



Control Number: 50367



Item Number: 14

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# OPEN MEETING COVER SHEET

## DRAFT PRELIMINARY ORDER

**MEETING DATE:** July 2, 2020

**DATE DELIVERED:** June 23, 2020

**AGENDA ITEM NO.:** TBD

**CAPTION:** Docket No. 50367; SOAH Docket No. 473-20-3820.WS – Complaint of Chad Swahn Against Shady Oaks Water Supply Company, LLC

**DESCRIPTION:** Draft Preliminary Order

Distribution List:  
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**Arthur C. D'Andrea**  
Commissioner

**Shelly Botkin**  
Commissioner

**John Paul Urban**  
Executive Director



**Greg Abbott**  
Governor

## *Public Utility Commission of Texas*

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TO: Chairman DeAnn T. Walker  
Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

All Parties of Record (*via electronic transmission*)

FROM: Austin Spraez  
Commission Advising

RE: *COMPLAINT OF CHAD SWAHN AGAINST SHADY OAKS WATER SUPPLY COMPANY, LLC*, Docket No. 50367, SOAH Docket No. 473-20-3820.WS,  
Draft Preliminary Order, July 2, 2020 Open Meeting, Item No. X.

DATE: June 23, 2020

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the July 2, 2020 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the July 2, 2020 open meeting.

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**DOCKET NO. 50367**  
**SOAH DOCKET NO. 473-20-3820.WS**

<b>COMPLAINT OF CHAD SWAHN</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AGAINST SHADY OAKS WATER</b>	<b>§</b>	
<b>SUPPLY COMPANY, LLC</b>	<b>§</b>	<b>OF TEXAS</b>

**DRAFT PRELIMINARY ORDER**

Chad Swahn filed a formal complaint against Shady Oaks Water Supply Company, LLC alleging that he was billed charges before signing a service contract, that he had his water service disconnected for over two months, and that the prolonged disconnection resulted in damage to his water heater and septic system.<sup>1</sup> This preliminary order identifies the issues that must be addressed and the issues that shall not be addressed.

**I. Background**

Mr. Swahn stated that he purchased his property on July 27, 2018, but did not sign a service contract with Shady Oaks until April 25, 2019. However, the service application Mr. Swahn signed was with an entity named the Hickory Hill Water Supply Company, Hickory Hill Water Supply Corporation, or alternatively the Hickory Hill Water Company Water Supply Corporation.<sup>2</sup> Checks signed by Mr. Swahn to cover the service application's fees were made out to Hickory Hill Water Supply.<sup>3</sup> Conversely, Mr. Swahn's customer billing history for water service contained letterhead that indicated Shady Oaks was Mr. Swahn's water service provider.<sup>4</sup> Mr. Swahn asserted his initial bill included charges and late fees beginning from the day he initially purchased his property, totaling \$328.34. Mr. Swahn stated that he contacted Shady Oaks, contested these charges, and continued to pay only the water charges based on his usage beginning from April 25, 2019, the date he signed a service agreement with Hickory Hill. Mr. Swahn asserted that Shady Oaks subsequently disconnected his water service during the second week of September 2019 for failure to pay the entirety of his bill and that, at the time of his formal

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<sup>1</sup> Complaint of Chad Swahn (Dec. 16, 2019).

<sup>2</sup> Response of Shady Oaks at 6-11, 15-20 (Feb. 3, 2020).

<sup>3</sup> *Id.* at 13, 21-22.

<sup>4</sup> *Id.* at 23-24.

complaint, Mr. Swahn had not received water service at his residence for over two months. Mr. Swahn asserted that Shady Oaks's actions created a safety hazard and caused damage to Mr. Swahn's water heater and septic system.

Shady Oaks responded to Mr. Swahn's formal complaint, disputed any overcharges and damages claimed, and asserted that an unknown number of people had requested service and moved in and out of Mr. Swahn's residence since he purchased it on July 27, 2018.<sup>5</sup> The response was filed on the letterhead of Shady Oaks Water, L.P.; however, the response was signed by the office manager, owner, and water operator of C. Willow Water Co. Shady Oaks further asserted that it was contacted by Megan Leslie to initiate service on April 25, 2019 at Mr. Swahn's residence. Shady Oaks stated that it did not accept Ms. Leslie's service application or money deposit because it had received no contact from Mr. Swahn. Shady Oaks response was unclear as to whether it had ever accepted a service application from Ms. Leslie or Mr. Swahn to initiate water service at Mr. Swahn's residence. Shady Oaks asserted that Ms. Leslie continued to reactivate the property's water service after Shady Oaks repeatedly disconnected the property's water service, subsequent to Shady Oaks providing proper notice of disconnect. Shady Oaks asserted that it ultimately locked Mr. Swahn's meter on September 18, 2019, and that there had been no recorded usage at the property since the filing of its response.

## **II. Procedural History**

Mr. Swahn filed his formal complaint against Shady Oaks on December 16, 2019. The Commission administrative law judge (ALJ) in Order No. 1 set a deadline for Shady Oaks to respond to Mr. Swahn's complaint by January 6, 2020 and set a deadline for Commission Staff to file a statement of position by January 13, 2020. Shady Oaks failed to file a response by January 6 which resulted in Commission Staff seeking an extension to file its statement of position. The ALJ in Order No. 2 granted Commission Staff's request and extended the deadline to file a statement of position to January 24, 2020.

Commission Staff filed its statement of position on January 24, 2020. Commission Staff stated that Mr. Swahn complied with the Commission informal complaint requirements under 16

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<sup>5</sup> Response of Shady Oaks (Feb. 3, 2020).

Texas Administrative Code (TAC) § 22.242(c). Commission Staff further stated that Mr. Swahn does not live within the city limits of any municipality and therefore that 16 TAC § 22.242(e) does not apply to his complaint. Commission Staff stated that it was unable to provide a statement of position because Shady Oaks failed to respond to Mr. Swahn's formal complaint. Because Shady Oaks had informally indicated to Commission Staff it was preparing a response, Commission Staff recommended that Shady Oaks be given until January 31, 2020 to provide a response. Commission Staff further recommended that, should Shady Oaks fail to respond by January 31, 2020, an order be issued requiring Mr. Swahn's service be restored and that Mr. Swahn not be required to pay Shady Oaks any bills, service costs, or water usage amounts incurred prior to restoration of service for which Mr. Swahn had not already paid.

On February 3, 2020, Shady Oaks filed its response to Mr. Swahn's formal complaint. The ALJ in Order No. 3 stated that Shady Oaks's filing referenced Shady Oaks Water, L.P., C-Willow Water Co., Hickory Hill Water Company, and Hickory Hill Water Supply, and requested that Shady Oaks clarify the appropriate respondent in this proceeding by February 18, 2020. The ALJ further requested that Commission Staff file a supplemental statement of position by March 3, 2020. Shady Oaks failed to file a response to Order No. 3. Commission Staff filed its supplemental statement of position on March 3, 2020, and recommended that this proceeding be referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.

On May 29, 2020, the Commission referred this proceeding to SOAH. Mr. Swahn and Shady Oaks were directed, and Commission Staff was allowed, to file by June 11, 2020 a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed. Commission Staff was the only party to file a list of issues.

### **III. Issues to be Addressed**

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.<sup>6</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

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<sup>6</sup> Tex. Gov't Code § 2003.049(e).

1. Who is the water utility at issue in this complaint? In answering this question please provide the entity's full legal name, any assumed name certificates filed with the secretary of state, and any certificate of convenience and necessity under which the utility provides utility service in Texas.
2. Who was listed as the account holder at 327 Hickory Hill prior to Mr. Swan purchasing the property on July 27, 2018?
  - a. For the account holder immediately prior to Mr. Swan for 327 Hickory Hill, what is the date that service was activated?
  - b. For the account holder immediately prior to Mr. Swan for 327 Hickory Hill, what is the date that service was terminated?
3. Please provide all service applications submitted to the utility at issue for 327 Hickory Hill from July 27, 2018 through April 25, 2019.
4. For Mr. Swahn's water service at 327 Hickory Hill:
  - a. On what date did the utility at issue receive a completed service application from Mr. Swahn for water service?
  - b. On what date did the utility at issue accept the service application from Mr. Swahn for water service?
  - c. On what date did the utility at issue begin providing water service to Mr. Swahn?
  - d. Following receipt of Mr. Swahn's completed service application, on what date did the utility at issue complete an initial meter read and what usage was recorded?
  - e. What period of service did Mr. Swahn's initial water service bill cover?
5. In rendering Mr. Swahn's bills for water service did the utility at issue comply with 16 TAC § 24.165?
  - a. Were Mr. Swahn's bills calculated according to the rates included in the utility's current tariff in accordance with 16 TAC § 24.165(a)?
  - b. Was the form and rendering of the bills in accordance with 16 TAC § 24.165(e)?

- c. If any bills for water service to Mr. Swahn included overbilling, did the utility at issue calculate an adjustment in accordance with 16 TAC § 24.165(h)?
  - d. If the initial bill was for a partial month, was the bill calculated in accordance with 16 TAC § 24.165(j)?
  - e. Did Mr. Swahn dispute any bills and did the utility at issue comply with the requirements of 16 TAC § 24.165(l)? If so, was the utility at issue in violation of 16 TAC § 24.165(l)(3) if it stated service would be terminated for nonpayment?
  - f. In assessing Mr. Swahn any penalties or late fees, did the utility at issue violate 16 TAC § 24.165(c)?
- 6. Did the utility at issue comply with the termination notice requirements of § 24.167(a) for each instance that it disconnected service to Mr. Swahn?
  - 7. Did the initial bill charged to Mr. Swahn include charges for water service provided to a prior account holder of the premises? If so, did the utility at issue violate 16 TAC § 24.167(c) if it stated Mr. Swahn's service would be disconnected for failure to pay his initial bill?
  - 8. Did the utility at issue comply with Mr. Swahn's requests, if any, to test the accuracy of his meter under 16 TAC § 24.169(d)?
  - 9. Did the utility at issue determine that meter tampering occurred under 16 TAC § 24.169(h)?
  - 10. Did the utility at issue bill or collect from Mr. Swahn any fee in violation of Commission rules or its approved tariff? If so, what is the amount that the utility at issue collected from Mr. Swahn in violation of Commission rules or its approved tariff?
  - 11. Did the utility at issue overbill Mr. Swahn for water service at 327 Hickory Hill? If so, what was the amount that Mr. Swahn was overbilled?
  - 12. Did the utility at issue fail to comply with any other Commission rules or its approved tariff?
  - 13. If the utility at issue has failed to comply with any Commission rules or its approved tariff, what is the appropriate remedy?

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 may 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).

#### **IV. Issues Not to be Addressed**

The Commission identifies the following issues that need not be addressed in this proceeding for the reasons stated.

***1. Do common law tort theories of negligence, negligence per se, or gross negligence apply to this complaint? This issue not to be addressed also includes damages under tort law, attorneys' fees, and court costs.***

As a creature of statute, the Commission's powers and duties are limited to those that the Legislature expressly conferred on it through statute and the implied powers that are reasonably necessary to accomplish the Commission's express responsibilities.<sup>7</sup> The Legislature has not conferred on the Commission any general authority to preside over tort actions.<sup>8</sup> And although the Commission has been expressly delegated authority to grant some remedies, such as ordering charges or refunds to resolve billing disputes, the Commission does not have authority to order some forms of relief available in courts of law, such as awarding attorneys' fees, court costs, or damages under tort law. Those types of relief must be sought before a court of competent jurisdiction.

The Commission has exclusive jurisdiction over this complaint to make determinations within the administrative framework provided by the Public Utility Regulatory Act (PURA)<sup>9</sup> and the Commission's rules. In this docket, the Commission may make determinations regarding alleged violations of PURA, Commission rules, or an electric utility's tariff. Once the Commission

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<sup>7</sup> *Complaint of Giovanni Homes Corporation Against Oncor Electric Delivery Company, LLC*, Docket No. 45854, Preliminary Order at 4 (Aug. 25, 2016); *see also Tex. Mun. Power Agency v. Pub. Util. Comm'n of Tex.*, 253 S.W.3d 184, 192-93 (Tex. 2007) (quoting *Pub. Util. Comm'n of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 315 (Tex. 2001); *Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 216 (Tex. 2002)) (citing *State v. Pub. Util. Comm'n*, 883 S.W.2d 190, 194 (Tex. 1994)).

<sup>8</sup> *Complaint of Giovanni Homes Corporation Against Oncor Electric Delivery Company, LLC*, Docket No. 45854, Preliminary Order at 4 (Aug. 25, 2016); *see also Jenkins v. Entergy Corp.*, 187 S.W.3d 785, 801 (Tex. App.—Corpus Christi—Edinburg 2006, pet. denied) (holding that a suit was "inherently judicial in nature" because it involved "state law tort claims" over which the Commission did not have primary jurisdiction).

<sup>9</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001—66.017 (PURA).

issues a final order in this complaint docket, a court may use the determinations made by the Commission under its exclusive jurisdiction to adjudicate claims that are within the court's jurisdiction.

**V. Effect of Preliminary Order**

The Commission's discussion and conclusions in this Order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, 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 the non-dispositive rulings of 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 \_\_\_\_\_ day of July 2020.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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**ARTHUR C. D'ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**