

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG PENNSYLVANIA 17120**

**Petition of Valley Township for a
Declaratory Order Regarding the
Provision of Water Service to 22
Residents of West Caln Township,
Sadsbury Township, and East Fallow-
Field Township**

**Public Meeting held August 6, 2020
3019476-LAW
Docket Nos. P-2020-3019476,
P-2020-3019477**

DISSENTING STATEMENT OF VICE CHAIRMAN DAVID W. SWEET

Before the Commission are the petitions of Valley Township seeking a declaration that the water and wastewater service that they provide to customers located beyond their corporate limits is not public utility service. I would find that they are offering public utility service and require them to file for a certificate of public convenience.

Section 1501 of the Public Utility Code¹ requires that a municipal corporation offering public utility service beyond its corporate borders is subject to the regulation and control of this Commission. The determination of whether the service qualifies as “public utility service” is the key. The definition of “public utility” states that the service must be “for the public,”² which means as a class as opposed to only particular individuals.

Valley Township has both a water and a wastewater system. It serves 1,649 water customers inside its boundaries and 22 outside, split between West Caln and East Fallowfield Townships, and it serves 3,048 wastewater customers in its boundaries plus 30 outside to customers in three townships. Valley states that it has no intention of enlarging its customer base outside its boundaries and its Board of Supervisors passed a resolution so stating. It also commits to providing the same customer protections and rates to the outside customers as it extends to its residents.

In its petition, Valley states that service to a limited number of isolated individuals outside of the municipal boundaries under special circumstances does not constitute public utility service subject to the Commission’s jurisdiction, and cites to a number of Commission decisions which do say that.³ However, most of those cases explain what those special circumstances are, where Valley simply claims that they exist.

¹ 66 Pa. C.S.A. § 1501.

² 66 Pa. C.S.A. §102 definitions.

³ *Petition of Borough of Driftwood*, Docket No. P-2016-2533069 (Order entered June 14, 2017)(mountainous terrain prohibited other connection to nearest provider which was 18 miles away; *Petition of New Albany Borough*, Docket No. P-00991775, 200 Pa. PUC LEXIS 34 (2000)(nearest other provider 12 miles away, only six customers with no more accepted); *Petition of Laceyville Borough*, Docket No. P-2008-2064117 (2008)(nearest other provider 8 miles away, water table contaminated with sulfur rendering wells unusable); *Petition of Cochranon Borough*, Docket No. P-200802035741 (2009)(most customers were connected over 50 years earlier, no new customers to be accepted); and *Petition of the City of Titusville*, Docket No. P-2013-2376600 (2014)(connections made prior to 1970, no new customers to be accepted).

While Commission decisions have not always been consistent, the appellate cases have been very consistent. If the service is to a defined, limited and privileged class and is incidental to a relationship between the provider and the customer, such as a landlord providing service to tenants, then it is not public utility service.⁴ If, however, the service is to an open class of persons who may sell or lease their property without regard to the service provider, then the service is that of a public utility, absent special circumstances. The nature of the service does not depend on the number of customers served nor does it depend upon whether the provider passes an ordinance that states it has no intention of enlarging its customer base beyond its border.

I recognize that this Commission has not been consistent it applying this standard, and that there are Commission orders which appear to be precedential to granting this Petition. There are, however, no appellate cases, and I suggest that in granting this petition, we are following the wrong precedent.

This Township is providing service beyond its borders into three different municipalities. The fact that all of the extraterritorial customers are located near the borders does not constitute special circumstances. This service is public utility service and should be certificated as such.

August 6, 2020

DATE



DAVID W. SWEET
VICE CHAIRMAN

⁴ *Drexelbrook Associates v. PA PUC*, 518 Pa. 430, 212 A2d 237 (1965).