

Request for Admission No. 2-52: Admit that Avalon has not made the voting roster available to its members in the corporation's office at least 28 days prior to the April 11, 2016.

RESPONSE:

Request for Admission No. 2-53: Admit that Avalon did not post the notice of membership meeting and the agenda at the Ellis County Courthouse at least 72 hours before the scheduled meeting time of 7:00 p.m. on April 11, 2016.

RESPONSE:

Request for Admission No. 2-54: Admit that Avalon did not post notice of the New Board of Director Meeting at the Ellis County Courthouse at least 72 hours before the scheduled meeting time of 7:00 p.m. on April 11, 2016.

RESPONSE:

Request for Admission No. 2-55: Admit that Avalon did not prepare an alphabetical list of the names and addresses of all its voting members ("voting roster") for the 2016 annual meeting of the members on or before March 11, 2016.

RESPONSE:

Request for Admission No. 2-56: Admit that Avalon directors, candidate for directors, employees, staff, or independent contractors opened the secured box between the time when the corporation began accepting ballot forms for the 2016 annual meeting of the members and April 4, 2016.

RESPONSE:

Request for Admission No. 2-57: Admit that Avalon directors, candidate for directors, employees, staff, or independent contractors opened the secured box between the time when the corporation began accepting ballot forms for the 2016 annual meeting of the members and April 11, 2016.

RESPONSE:

Request for Admission No. 2-58: Admit that Avalon's secured box does not have a lock and key.

RESPONSE:

Request for Admission No. 2-59: Admit that the secured box was not in the sole custody of the Election Auditor between 12:00 noon on April 1, 2016 and the 7:00 p.m. on April 4, 2016.

RESPONSE:

Request for Admission No. 2-60: Admit that the secured box was not in the sole custody of the Election Auditor between 12:00 noon on April 8, 2016 and 7:00 p.m. on April 11, 2016.

RESPONSE:

Request for Admission No. 2-61: Admit that the Election Auditor did not verify and has not verified whether members had already submitted a ballot on April 4, 2016.

RESPONSE:

Request for Admission No. 2-62: Admit that the Election Auditor did not open ballot envelopes received prior to April 4, 2016.

RESPONSE:

Request for Admission No. 2-63: Admit that Heather Howell (aka Heather Noles), is an Avalon employee or independent contractor engaged by the corporation as part of the corporation's regular course of business.

RESPONSE:

Request for Admission No. 2-64: Admit that Heather Howell (aka Heather Noles) is not the Election Auditor for Avalon.

RESPONSE:

Request for Admission No. 2-65: Admit that Heather Howell (aka Heather Noles) opened ballot envelopes prior to the April 4, 2016 meeting.

RESPONSE:

Request for Admission No. 2-66: Admit that Heather Howell (aka Heather Noles) opened ballot envelopes prior to the April 11, 2016 meeting.

RESPONSE:

Request for Admission No. 2-67: Admit that the ballot envelopes for the 2016 annual meeting were kept in the Avalon offices between the time the corporation began accepting ballot forms for the 2016 Director's election and April 4, 2016.

RESPONSE:

Request for Admission No. 2-68: Admit that the ballot envelopes for the 2016 annual meeting were kept in the Avalon offices between the time the corporation began accepting ballot forms for the 2016 Director's election and April 11, 2016.

RESPONSE:

Request for Admission No. 2-69: Admit that the notice for the April 4, 2016 meeting did not comply with Avalon's current bylaws or election procedures.

RESPONSE:

Request for Admission No. 2-70: Admit that the board was aware of the need for and/or wanted additional training from TCEQ staff relating to operational issues, customer relations, bylaws and tariff issues after December 5, 2013.

RESPONSE:

REQUESTS FOR PRODUCTION

Request for Production 3-1: Please provide a copy of the current bylaws of the corporation, including any amendments thereto.

RESPONSE:

Request for Production 3-2: Please provide a current, signed and dated copy of corporation's election procedures for members' meetings.

RESPONSE:

Request for Production 3-3: Please provide documentation showing that Avalon sent notice of opportunity to submit applications for directors' positions to all its member at least 75 days before April 4, 2016.

RESPONSE:

Request for Production 3-4: Please provide documentation showing that Avalon sent notice of opportunity to submit applications for directors' positions to all its member at least 75 days before April 11, 2016.

RESPONSE:

Request for Production 3-5: Please provide a copy of the meeting packet for the April 4, 2016 member meeting that was mailed to all members.

RESPONSE:

Request for Production 3-6: Please provide a copy of the meeting packet for the April 11, 2016 member meeting that was mailed to all members.

RESPONSE:

Request for Production 3-7: Please provide documentation showing the Board of Director's approval of the meeting packet for the April 4, 2016 member meeting.

RESPONSE:

Request for Production 3-8: Please provide documentation showing the Board of Directors' approval of the meeting packet for the April 11, 2016 member meeting.

RESPONSE:

Request for Production 3-9: Please provide documentation showing that the Board of Directors selected an independent auditor at least 30 days before April 4, 2016.

RESPONSE:

Request for Production 3-10: Please provide documentation showing that the Board of Directors selected an independent auditor at least 30 days before April 11, 2016.

RESPONSE:

Request for Production 3-11: Please provide documentation showing that Avalon made the voting roster available to its members in the corporation's office at least 28 days prior to the April 4, 2016 meeting.

RESPONSE:

Request for Production 3-12: Please provide documentation showing that Avalon made the voting roster available to its members in the corporation's office at least 28 days prior to the April 11, 2016 meeting.

RESPONSE:

Request for Production 3-13: Please provide a copy of the notice of the membership meeting and the agenda for the meeting scheduled for April 4, 2016.

RESPONSE:

Request for Production 3-14: Please provide a copy of the notice of the membership meeting and the agenda for the meeting scheduled for April 11, 2016.

RESPONSE:

Request for Production 3-15: Please provide a copy of the notice of the New Board of Director Meeting scheduled for April 4, 2016.

RESPONSE:

Request for Production 3-16: Please provide a copy of the notice of the New Board of Director meeting scheduled for April 11, 2016.

RESPONSE:

Request for Production 3-17: Please provide a copy of the alphabetical list of the names and addresses of all its voting members ("voting roster") prepared for the April 11, 2016 annual meeting.

RESPONSE:

Request for Production 3-18: Please provide a copy of the posted agenda for the new board of directors meeting original scheduled for April 4, 2016.

RESPONSE:

Request for Production 3-19: Please provide a copy of the posted agenda for the new board of directors meeting scheduled for April 11, 2016.

RESPONSE:

Request for Production 3-20: Please provide copies of the ballot for those members voting in person at the 2016 annual meeting of the members.

RESPONSE:

Request for Production 3-21: Please provide copies of any training exercises or other assistance provided to Avalon by the TCEQ or PUC or their contractors.

RESPONSE:

Request for Production 3-22: Please provide copies of Avalon's conflict of interest policy.

RESPONSE:

Request for Production 3-23: Please provide copies of Avalon's Credentials Committee's written procedures for conducting annual or special membership meetings, including any procedures for proper notification of the membership for annual or special meetings and delivery of the corporation's proxy forms.

RESPONSE:

EXHIBIT D

SOAH DOCKET NO. 473-16-2033.WS
PUC DOCKET NO. 43146

2016 MAR 22 AM 11:24

COMPLAINT OF CAROL D. GILLESPIE §
AGAINST AVALON WATER SUPPLY §
AND SEWER SERVICES §
CORPORATION (37985-I) §

PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

PRELIMINARY ORDER

On August 24, 2014, Carol Gillespie filed a complaint with the Texas Commission on Environmental Quality against Avalon Water Supply and Sewer Services Corporation regarding alleged violations of Texas Water Code (TWC) § 13.004. Avalon is a Texas Water Code chapter 67 water supply and sewer service company located Avalon, Texas and serves approximately 340 customers.¹ Ms. Gillespie alleges that Avalon violated TWC § 13.004(a)(1) and (2) by not operating in accordance with the bylaws or in a manner that complies with the requirements for classification as a nonprofit water service corporation water supply corporation.²

On September 1, 2014, this case transferred to the Public Utility Commission of Texas (Commission).³ This docket was referred to the State Office of Administrative Hearings (SOAH) on January 25, 2016. Lists of issues were timely filed by Carol Gillespie, Avalon, and Commission Staff.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.⁴ After reviewing the pleadings

¹ Response of Avalon Water Supply and Sewer Services Corporation to the Complaint of Carol Gillespie at 2 (March 4, 2015).

² Letter from Carol Gillespie, Response to Order No. 3 at 2 (March 27, 2015).

³ Act of May 13, 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.96, 2013 Tex. Gen. Laws 725, 730; Act of May 13, 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 96, 2013 Tex. Gen. Laws 772.

⁴ Tex. Gov't Code Ann. § 2003.049(e) (West 2011).

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submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Is Avalon failing to comply with TWC § 13.004?
2. Is Avalon failing to conduct annual or special meetings in compliance with Section 67.007? TWC § 13.004(a)(1).
3. Is Avalon operating in a manner that fails to comply with the requirements for classification as a nonprofit water supply or sewer service corporation as prescribed by TWC §§ 13.002(11) and (24)? TWC § 13.004(a)(2).
4. What should the Commission require of Avalon if it is failing to comply with TWC § 13.004?

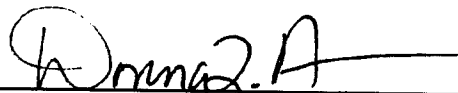
This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the 22nd day of March 2016.

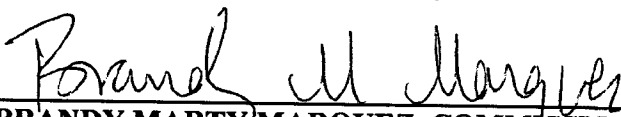
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER

EXHIBIT E

EXCERPT

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE B. WATER RIGHTS

CHAPTER 13. WATER RATES AND SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 13.001. LEGISLATIVE POLICY AND PURPOSE. (a) This chapter is adopted to protect the public interest inherent in the rates and services of retail public utilities.

(b) The legislature finds that:

(1) retail public utilities are by definition monopolies in the areas they serve;

(2) the normal forces of competition that operate to regulate prices in a free enterprise society do not operate for the reason stated in Subdivision (1) of this subsection; and

(3) retail public utility rates, operations, and services are regulated by public agencies, with the objective that this regulation will operate as a substitute for competition.

(c) The purpose of this chapter is to establish a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the retail public utilities.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 1, eff. Sept. 1, 1989.

Sec. 13.002. DEFINITIONS. In this chapter:

(1) "Affected person" means any landowner within an area for which a certificate of public convenience and necessity is filed, any retail public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any

person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(1-a) "Landowner," "owner of a tract of land," and "owners of each tract of land" include multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(2) "Affiliated interest" or "affiliate" means:

(A) any person or corporation owning or holding directly or indirectly five percent or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a utility;

(C) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly five percent or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of five percent of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

(F) any person or corporation that the utility commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the utility commission, after notice and hearing, determines is exercising substantial influence over the policies and actions of the utility in

conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(3) "Allocations" means, for all retail public utilities, the division of plant, revenues, expenses, taxes and reserves between municipalities or between municipalities and unincorporated areas, where those items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

(4) "Board" means the Texas Water Development Board.

(4-a) "Class A utility" means a public utility that provides retail water or sewer utility service through 10,000 or more taps or connections.

(4-b) "Class B utility" means a public utility that provides retail water or sewer utility service through 500 or more taps or connections but fewer than 10,000 taps or connections.

(4-c) "Class C utility" means a public utility that provides retail water or sewer utility service through fewer than 500 taps or connections.

(5) "Commission" means the Texas Commission on Environmental Quality.

(6) "Commissioner" means a member of the commission.

(7) "Corporation" means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships but does not include municipal corporations unless expressly provided in this chapter.

(8) "Executive director" means the executive director of the commission.

(9) "Facilities" means all the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(10) "Incident of tenancy" means water or sewer service,

provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(11) "Member" means a person who holds a membership in a water supply or sewer service corporation and is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(12) "Municipality" means cities existing, created, or organized under the general, home-rule, or special laws of this state.

(13) "Municipally owned utility" means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(14) "Order" means the whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rulemaking, but including issuance of certificates of convenience and necessity and rate setting.

(15) "Person" includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations.

(16) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this chapter and includes the denial of relief or the dismissal of a complaint.

(17) "Rate" means every compensation, tariff, charge, fare, toll, rental, and classification or any of those items demanded, observed, charged, or collected whether directly or indirectly by any retail public utility for any service, product, or commodity described in Subdivision (23) of this section and any rules, regulations, practices, or contracts affecting that compensation, tariff, charge, fare, toll, rental, or classification.

(18) "Regulatory authority" means, in accordance with the context in which it is found, the commission, the utility commission,

or the governing body of a municipality.

(19) "Retail public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(20) "Retail water or sewer utility service" means potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(21) "Service" means any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(22) "Test year" means the most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.

(22-a) "Utility commission" means the Public Utility Commission of Texas.

(23) "Water and sewer utility," "public utility," or "utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by

others.

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

(25) "Wholesale water or sewer service" means potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

(26) "Affected county" is a county to which Subchapter B, Chapter 232, Local Government Code, applies.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 1, 2, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.058, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 400, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, Sec. 6, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.02, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.52, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, Sec. 29, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1145 (H.B. 2876), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.05, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.08, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 8, eff. September 1, 2013.

Sec. 13.003. APPLICABILITY OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. Chapter 2001, Government Code applies to all proceedings under this chapter except to the extent inconsistent with this chapter.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

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

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

(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.

Added by Acts 2005, 79th Leg., Ch. 1057 (H.B. 1358), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.09, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 9, eff. September 1, 2013.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 13.011. EMPLOYEES. (a) The utility commission and the executive director of the commission, subject to approval, as applicable, by the utility commission or the commission, shall employ

WATER CODE

TITLE 4. GENERAL LAW DISTRICTS

CHAPTER 67. NONPROFIT WATER SUPPLY OR SEWER SERVICE CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 67.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of directors of a corporation.
- (2) "Corporation" means a water supply or sewer service corporation operating under this chapter.
- (3) "Director" means a member of the board of directors.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.002. PURPOSE OF CORPORATION. A corporation may be organized under this chapter to provide:

- (1) water supply, sewer service, or both for a municipality, a private corporation, an individual, or a military camp or base; and
- (2) flood control and a drainage system for a political subdivision, private corporation, or another person.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.003. CREATION OF CORPORATION. (a) Three or more individuals who are citizens of this state may form a corporation by making an application to the secretary of state in the same manner as provided by law for an application for a private corporation.

(b) The application for charter must include the number of directors and the name of each director.

(c) The name designated for the corporation must include the words "Water Supply Corporation."

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.004. APPLICATION OF TEXAS NON-PROFIT CORPORATION ACT. To the extent it does not conflict with this chapter, the Texas Non-

Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a corporation created under:

- (1) this chapter; or
- (2) Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.005. DIRECTORS. (a) A corporation may not have more than 21 directors.

(b) The corporation may increase the number of directors by amendment to the bylaws but may not exceed the limit imposed by Subsection (a).

(c) The bylaws of the corporation may provide that directors serve staggered terms of approximately two or three years.

(d) At the first annual meeting of the shareholders, the directors shall be divided into two or three classes according to the length of the terms the directors serve. The classification of directors may not take effect before that meeting.

(e) The division of the directors and the corresponding terms must be set so that:

(1) one-half of the directors, as nearly as possible, are elected annually, if a two-year term is provided; or

(2) one-third of the directors, as nearly as possible, are elected annually, if a three-year term is provided.

(f) After the implementation of two-year or three-year terms for directors, as directors' terms expire, the members shall elect their successors to serve until the second or third succeeding annual meeting after their election, as appropriate.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.0051. QUALIFICATIONS FOR ELECTION OR APPOINTMENT AS DIRECTOR. (a) To be qualified for election or appointment as a director, a person must be:

- (1) 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable; and

(2) a member or shareholder of the corporation.

(b) In addition to the qualifications prescribed by Subsection (a), a person is not qualified to serve as a director if the person:

(1) has been determined by a final judgment of a court exercising probate jurisdiction to be:

(A) totally mentally incapacitated; or

(B) partially mentally incapacitated without the right to vote; or

(2) has been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities.

(c) If the board determines that a person serving as a director does not have the qualifications prescribed by Subsections (a) and (b), the board shall, not later than the 60th day after the date the board makes that determination, remove the director and fill the vacancy by appointing a person who has the qualifications prescribed by those subsections.

Added by Acts 2011, 82nd Leg., R.S., Ch. 10 (S.B. 333), Sec. 1, eff. September 1, 2011.

Sec. 67.0052. BALLOT APPLICATION. (a) To be listed on the ballot as a candidate for a director's position, a person must file an application with the corporation that includes:

(1) the director's position sought, including any position number or other distinguishing number;

(2) if the corporation has 1,500 or more members or shareholders, a petition signed by 20 members or shareholders requesting that the person's name be placed on the ballot as a candidate for that position;

(3) the person's written consent to serve, if elected;

(4) biographical information about the person; and

(5) a statement of the person's qualifications, including a statement that the person has the qualifications prescribed by Section 67.0051.

(b) The application must be filed with the corporation not later than the 45th day before the date of the annual meeting. The corporation shall notify the members or shareholders of the

application deadline not later than the 30th day before the deadline.

(c) The corporation shall make available director candidate application forms at the corporation's main office and shall provide application forms by mail or electronically on request.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 10 (S.B. 333), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 1, eff. May 18, 2013.

Sec. 67.0053. BALLOT. (a) Not later than the 30th day before the date of an annual meeting, the corporation shall mail to each member or shareholder of record:

- (1) written notice of the meeting;
- (2) the election ballot; and
- (3) a statement of each candidate's qualifications, including biographical information as provided in each candidate's application.

(b) The election ballot must include:

- (1) the number of directors to be elected; and
- (2) the names of the candidates for each position.

(c) This section:

- (1) applies only to a corporation that provides retail water or sewer service; and
- (2) does not apply to an election in relation to a candidate for a director's position for which the board has adopted a resolution under Section 67.0055.

Added by Acts 2011, 82nd Leg., R.S., Ch. 10 (S.B. 333), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 2, eff. May 18, 2013.

Sec. 67.0054. ELECTION PROCEDURES. (a) A member or shareholder

may vote:

- (1) in person at the annual meeting;
 - (2) by mailing a completed ballot to the office of the independent election auditor selected under Section 67.007(d) or to the corporation's main office, which ballot must be received by the corporation not later than noon on the business day before the date of the annual meeting; or
 - (3) by delivering a completed ballot to the office of the independent election auditor or to the corporation's main office not later than noon on the business day before the date of the annual meeting.
- (b) The independent election auditor shall receive and count the ballots before the annual meeting is adjourned.
- (c) For each director's position, the candidate who receives the highest number of votes or who is the subject of a resolution described by Section 67.0055 is elected.
- (d) If two or more candidates for the same position tie for the highest number of votes for that position, those candidates shall draw lots to determine who is elected.
- (e) The independent election auditor shall provide the board with a written report of the election results.
- (f) The board may adopt necessary rules or bylaws to implement this section, including rules or bylaws to ensure the fairness, integrity, and openness of the voting process.
- (g) This section applies only to a corporation that provides retail water or sewer service.

Added by Acts 2011, 82nd Leg., R.S., Ch. 10 (S.B. 333), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 3, eff. May 18, 2013.

Sec. 67.0055. ELECTION OF UNOPPOSED CANDIDATE. (a) This section applies only to an election for a director's position on a board of a corporation that provides retail water or sewer service in which a candidate who is to appear on the ballot for the position is unopposed.

(b) The board by resolution may declare a candidate elected to a director's position if the board certifies in writing that the candidate is unopposed for the position. A copy of the resolution shall be posted at the corporation's main office.

(c) If a declaration is made under Subsection (b), the election for that position is not held.

(d) If the election for the unopposed candidate would have been held with an annual meeting of the members or shareholders of the corporation, the text of the declaration described by Subsection (b) shall be read into the record at the annual meeting.

(e) The ballots used at a separate election that is held at the same time as an election for an unopposed candidate would have been held shall include after measures or contested races the position and name of a candidate declared elected under this section, under the heading "Unopposed Candidates Declared Elected."

(f) A person may not, by intimidation or by means of coercion, influence or attempt to influence a person to withdraw as a candidate or not to file an application for a place on the ballot so that an election may be canceled.

(g) The board may adopt necessary rules or bylaws to implement this section, including rules or bylaws to ensure the fairness, integrity, and openness of the process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 4, eff. May 18, 2013.

Sec. 67.006. OFFICERS. (a) The board shall elect a president, a vice president, and a secretary-treasurer following the issuance of a charter and after each annual meeting of the membership or shareholders. At the meeting, each member or stockholder may be allowed only one vote regardless of the number of memberships or stock certificates held by the person.

(b) The board may require a bond of an officer for faithful performance of the officer's duties.

(c) The salary of an officer of the corporation other than secretary-treasurer or a manager employed under Section 67.012 may not exceed \$5,000 a year. The board shall set the secretary-treasurer's salary at an amount commensurate with the secretary-treasurer's

duties.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.18(a), eff. Sept. 1, 1999.

Sec. 67.007. ANNUAL OR SPECIAL MEETING OF RETAIL CORPORATION.

(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.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 54, Sec. 1, eff. May 10, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 10 (S.B. 333), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 5, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 6, eff. May 18, 2013.

Sec. 67.0075. ANNUAL OR SPECIAL MEETING OF OTHER CORPORATION. A corporation to which Section 67.007 does not apply shall comply with the annual meeting and director election provisions prescribed by Chapter 22, Business Organizations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 84 (S.B. 447), Sec. 7, eff. May 18, 2013.

Sec. 67.008. DISTRIBUTION OF PROFITS. (a) The incorporators may provide in the charter of the corporation that a dividend will not be paid on the stock and that all profits of the corporation will be paid annually to political subdivisions, private corporations, or other persons that have transacted business with the corporation during the previous year.

(b) The corporation shall distribute any profits under Subsection (a) in direct proportion to the amount of business the corporation transacts with each entity during that year.

(c) The corporation may not make a distribution under Subsection (a) if the corporation has unpaid indebtedness.

(d) A corporation may allocate to a sinking fund an amount of

the annual profits as determined necessary by the board for maintenance, operation, and replacements.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.009. FACILITIES. A corporation may construct, acquire, lease, improve, extend, or maintain a facility, plant, equipment, or appliance helpful or necessary to provide more adequate sewer service, flood control, or drainage for a political subdivision.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.010. POWER TO CONTRACT WITH OTHER ENTITIES. (a) A corporation may enter into a contract with any political subdivision, federal agency, or other entity for the acquisition, construction, or maintenance of a project or improvement for an authorized purpose.

(b) A corporation may obtain money from any political subdivision of this state, federal agency, or other entity to finance the acquisition or construction of a project or improvement for an authorized purpose.

(c) A corporation may encumber the project or improvement and may encumber any income, fees, rents, and other charges derived from the operation of the project or improvement. The corporation may issue bonds, notes, or warrants to secure payment of funds received. Indebtedness authorized by this subsection is a charge only on specifically encumbered property and revenues and is not a general obligation of indebtedness of the corporation.

(d) A political subdivision may contract with a corporation under Section 552.014, Local Government Code, to carry out this chapter. If a corporation issues bonds secured by a contract entered into under Section 552.014, Local Government Code, the corporation is considered to be acting for or on behalf of that political subdivision for the purposes of Section 1201.002(1), Government Code. A political subdivision is authorized to approve by ordinance, resolution, or order the articles of incorporation and the bylaws of a corporation that is created for the purpose of constructing facilities under a contract as provided by Section 552.014, Local Government Code.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Amended by Acts 2003, 78th Leg., ch. 248, Sec. 56, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(32), eff. April 1, 2009.

Sec. 67.0105. WATER FOR FIRE SUPPRESSION. (a) A corporation may provide a water supply to a governmental entity or volunteer fire department for use in fire suppression.

(a-1) A corporation may enter into a contract with a governmental entity or a volunteer fire department to supply water to fire hydrants owned by the governmental entity or the corporation for use in fire suppression by the governmental entity's fire department or a volunteer fire department. The contract must be under terms that are mutually beneficial to the contracting parties.

(b) The furnishing of a water supply and fire hydrant equipment by a governmental entity or a volunteer fire department directly or through another entity by a lease, contract, or any other manner is an essential governmental function and not a proprietary function for all purposes, including the application of Chapter 101, Civil Practice and Remedies Code.

(c) A corporation that provides a governmental entity or volunteer fire department with a water supply or fire hydrant equipment to carry out the governmental function described by Subsection (b) may be liable for damages only to the extent that the governmental entity or volunteer fire department would be liable if the governmental entity or volunteer fire department were performing the governmental function directly.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.19(a), eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 290 (H.B. 1814), Sec. 1, eff. September 1, 2011.

Text of section as amended by Acts 2003, 78th Leg., ch. 46, Sec. 1

Sec. 67.011. ADDITIONAL POWERS OF CORPORATION. In addition to

other powers granted by this chapter, a corporation may:

- (1) own, hold, lease, or otherwise acquire water wells, springs, or other sources of water supply;
- (2) build, operate, and maintain pipelines to transport water or wastewater;
- (3) build and operate plants and equipment necessary to distribute water or to treat and dispose of wastewater; and
- (4) sell water or provide wastewater services to a political subdivision, a private corporation, or an individual.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 669, Sec. 151, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 46, Sec. 1, eff. May 15, 2003.

Text of section as amended by Acts 2003, 78th Leg., ch. 512, Sec. 1

Sec. 67.011. POWERS OF CORPORATION IN CERTAIN COUNTIES. (a) In a county with a population of less than 3.3 million, a corporation may:

- (1) own, hold, lease, or otherwise acquire water wells, springs, or other sources of water supply;
- (2) build, operate, and maintain pipelines to transport water or wastewater;
- (3) build and operate plants and equipment necessary to distribute water or to treat and dispose of wastewater;
- (4) sell water or provide wastewater services to a political subdivision, a private corporation, or an individual; and
- (5) establish and enforce reasonable customer water conservation practices and prohibit excessive or wasteful uses of potable water.

(b) A corporation may enforce customer water conservation practices under Subsection (a)(5) by assessing reasonable penalties as provided in the corporation's tariff. A penalty may be appealed in the same manner as provided for appeal of new customer service costs under Section 13.043(g). In an appeal, the commission shall approve a corporation's penalty if the commission determines that the penalty is clearly stated in the tariff, that the penalty is reasonable, and that the corporation has deposited the penalty in a separate account

dedicated to enhancing water supply for the benefit of all the corporation's customers.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 669, Sec. 151, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 512, Sec. 1, eff. June 20, 2003.

Sec. 67.012. USE OF MANAGER. The board may employ a manager to handle the business of the corporation under the direction of the board. The board shall set the salary for the manager.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.013. USE OF COUNSEL. The board may employ and compensate counsel to represent the corporation as the board determines is necessary.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.014. DEPOSITORY FOR FUNDS; PERMITTED INVESTMENTS. (a) The board shall select as depository for the funds of the corporation a bank in this state that is insured by the Federal Deposit Insurance Corporation and require from the depository a bond in an amount the board finds necessary to protect the corporation.

(b) Funds allocated by the board to a sinking fund for replacement, amortization of debts, and the payment of interest that are not required to be spent in the year in which deposited shall be:

(1) invested in bonds or other evidence of indebtedness of the United States;

(2) placed with the depository in an interest-bearing savings account;

(3) invested in shares or share accounts in a savings and loan association insured by the Federal Deposit Insurance Corporation;
or

(4) invested in an investment that is authorized under Subchapter A, Chapter 2256, Government Code, and by a written investment policy approved by the board that complies with Section 2256.005, Government Code.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 258, Sec. 1, 2, eff. May 28,
1999.

Sec. 67.015. EXEMPTION FROM SECURITIES ACT. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) does not apply to:

- (1) a note, bond, or other evidence of indebtedness issued by a corporation doing business in this state to the United States;
- (2) an instrument executed to secure a debt of a corporation to the United States; or
- (3) the issuance of a membership certificate or stock certificate of a corporation.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.016. TRANSFER OR CANCELLATION OF STOCK, MEMBERSHIP, OR OTHER RIGHT OF PARTICIPATION. (a) A person or entity that owns any stock of, is a member of, or has some other right of participation in a corporation may not sell or transfer that stock, membership, or other right of participation to another person or entity except:

- (1) by will to a person who is related to the testator within the second degree by consanguinity;
- (2) by transfer without compensation to a person who is related to the owner of the stock or other interest within the second degree by consanguinity; or
- (3) by transfer without compensation or by sale to the corporation.

(b) Subsection (a) does not apply to a person or entity that transfers the membership or other right of participation to another person or entity as part of the conveyance of real estate from which the membership or other right of participation arose.

(c) The transfer of stock, a membership, or another right of participation under this section does not entitle the transferee to water or sewer service unless each condition for water or sewer service is met as provided in the corporation's published rates, charges, and conditions of service. A transfer and service

application must be completed on the corporation's standardized forms and filed with the corporation's office in a timely manner. The conditions of service may not require a personal appearance in the office of the corporation if the transferee agrees in writing to accept the rates, charges, and conditions of service.

(d) The corporation may make water or sewer service provided as a result of stock, a membership, or another right of participation in the corporation conditional on ownership of the real estate designated to receive service and from which the membership or other right of participation arises.

(e) The corporation may cancel a person's or other entity's stock, membership, or other right of participation if the person or entity fails to:

(1) meet the conditions for water or sewer service prescribed by the corporation's published rates, charges, and conditions of service; or

(2) comply with any other condition placed on the receipt of water or sewer service under the stock, membership, or other right of participation.

(f) Consistent with Subsection (a), the corporation may reassign canceled stock or a canceled membership or other right of participation to a person or entity that has legal title to the real estate from which the canceled membership or other right of participation arose and for which water or sewer service is requested.

(g) Notwithstanding Subsection (a), the corporation shall reassign canceled stock or a canceled membership or other right of participation to a person or entity that acquires the real estate from which the membership or other right of participation arose through judicial or nonjudicial foreclosure. The corporation may require proof of ownership resulting from the foreclosure.

(h) Service provided following a transfer under Subsection (f) or (g) is made subject to compliance with the conditions for water or sewer service prescribed by the corporation's published rates, charges, and conditions of service.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.

Sec. 67.017. VOLUNTARY CONTRIBUTIONS ON BEHALF OF EMERGENCY

SERVICES. (a) A corporation may as part of its billing process collect from its customers a voluntary contribution, including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service.

(b) A corporation that collects contributions under this section shall provide each customer at the time that the customer first subscribes to the water or sewer service, and at least annually thereafter, a written statement:

- (1) describing the procedure by which the customer may make a contribution with the customer's bill payment;
- (2) designating the volunteer fire department or emergency medical service to which the corporation will deliver the contribution;
- (3) informing the customer that a contribution is voluntary; and
- (4) describing the deductibility status of the contribution under federal income tax law.

(c) A billing by the corporation that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it may be deducted from the billed amount.

(d) The corporation shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the corporation may keep from the contributions an amount equal to the lesser of:

- (1) the corporation's expenses in administering the contribution program; or
- (2) five percent of the amount collected as contributions.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 2, eff. Sept. 1, 1997.