



Control Number: 50367



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COMPLAINT OF CHAD SWAHN § BEFORE THE STATE OFFICE  
AGAINST SHADY OAKS WATER § OF  
SUPPLY COMPANY, LLC § ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S MOTION TO SANCTIONS AND TO LIFT ABATEMENT**

**COMES NOW** the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Motion for Sanctions and to Lift Abatement. In support, Staff shows the following:

**I. BACKGROUND**

On December 16, 2019, Chad Swahn (Mr. Swahn) filed a complaint against Shady Oaks Water Supply Company, LLC (Shady Oaks) alleging overcharges for water service. On May 11, 2020, Staff filed its First Requests for Information (RFI) from Shady Oaks, making Shady Oaks' responses to those RFIs due by June 1, 2020. In addition, on September 10, 2020, State Office of Administrative Hearings (SOAH) Order No. 4 was filed giving Shady Oaks until September 18, 2020 to file direct testimony.

On October 19, 2020 the administrative law judge (ALJ) filed SOAH Order No. 5, directing Staff to file a motion for sanctions, summary disposition, or otherwise indicate how this case should proceed by November 5, 2020. Therefore, this pleading is timely filed.

**II. MOTION FOR SANCTIONS**

Under 16 Texas Administrative Code (TAC) § 22.161(b), on the motion of a party, sanctions may be imposed against a party for abusing the discovery process by resisting discovery or failing to obey the order of an ALJ after notice and an opportunity for a hearing. Shady Oaks has failed to provide responses to Staff's May 11, 2020 RFIs and direct testimony in this case. Shady Oaks has been compelled three times by the ALJ to respond to Staff's RFIs and to file direct testimony. This includes SOAH Order No. 3, filed on August 26, 2020; SOAH Order No. 4, filed on September 10, 2020; and SOAH Order No. 5, filed on October 19, 2020.

Shady Oaks has failed to comply with these orders, and, as of the date of this filing, has not responded to Staff's RFIs, even after 178 days and three orders from the ALJ granting Staff's

motions to compel. The information that Staff seeks in its RFIs is paramount to being able to take a position on the complaint and Shady Oaks' failure to reply prevents Staff from being able to do so.

As such, Staff respectfully requests that, upon notice and hearing, the ALJ finds that Shady Oaks violated 16 TAC § 22.161(b) and order that the following actions be taken for the purposes of this proceeding<sup>1</sup> as a sanction against Shady Oaks:

- Shady Oaks be disallowed from filing Direct Testimony in this docket.
- Shady Oaks be disallowed from providing any form of written or oral direct testimony at the Hearing on the Merits in this docket.
- A negative inference be drawn against Shady Oaks regarding Staff Request for Information Nos. 1-1, 1-2, 1-3, 1-5, 1-6, 1-7, 1-10, 1-12, 1-15 for failure to provide Staff the information requested.
- That any testimony or evidence provided by Mr. Swahn relating to Staff Request for Information Nos. 1-1, 1-2, 1-3, 1-5, 1-6, 1-7, 1-10, 1-12, 1-15 be deemed true and factual.

Further, that the following designated facts be deemed admitted for the purposes of this proceeding<sup>2</sup> as a sanction against Shady Oaks:

- Shady Oaks improperly charged Mr. Swahn a \$100 security deposit.
- Shady Oaks did not send a proper disconnection notice to Mr. Swahn when it disconnected service at 327 Hickory Hill Drive Lot #7, La Vernia, Texas in September of 2019.
- Shady Oaks improperly locked Mr. Swahn's meter at 327 Hickory Hill Drive Lot #7 on September 18, 2019 and did so in violation of its tariff.
- Shady Oaks improperly charged Mr. Swahn additional charges for water service from July 27, 2018 through April 11, 2019.
- Shady Oaks improperly filed a police report for meter tampering or theft of service for 327 Hickory Hill Drive Lot #7, La Vernia, Texas.
- That no meter tampering or theft of service occurred at 327 Hickory Hill Drive Lot #7, La Vernia, Texas.

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<sup>1</sup> 16 TAC § 22.161(c)(4).

<sup>2</sup> 16 TAC § 22.161(c)(3).

- Shady Oaks improperly charged Mr. Swahn \$450 in meter charges on July 27, 2018 and did so in violation of there tariff.

### **III. COMMENTS ON ABATEMENT**

Staff requests that the abatement ordered in SOAH Order No. 5 be lifted and that Staff and the parties be given until November 20, 2020 to file a new proposed procedural schedule for further processing of this docket.

### **IV. CONCLUSION**

Staff respectfully requests the issuance of an order consistent with the foregoing motion.

Dated: November 5, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Heath D. Armstrong  
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/s/ Robert Dakota Parish  
Robert Dakota Parish  
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**SOAH DOCKET NO. 473-20-3820.WS  
PUC DOCKET NO. 50367**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on November 5, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Robert Dakota Parish  
Robert Dakota Parish

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

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<b>AGAINST SHADY OAKS WATER</b>	<b>§</b>	<b>OF</b>
<b>SUPPLY COMPANY, LLC</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**AFFIDAVIT OF RACHELLE NICOLETTE ROBLES**

<b>THE STATE OF TEXAS</b>	<b>§</b>
	<b>§</b>
<b>COUNTY OF TRAVIS</b>	<b>§</b>

On this day, Rachelle Nicolette Robles personally appeared before me, the undersigned authority, and stated the following under oath:

1. My name is Rachelle Nicolette Robles. I am at least twenty-one (21) years of age, of sound mind, and I am authorized to make the statements in this affidavit. I have personal knowledge of the statements in this affidavit, and the statements in this affidavit are true and correct to the best of my knowledge.
  
2. I am currently employed as the Director of the Legal Division of the Public Utility Commission of Texas.
  
3. I have read Staff's Motion for Sanctions and I am familiar with the contents thereof. The allegations set forth therein are within my personal knowledge and are true and correct.

*Rachelle Robles*

Rachelle Nicolette Robles  
Director, Legal Division  
Public Utility Commission of Texas  
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Subscribed and sworn to me this 9<sup>th</sup> day of November 2020

*Ruby D. Hicks*

Name: Ruby Hicks

Notary Public in and for the State of Texas

My commission expires:

