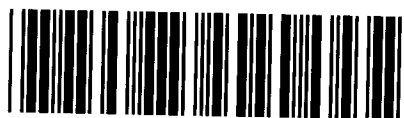




Control Number: 43146



Item Number: 52

Addendum StartPage: 0

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BEFORE THE
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COMPLAINT OF CAROL D. §
GILLESPIE AGAINST AVALON §
WATER SUPPLY AND SEWER §
SERVICES CORPORATION (37985- §
1) §

PUBLIC UTILITY COMMISSION

OF TEXAS

COMPLAINANT GILLESPIE'S MOTION TO COMPEL

TO THE HONORABLE JUDGE STEPHANIE FRAZEE:

COMES NOW, Carol D. Gillespie ("Gillespie" or "Complainant") and files this Motion to Compel the Responses of Avalon Water Supply and Sewer Services Corporation ("Avalon" or "Corporation") to her Second Request for Information. In support of the foregoing Motion, Complainant respectfully shows the following:

I. BACKGROUND

1. On July 14, 2014, Carol D. Gillespie filed her original complaint against Avalon with the Texas Commission on Environmental Quality ("TCEQ"), which complaint was supplemented by additional complaint letters and other information on August 14, 2014, August 20, 2014, September 30, 2014, October 6, 2014 and February 3, 2015.

2. After jurisdiction was transferred to the Public Utility Commission of Texas ("Commission") on September 1, 2014, Ms. Gillespie's complaint was referred to the State Office of Administrative Hearings ("SOAH") for hearing on January 25, 2016.

3. SOAH Order No. 2 was issued on March 18, 2016, establishing a hearing schedule.

4. On March 22, 2016, the Commission issued a Preliminary Order establishing a list of issues to be addressed in the hearing before SOAH, including whether Avalon was failing to comply with Texas Water Code §§ 13.002, 13.004 and 67.007 ("TWC").

5. On March 25, 2016, Complainant served her first set of Requests for Information ("RFIs") on Avalon ("First RFIs").

6. The parties entered into a Rule 11 letter on April 1, 2016 resolving some of Avalon's objections to Complainant's First RFIs. Avalon filed objections on certain remaining RFIs on April 4, 2016.

7. Complainant filed her second set of RFIs ("Second RFIs") on April 1, 2016, and following a conference of the parties, Avalon filed its objections on April 8, 2016.

8. Complainant's Motion to Compel Avalon's responses to her Second RFIs is filed within five (5) working days of receiving Avalon's objections and is therefore timely.

II. LEGAL ARGUMENT

A. Complainant's Requests for Admission are Relevant

Avalon asserts objections to Complainant's Second RFIs on the basis of relevancy, as follows:¹

Request for Admission No. 9: Admit that prior to representing Avalon, attorney, Jesse Joe Munguia had no prior experience or expertise providing legal counsel to a Water Supply and Sewer Corporation.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 10: Admit that prior to representing Avalon, attorney, Jesse Joe Munguia had no prior experience or expertise providing legal counsel to a water or wastewater utility.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 11: Admit that prior to representing Avalon, Jesse Joe Munguia had no expertise providing legal counsel to any political subdivision of the State of Texas.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case

¹ See Attachment A, excerpted pages from Respondent Avalon's Objections to Complainant Gillespie's Second Request for Information.

and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 12: Admit that attorney Jesse Joe Munguia is the grandson of former Board President Patsy Russell.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 75: Admit that Secretary-Treasurer, Robin Donaldson, is employed by the First State Bank, 100 W. Main, Italy, Texas 76651.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 76: Admit that the corporation has bank account(s) at the First State Bank, Italy, Texas.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

As set out in the Commission's Preliminary Order, the issue of whether Avalon is operating as a nonprofit water supply or sewer service corporation in accordance with applicable law is the central question of this case. Specifically, this Court is to determine whether Avalon is complying with TWC § 13.004 which includes by reference the TWC § 13.002(11) and (24) and chapter 67 requirements to operate "in accordance with by-laws or articles of incorporation."² Like all Water Supply or Sewer Service Corporations ("WSSC") organized under TWC chapter 67, Avalon is also subject to the Texas Non-Profit Corporations Act,³ chapter 22 of the Texas Business Organizations Code that requires a WSSC to comply with its bylaws or rules to regulate or manage the corporation.⁴ Thus, if Avalon is failing to comply with its bylaws, it fails to comply with

² TEX. WATER CODE ANN. § 13.002(24).

³ TEX. WATER CODE ANN. § 67.004.

⁴ TEX. BUS. ORGS. CODE ANN. § 22.102.

TWC §13.004, 13.002 and chapter 67 and may be stripped of its WSSC status and treated as a water and sewer utility. Avalon's adherence or non-compliance with its bylaws, then, is an ultimate question in this case.

Article IV, section 4 of Avalon's bylaws⁵ specifically states that, "[t]he Board of Director's shall adopt and maintain a conflict of interest policy designed to promote the business of the Corporation and serve the interests of the Membership."⁶ Complainant's Requests for Admission Nos. 9-12 relate to Mr. Jesse Joe Munguia and his role with Avalon. It is Complainant's understanding that Mr. Munguia is the grandson of Patsy Russell who was the president of the Avalon Board of Directors during the time Ms. Gillespie has alleged violations of the Texas Open Meetings Act, Avalon's bylaws and chapters 13 and 67 of the TWC. If Avalon has adopted a conflict of interest policy, as required by its bylaws, but hired an attorney with no prior water utility or open government experience and who merely had a familial connection to Avalon through a relative, this would appear to violate the bylaws. In fact, the State Bar of Texas shows that Mr. Munguia was only licensed in May 2011 contemporaneously with the underlying events alleged in Ms. Gillespie's complaint.⁷

Article V, section 5 of Avalon's bylaws also states that the Board may rely on the information and opinions prepared and presented by various people including legal counsel.⁸ If Avalon is relying or has relied on the opinions of a recently licensed attorney with no prior water utility or open government experience who was hired solely at the behest of his Board President-relative, this would appear to violate the terms of Avalon's bylaws. A violation of the conflict of interest policy violates the high ethical duty the Legislature has placed on member-owned WSSCs to carry out the members' business in an open, accessible, transparent and competent manner. Complainant's Requests for Admission relating to Mr. Munguia are relevant to Avalon's compliance with its bylaws and Avalon's objections should be overruled.

Similarly, Complainant's Requests for Admission Nos. 75 and 76 relate to Board Director Robin Donaldson's employment at a local bank that has also loaned money to

⁵ Relevant sections of Avalon's bylaws are excerpted and attached hereto as Attachment B.

⁶ Complainant requested a copy of Avalon's conflict of interest policy in its Third RFIs and is still awaiting production of documents.

⁷ See State Bar of Texas Lawyer Profile, Attachment C.

⁸ See Attachment B, Avalon's Bylaws, Article V, section 5.

Avalon, including funding for Avalon's participation in this complaint process. Here again, if Ms. Donaldson and/or Avalon violated its conflict of interest policy in obtaining funding from the bank through its Director/bank employee relationship, this would be a violation of the bylaws and therefore TWC § 13.004. Complainant's Requests for Admission regarding Ms. Donaldson's employment are relevant to Avalon's compliance with its bylaws and Avalon's objections should be overruled.

Avalon also objected to Complainant's Request for Admission No. 118 regarding water service from its groundwater well:

Request for Admission No. 118: Admit that Avalon provides water service to its members from one groundwater well.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Article XIV of Avalon's Bylaws specifically states that all members "shall receive service in accordance with the written policies of the Corporation, including the tariff of the Corporation."⁹ Avalon's tariff, like all tariffs issued by public drinking water systems as part of their Certificates of Convenience and Necessity ("CCN") obligation, requires that Avalon comply with the State's public drinking water rules – 30 TAC chapter 290, which include requirements for minimum capacity (i.e., for 50-250 connections, 0.6 gallons per minute per connection).¹⁰ Additionally Article X relating to membership transfers states that this will be done within the *capacity* of the facilities.¹¹ In other words, the WSSC cannot reasonably add additional members to the water system if it lacks minimum drinking water capacity required by law to do so. Therefore, if Avalon is not providing or has not provided service that its bylaws state shall be provided in compliance the state's drinking water capacity requirements and its policies and tariff, then Avalon is violating state law and its bylaws.

In this case, it is Complainant's understanding that one of Avalon's two

⁹ See Attachment B, Avalon's Bylaws, Article XIV.

¹⁰ Notwithstanding the transfer of utility rate jurisdiction to the Commission, 30 TAC chapter 290 is applicable to both the TCEQ and PUC insofar as both agencies have jurisdiction over customer service and protection. See also, 16 TAC ch. 24.

¹¹ See Attachment B, Avalon's Bylaws, Article X.

groundwater wells has been inactive at least part of the time period in which Complainant alleges violations. Providing water service from one, not two, of its wells in violation of the minimum drinking water capacity rules appears to be a violation of the Avalon's bylaws and TWC § 13.004. Complainant's Request for Admission regarding Avalon's groundwater well is relevant to Avalon's compliance with its bylaws and Avalon's objections should be overruled.

B. Complainant's Interrogatories are Relevant

Complainant's Interrogatories 7-13 pertain to the same subject matter as Request for Admission No. 118, whether Avalon has complied with the required minimum drinking water capacity rules for its members pursuant to state law, its tariff and bylaws:

Interrogatory No. 7: What is the total capacity, in gallons per minute per connection, of each groundwater well currently serving the members of Avalon?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 8: What is the total ground storage tank capacity per connection for the Avalon water system used to provide water service to its members?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 9: What is the total elevated storage tank capacity per connection for the Avalon water system used to provide water service to its members?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 10: What is the total pressure tank capacity, in gallons per connection, of the Avalon water system used to provide water service to its members?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 11: What is the pressure pump capacity, in gallons per minute per connection at each pump station or pressure plane used by the Avalon water system to provide water service to its members?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 12: What is the capacity of Avalon's emergency power used by the Avalon water system to provide water service to its members?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 13: Has Avalon ever requested approval to meet alternative capacity requirements in lieu of the minimum capacity requirements specified by State law?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

The language for each of Complainant's interrogatories comes directly from 30 TAC § 290.45, which relates to design and capacity requirements for public water systems (and the capacities at individual pump stations and pressure planes which serve portions of systems) and goes directly to whether Avalon is complying with its bylaws and its commitment to provide its members continuous and adequate water service under its CCN. Avalon's failure to comply with applicable public drinking water capacity requirements is a violation of its bylaws, which is one of the central questions in this case. Complainant's Interrogatories regarding Avalon's minimum drinking water capacity is relevant to Avalon's compliance with its bylaws and Avalon's objections should be overruled.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Complainant prays that the ALJ overrule Avalon's objections to Complainant's Requests for Admission Nos. 9-12, 75 and 76 and 118 and Interrogatories 7-13 and compel Avalon to respond to each and every one of those aforementioned RFIs, and for all other relief to which Complainant may be entitled.

Respectfully submitted,
GILBERT WILBURN, PLLC
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Austin, Texas 78731
Telephone: (512) 494-5341
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hgilbert@gwtxlaw.com

By: Helen S. Gilbert
Helen S. Gilbert
State Bar No. 00786263
Randall B. Wilburn
State Bar No. 24033342

ATTORNEYS FOR COMPLAINANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested on all parties on the 15th of April, 2016.

By: Helen S. Gilbert
Helen S. Gilbert

CERTIFICATE OF CONFERENCE

I certify that a reasonable effort was made to resolve the dispute regarding the Complainants' Motion to Compel Responses without the necessity of ALJ intervention, and the effort failed.

By: Helen S. Gilbert
Helen S. Gilbert

ATTACHMENT A

OBJECTION: NONE

Request for Admission No. 5: Admit that previous Board President Patsy Russell adjourned the December 8, 2011 Board Meeting, advising or directing all persons to vacate the meeting except the Board Members.

OBJECTION: NONE

Request for Admission No. 6: Admit that the public notice announcing the February 9, 2012 Board Meeting was posted on the afternoon of February 7, 2012.

OBJECTION: NONE

Request for Admission No. 7: Admit that the Board agenda for its February 9, 2012 meeting did not list for Board consideration the hiring of Jesse Joe Munguia to represent Avalon.

OBJECTION: NONE

Request for Admission No. 8: Admit that the Board agenda for its February 9, 2012 meeting did not list for Board consideration the hiring of an attorney to represent Avalon.

OBJECTION: NONE

Request for Admission No. 9: Admit that prior to representing Avalon, attorney Jesse Joe Munguia had no prior experience or expertise providing legal counsel to a Water Supply and Sewer Corporation.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 10: Admit that prior to representing Avalon, attorney Jesse Joe Munguia had no prior experience or expertise providing legal counsel to a water or wastewater utility.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 11: Admit that prior to representing Avalon, attorney Jesse Joe Munguia had no expertise providing legal counsel to any political subdivision of the State of Texas.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 12: Admit that attorney Jesse Joe Munguia is the grandson of former Board President Patsy Russell.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 13: Admit that the agenda posted for the March 8, 2012 Board Meeting did not list or provide notice of the corporation's consideration of its "eminent domain" power or use of that power in connection with the Gillespie property.

OBJECTION: NONE

Request for Admission No. 14: Admit that prior Board President Patsy Russell announced in the public meeting following the executive session on March 8, 2012, that the Board's constitutional authority would be used to "take" 500-800 feet of Gillespie property to satisfy the TCEQ buffer zone requirements.

OBJECTION: NONE

Request for Admission No. 15: Admit that the Board did not vote in open meeting on March 8, 2012, following executive session, to use eminent domain to condemn the Gillespie property.

OBJECTION: NONE

Request for Admission No. 16: Admit that the minutes from the March 8, 2012 Board Meeting, approved on April 9, 2012, do not state that the Board took a vote in open meeting to authorize the use of eminent domain to condemn the Gillespie property.

OBJECTION: NONE

Request for Admission No. 17: Admit that the minutes from the March 8, 2012 Board Meeting were amended to add a statement that the Board voted in open session to authorize the use of eminent domain to condemn the Gillespie property.

OBJECTION: NONE

Request for Admission No. 71: Admit that the agenda for the July 11, 2013 Board meeting did not list for consideration the resignation or termination of wastewater operator/consultant Dean Carrell.

OBJECTION: NONE

Request for Admission No. 72: Admit that the Board discussed the resignation or termination of Dean Carrell during the July 11, 2013 Board meeting.

OBJECTION: NONE

Request for Admission No. 73: Admit that the agenda for the September 12, 2013 Board meeting does not contain any notice of the Board's consideration of repairs to its backhoe.

OBJECTION: NONE

Request for Admission No. 74: Admit that a resolution or other document regarding the hiring of attorney Aimee Hess that was passed between Directors during the open session of the November 18, 2013 Special Meeting was not read aloud to the members/visitors present.

OBJECTION: NONE

Request for Admission No. 75: Admit that Secretary-Treasurer, Robin Donaldson, is employed by the First State Bank, 100 W. Main, Italy, Texas 76651.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 76: Admit that the corporation has bank account(s) at the First State Bank, Italy, Texas.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 77: Admit that Avalon used member deposits as collateral for a \$35,000 loan it obtained from the First State Bank, Italy, Texas in December 2013.

OBJECTION: NONE

Request for Admission No. 117: Admit that the agenda for the November 20, 2014 Special Meeting lists the action item, "[g]o into executive session to discuss the resignation of board members Manuel Rodriguez and Ricky Johnston and the appointment of board members to fill the vacancies until the annual meeting."

OBJECTION: NONE

Request for Admission No. 118: Admit that Avalon provides water service to its members from one groundwater well.

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Request for Admission No. 119: Admit that Avalon is a public water system.

OBJECTION: NONE

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all witnesses Avalon intends to call to testify at the evidentiary hearing in accordance with TEX. R. CIV. P. 192.3(d).

OBJECTION: NONE

INTERROGATORY NO. 2: Please identify each person with whom Avalon consulted, or from whom Avalon sought expert advice relating to the subject matter of this case and who is not identified in response to the Requests for Disclosure, if such consultant's or expert's work product forms the basis, either in whole or in part, of the opinions of any expert Avalon anticipates calling or may call as a witness.

OBJECTION: NONE

INTERROGATORY NO. 3: Please state the full name, address, telephone number, job title, and employer of each person answering, supplying information, or assisting in answering these Interrogatories on behalf of Avalon.

OBJECTION: NONE

INTERROGATORY NO. 4: In what meeting did the Board vote to waive late fees for Avalon ISD?

OBJECTION: NONE

INTERROGATORY NO. 5: What month and year were the Fiscal Year 2011, 2012, 2013, 2014, 2015 audits submitted to TCEQ or PUC?

OBJECTION: NONE

INTERROGATORY NO. 6: How many connections does the Avalon water and wastewater system currently have?

OBJECTION: NONE

INTERROGATORY NO. 7: What is the total capacity, in gallons per minute per connection, of each groundwater well currently serving the members of Avalon?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 8: What is total ground storage tank capacity per connection for the Avalon water system used to provide water service to its members?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 9: What is total elevated storage tank capacity per connection for the Avalon water system used to provide water service to its members?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 10: What is the total pressure tank capacity, in gallons per connection, of the Avalon water system used to provide water service to its members?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 11: What is the pressure pump capacity in gallons per minute per connection at each pump station or pressure plane used by the Avalon water system to provide water service to its members?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 12: What is the capacity of Avalon's emergency power used by the Avalon water system to provide water service to its members?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 13: Has Avalon ever requested approval to meet alternative capacity requirements in lieu of the minimum capacity requirements specified by State law?

OBJECTION: Avalon objects under TRCP 192.3 on the basis that this request is beyond the scope of discovery because it involves matters not relevant to the case and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

REQUESTS FOR PRODUCTION

OBJECTION: NONE

Request for Production 2-1: Please provide the list of voting members pursuant to Article XI, section 2 of Avalon's Bylaws, for each annual meeting since January 1, 2011.

OBJECTION: NONE

Request for Production 2-2: Please provide the certificates of completion of training pursuant to section 551.005 of the Texas Government Code for each member of the Board since 2011.

OBJECTION: NONE

ATTACHMENT B

Continuing to act in this capacity as an officer or Director of the Corporation. Any Director that has been removed under the provisions of this Article shall not be precluded from subsequent election to a position on the Board of Directors.

Section 4. The Board of Directors shall adopt and maintain a conflict of interest policy designed to promote the business of the Corporation and serve the interests of the Membership.

ARTICLE V

Section 1. Regular meetings of the Board of Directors shall be held at such time and place as the Board may determine at the next previous regular meeting and shall include posting of the meeting as required by the Texas Open Meetings Act, Chapter 551 Texas Government Code including any amendment thereto. Such notice shall specify the date, hour, place and subject of each meeting held by the Board of Directors.

Section 2. Any Director failing to attend two (2) consecutive regular monthly meetings shall be given written notice by the balance of the Board of Directors that failure by said Director to attend a third consecutive monthly meeting, without justifiable cause acceptable to the balance of the Board of Directors, shall give rise to removal of said Director from the Board. A successor shall be elected by a majority vote of the Directors remaining to serve until the next regular or

special Membership meeting, at which time the general Membership shall elect a successor for the balance of the term. If the removal of a Director pursuant to this Section 2 occurs at an annual Membership meeting, then the successor shall be elected by majority vote of the Membership in attendance at the meeting.

Section 3. The Board of Directors shall provide access for the public, new service applicants, or Members to the regular monthly meetings of the Board of Directors by setting aside a time for hearing of suggestions, proposals, or grievances. The Board of Directors shall establish reasonable rules for access to such meetings.

Section 4. The Board of Directors shall ensure that all meetings comply with the requirements of the Open Meetings Act, Article 6252-17, Tex. Rev. Div. Stat., including any subsequent amendment thereto. In the event of any conflict between the provisions of these Bylaws and the requirements of the Open Meetings Act, the provisions of the Open Meetings Act shall prevail.

Section 5. In conducting their duties as members of the Board, each Director (1) shall be entitled to rely, in good faith and with ordinary care, on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or the Corporation's affairs, that have been prepared or presented by one or more officers or employees of the Corporation; or by legal counsel, public accountants, or other persons retained by the Corporation for the

notification of the Corporation, preclude the holder of such mortgages from exercising legal rights pursuant to such mortgages upon proper notice to the Corporation.

ARTICLE X

Section 1. In order to insure that business done by the Corporation shall continue within the capacity of its facilities and to prevent undue financial burden on the Members of the Corporation, Membership in the Corporation shall be transferred in accordance with the following:

(a) Except as herein provided, Membership in the Corporation shall be deemed personal estate and a person or entity that owns any stock of, is a Member of, or has some other right of participation in the 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 transferee who is a person related to the testator within the second degree by consanguinity; (2) by transfer without compensation to a transferee who is a person 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) of this section 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

to effectively operate the business of the Corporation.

ARTICLE XIV

~~Notwithstanding the ownership of a Membership certificate,~~
all Members shall be billed, disconnected, or reconnected, and
otherwise shall receive service in accordance with the written
policies of the Corporation, including the tariff of the
Corporation.

In the event a Member should surrender his
Membership certificate properly endorsed to the Secretary-
Treasurer of the Corporation, the water service or sewer service
shall be discontinued and the obligation to pay for water service
or sewer service shall terminate except as for the minimum charge
for the current month and the charge for water used or sewer
service furnished during the current month, and except as for any
prior unpaid amounts due the Corporation. In the event
Membership is terminated, cancelled, withdrawn, or surrendered,
whether voluntarily or involuntarily, the former Member's rights
and interest in the assets of the Corporation will not be
forfeited.

ARTICLE XV

Upon the discontinuance of the Corporation by dissolution or
otherwise, all assets of the Corporation remaining after payment
of the indebtedness of the Corporation shall be distributed among
the Members and former Members in direct proportion to the amount
of their patronage with the Corporation insofar as practicable.
Any indebtedness due the Corporation by a Member for water
service and sewer service or otherwise shall be deducted from

ATTACHMENT C



STATE BAR of TEXAS

JESSE JOE MUNGUIA JR.

Eligible to Practice in Texas

Bar Card Number: 24076579

TX License Date: 05/06/2011

Tel: 972-923-9393 ☎

Primary Practice Location: Waxahachie, Texas

100 Chambers Circle 1002
Waxahachie, TX 75165

Practice Areas: Business, Criminal, Family, Labor-Employment, Wills-Trusts-Probate, Juvenile, Public Utility, LGBT Law

Statutory Profile Last Certified On: 04/16/2015

Firm: The Munguia Law Firm P.L.L.C.

Firm Size: 2 to 5

Occupation: Private Law Practice

Practice Areas: Business, Criminal, Family, Labor-Employment, Wills-Trusts-Probate, Juvenile, Public Utility, LGBT Law

Services Provided:

Hearing impaired translation: Not Specified

ADA-accessible client service: Not Specified

Language translation: Not Specified

Foreign Language Assistance:

Federal:

None Reported By Attorney

Other Courts:

None Reported By Attorney

Other States Licensed:

None Reported By Attorney