



Control Number: 43146



Item Number: 83

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

**RESPONDENT AVALON'S RESPONSE TO COMPLAINANT
GILLESPIE'S EXCEPTIONS TO THE PROPOSAL FOR DECISION**

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

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TO THE HONORABLE COMMISSIONERS:

COMES NOW, Avalon Water Supply and Sewer Service Corporation ("Avalon," "the WSC," or "Respondent") and files this, its Response to Complainant Gillespie's Exceptions to the Proposal for Decision in the above referenced matter. In support Respondent would show the following.

I. BACKGROUND

While the Proposal for Decision to Dismiss ("PFD") had no discussion under the general "Background" heading, Complainant ("Ms. Gillespie") used this section to present what would generally be considered a "closing argument." Avalon notes, as has Complainant, that no evidence has been introduced in this matter and discovery has been abated. The question of the mentioned sewer line is actually the subject of ongoing civil litigation. Complainant argues that the Administrative Law Judges' ("ALJs") statement in the body of the PFD that Ms. Gillespie is not a customer is incorrect according to definitions in the Public Utility Commission ("Commission," "PUC," or "the Agency") Rules. Avalon believes that statements that Ms.

Gillespie is not an Avalon customer are meant to say that she receives no water or sewer service because the meter is located at an abandoned house. This is significant because her litigious actions have jeopardized water and sewer service to other members of the water supply corporation ("WSC"); most of who rely on that service for their health and safety.¹ Avalon cannot vouch for the accuracy of Complainant's other factual statements in the "Background" section of Complainant, Gillespie's Exceptions to the Proposal for Decision ("Gillespie's Exceptions").

Avalon takes exception to Complainant's characterization of the PFD as "unfairly demoniz[ing] this public citizen as a serial complainant with ulterior motives." While Avalon agrees, "It is bad public policy to discourage public participation, . . .",² Avalon also believes it is bad public policy to allow a disgruntled member of a WSC, who does not rely on the WSC for water and sewer service, to adversely impact the financial health of the WSC for unstated reasons. As mentioned in the PFD, Complainant refused to mediate this matter and negotiations between the parties failed to reach accord.

Avalon also takes exception to Complainant's claim that dismissing this matter "eviscerates the purpose of TWC § 13.004" and "removes any Legislature-intended check on a WSC's conduct."³ Dismissal of this case does nothing of the sort. If Agency staff has ample support for an enforcement action based on staff's investigation of a WSC for failing to act as a member-owned, member-controlled non-profit, an enforcement action will be initiated, the WSC will be provided the required due process notice and opportunity for hearing, and if deficiencies are proved, the WSC will be put under the Agency's regulatory control for the period allowed by statute.⁴

A. Complaints

Complainant "excepts to the PFD's claim that her complaints encompass a 5-year period

¹ See, PFD at p. 28 *et seq.*

² Gillespie's Exceptions at p. 2.

³ Gillespie's Exceptions at p. 2.

⁴ See, TEX. WATER CODE § 13.004; 16 TEX. ADMIN. CODE § 24.35. See also, PFD at p. 13 *et seq.*

beginning in 2011.”⁵ Avalon notes that Complainant’s tables submitted in response to SOAH Order No. 6 lists numerous “alleged deficienc[ies]” encompassing 2011 through 2016. *See*, Attachments C and D to PFD, *passim*. Complainant expands and mischaracterizes the PFD’s succinct two-sentence summary of the complaints.

B. Parties

Complainant uses this section to expand her point that Ms. Gillespie is an Avalon customer. Avalon has addressed this issue above under “Background” because that is where Complainant initially raised in Gillespie’s Exceptions.

C. Procedural History

Avalon notes that Attachment A to the PFD is a July 14, 2014 letter from Complainant to the TCEQ in which Complainant admits that the TCEQ investigation based on an earlier complaint by her against Avalon “was closed on June 16, 2014” and that she received a letter from TCEQ in this regard stating “Avalon Water Supply and Sewer Service Corporation has provided TCEQ with sufficient documentation to show that it is properly operating as a non-profit, member-owned and member-controlled WSC.” See, PFD at Attachment A, p. 1, paragraph 2. Avalon avers that this is Complainant’s own admission that her July 2013 complaint against Avalon “was closed” and that a “positive determination” was made in this regard.⁶ The ALJ did not mention this earlier series of events in Section I.C. Procedural History of the PFD.

Avalon otherwise agrees with the ALJ’s Procedural History except to note that footnote 4 on page 2 citing to TCEQ’s August 25, 2014 letter erroneously cites to Attachment A. The letter, which closed an additional investigation based on Ms. Gillespie’s further complaints and made a positive determination that Avalon was “properly operating as a non-profit, member-owned and member-controlled WSC,” is actually found at Attachment B to the PFD.

⁵ Gillespie’s Exceptions at p. 2.

⁶ Gillespie’s Exceptions at pp. 3-4.

Complainant's exceptions to this section of the PFD veer into matters not addressed by the ALJ in this section. Many unsubstantiated facts are presented. Even if substantiated, they do not support jurisdiction nor do they provide grounds for overturning the ALJs' findings, conclusions, and recommendation.

II. APPLICABLE LAW

Both Complainant and Avalon agree with the ALJs' statement of the applicable law. Complainant includes arguments about how the law was applied in this case. Application of law to the case are covered in "Section III: ALJs' Analysis" and Complainant's arguments in this regard are more properly addressed in exceptions to that section. In brief, Avalon does not agree with Complainant's analysis in this section, and responds in the appropriate sections below.

One of Complainant's contentions, however, requires specific response here. Complainant makes an impassioned argument that the bylaws are essential to the member-owner, member-controlled requirement of a WSC. While bylaws are indeed adopted by a WSC's Board of Directors, which is comprised of members, the remedy for a member who feels they are not being followed is at the ballot box. As discussed in the PFD beginning at page 13, the legislative history of TWC § 13.004 shows that the Legislature understood the unique status of these water and sewer utilities and did not seek to give State agency control of their day-to-day operations.

III. ALJS' ANALYSIS

A. Lack of Standing

Avalon agrees with the PFD's discussion and conclusion that an individual, including Ms. Gillespie, lacks standing to bring a cause of action under TWC 13.004. Complainant relies on the PUC regulation implementing TWC 13.004, 16 TAC 24.35, to support her exceptions to this section. The regulation reads, in relevant part:

(a) Notwithstanding any other law, the commission has the same jurisdiction over a water supply or sewer service corporation that the commission has under this chapter over a water and sewer utility if the commission finds, after notice and opportunity for hearing, that the water supply or sewer service corporation:

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

Complainant continues to conflate the original inquiry under 13.004 - does the Agency believe facts exist to warrant exercising its regulatory jurisdiction over a water supply corporation - with the formal inquiry needed to exercise that jurisdiction. Rule 24.35 establishes that before formally exercising regulatory authority over a water supply corporation, the Commission must provide the water supply corporation with notice and an opportunity for hearing. This protects the water supply corporation's due process rights and allows it to put to test the agency's allegations that it is failing to conduct annual or special meetings or is not complying with the requirements of a nonprofit water supply corporation. An individual, including Ms. Gillespie, has standing to make complaints to the Agency through its staff, but no standing to go further. Ms. Gillespie does not have standing to bring a cause of action or enforcement case under TWC section 13.004.⁷

Further, Avalon agrees that "Complainant does not have standing to seek the remedies she suggests for Avalon's alleged violations."⁸ Complainant lists dissolution of Avalon's Board of Directors and receivership as the remedy she seeks for every claim.⁹ While the ALJs' analysis on this issue goes to the heart of the matter, Complainant's exceptions misconstrue the ALJs' reasoning, stating, "The PFD wrongly confuses staff and Commission-initiated enforcement and oversight and their different functions under the rules." Ms. Gillespie then reaches the illogical conclusion, "The staff cannot initiate a 16 TAC § 24.140 enforcement action when the Commission has already initiated the TWC [sic] § 24.35(a) prescribed hearing."¹⁰ While it is correct that the Commissioners referred this matter to SOAH to determine four specific issues, it is also the case that in response, SOAH has determined that TWC 13.004, and by implication, 16 TAC § 24.35(a), do not create an individual cause of action and thus recommend that this matter be dismissed.

⁷ Complainant cites as support a case that was not brought under TWC 13.004.

⁸ PFD at pp. 9 – 11.

⁹ See PFD Attachments C and D, fourth column, *passim*.

¹⁰ Gillespie's Exceptions at p. 8.

B. Failure to State a Claim

Avalon agrees with the PFD's discussion and conclusion that Complainant's complaints equated to requests that the Agency open an investigation into Avalon's practices and not the statement of a legally recognized cause of action; Ms. Gillespie failed to state a claim for which relief can be granted. Once again, Complainant conflates the two steps – investigation of her complaints by the staff and pursuit of an enforcement action by the Agency, in which situation, Avalon would receive notice and the opportunity for a hearing.¹¹

The status of discovery has nothing to do with Ms. Gillespie's failure to state a claim. No individual would have a claim under TWC 13.004. The PFD correctly concludes that because Ms. Gillespie relies solely on 13.004, which incorporates 67.007, as the basis for her "lawsuit," this matter must be dismissed. Neither statutory provision establishes an individual cause of action.

Complainant's argument that "there is a clear distinction between traditional penalty-imposed enforcement, supervision, and the process envisioned under TWC 13.004"¹² is unsupported by law or practice. It serves as a red-herring. Whether the enforcement regulation predates the statute is irrelevant.

Further, Complainant interprets the use of the term "Commission" to mean the Commissioners of the Public Utility Commission. While Commission may sometimes mean the three-member Commission, most often it refers to the Agency. By ascribing authority only to the Commissioners, Complainant has misinterpreted TWC 13.004(a), which only supports an investigation. The Commissioners do not undertake the investigation; they have a staff for that purpose. The ALJs properly recommend dismissal for failure to state a claim.

¹¹ Presumably, Ms. Gillespie could be called upon as a Staff witness, if needed.

¹² Gillespie's Exceptions at p. 8.

C. Lack of Jurisdiction

1. The Commission's Narrow Scope of Jurisdiction under TWC § 13.004

Avalon agrees with the PFD's discussion and conclusion that Complainant's basic misunderstanding of the scope and import of TWC 13.004 leads her to claim rights that she does not have and the Agency to incorrectly refer the matter for a SOAH contested case hearing when it did. The ALJs have correctly concluded that no individual, including Complainant, has standing to bring an action under 13.004. When Complainant could point to no other statutory provisions that establish a cause of action for the deficiencies she alleges, the ALJs correctly concluded that she failed to state a claim. In this section, the PFD addresses the question of what if Complainant had standing and what if TWC 13.004 established a cause of action for her and further concludes that the PUC incorrectly referred the matter to contested case hearing even though PUC staff concluded there were no grounds for further action under TWC 13.004. It does not authorize the Agency to inquire into the day-to-day operations of a WSC.

Avalon disagrees with Complainant's assertion that "a WSC that operates in a manner counter to *any* of the corporation's Bylaws is not member-controlled, and a corporation operating in that manner is not complying with the requirements for classification as a nonprofit water supply or sewer service corporation."¹³ Further, Avalon disputes that "the mistakes were made year after year," as alleged by Complainant, and disputes the assertion that mistakes that may have been made, rise to the level of failing to operate as a member-owned, member-controlled utility.¹⁴ Avalon generally denies the list of alleged deficiencies provided by Complainant.¹⁵

Additionally, Complainant's failed logic concludes that if TWC 13.004 does not establish a cause of action for an individual complainant, such individuals would have no opportunity to participate in a TWC 13.004 proceeding.¹⁶ Avalon does not read the Agency rules in that manner. An individual would still have the opportunity to complain to the Agency and to convince Agency staff that a WSC was not operating as a nonprofit utility. If the Agency agreed and initiated an enforcement action that resulted in a contested case hearing at SOAH,

¹³ Gillespie's Exceptions at p. 10.

¹⁴ See Gillespie's Exceptions at pp. 10 – 11.

¹⁵ See Gillespie's Exceptions at p. 11; PFD at Attachments C and D.

¹⁶ Gillespie's Exceptions at pp. 11 – 12.

presumably, the complainant could work with the staff to provide evidence and thereby participate in the TWC 13.004 proceeding. Just a look at the many documents (personal letters by Ms. Gillespie to TCEQ and PUC staff) that comprise the live pleadings in this "case" show the impracticality and fallacy of allowing private causes of action under TWC 13.004.¹⁷ Avalon agrees with the ALJs that this could not be the import of the statute.

Clearly, the Agency has the authority to determine whether Avalon "is failing to conduct annual or special meetings in compliance with [Texas Water Code] Section 67.007"¹⁸ and "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 [Texas Water Code] Sections 13.002(11) and (24)."¹⁹ Properly, that determination is made by Agency staff, not by referring the matter to SOAH. Complainant conflates the Agency's investigative authority and the remedy provided by 13.004.

The ALJs have recommended dismissal, at least in part, on the basis that the Agency staff already made the determination that none of Complainant's allegations, if true, would rise to the level requiring the Agency to initiate an enforcement hearing.²⁰ Further, even if an enforcement action were initiated, TWC 13.004 restricts the issues to be addressed. The Agency may not delve into the everyday operations of a water supply corporation; it must restrict itself to actions specific to the non-profit status of such utilities. Thus, the ALJs conclude that if the Agency had initiated an enforcement action, the Agency would have jurisdiction over a properly defined inquiry; under no circumstances does the Agency have authority over an inquiry into the day-to-day operations of a water supply corporation. This being said, if the Agency conducts a properly defined inquiry and makes the findings established by Texas Water Code Section 13.004(a)(1) or (2), the remedy authorized by the statute is for the Agency to assert the same jurisdiction over that water supply corporation as the Agency has to regulate and oversee a water and sewer utility.²¹ This can only be accomplished through the Agency's enforcement process and not through a private cause of action by a complainant.

¹⁷ See PFD at p. 25 for a descriptive list of these complaints, all of which are included in filings in this docket. See, PUC Control Number 43146, Item Nos. 1, 4, 5, 8, and 9.

¹⁸ TEX. WATER CODE § 13.004(a)(1).

¹⁹ TEX. WATER CODE § 13.004(a)(2).

²⁰ PFD at p. 27.

²¹ TEX. WATER CODE § 13.004(a).

In her exceptions, Complainant argues that the ALJ improperly employed legislative history to interpret TWC 13.004. Complainant states that the rules of statutory construction allow such use only to determine the meaning of "ambiguous statutory language."²² Significantly, everyone except Complainant believes this provision is ambiguous and needs explanation. Thus, consideration of the legislative history of Section 13.004 is proper and enlightening as discussed by the ALJs.²³

In further support is the TCEQ practice regarding many of these very allegations. As explained above, under Texas Water Code section 13.004(a), the TCEQ twice investigated Gillespie's complaints about Avalon. In both instances, the TCEQ closed the investigation with the following finding: "Avalon Water Supply and Sewer Service Corporation has provided TCEQ with sufficient documentation to show that is properly operating as a non-profit, member-owned and member-controlled WSC."²⁴ Clearly, the TCEQ interpreted 13.004(a) to apply only to issues related to Avalon's non-profit status and not to the myriad other allegations made by Gillespie. The PUC is operating under the same statutory authority and has adopted the same implementing regulations as the TCEQ;²⁵ therefore, the PUC should limit its investigation to the same issues.

2. Failure to Articulate Jurisdiction over Specific Claims

Avalon agrees with the ALJs that if the entire case is not dismissed on the legal grounds presented in the PFD and set forth in the earlier Sections of the PFD, Ms. Gillespie's claims should be dismissed on the alternate grounds presented in the PFD, Sections C.2 and D.

²² Gillespie's Exceptions at p. 6.

²³ PFD at pp. 13 – 14.

²⁴ See, Letter from Carol D. Gillespie to Tammy Holguin-Benter, TCEQ dated July 14, 2014 (Attachment A to the PFD) and August 25, 2014 letter to Ms. Carol D. Gillespie from Cari-Michel La Caille, Assistant Director, Water Supply Division, TCEQ (Attachment B to the PFD).

²⁵ Compare, 30 TEX. ADMIN. CODE § 291.35 (TCEQ) and 16 TEX. ADMIN. CODE § 24.35 (PUC).

a. Failure to Articulate Jurisdiction over Non-TOMA Claims in Compliance with Order No. 6

Avalon agrees with the ALJs' conclusion that Complainant failed to articulate jurisdiction over the deficiencies alleged by Ms. Gillespie in response to SOAH Order No. 6. Complainant failed to comply with the requirements of SOAH Order No. 6. As stated in Order No. 6 at page 2, "[I]t is not enough to simply refer to Texas Water Code § 13.004(a)(1). Complainant must cite and explain how the Commission has the same jurisdiction over Avalon as over a water and sewer utility, including specific criteria."²⁶ Complainant submitted exhibits²⁷ in the tabular format ordered by the ALJs, however, most allegations cite to no statutory basis for Commission jurisdiction (the second column in each table). Avalon agrees that each allegation that is not supported in these tables by a statutory basis for Commission jurisdiction should be dismissed. Avalon agrees that the complaints cited by the ALJs should be dismissed for a failure to comply with SOAH Order No. 6. These are the allegations stated in PFD Attachment C, at Nos. 1-6, 10-13, 15-30, 32-46, and 48-52.

b. Failure to Articulate Specific Substantive Grounds for Jurisdiction over Non-TOMA Claims

Avalon agrees with the ALJs' recommendation that claims that failed to articulate a statutory nexus between alleged bylaw violations and Avalon's non-profit status as a member-owned, member-controlled water supply corporation should be dismissed. Allegations of deficiencies unrelated to the statutory requirements of Texas Water Code sections 67.007, 13.002(11), and 13.002(24) must be dismissed because they are outside the PUC's jurisdiction under Texas Water Code section 13.004(a). As the ALJs recognize, Complainant attempts to unacceptably broaden the inquiry under 13.004(a) by misconstruing the Texas Water Code Section 13.002(24) definition of water supply or sewer supply corporation. Complainant incorrectly focuses on the statutory language "is operating in accordance with by-laws" and ignores the full sentence: "is operating in accordance with by-laws or articles of incorporation which [sic] ensure that it is member-owned and member-controlled." Complainant urges the PUC to look at all of Avalon's by-laws and hear evidence of every instance Complainant alleges

²⁶ See filing in PUC Control No. 43146, Item No. 67.

²⁷ See PFD Attachments C and D.

Avalon has failed to operate in accordance with those by-laws. The alleged deficiencies run the gamut from failing to prepare annual financial audit reports to failure to adopt a conflict of interest policy.

Section 13.002(24) states that a nonprofit water supply or sewer supply corporation must adopt and abide by, either by-laws or articles of incorporation that ensure that it is member-owned and member-controlled. In keeping with the statutory scheme under which the operations of water supply corporations are unregulated by the State except in two instances (the PUC hears appeals of rate disputes and the PUC has the authority under 13.004 to determine whether a water supply corporation is operating as a non-profit corporation) the members and the Board of Directors made up of members oversee the administration and day-to-day operations of a water supply corporation. Complainant misunderstands the ALJs' reasoning, as is apparent by her statement that "Nowhere did the table allege operational problems or rate disputes."²⁸

Avalon agrees with the ALJs that Complainant is asking the PUC to step into a regulatory oversight role of a WSC that is operating as a member-owned, member-controlled nonprofit. If the PUC were to do so, it would eviscerate the independence of these unique member-owned utilities. In summary, Avalon agrees with the PFD that allegations of deficiencies unrelated to whether Avalon conduct annual or special meetings in compliance with Section 67.007 should be dismissed. These include PFD Attachment C, claim nos. 10, 20-22, 24-26, 28, 30-34, 49-52; Attachment D, claim nos. 1 — 20.

D. Additional Reasons for Dismissing Certain Claims

1. Claims Stemming from Facts Prior to August 25, 2014, Should be Barred in Deference to TCEQ Agency Action

Avalon agrees with the PFD recommendation to dismiss claims that Gillespie complained about to the TCEQ and that the TCEQ ruled on. Gillespie misconstrues the PFD in arguing that this recommendation, based on acknowledgement of the TCEQ's previous jurisdiction over TWC 13.004 complaints, is inconsistent with the PFD's finding that the PUC lacks jurisdiction.²⁹

²⁸ Gillespie's Exceptions at p. 13.

²⁹ Gillespie's Exceptions at p. 13.

In fact, it is wholly consistent – the TCEQ as an agency previously had jurisdiction to investigate such complaints and to bring enforcement actions, just as the PUC now has that jurisdiction.

Avalon generally denies the allegations Ms. Gillespie uses to support her exception to this section of the PFD. Further, on the issue of whether “the Commission should defer to the TCEQ for claims that arose after September 1, 2014,” Complainant’s failure to comply with SOAH Order No. 6 comes to haunt her. The claims that the PFD recommends be dismissed because they occurred prior to August 25, 2014, are those claims that Complainant listed as having occurred “in 2011 – 2016.”³⁰ There was simply no other way that the ALJs could parse this information. Additionally, to say “Avalon’s obligation to act as a nonprofit WSC is continuing in nature” is to state the obvious. Complainant, as is clear from her unrelenting complaining about Avalon, envisions a system whereby the Agency is to review Avalon’s each new activity and each meeting.³¹ This impractical and impossible system cannot be what is envisioned by TWC 13.004.

The most recent letter in which the TCEQ made a finding that “Avalon Water Supply and Sewer Service Corporation has provided TCEQ with sufficient documentation to show that is properly operating as a non-profit, member-owned and member-controlled WSC” is dated August 25, 2014.³² For this reason, all allegations in this docket that pre-date August 25, 2014 should be dismissed as recommended by the ALJs.³³

On September 16, 2014, when Ms. Gillespie began complaining to the PUC, most of her complaints had already been investigated by the TCEQ and Avalon had been found to be operating properly under Texas Water Code section 13.004(a). Thus, every allegation made in this docket that pre-dates August 25, 2014, is not relevant to this docket and has already been investigated and found not to support Complainant’s contentions about Avalon’s nonprofit status.

³⁰ See PFD at Attachment C, claim nos. 1 – 35 and 47 – 52.

³¹ Gillespie’s Exceptions at p. 14.

³² See PFD Attachment B.

³³ PFD at p. 22.

In summary, allegations of deficiencies occurring prior to August 25, 2014 must be dismissed because they have already been investigated by the TCEQ and found to have no merit under Texas Water Code section 13.004. Avalon agrees with the recommendation that the following allegations be dismissed under this standard: PFD Attachment C, claim nos. 1 — 35 and 47 — 52.

2. The Commission Lacks Jurisdiction over Claims that Avalon Violated TOMA

Avalon agrees with the ALJs' conclusion that "the Commission lacks jurisdiction to adjudicate and establish" the 20 claims Complainant asserted based on alleged violations of the Texas Open Meetings Act ("TOMA").³⁴ "Administrative bodies may exercise only those powers the law confers upon them in clear and express language; courts will not imply the existence of additional authority for administrative bodies, nor may such bodies create for themselves any excess powers."³⁵ Complainant urges the PUC to ignore this tenet of administrative law. Complaints about whether Avalon complies with the Open Meetings Act³⁶ are outside the scope of this case. Although the Open Meetings Act applies to WSCs,³⁷ alleged non-compliance with the Act can only be addressed as provided in the Act, which requires litigation in state courts. No state agency, not even the Office of the Attorney General of Texas, has the authority to enforce TOMA.³⁸

Once again, Complainant argues that TWC 13.004 authorizes the PUC to investigate and enforce Avalon's compliance with its own bylaws, which state that it must comply with TOMA. This is in the face of the many legal bases for interpreting TOMA otherwise, as discussed and analyzed in the PFD.

Finally, the Texas Water Code does not confer upon the PUC the power to determine compliance with TOMA "in clear and express language." Avalon agrees with the ALJs,

³⁴ PFD at p. 23.

³⁵ *Subaru of Am., Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220 (Tex. 2002).

³⁶ TEX. GOV'T CODE, chapter 551.

³⁷ See, TEX. GOV'T CODE §551.001(3)(K), which defines a governmental entity subject to the Act under section 551.002, as including water supply corporations under Texas Water Code chapter 67.

³⁸ Office of the Attorney General of Texas, *Open Meetings Handbook 2016*, at p. 63.

therefore, that the PUC may not exercise this power. Avalon agrees with the PFD recommendation that allegations of TOMA deficiencies, catalogued in Attachment D to the PFD, be dismissed because they are beyond the PUC's investigative jurisdiction.

3. Failure to Amend Pleadings

Avalon agrees with the ALJs' conclusion that Complainant failed to comply with an additional requirement of SOAH Order No. 6. As stated in Order No. 6 at page 2, footnote 2, "Complainant will be required to amend her complaint if she presents alleged deficiencies in her brief that are not set forth in her complaint." A SOAH ALJ has the discretion to determine whether an order has been complied with and discretion to impose sanctions, or as in this case, to recommend those to the PUC. Avalon agrees with the PFD's recommendation that all claims that Complainant has identified without specific dates and those identified as occurring during 2014, 2015, and 2016 be dismissed: Attachment Exhibit A; claim nos. 1 — 6, 8 — 22, 24, 26, 30, 32, 34 — 47 and 51 — 52.

E. Summary

[Complainant made no exception.]

IV. ADDRESSING AVALON'S ALLEGATIONS

Avalon agrees with the ALJs' summary of Avalon's position regarding Complainant's motivation and the possibility that with this action she could bankrupt Avalon and adversely impact the health and safety of the other members who, unlike Ms. Gillespie, actually rely on Avalon for water and sewer service. Avalon notes that Gillespie's Exceptions to this section do not deny any of the specifics summarized by the ALJs in this section.

V. PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

Complainant excepts to proposed Findings of Fact 1, 2, and 4. Avalon notes that Attachments A and B to the PFD support these findings. Complainant's document filed as Control Number 43146, Item Number 1 includes and incorporates her earlier complaints to the TCEQ. See also, Control Number 43146, Item Numbers 4, 5, 8, and 9.

In response to Gillespie's Exceptions, Avalon agrees with the ALJs' Findings of Fact 18, 22, and 23 for the reasons discussed in this pleading, above.

In response to Gillespie's Exceptions, Avalon agrees with the ALJs' Conclusions of Law 1-7 for the reasons discussed in this pleading, above.

Avalon agrees with the Findings of Fact and Conclusions of Law in their entirety.

VI. CONCLUSION

Avalon disputes Gillespie's Exceptions and wonders why a member who does not rely on water or sewer service has "spent significant time and resources" to pursue these baseless claims. Therefore, Avalon asks the Commission to issue an order adopting the PFD, Findings of Fact, Conclusions of Law, and dismissing this case for lack of standing, failure to state a claim upon which relief can be granted, and for lack of jurisdiction. Avalon further asks that the Agency's order make it clear that no further action can be taken on the claims made in this case, by way of a future enforcement action, or otherwise.

Avalon suggests the following ordering provision:

The case is dismissed with prejudice for lack of standing, failure to state a claim upon which relief can be granted, and for lack of jurisdiction, and the prejudice extends to all further actions by the PUC based on the claims asserted by Complainant in this case.

Respectfully submitted,

MARY K. SAHS, P.C.

1802 Collier Street

Austin, TX 78704

Telephone: 512-326-2556

Facsimile: 512-597-2516

marysahs@sahslaw.com

By: 

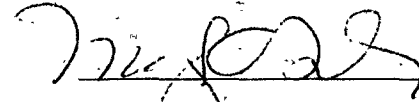
Mary K. Sahs

State Bar No: 17522300

ATTORNEY FOR RESPONDENT,
AVALON WATER SUPPLY AND
SEWER SERVICE CORP.

CERTIFICATE OF SERVICE

I certify that, on January 17, 2017 I have served a copy of this filing upon all known parties of record via email with read receipt requested per SOAH Order No. 2.

A handwritten signature in black ink, appearing to read 'Mary K. Sans', written over a horizontal line.

Mary K. Sans