

**BEFORE THE PENNSYLVANIA UTILITY COMMISSION**

In re: ) Docket No.  
 )  
PETITION OF BOROUGH OF SANDY )  
LAKE )

**PETITION FOR DECLARATORY JUDGMENT**

The Borough of Sandy Lake (“Sandy Lake”), through its counsel, Knox McLaughlin Gornall & Sennett, P.C., files the following Petition for Declaratory Judgment:

**Background**

1. Sandy Lake a municipality within Mercer County, duly organized pursuant to the laws of the Commonwealth of Pennsylvania, with a principal location of 3271 South Main Street, PO Box 87, Sandy Lake, PA 16145.

2. Sandy Lake operates a system of potable drinking water treatment and distribution.

3. Sandy Lake seeks a declaratory order under 66 Pa.C.S. § 331(f) and 52 Pa. Code § 5.42 requesting that the Commission conclude that Sandy Lake’s provision of water service to a single customer who is in immediate proximity to, but outside the formal limits of, Sandy Lake does not constitute the provision of public utility service pursuant to 66 Pa. C.S. § 102.

4. Sandy Lake has a total population of 659 people within approximately 5.5 square miles, and 370 total water customers.

5. Sandy Lake purchased the water supply system from Sandy Lake Water Works in 1934. When Sandy Lake acquired the water supply system, it is believed that it included 22 residential customers who were outside of Sandy Lake’s municipal boundary. It is believed that each of the residential customers outside of Sandy Lake were already connected to the main

water line and had been served by the prior owner, Sandy Lake Water Works, a private company, from as far back as 1914.

6. In 1952, Sandy Lake agreed to supply water to two schools of the Lakeview Consolidated Schools—the school district for the Sandy Lake area. The two schools served with Sandy Lake’s water nearly abut Sandy Lake’s municipal line.

7. A non-residential customer outside of Sandy Lake’s municipal limits a gas station located next to the Lakeview Consolidated School buildings that are served by Sandy Lake’s water supply.

8. Sandy Lake has never held itself out as supplying water to the public in areas outside its municipal limits. Rather, these 24 customers live in close proximity to Sandy Lake’s existing water lines.

9. Given the limited provision of water services outside its municipal limits, in 2011, Sandy Lake filed a petition with the Pennsylvania Utility Commission (“PUC”) seeking a declaratory judgment that the provision of water to these 24 customers did not constitute the provision of public utility service under 66 Pa.C.S. § 102. *See* PUC Docket no. P-2011-2224488.

10. Around that same time, Sandy Lake passed Resolution No. 2011-1, which provides that Sandy Lake will not allow any additional water service connections to properties outside its municipal limits and that those existing customers whose properties are located outside Sandy Lake’s municipal will be charged the same rates and on the same terms and conditions as applied to customers located within Sandy Lake’s municipal limits. *See* Resolution No. 2011-1, attached at Exhibit A.

11. On August 26, 2011, the PUC issued a Tentative Order granting Sandy Lake's Petition, finding that, "the limited extra-territorial service being provided by [Sandy Lake] is not subject to Commission jurisdiction. The extra-territorial service being provided by [Sandy Lake] is provided to a limited number of customers and is not available or offered to the general public." *See* Tentative Order, attached as Exhibit B. Because no objections were filed, the Tentative Order became final. *See* Exhibit B.

12. Since 2011, other than the 24 customers identified above, Sandy Lake has provided water service to a single customer outside its corporate limits. This final customer also requested water service because of extenuating circumstances and Sandy Lake sought and obtained an opinion letter from Chief Counsel for the PUC that water service to this customer would not subject Sandy Lake to the PUC's jurisdiction. *See* August 29, 2012 Opinion Letter and accompanying documents, attached as Exhibit C.

13. Aside from these 25 customers, Sandy Lake has not provided water service to any customers outside its municipal limits and still does not hold itself out as supplying water to the public in areas outside its municipal limits. Further, Sandy Lake does not intend to hold itself out as supplying water to the public in areas outside its municipal limits.

#### **The Sandy Lake Wesleyan Church Property**

14. The Sandy Lake Wesleyan Church is the owner of certain real property located at 3096 Sandy Lake-Grove City Road, Sandy Lake, PA (the "Property").

15. The Property is located just outside Sandy Lake's municipal limits in Sandy Lake Township, but is adjacent to a water line owned and operated by Sandy Lake.

16. The Property receives water through a well that is currently failing, without reasonable means of remediation.

17. The Sandy Lake Wesleyan Church has requested permission to connect to Sandy Lake's water line adjacent to the Property in order to allow it access to water, which would otherwise be impracticable.

18. Sandy Lake is willing to allow the Sandy Lake Wesleyan Church to connect to its water lines provided this provision of water service outside its municipal limits does not make it subject to the Commission's jurisdiction.

19. Indeed, Sandy Lake believes providing water service to the Property would not constitute the provision of services "to or for the public" within the meaning of 66 Pa.C.S. 102.

20. The provision of water to the Property would be a *de minimus* expansion of service beyond Sandy Lake's municipal limits, which was not the product of general solicitations. Rather, the Sandy Lake Wesleyan Church requested this service out of an urgent need for water at the Property.

21. These special circumstances are similar to other cases in which the Commission has allowed the provision of services outside of municipal boundaries without constituting a public utility service subject to the Commission's jurisdiction. *See Petition for A Declaratory Ord. of the Borough of Weatherly*, No. P-2023-3038615, 2023 WL 3625009 (May 18, 2023), *Petition of Valley Twp.*, No. P-2020-3019476, 2020 WL 5593134 (Aug. 6, 2020).

22. Consistent with Resolution No. 2011-1, Sandy Lake would apply the same rules, regulations and rates to the Sandy Lake Wesleyan Church as it does its other customers.

WHEREFORE, the Borough of Sandy Lake requests that the Commission grant its Petition for Declaratory Judgment and enter an order declaring that the provision of water service to the Sandy Lake Wesleyan Church at 3096 Sandy Lake-Grove City Road, Sandy Lake, PA is deemed to be non-jurisdictional because it is not service “to or for the public” as contemplated under 66 Pa. C.S. § 102, along with such further relief as is just.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &  
SENNETT, P.C.

BY: 

Michael J. Musone, Esquire  
120 West Tenth Street  
Erie, Pennsylvania 16501  
(814) 459-2800

Attorneys for Petitioner,  
The Borough of Sandy Lake

# 2543519.v1

**RESOLUTION 2011-1**  
**THE BOROUGH OF SANDY LAKE**  
**MERCER COUNTY, PENNSYLVANIA**

WHEREAS, the Borough of Sandy Lake, hereinafter referred to as "Borough," has filed a Petition with the Pennsylvania Public Utility Commission, hereinafter referred to as "PUC," seeking a Declaratory Order that its provision of water service to an isolated group of customers in adjoining Sandy Lake Township does not constitute the provision of public utility service under Pa. C.S.A. § 102;

NOW THEREFORE, should the Borough's Petition be granted, in order to ensure that extraterritorial customers of the Borough will not be subject to potential discrimination without the opportunity for Commission review and oversight, the Borough hereby resolves as follows:

1. The Borough shall continue to provide water service to the existing extraterritorial water customers.

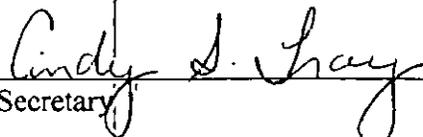
2. The Borough will, at all times in the future, apply the same rates, terms, and conditions to the customers outside of the Borough's geographic limits as it does to customers within the Borough's geographic limits.

3. The Borough will not, unless directed by a Pennsylvania regulatory agency, permit any new customer connections beyond its municipal boundaries without the prior approval of the PUC.

4. This Resolution shall not be repealed or expire without the prior written notification of its repeal or expiration to the PUC.

This Resolution is adopted and approved this 5th day of January, 2011.

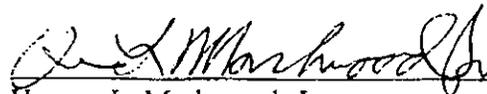
ATTEST:

  
Secretary

**BOROUGH OF SANDY LAKE**

By:   
Robert W. Kaltenbaugh  
President, Borough Council

This Resolution is approved this 5th day of January, 2011.

By:   
Vernon L. Markwood, Jr.  
Mayor, Borough of Sandy Lake

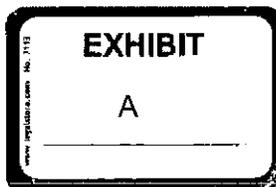


EXHIBIT "B"

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held August 25, 2011

Commissioners Present:

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Wayne E. Gardner  
James H. Cawley  
Pamela A. Witmer

Petition of the Borough of Sandy Lake for a  
Declaratory Order that its Provision of Water Service  
to Isolated Customers in Sandy Lake Township Does  
Not Constitute the Provision of Public Utility Service  
Under 66 Pa. C.S. § 102.

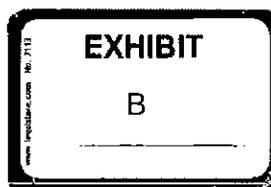
Docket No. P-2011-2224488

**TENTATIVE ORDER**

**BY THE COMMISSION:**

On February 2, 2011, the Borough of Sandy Lake (the Borough or Sandy Lake), filed the above-captioned petition for declaratory order. In accordance with 52 Pa. Code § 5.42, the Borough served a copy of its petition on the Office of Consumer Advocate (OCA), the Bureau of Investigation and Enforcement (BI&E), the Office of Small Business Advocate (OSBA), and on each of the twenty-four customers affected that are located outside of Sandy Lake's corporate boundaries. None of the above-mentioned parties filed answers to Sandy Lake's petition.

Section 331(f) of the Public Utility Code, 66 Pa. C.S. § 331(f), provides that the Commission "may issue a declaratory order to terminate a controversy or remove uncertainty." By its petition, the Borough seeks a determination that its provision of



because they had been receiving service when Sandy Lake acquired the system in 1934. There are no other public or private water service options available for these residential customers, other than the possibility of private wells. The two schools and the gas station nearly about the Borough's boundary lines. These three non-residential customers have received service since 1952. No extra-territorial customers have been added to the system since 1952. The Borough provides and maintains fire hydrants that protect all of the extra-territorial customers.

In further support of its petition, the Borough states that extra-territorial customers do not have a right to connect to Borough's system; rather the only persons who had, and still have, any right to connect to the Borough's water system are property owners located within the Borough's municipal limits.

The Borough also states in a January 5, 2011 Borough Resolution that it will not, unless directed by a Pennsylvania regulatory agency, permit any new customer connections beyond its municipal boundaries without the prior approval of the Commission. In addition, the Borough's resolution provides that the Borough will apply the same rates, terms, and conditions to the customers outside as those within the Borough's limits. The Borough Resolution also states that the Borough will not repeal or sunset the aforementioned resolution without advising the Commission regarding same. These commitments were made to ensure that the Borough will not be adding additional extra-territorial customers and that the twenty-four extra-territorial customers will not be subject to potential discrimination without the opportunity for Commission oversight.

The Borough's circumstances are similar to those presented to the Commission in the matter of *Lehigh Valley Cooperative Farmers v. City of Allentown*, 54 Pa.P.U.C. 495 (1980), wherein the Commission concluded that service to a number of isolated individuals outside of the municipal boundaries under special circumstances did not constitute public utility service subject to the Commission's jurisdiction.

limited nature of water service to such a defined group of customers should not realistically be subject to its jurisdiction. *Id.* at p.4.

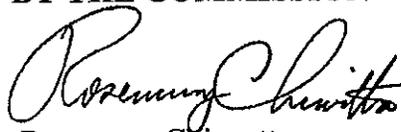
Similarly, and more recently, in *Petition of Laceyville Borough*, Docket No. P-2008-2064117 (2008), the Commission determined that service of seventeen customers outside the Laceyville Borough limits did not constitute public utility service. Even more recently, in *Petition of Cochranon Borough for a Declaratory Order*, Docket No. P-2008-2035741 (2009), the Commission determined that service to seventy-five customers outside the Cochranon Borough limits did not constitute public utility service. Sandy Lake's petition in this proceeding comports with these two recent proceedings, and therefore Sandy Lake's petition should be resolved on a similar basis.

In applying the standards enunciated in *Laceyville* and *Cochranon* to the facts of the present case, we tentatively find that the limited extra-territorial service provided by the Borough is not subject to Commission jurisdiction. The extra-territorial service being provided by the Borough is provided to a limited number of customers and is not available or offered to the general public. The Borough clearly states that it will continue to provide service only to the twenty-four customers that it is presently serving outside of its boundaries and that it is not soliciting additional customers. Such service does not constitute the extra-territorial provision of water service to or for the public. We note our expectation that an express condition of this exemption is that the Borough continue to apply the same rates and terms of service outside as well as within the Borough's limits.

Still, we will not cancel the operating authority of Sandy Lake Borough without allowing for one additional opportunity for comment. Parties may file adverse comments with the Commission no later than twenty days after publication of this Order in the *Pennsylvania Bulletin*.

6. That, if no objection to this Order is filed with the Commission within twenty days of the publication date in the *Pennsylvania Bulletin*, this Order shall become final, and the Commission's Secretary's Bureau shall cancel the operating authority of Sandy Lake Borough and mark this file as closed. The Secretary's Bureau then shall remove Sandy Lake Borough from the active lists of the Tariff and Annual Report Section of the Commission's Bureau of Technical Utility Services and the Assessment Section of the Bureau of Administrative Services.

BY THE COMMISSION



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: August 25, 2011

ORDER ENTERED: August 26, 2011



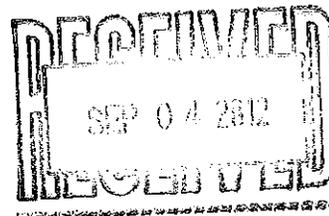
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

Bp8 # 2316853

August 29, 2012

Cindy Troy, Secretary  
Sandy Lake Borough  
3721 South Main Street  
P.O. Box 87  
Sandy Lake, PA 16145-0087



Re: Sandy Lake Borough's Water System and Public Utility  
Commission Jurisdiction  
Docket No. P-2011-2224488

Dear Ms. Troy:

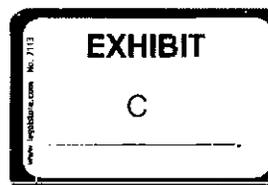
In your letter dated July 26, 2012, on behalf of Sandy Lake Borough (SLB or the Borough), you noted that Cocca Development (Cocca), which owns a plaza outside of the Borough,<sup>1</sup> has requested water service from the Borough because it is unable to obtain acceptable drinking water from its groundwater well. You also noted in your letter that the Pennsylvania Department of Environmental Protection (DEP) supports this request.

For background, it should be noted that, as support for the January 31, 2012 determination by the Public Utility Commission (Commission) that the Borough was not subject to Commission jurisdiction, the Borough passed a resolution that it would "not permit any new customer connections beyond its municipal boundaries without the prior approval of the PUC."<sup>2</sup> Accordingly, you have requested an Opinion of Counsel under 52 Pa. Code § 1.96 because the Borough will not provide Cocca Development with water service unless the Commission provides written permission that the Borough can do so without coming under Commission jurisdiction.

The Commission exercises jurisdiction over public utilities. A public utility is defined in relevant part as "any person or corporations now or hereafter owning or

<sup>1</sup> Cocca Development's property is called the Stoneboro Plaza, and consists of a Dollar General Store, Physiotherapy Associates, and Harley's Pizza and Wings. Stoneboro Plaza is located in Sandy Township, which is adjacent to the Borough. Sandy Township does not have a public water supply.

<sup>2</sup> This resolution was included as Exhibit "B" in SLB's Petition. *See Petition of the Borough of Sandy Lake for a Declaratory Order that its Provision of Water Service to Isolated Customers in Sandy Lake Township Does Not Constitute the Provision of Public Utility Service Under 66 Pa. C.S. § 102*, Docket No. P-2011-2224488 (Order entered January 31, 2012).



operating in this Commonwealth equipment of facilities for . . . [d]iverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation.” 66 Pa. C.S. § 102.

The phrase “to or for the public” has been defined as holding oneself out as supplying services to the public as opposed to only serving particular individuals and does not include service to a limited number of isolated individuals under special circumstances, even outside municipal boundaries.<sup>3</sup> Water service to a defined and limited number of customers should not be subject to Commission jurisdiction.<sup>4</sup> Additional considerations include the number of customers, whether the municipality solicits customers, and whether the municipality will provide service at the same terms and rates for customers inside and outside of the municipality.<sup>5</sup>

Application of this case law definition to SLB indicates that the extension of service to Cocca will not subject SLB to Commission jurisdiction. The Commission has previously determined that SLB is not providing service to or for the public by serving twenty-four customers outside of the Borough.<sup>6</sup> In that decision, the Commission stated that the extra-territorial service provided by the Borough is not service to the public but instead is service to a limited number of customers and is not available or offered to the general public.

In the present situation, Cocca has a special circumstance in that it has been unable to attain acceptable drinking water from its groundwater well, and its most viable solution is to obtain water from the Borough. As stated previously, Sandy Lake Township does not have a public water supply. In addition, the DEP supports this solution. Because the Borough would only be extending service to one additional entity, Cocca Development, in a special circumstance, the unavailability of acceptable drinking water, we are of the opinion that this scenario does not constitute public utility service. Since we are of the opinion that the Borough would not be providing public utility service, we conclude that it would not be subject to Commission jurisdiction.

Please be advised that the opinions expressed herein are rendered as a courtesy to you and Sandy Lake Borough and represent only the opinions of the undersigned. They are not binding on the Commission. See 52 Pa. Code § 1.96. Formal opinions in the

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<sup>3</sup> See *Drexelbrook Assoc. v. Pa. Public Utility Commission*, 212 A.2d 237, 240 (Pa. 1965); *Petition of Chicora Borough*, Docket No. P-00981355 (Order entered May 22, 1998); *Lehigh Valley Cooperative Farmers v. City of Allentown*, 54 Pa. P.U.C. 495 (1980).

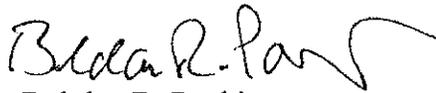
<sup>4</sup> *Joint Application of Seven Fields Development Corporation*, Docket No. A-220007 and A-210062F2000 (Order entered Oct. 1, 1999)

<sup>5</sup> *Id.*

<sup>6</sup> See *Petition of the Borough of Sandy Lake for a Declaratory Order that its Provision of Water Service to Isolated Customers in Sandy Lake Township Does Not Constitute the Provision of Public Utility Service Under 66 Pa. C.S. § 102*, Docket No. P-2011-2224488 (Order entered January 31, 2012).

Please be advised that the opinions expressed herein are rendered as a courtesy to you and Sandy Lake Borough and represent only the opinions of the undersigned. They are not binding on the Commission. *See* 52 Pa. Code § 1.96. Formal opinions in the form of declaratory orders are available from the Commission under appropriate circumstances. *See* 52 Pa. Code § 5.42.

Sincerely,

A handwritten signature in black ink, appearing to read "Bohdan R. Pankiw". The signature is fluid and cursive, with a prominent flourish at the end.

Bohdan R. Pankiw  
Chief Counsel

cc: Kathryn G. Sophy, Deputy Chief Counsel  
Stanley E. Brown, Assistant Counsel  
Opinion Letter File

**Sandy Lake Borough**

3271 South Main Street  
P.O. Box 87  
Sandy Lake, PA 16145-0087  
e-mail: [slboro@windstream.net](mailto:slboro@windstream.net)

Telephone: 724-376-2676

Fax: 724-376-7047

July 26, 2012

Mr. Stanley Brown, Assistant Council  
Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

RE: Docket Number: P-2011-2224488

Dear Mr. Brown,

The Sandy Lake Borough petitioned for a declaratory order to remove the Sandy Lake Borough from the Pennsylvania Public Utility Commission's operating authority. I believe the process was started around February 2011.

This was requested because we serviced a minimal amount of customers that lie on the border of the Sandy Lake Borough. The request was granted on January 31, 2012 by the Public Utility Commission.

As part of the agreement, Sandy Lake Borough stated they would not add any new customers located outside the Borough unless permission was granted by the Commission.

The Sandy Lake Borough was recently approached by Cocca Development which houses a Dollar General Store, Physiotherapy Associates, and Harley's Pizza and Wings. They are located in Sandy Lake Township and have a well which has been failing to meet the Department of Environmental Protection's standards for a public water supply. Cocca Development would like to tap into the Sandy Lake Borough's water system. This development lies within the area that we currently service. I have enclosed letters explaining their current situation.

The Sandy Lake Borough does not want to go back to being under the PUC's operating authority. We are requesting an Opinion of Council under Title 52 PA

Code Section 1.96. The Borough will not consider allowing the development to tap into our water system unless the Public Utility Commission sends us written permission stating that we can do this without falling back under the authority.

If you need any further information, please contact me at 724-376-2676.

Sincerely,

  
Cindy S. Troy  
Borough Secretary

Enclosures

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## COCCA DEVELOPMENT, LTD.

7/23/12

Sandy Lake Borough  
3271 South Main Street  
Sandy Lake, PA 16145

RE:  
Dollar General Store & Multi-Tenant Building  
2447 Mercer Street  
Stoneboro, PA 16153

Dear Borough,

As you are aware we are the owners of the property located in Sandy Lake Township that currently houses the Dollar General Store, Physiotherapy Associates & Harley's Pizza & Wings. We have for several years now been dealing with major well issues that have not only been costly but pose an possible health threat to the public. We have went several different directions working hand in hand with the DEP trying to correct these problems with little to no success. As you know the Township does not have a public water supply, this is why we are asking for help from Sandy Lake Borough. We are hoping that an agreement can be reached between Cocca Development, Sandy Lake Borough and the PUC that would allow us to tap into the water supply that is directly across the street and supply safe water to our buildings and the public. In closing I would like to mention that Chuck Byham @ the Pennsylvania DEP is also recommending approval of this request, he can be reached @ 814-332-6324 and I can be reached at 330-729-1010 for any further questions or comments. Thank you for your time and consideration in this urgent matter.

Sincerely:  
Cocca Development, LTD



Brice Jackson - Design Manager  
Cocca Development LTD  
100 Debartolo Place - Suite 400  
Youngstown, Ohio 44512  
Phone: 330-729-1010  
Fax: 330-729-1008  
Email: [bjackson@coccadevelopment.com](mailto:bjackson@coccadevelopment.com)



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NORTHWEST REGIONAL OFFICE

July 9, 2012

Ms. Cindy Troy  
Secretary  
Sandy Lake Borough  
P.O. Box 87  
Sandy Lake, PA 16145

Re: Stoneboro Plaza  
PWSID No. 6431077  
Sandy Lake Township, Mercer County

Dear Ms. Troy:

The purpose of this letter is to provide you with a summary of the issues associated with the Stoneboro Plaza water supply. The Department of Environmental Protection regulates the Stoneboro Plaza as a transient noncommunity water supply. The Stoneboro Plaza's address is 2449 Mercer Street, Stoneboro, PA 16153 and is physically located in Sandy Lake Township. The property is owned by Cocca Development, 100 DeBartolo Place, Suite 400, Boardman, OH 44512. This facility consists of the Dollar General and the building that includes the Harley's Pizza and Wings restaurant. Both connections are supplied drinking water from one groundwater well located in the Dollar General parking lot.

As a public water supply, this system is required to conduct routine monitoring in accordance with Chapter 109 of the Pennsylvania Safe Drinking Water Act. Beginning in June 2011, the Stoneboro Plaza has had several water samples total coliform and fecal positive. The supply has tried different corrective actions including disinfecting their well and installing an ultraviolet treatment unit. Unfortunately, some samples have continued to be positive for total coliform and fecal.

Since the system has had difficulties meeting the standards of the Safe Drinking Water Act, Cocca Development has expressed an interest in abandoning this well and connecting to an adjacent public water supply if possible. The Department agrees that this is a viable solution to the Stoneboro Plaza's water problems.

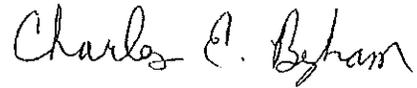
Ms. Cindy Troy

-2-

July 9, 2012

If you have any questions regarding this matter, please contact me at this office.

Sincerely,

A handwritten signature in cursive script that reads "Charles E. Byham". The signature is written in black ink and is positioned above the typed name.

Charles E. Byham  
Sanitarian  
Safe Drinking Water Program

cc: Cocca Develpoment  
File

CB:ll



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET  
HARRISBURG, PENNSYLVANIA 17120

IN REPLY PLEASE  
REFER TO OUR FILE  
Bp8# 3026373

February 20, 2024

**Via First Class Mail and Electronic Mail**

Cindy S. Troy  
Borough Secretary  
Sandy Lake Borough  
3271 South Main Street  
P.O. Box 87  
Sandy Lake, PA 16145-0087  
[slboro@zoominternet.net](mailto:slboro@zoominternet.net)

Re: Sandy Lake Borough's Request for Opinion of the Chief Counsel  
Regarding Provision of Service to One Additional Customer Outside of the  
Borough  
Bp8# 3026373

Dear Ms. Troy:

In a letter dated December 23, 2023, to the Commission's Law Bureau, you are seeking an Opinion of the Chief Counsel on behalf of Sandy Lake Borough (Borough) on the interpretation of the *Petition of the Borough of Sandy Lake for a Declaratory Order that its Provision of Water Service to Isolated Customers in Sandy Lake Township Does Not Constitute the Provision of Public Utility Service Under 66 Pa.C.S. § 102*, Docket No. P-2011-2224488 (Final Order entered January 31, 2012) (*2012 Order*). Specifically, you are asking if the Borough added another customer, who is physically proximate to the Borough but not within the corporate boundaries of the Borough, would that violate the terms of the *2012 Order*, which would cause the Borough to fall under the jurisdiction of the Commission as it would provide service "to or for the public" within the meaning of Section 102 of the Public Utility Code, 66 Pa.C.S. § 102.

The question of whether a given service is within the Commission's regulatory jurisdiction under the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*, depends upon the circumstances and facts of each case. Section 102 of the Public Utility Code defines a public utility as "[a]ny person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for . . . diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation." 66 Pa.C.S. § 102. Water service is considered to be "for the public" within the meaning of Section 102 when it is open to all members of the public who require service, as opposed to only particular individuals. *Pilot Travel Centers, LLC v. Pa. Pub. Util. Comm'n*, 933 A.2d 123, 128 (Pa. Cmwlth 2007), appeal denied, 938 A.2d 1054

(Pa. 2007). The word “public” implies the population at large, not a single corporate entity. *Peter Daniels Realty, Inc. v. N. Equity Inv'rs, Grp., Inc.*, 829 A.2d 721, 724 (Pa. Super. 2003) (citing *Bethlehem Steel Corporation v. Pa. Pub. Util. Comm'n*, 713 A.2d 1110 (Pa. 1998)). Water service that is restricted to a “defined, privileged, and limited group,” on the other hand, is generally considered to be private and is, therefore, exempt from public utility regulation. *Id.* (citing *Drexelbrook Assocs. v. Pa. Pub. Util. Comm'n*, 212 A.2d 237 (Pa. 1965)).

The Commission has adopted policy guidelines for determining public utility status. See 52 Pa. Code § 69.1401. Those guidelines provide that the Commission will consider the status of a utility project or service based on the specific facts of the project or service and will take into consideration the following criteria in formulating its decision:

- (1) the service being provided by the utility project is merely incidental to nonutility business with the customers which creates a nexus between the provider and customer;
- (2) the facility is designed and constructed only to serve a specific group of individuals or entities, and others cannot feasibly be served without a significant revision to the project; and
- (3) the service is provided to a single customer or to a defined, privileged, and limited group when the provider reserves its right to select its customers by contractual arrangement so that no one among the public, outside of the selected group, is privileged to demand service. 52 Pa. Code § 69.1401(c).

On February 4, 2011, the Borough filed with the Commission a Petition for Declaratory Order (Petition) seeking permission to add “a defined, privileged and limited group of customers” located outside the Borough’s municipal limits to connect to its water system. The Petition stated in part “...the Sandy Lake residents and businesses do not have the right to connect to the Borough’s water system; rather the only residents and businesses who have any right to connect to the Borough’s water system are such resident and businesses located within the Borough’s municipal limits and the non-Borough customers permitted to water service from the Borough for the reason listed above.”<sup>1</sup>

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<sup>1</sup> Petition for Declaratory Order, February 2, 2011, page 4.

In accordance with that Petition, by Tentative Order, the Commission granted the Borough's Petition which stated, "water service by Sandy Lake Borough to the twenty-four customers located outside the Borough's boundaries is deemed to be non-jurisdictional because it is not service "to or for the public" within the meaning of section 102 of the Public Utility Code, 66 Pa.C.S. § 102." The Borough had been serving twenty-one extra-territorial residential customers since 1934. The additional three-extra-territorial customers had been served since 1952 and were the Lakeview Consolidated Schools (two buildings) and a gas station located next to the schools. On January 31, 2012, by Secretarial Letter, the Commission reported that no comments or objections were filed within the twenty-day comment period, and concluded therefore, that pursuant to the Tentative Order adopted on August 25, 2011, at Docket No. P-2011-2224488, that the Tentative Order has become Final.

From the facts outlined in your letter and in the letter from the Sandy Lake Wesleyan Church dated November 1, 2023, the church building is located outside the boundaries of the Borough by "approximately 500 feet." The church is served by a well on its property but now requests that it be allowed to connect to the Borough's water system due to capital improvements needed on the well and its fixtures. In addition, unlike the twenty-four entities mentioned above, it does not appear the church has a prior relationship of being served by the Borough water system and they are not residential in nature.

In conclusion, it is my opinion that due to the question raised by Sandy Lake Borough, I will decline to issue a Chief Counsel Opinion letter that sets forth my interpretation of whether the scope of the holding of the *2012 Order* encompasses the fact pattern set forth in your December 23, 2023 letter. Rather, I encourage you to seek a formal determination from the Commission and recommend that you file with the Commission a Petition for Declaratory Order which seeks to amend the Final Order issued on January 31, 2012, to permit the Borough to provide water service to the Sandy Lake Wesleyan Church.

Sincerely,



David Screven  
Chief Counsel

cc: Law Bureau Electronic Archive – State  
Adam Simcik, Lead Pastor, Sandy Lake Wesleyan Church (First Class Mail Only)  
Patricia T. Wiedt, Deputy Chief Counsel  
David A. Alexander, Assistant Counsel

**Sandy Lake Borough**  
3271 South Main Street  
P.O. Box 87  
Sandy Lake, PA 16145-0087  
e-mail: [slboro@zoominternet.net](mailto:slboro@zoominternet.net)

Telephone: 724-376-2676

Fax: 724-376-7047

December 20, 2023

Chief Council  
Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

RE: Docket Number: P-2011-2224488

Dear Chief Council,

The Sandy Lake Borough petitioned for a declaratory order to remove the Sandy Lake Borough from the Pennsylvania Public Utility Commission's operating authority.

This was requested because we serviced a minimal number of customers that lie on the border of the Sandy Lake Borough. The request was granted on January 31, 2012 by the Public Utility Commission.

As part of the agreement, Sandy Lake Borough stated they would not add any new customers located outside the Borough unless permission was granted by the Commission.

The Sandy Lake Borough was recently approached by the Sandy Lake Wesleyan Church. They are located in Sandy Lake Township and have a well which by the Department of Environmental Protection's standards would need to operate as a public water supply. The Sandy Lake Wesleyan Church would like to tap into the Sandy Lake Borough's water system. Enclosed is a letter from the Church explaining their situation.



November 1, 2023

Sandy Lake Borough  
3271 S Main St  
Sandy Lake, PA 16145

Attention: Cindy Troy, Secretary

The Sandy Lake Wesleyan Church property, located at 3096 Sandy Lake-Grove City Rd, Sandy Lake, PA has been functioning with an on-site well to supply their water since it was constructed in 1991. The property is located in Sandy Lake Township, approximately 500 feet beyond the Sandy Lake Borough boundary.

In 2019, the church was notified by DEP that it may have to operate the well as a public water supply. After submitting the required information to DEP, the church was notified it had to either upgrade the well to a public water supply or find another source to connect to. Currently, the church is restricting water usage. Bottled water is now available for drinking and all food preparation/dishwashing in the kitchen has been eliminated.

The church is exploring options to either develop the well into a public water supply or to connect to another source of water. Pressure readings were taken on the Borough water system at nearby properties at 3186 Sandy Lake-Grove City Rd (Martin property) and 1479 Hendersonville Rd (Blake property) and their pressure readings were 40psi and 30psi respectively. The elevation at the Blake property is the same elevation as the church building, so the pressure appears to be adequate to serve the church property. If the pressure needs to be increased to meet the demands of the church, a booster pump would be installed on the church property. All costs and risks to extend the water to the church building would be assumed by the church.

The proposed cost to develop the well into a potential public water supply and the ongoing financial commitment to maintain and test the well each year would be significant for the church as a small non-profit organization. The church is seeking the best, most cost-effective solution to avoid any potential financial hardships that would create a consequence of having to reduce the preschool availability, or worst-case scenario, create a situation where it was not possible to continue to provide this resource, support, and ministry to local community children and their families.

At this time, the most practical option (from the church's position) would be to connect to the Borough's water system. Therefore, the church is requesting that the Borough take the necessary steps through the PUC and DEP to allow this option to be further considered.

Thank you for your consideration and feel free to reach out to me if you have any questions or require any additional information.

Respectfully,

Adam J. Simcik - Lead Pastor  
ajsimcik@slwchurch.org

**BEFORE THE PENNSYLVANIA UTILITY COMMISSION**

In re: ) Docket No.  
 )  
PETITION OF BOROUGH OF SANDY )  
LAKE )

**VERIFICATION**

On this, the 31<sup>st</sup> day of October 2024, Tim Clark, the undersigned, deposes and states that he/she is authorized to execute this verification on behalf of the Borough of Sandy Lake and that the facts set forth in the foregoing Petition for Declaratory Judgment are true and correct to the best of his/her knowledge, information and belief, subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

  
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**BEFORE THE PENNSYLVANIA UTILITY COMMISSION**

In re: ) Docket No.  
 )  
PETITION OF BOROUGH OF SANDY )  
LAKE )

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.



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Michael J. Musone

**BEFORE THE PENNSYLVANIA UTILITY COMMISSION**

In re: ) Docket No.  
 )  
PETITION OF BOROUGH OF SANDY )  
LAKE )

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 1<sup>st</sup> day of November, 2024, a copy of the within document was served on all counsel of record and unrepresented parties in accordance with the applicable rules of court.

Office of Trial Staff  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120

Office of Consumer Advocate  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120

Office of Small Business Advocate  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120

The Sandy Lake Wesleyan Church  
3096 Sandy Lake-Grove City Road  
Sandy Lake, Pennsylvania 16153

  
\_\_\_\_\_  
Michael J. Musone