hettingers resigned on June 30, 2014. Mr. Low is a Director of the Board who was elected in April 2014. He is accepting no pay to act as General Manager.

I have reviewed my list of previously reported items and have made some additions, but this is a complete list of what the PUC needs to consider:

- 1) On May 2, 2014 AWS&SSC posted a notice/agenda for a meeting to be held on May 8th at 7PM. On May 8th at 12:56PM, a notice was posted adding an "emergency" addition to the agenda. This item was, "Adoption of resolution of the Board of Directors authorizing the purchase of approximately 1.01 acres of land adjacent to the Avalon Water Supply and Sewer Service Corp. Wastewater Treatment plant." According to TOMA the purchase of land is not an emergency item and requires a 72 hour notice. (Documentation supporting this allegation was submitted to TCEQ with a letter dated July 14, 2014.)
- 2) The Board signed a resolution for the land sale at the May 8th meeting. However, during the meeting members raised concerns that the resolution did not fit the legal criteria for an emergency item. A Special Meeting was called for May 15th to approve and sign the resolution again. Once again, the resolution was passed around the table for Directors to sign. During closing of the land sale on May 22nd, I was given a copy of the resolution by the title company. The resolution is dated May 8th, and is signed by all 7 directors. Only 6 were present at the May 8th meeting. Only 5 were present at the May 15th meeting. David Waishes (President) was absent from both meetings. Jacob Carter (Vice-President) was not present at the May 15th meeting. Since the May 15th meeting was called specifically to "Approve and Sign Corporate Resolution related to purchase of land adjacent to waste water treatment plant," then only the five directors present at that meeting should have voted to approve and sign the resolution. Directors cannot vote to approve or sign resolutions if they are not present at the meeting where is it approved. (Documentation supporting this allegation was submitted to TCEQ with a letter dated July 14, 2014.)
- 3) On the July 10, 2014 agenda there is an item, "Assignment of responsibilities of personnel." The Board voted to make one of the Directors (Gary Low) the General Manager. Visitors and members tried to explain to them that they could not vote to make Mr. Low the GM because it was not worded on the agenda to vote to make anyone GM. The President replied that they were trying to include broad-based topics so they could do what they needed to do. This agenda item allowed the Board to discuss assignment of responsibilities, but it did not allow them to take any action. This is a TOMA violation. (Documentation supporting this allegation was submitted to TCEQ with a letter dated July 14, 2014. Additional supporting information is included with a CD containing the audio of the July 10, 2014 meeting that is being sent with this letter. Discussion starts at 16:25 on the audio CD.)

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- 4) At the Annual Meeting in April 2014, the annual audit for the year 2012 was presented for a second time. It was stated that the 2013 audit (for year ending December 31, 2013) was "not complete at this time." In the July 14, 2014 meeting it was stated that the 2013 audit has not been done because of "some circumstances" but would not elaborate. In August 2014, the members were told that a new CPA had been hired because of issues with their long-time CPA. Hiring a new CPA firm was not voted on in a public meeting. There was no regular meeting in September 2014, so members still have not seen an audit for 2013, and we do not know why. This is a violation of the bylaws. (Documentation supporting this allegation was submitted to TCEQ with a letter dated July 14, 2014. There is a discussion beginning at 10:30 on the DVD containing the audio/video of the August meeting which was sent to TCEQ with the letter dated August 20th.)
- 5) During the August 2014 meeting, when the GM was discussing the audit he talks about an extension. This seems to indicate that the income tax return for 2013 has also not been completed. (Documentation supporting this allegation was submitted to TCEQ with a letter dated August 20, 2014. It is on the audio/video DVD sent with the letter at approximately 10:30.)
- 6) In December 2013, AWS&SSC borrowed \$35,000 from a local bank. (The secretary/treasurer of AWS&SSC is an employee of the bank.) According to minutes, this loan is secured by a certificate of deposit that the corporation has at the bank. The corporation only has three CD's. At the time this loan was obtained, two of the CD's were pledged to the USDA and each are less than \$30,000. The third CD was made up of membership deposits. The value of it is in excess of \$38,000. Although I do not have a copy of the loan, it appears that AWS&SSC pledged the CD containing members' deposits as collateral. This is misappropriation of funds. (Documentation supporting this allegation was submitted to TCEQ with a letter dated July 14, 2014.)
- 7) The amount to obtain a water meter with AWS&SSC has always been \$3800 (\$3500 capital investment, \$200 tap fee, and \$100 membership fee). However, in November 2013 there is a capital investment amount of \$1858.64. What is this amount? In February 2014, there is a capital investment amount of \$1304 and a \$100 membership fee. What is this amount? Is AWS&SSC now discounting the capital investment? If so, this is a violation of the Tariff. (Documentation supporting this allegation was submitted to TCEQ with a letter dated July 14, 2014. Additional evidence can be found on the Financial Report that was submitted with the August 20th letter.)
- 8) I recently obtained copies of several checks AWS&SSC wrote in 2012 and 2013. These were obtained through a legal open records request. One check is signed by only one person and two checks are signed by two people. However, one of the people is not an officer of the corporation and never has been. The bylaws state that checks MUST be signed by the secretary/treasurer AND the president. If the president is not available, then the vice-president may sign. Although the checks are rather old, I believe that this practice is still ongoing. This is a violation of the bylaws. (Documentation supporting this allegation was submitted to TCEQ with a letter dated July 14, 2014.)
- 9) The agenda and format of AWS&SSC's meetings changed to using a consent agenda beginning with the August 14, 2014 meeting. I am not objecting to a consent agenda per se, I am objecting to how AWS&SSC is using it. Five of the eight items on the agenda were listed under the consent agenda. In the case of AWS&SSC's apparent financial crisis, I do not believe that the financial report should be under the consent agenda. It should be discussed in the open in front of members present.
 - Plus, the Directors all should have agreed (voted) on the format change and understand how the consent agenda works prior to the August 14, 2014 meeting. This means that the Directors must be making decisions outside of the meetings and/or meeting outside of posted meetings. If so, this is a violation of TOMA. (Documentation supporting this allegation was submitted to TCEQ with a letter dated August 20, 2014. It is also mentioned several times on the DVD containing the audio/video from the August 20th meeting which was forwarded to TCEQ along with the letter dated August 20th.)
- 10) At the August 14, 2014 meeting the President announced that there will be, "no written minutes from this point forward." He stated that instead the meetings will be audio recorded. Later it was stated that members will be able to purchase copies of the audio. However, the bylaws of AWS&SSC specifically state, "The Secretary-Treasurer shall keep regular books and shall keep minutes of all meetings of Members and Directors." And, they voted to approve "minutes" not a recording of the July meeting at the August meeting. How can they approve recordings that have not been transcribed? Minutes are a written summary of a public meeting. They are not the same thing as recordings.

I gave AWS&SSC an open records request for the July meeting minutes at the August 14th meeting. Even though I am shown on the DVD handing the open records request to the President, the Board denies that they received it. I had to file a complaint with the District Attorney on September 8th. I finally received the audio tape (CD) of the July meeting on September 22, 2014. It is my belief that AWS&SSC is trying to keep members from having the minutes, since members have used the minutes to complain to the Ellis County District Attorney, TCEQ, and PUC. (Documentation supporting this allegation was submitted to TCEQ with the August 20th letter and the DVD was submitted to TCEQ also. A copy of the recording of the July 10th meeting will be submitted with this letter.)

11) There was no financial report given during the August meeting. The only information given was by GM who stated, "Number 2 well is paid in full.....\$44,000.....We managed to do this without borrowing against clear CDs that we had." Then a person who works in the office gave a short statement without mentioning any financial amounts. At no time did the Board state how much money is in the bank. In fact, the only dollar amount mentioned was the \$44,000 in well repairs. The Directors had copies of the monthly financial statement and appeared to be reading it during the meeting. However, no copies were given to members/visitors at this time and the report was not read aloud. Only after a tense discussion at the end of the meeting and handing the President an open records request, was I given a copy of the financials. And, it is not a true financial report. It only lists the one bank account and not the certificate of deposits. Therefore, it is not a complete financial report.

The President states that in his two years on the Board, financials have almost always been distributed to members at meetings. This is not true. He has been President since April 2012. Therefore, he has been President of the Board for 29 monthly meetings. I have been to almost every meeting, and have received copies of handouts from other members when I was unable to attend. I keep very good records and only have 11 financial reports. Many of those were obtained by open records requests or other means but not during a meeting. (Documentation supporting this allegation was submitted to TCEQ with the August 20th letter. On the DVD containing the audio/video of the August meeting that was submitted with the letter, there is a discussion beginning at 9:45, another discussion at 17:25, and 16:00 on Part II of the CD.)

- 12) On the financial report, there is a deposit for \$10,000 made at the end of July. The deposits are never for even amounts and are never that large. The highest total monthly deposit that AWS&SSC is approximately \$33,000. With this \$10,000 deposit, the total deposits for July are over \$41,000. I did not receive this report until the end of the meeting and was unable to ask where this money came from. But it was stated during the meeting several times that they did not borrow from "any clear CDs." I have since learned that the Board withdrew funds from a certificate of deposit that was going to mature in October 2014. The Board had previously voted in April 2014 to leave the money in the certificate of deposit. Withdrawing the funds without voting or discussing in a meeting is a violation of TOMA. The Board of Directors is clearly making decisions outside of meetings. (Documentation supporting this allegation was submitted to TCEQ with the August 20th letter. The Financial Report was included with the letter of August 20th. Also, there is nothing on the DVD containing the audio/video from the August 14th meeting that addresses this \$10,000 deposit. It is also not mentioned on the CD of the July meeting that I am submitting with this letter.)
- 13) It also came up during the August meeting that the Board removed someone's meter without notice and they were not behind in payments. The reason given was that documentation was missing from their file. I really don't know the particulars, but it does concern me because it seems to be in violation of the tariff. During this discussion, the President told the member complaining that his three minutes were up. However, members have been told if we needed to speak more than 3 minutes that we can sign up for consideration to be placed on the agenda. This member was on the agenda to discuss this matter. Clearly, the Board did not want to discuss. This was not during Open Forum. The Board needs to follow the rules that they set for the members. At one point, the President tells the member and the GM to "take it outside." (Documentation supporting this allegation was submitted to TCEQ with the August 20th letter. A DVD containing the audio/video from the August 14th meeting was submitted with the letter. On that DVD, this discussion starts at 21:20.)
- 14) On the agenda for the August 14, 2014 meeting was an item, "Recess into executive session to discuss pay rates for employees after a year of employment." According to TOMA, this action is not allowed. The Attorney General Opinion H-496 concluded that closed sessions can only be used to discuss individual employees rather than groups or a class of employees. The Board can only go into a closed session to discuss an individual's pay raise because more than likely that would include a discussion of the individual's work performance and would need to be held in private.

When the Board came out of closed session, they voted to accept the proposal pay rate. They didn't state what the pay rate was. Visitors/members present have no idea what they voted on. It is my belief that AWS&SSC did not want the

members present to know who they were giving a raise to or how much the raise is. The members would have voiced concern about the corporation giving raises when there is only \$17,256 in the bank account. (This is clearly documented on the DVD containing audio/video of the August 14th meeting. This DVD was sent to TQEC with the letter dated August 20th. The Board going into closed session is at 31.50 on Part I of the meeting. The reconvening of the open session is at the beginning of Part II of the CD.)

In the Special Meeting on September 25th they voted to give one of their employees a 10 percent raise. This employee has had numerous raises over the past two years while AWS&SSC has been having financial issues. Should a water supply corporation with only \$17,256 in the bank account be giving out 10% raises? Ten percent raises are very rare in this day and time. (I have no documentation from this. In a letter dated September 12, 2014 that I received from AWS&SSC's attorney, "Please be advised that from this date forward and until further notice, you and your family are requested to have no further communication at any time and in any form whatsoever, whether verbal, written, digital, telephonic, or in any other form, with any officer, director, manager, employee, agent, contractor or representative of Avalon other than in the case of the exceptions described in the third paragraph of this letter." Basically, I am allowed to pay my bill and report emergencies to AWS&SSC only. A copy of this letter is attached.)

- 15) On the August 14, 2014 agenda, AWS&SSC included the following wording in regards to the financial report, "Copies will be available in paper format during normal office hour no earlier than two working days after the meeting. A written request and Charges for copies will apply, in accordance to Texas Government Code, Chapter 552." During the meeting the Board argued that they never stated that members were required to file an open records request or pay to obtain copies of the financial report. They did give me a copy of the financials at the end of the meeting, but it was too late to ask any questions. (This documentation has already been sent to the TCEQ. It is on the video/audio DVD from the August 14th meeting that accompanied the letter of August 20th. It is on Part II at 18:00.)
- During the August meeting the Operations Manager discussed moving a building that was going to be donated to AWS&SSC. The estimate given for moving and renovating this building that in his words, "is in bad shape," is \$6500. It was also stated that they needed this so everyone can have their own office. It's only my opinion, but I do not believe that a WSC with only \$17,000 in the bank (and only has this because they borrowed \$35,000 in December and withdrew \$10,000 from a certificate of deposit in July) should be concerned about office space for employees. Any money that AWS&SSC has should be going to repair the aging infrastructure and saving for emergencies. (This documentation has already been sent to the TCEQ. It is on the video/audio DVD from the August 14th meeting that accompanied the letter of August 20th. It is at the beginning of the CD. The Operations Manager's Report is one of the first topics covered.)
- 17) During the August 14th meeting I gave AWS&SSC's President a letter requesting information on the 2012 tax return. The return was not filed until December 2013. I recently obtained a copy from an online website that has returns for non-profits. I had several questions about the return, including wanting to know why it was not reviewed at a meeting prior to filing, as is stated on the return.

According to the tariff, the Board must respond in writing. I received a response from AWS&SSC's attorney which states that, "My client and I decline at this time to address any of the other allegations/issues in either of your letters because they are either repetitive of previous communications with you or because they are argumentative, frivolous and contentious." It doesn't not appear that I will be getting a response to my questions. This is in violation of the tariff. (Documentation regarding the income tax return and my request were sent to TCEQ on August 20th with the letter. I am now attaching a copy of the letter from the attorney.)

I apologize if my two previous letters caused confusion. But unfortunately, every time AWS&SSC holds a meeting there are new issues that need to be reported. Since I am complaining about AWS&SSC's failure to follow the law, I am doing my best to comply with the rules set by the PUC for submission of documentation. However, I do not know how to submit a CD or a DVD, so I am sending one copy only. Please make sure they are available to Mr. Fred Bednarski who has been assigned this case.

I am available to talk with anyone from the PUC at any time about these issues. I will even come to Austin, if that is what is takes. The members of AWS&SSC need these issues resolved.

Sincerell

Carol D. Gillespie

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September 12, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

NO.: 9407 1118 9956 1164 4607 30

Ms. Carol Gillespie 3921 Bobbin Ln. Addison, TX 75001-3102

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

NO.: 9407 1118 9956 1164 4835 62

Ms. Mary Grace Gillespie Bates 815 Amherst Waxahachie, TX 75165

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

NO.: 9407 1118 9956 1164 4607 30

Ms. Marcia Gillespie 3921 Bobbin Ln. Addison, TX 75001-3102

Re: Communications with Avalon Water Supply and Sewer Service Corporation

Dear Ladies:

This firm represents Avalon Water Supply and Sewer Service Corporation ("Avalon"). Please be advised that from this date forward and until further notice, you and your family are requested to have no further communication at any time and in any form whatsoever, whether verbal, written, digital, telephonic or in any other form, with any officer, director, manager, employee, agent, contractor or representative of Avalon other than in the case of the exceptions described in the third paragraph of this letter.

Should you have any need to communicate with Avalon, please direct your communications to me in writing. Any communication from you or your family to Avalon in violation of this request will be forwarded to me for review and any necessary reply. Any communication that does not comply with this request, including communications delivered during an Avalon directors or members meeting, will not be responded to or acted upon by Avalon.

This request does not apply to payments due to Avalon or emergency requests for service or repair, all of which should be directed to the Avalon office as usual.

Should you have any questions about this request, you're welcome to contact the undersigned in writing. Thank you in advance for your courtesy and cooperation.

Very truly yours,

Law Offices of Aimee Hess P.C.

Aimee Hess

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	Aimee Hess

Law Offices of AIMEE HESS A Professional Corporation

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6967 S.E. County Road 2385 Streetman, Texas 75859-7067

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September 12, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

NO.: 9407 1118 9956 1164 4607 30

Ms. Carol Gillespie 3921 Bobbin Ln. Addison, TX 75001-3102

Re: August 30, 2014 Public Records Request

Dear Ms. Gillespie:

As you know, this office represents Avalon Water Supply and Sewer Service Corporation ("Avalon"). Please accept this letter as a response both to your Public Records complaint against Avalon, as well as to your letters dated August 14, 2014 and August 30, 2014 to Avalon.

Your letter dated August 14, 2014 does not contain a request for a copy of the minutes of the July 2014 Avalon Directors meeting or for any other documents for that matter. Your August 30, 2014 correspondence does contain a request for a copy of the July 2014 Avalon Directors meeting minutes. While your letter of August 30, 2014 states that you delivered a written request for a copy of these minutes to Avalon at the August 14, 2014 meeting, this is incorrect. Avalon has at no time received such a request from you other than the request in your August 30, 2014 correspondence to Avalon.

The Texas Government Code clearly allows for the minutes of the Avalon Directors meeting to be recorded and digitally archived. We have confirmed the use of this procedure by Avalon personally with the Texas Attorney General's office. The cost of preparing and mailing the CD that contains the minutes of the July 2014 meeting is \$5.00. Please send your payment in this amount, in good funds, to the Avalon business office. Promptly thereafter, and assuming your check (if you pay by check) for payment clears your bank, Avalon will make a copy of the recording of the July 2014 meeting and mail that to you.

My client and I decline at this time to address any of the other allegations/issues in either of your letters because they are either repetitive of previous communications with you or because they are argumentative, frivolous and contentious.

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Should you have questions regarding any aspect of this matter, please contact me in writing. Thank you in advance for your courtesy and cooperation.

Very truly yours,

Law Offices of Aimee Hess P.C.

Aimee Hess

By:			
	Aimee	Hess	