

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

Public Meeting held November 20, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Kathryn L. Zerfuss  
John F. Coleman, Jr.  
Ralph V. Yanora

Petition of Borough of Sandy Lake

P-2024-3051940

**FINAL DECLARATORY ORDER**

**BEFORE THE COMMISSION:**

Before the Commission for review and consideration is the 2024 Petition of the Borough of Sandy Lake (SLB), Mercer County, requesting that the Pennsylvania Public Utility Commission (Commission) issue a declaratory order under 66 Pa.C.S. § 331(f) (relating to powers of Commission and administrative law judges) and 52 Pa. Code § 5.42 (relating to petitions of declaratory orders) regarding extraterritorial water service to the Sandy Lake Wesleyan Church (Church) at 3096 Sandy Lake-Grove City Road, Stoneboro, Mercer County, PA. Specifically, SLB requests that such service be deemed “non-jurisdictional because it is not service to or for the public.” (2024 Petition at ¶ 5.) SLB requests that the PUC declare that such service will not constitute the provision of public utility service under 66 Pa.C.S. § 102 (relating to definitions). No responses were filed to the Petition. For the reasons set forth below, the Commission will grant SLB’s 2024 Petition, conditioned on the requirements set forth herein.<sup>1</sup>

---

<sup>1</sup> This Declaratory Order will also address the extraterritorial nature of SLB’s water service to Stoneboro Plaza, 2449 Mercer Street, Stoneboro, Pennsylvania 16153, a prior extraterritorial connection by SLB.

## BACKGROUND

SLB is in Mercer County and operates a system (System) that treats and distributes potable drinking water. 2024 Petition at ¶ 1. SLB purchased this System in 1934 when the System served customers within SLB’s municipal boundary and also served customers outside the municipal boundary, believed to number 22 residences. 2024 Petition at ¶ 5. In 1952, SLB began serving two schools in the Lakeview Consolidated School district which “nearly abut [SLB’s] municipal line.” 2024 Petition at ¶ 6. SLB also began providing water service to a non-residential gas station next to the two schools. 2024 Petition at ¶ 7.<sup>2</sup>

SLB asserts that it has never held itself out as supplying water service to the public in areas outside its municipal limits and that these “24 customers live”<sup>3</sup> in close proximity to SLB’s existing water lines. 2024 Petition at ¶ 8. However, at some point in time at least as early as 1989, SLB was granted a certificate of public convenience (CPC) with a utility code of 223350 to provide water service to its extraterritorial customers. PUC records reflect that SLB filed an annual report for 1989 reflecting \$4,885 in extraterritorial revenue. PUC records reflect that the most recent annual report was filed for 2010 reflecting annual extraterritorial revenue of \$7,356. The highest reported annual extraterritorial revenue was \$20,971 for 2004.

---

<sup>2</sup> As of 1952 and continuing through the filing of the 2011 Petition, the System served the Lakeview High School, 2483 Mercer Street, Stoneboro, PA; the Oakview Elementary School, 1387 School Road, Stoneboro, PA; and Anchors Away gas station, 2436 Mercer Street, Stoneboro, PA. The 2011 Petition identifies the three properties by name but does not provide the addresses. 2011 Petition at 3. The addresses were located by internet searches. The 2024 Petition mentions the two schools and the gas station but does not identify them by name or address; it also mentions an additional extraterritorial customer added after 2011. 2024 Petition at ¶ 12.

<sup>3</sup> There is some ambiguity in the record as the number of extraterritorial customers the SLB presently provides water service to. It appears that the composition of the extraterritorial customers is 22 residences, two schools, one gas station, and Stoneboro Plaza, with the assertion that it is the same 22 residences as acquired in 1934. We shall refer to the number of extraterritorial customers as numbering 25, counting the two schools as two customers. Stoneboro Plaza is counted herein as the 26<sup>th</sup> customer absent any indication that the tenants are individually billed by SLB.

In 2011, SLB passed Resolution No. 2011-1 which is still in effect. *See* 2024 Petition Exhibit A. Resolution No. 2011-1 provides (1) that SLB will not allow additional water service connections to properties outside its “municipal limits,” and (2) that that the extraterritorial customers will be charged the same rates and on the same terms and conditions as applied to customers within SLB. 2024 Petition at ¶ 10.

In 2011, SLB filed a petition at Docket No. P-2011-2224488, seeking a declaratory judgement that service to the 25 enumerated extraterritorial customers<sup>4</sup> did not constitute public utility service under 66 Pa.C.S. § 102. SLB alleged that the Commission’s tariff and reporting requirements were unreasonably burdensome given SLB’s “already limited financial resources.” 2011 Petition at 21. The Commission entered a Tentative Order on August 25, 2011, that tentatively determined that water service offered by Sandy Lake Borough to the 25 customers located outside of the Borough’s boundaries was non-jurisdictional in accordance with *Drexelbrook Assoc. v. Pa. Pub. Util. Comm’n*, 212 A.2d 237, 240 (Pa. 1965) (service to a defined, privileged, and limited group is not public utility service; service was rendered by an apartment landlord to the building tenants).<sup>5</sup> 2024 Petition, Exhibit B. On January 31, 2012, by Secretarial Letter, the 2011 Tentative Order became final, SLB’s CPC was cancelled, and SLB was, *inter alia*, relieved of the obligation to file annual reports with the Commission.<sup>6</sup> SLB clearly stated that it would continue to provide service “only to the twenty-four customers” that it was then presently serving outside of its boundaries and that it was not soliciting additional customers. 2011 Tentative Order at 5.

---

<sup>4</sup> At this point in time, SLB was referring to the 22 residences, the two schools, and the gas station.

<sup>5</sup> *Re: 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 August 25, 2011) (*2011 Tentative Order*). The *2011 Tentative Order* notes that the three non-residential customers have received water service from the System since 1952. The *2011 Tentative Order* also reflects that the System provides and maintains fire hydrants that protect all of the extraterritorial customers. *2011 Tentative Order* at 3.

<sup>6</sup> 2012 Secretarial Letter, Docket No. P-2011-2224488, <https://www.puc.pa.gov/pcdocs/1163769.doc>.

When SLB filed the instant 2024 Petition, it also filed documents from 2012 regarding a possible additional connection of the Cocca Development Ltd (Cocca) property in Stoneboro Plaza to the System.<sup>7</sup> Neither the record at this docket nor the record at Docket No. P-2011-2224488 reflect these Stoneboro Plaza documents.

SLB notes that Stoneboro Plaza was connected to the System. 2024 Petition at ¶¶ 12 & 13. It appears, from the documentation provided by SLB, that SLB did not seek a declaratory order relative to Commission authority to provide water service to Stoneboro Plaza. It appears that SLB, instead, relied on a non-binding 2012 Opinion of Counsel Letter rendered under 52 Pa. Code § 1.96 that opined that the additional extraterritorial service to Stoneboro Plaza was also non-jurisdictional. Without seeking a more formal declaratory order to confirm the opinion of counsel, SLB connected Stoneboro Plaza to the System. SLB refers to Stoneboro Plaza as the one new connection since 2011. When Stoneboro Plaza was connected to the system there were at least three tenants in the Stoneboro Plaza: a Dollar General Store, Physiotherapy Associates, and Harley's Pizza & Wings. 2024 Petition Exhibit C Letter from Cocca to SLB.

---

<sup>7</sup> The documentation in Exhibit C to the 2024 Petition relative to Stoneboro Plaza does not reflect a docket number but includes, in chronological order:

- July 9, 2012 letter from the Pennsylvania Department of Environmental Protection (DEP) to Cocca asserting that Stoneboro Plaza was subject to DEP regulation as a transient noncommunity water supply which was having difficulties meeting the Safe Drinking Water Act. DEP supported abandonment of Cocca's well and connection to an "adjacent public water supply if possible."
- July 23, 2012 letter from Cocca to SLB requesting connection to the System to provide water service for Stoneboro Plaza tenants consisting of a Dollar General Store, Physiotherapy Associates, and Harley's Pizza & Wings.
- July 26, 2012 letter from SLB to the Commission asserting that it would not add Stoneboro Plaza to the System unless it could do so as consistent with Docket No. P-2011-2224488.
- August 29, 2012 Opinion of Counsel Letter under 52 Pa. Code § 1.96, identified as 2024 Petition Exhibit C, which opined that the addition of Stoneboro Plaza would not be jurisdictional. The Opinion of Counsel Letter clearly indicated that it was "rendered as a courtesy to [SLB] and represent[ed] 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."

On December 20, 2023, referencing Docket No. P-2011-2224488, SLB notified the Commission that the Church had requested connection to the System for water service. Included with the notification was a November 1, 2023 letter from the Church.<sup>8</sup> The Church, approximately 500 feet beyond the SLB boundary, asserted that DEP had notified the Church that the Church’s well would need to be upgraded to public water supply status or that the Church would need to find another water source. The Church also stated that it was restricting water usage, that bottled water was available for drinking, and that food preparation and dishwashing in the kitchen had been eliminated. The Church noted that water pressure at nearby locations indicated that the System had sufficient pressure to supply the Church and that the Church would assume “all costs and risks” to extend the System’s water service to the Church. SLB requested an opinion of counsel letter under 52 Pa. Code § 1.96 (relating to guidelines for determining public utility status – statement of policy) that service to the Church would be non-jurisdictional.

On February 20, 2024, in response to SLB’s December 20, 2023 opinion of counsel letter request regarding service to the Church, the responsive 2024 Opinion of Counsel Letter: (1) declined to opine whether the 2011 Order and 2012 Secretarial Letter (referred to therein as the “2012 Order”) encompassed the fact pattern relative to the Church (*i.e.*, that it would be non-jurisdictional); (2) encouraged SLB to seek a formal determination from the Commission; and (3) recommended that SLB file a petition for declaratory order seeking to amend the 2012 Final Order.

---

<sup>8</sup> The 2023 documents were not attached to Docket No. P-2011-2224488 or to this docket when they were filed. The only public record of them is as unmarked attachments to the 2024 Petition.

SLB's 2024 Petition, with a certificate of service, was filed on or about November 1, 2024.<sup>9</sup> SLB filed a second certificate of service for the 2024 Petition on February 25, 2025.<sup>10</sup> There have been no answers filed to the 2024 Petition.

As of November 1, 2024, when the 2024 Petition was filed, SLB had a population of 659 residents, and the System served 370 water customers. 2024 Petition at ¶ 4.

SLB's sole asserted criteria for deciding whether to provide water service to the Church is whether that service would jeopardize SLB's non-jurisdictional status. This is the same criteria it articulated when it requested an opinion of counsel letter in 2012 relative to providing extraterritorial water service to Stoneboro Plaza. Having received a favorable response in the 2012 Opinion of Counsel Letter relative to Stoneboro Plaza, SLB commenced providing water service to Stoneboro Plaza without seeking a determination by the Commission whether such service was indeed non-jurisdictional. While having sought the opinion of counsel letter establishes that SLB was likely exercising good faith, an opinion of counsel letter is not a fact-based determination by the Commission. Having been unable to obtain similar advice in an opinion of counsel letter relative to providing service to the Church, SLB now seeks a Commission determination in response to the 2024 petition as to whether such extraterritorial service to the Church would render its service as jurisdictional or non-jurisdictional to the Commission.

## **DISCUSSION**

We note that any issues which we do not specifically address herein have been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider expressly or at length each contention or

---

<sup>9</sup> The November 1, 2024 Certificate of Service listed the Commission's Office of Trial Staff (which is now the Commission's Bureau of Investigation and Enforcement), the Office of Small Business Advocate (OSBA), the Office of Consumer Advocate (OCA), and the Church.

<sup>10</sup> The February 25, 2025 Certificate of Service listed OCA and OSBA.

argument raised by the parties. *Consol. Rail Corp. v. Pa. Pub. Util. Comm'n*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, Univ. of Pa. v. Pa. Pub. Util. Comm'n*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

## **2024 Petition and the Church**

SLB filed its 2024 Petition regarding an extension to its extraterritorial water service under 66 Pa.C.S. § 331(f) and 52 Pa. Code § 5.42. SLB's System currently serves 370 customers, including at least 26<sup>11</sup> of which are extraterritorial. SLB now requests authorization to extend the System in such a manner as to provide extraterritorial water service to the Church, which is 500 feet beyond the SLB municipal boundary, without being subject to the Commission's jurisdiction.

In its 2024 Petition, SLB asserts that the basis for requesting a further extraterritorial extension of water service to the Church is the Church's claim that DEP has determined that the Church must either upgrade its well to a public water supply or find another water supply source. The Church has stated to SLB that the cost to upgrade and maintain a public water supply would be significant for the non-profit organization. The Church further stated that connection to the System would avoid consequences that could lead to having to reduce or terminate preschool activities in the Church. The Church asserted that connection to the System is the most practical option from the Church's position and requested that SLB take the necessary steps through the Commission and DEP regarding this option. The Church further asserted that it would bear all costs and risks associated with extension of the System to provide water service to the Church. *See* November 1, 2023 Letter from the Church to BLS.<sup>12</sup> To date, the

---

<sup>11</sup> This includes 22 residences SLB has been serving since 1934; an elementary school, a high school, and a gas station added in 1952; and Stoneboro Plaza which had a Dollar General Store, a physical therapy practice, and a restaurant, added circa 2012. 2024 Petition at ¶ 12. *See also* 2011 Tentative Order at 2. We are counting this as 26 customers; *see* footnotes 3 and 4, above. As noted above, SLB relied on the non-binding 2012 Opinion of Counsel Letter to provide extraterritorial water service to Stoneboro Plaza.

<sup>12</sup> As noted in FN 7, above, the November 1, 2023 Letter from the Church to BLS is part of the public record at this docket as an unmarked attachment to the 2024 Petition.

Commission has received no direct correspondence or copies of correspondence from DEP.

To provide extraterritorial water service to the Church, SLB notes that the Church is “adjacent” to a water line owned and operated by the System. 2024 Petition at ¶ 15. SLB is willing to provide this water service only if providing this extraterritorial water service is not subject to Commission jurisdiction. 2024 Petition ¶¶ 18 & 19. SLB asserts that this water service would be a “*de minimus* expansion” of its extraterritorial service, that it did not solicit the Church as a customer, and that the Church is in urgent need of water. 2024 Petition at ¶ 20. SLB further asserts that the circumstances regarding connecting the Church to the System are similar to other approved extraterritorial connections that were deemed non-jurisdictional, citing *Petition for A Declaratory Order of the Borough of Weatherly*, Docket No. P-2023-3038615, 2023 WL 3625009 (May 18, 2023) (*Weatherly Borough*) and *Petition of Valley Township*, Docket No. P-2020-3019476, 2020 WL 5593134 (Aug. 6, 2020) (*Valley Township*)<sup>13</sup>.

SLB also asserts that, consistent with its Resolution 2011-1, it will apply the same rules, regulations, and rates to the Church as it does to its other customers. 2024 Petition at 4. SLB maintains that such extraterritorial water service would not be jurisdictional “because it is not service ‘to or for the public’ as contemplated under 66 Pa.C.S. § 102. . . .” 2024 Petition at page 5.

---

<sup>13</sup> The proper citation is *Petition of Valley Township for a Declaratory Order Regarding the Provision of Water Service to 22 Residents of West Caln Township and East Fallowfield Township*, Docket No. P-2020-3019476 (August 6, 2020), and *Petition of Valley Township for a Declaratory Order Regarding the Provision of Wastewater Collection and Conveyance Service to 30 Residents of West Caln Township, Sadsbury Township, and East Fallowfield Township*, Docket No. P-2020-3019477 (Order entered August 6, 2020).

## **Stoneboro Plaza and the 2012 Opinion of Counsel Letter**

Because there has been no determination other than the non-binding 2012 Opinion of Counsel Letter relative to the nature of SLB's extraterritorial service to Stoneboro Plaza, we will address that extraterritorial water service in this Declaratory Order. We note that having requested an opinion of counsel letter in 2012, SLB acted in a good faith effort to operate in accordance with the law. We will consider that a mitigating factor as we consider the consequences of SLB's failure to request Commission confirmation of the 2012 Opinion of Counsel Letter. *See* 52 Pa. Code § 69.1401(f)(3) (2007) (relating to guidelines for determining public utility status – statement of policy). We hasten to note that an opinion of counsel letter is only considered as an aid to the public, does not have the force and effect of law or legal determinations, and is not binding on the Commonwealth or the Commission under 52 Pa. Code § 1.96.

## **Legal Standards – Declaratory Orders**

Section 331(f) of the Public Utility Code (Code) governs declaratory orders and provides that the Commission “may issue a declaratory order to terminate a controversy or remove uncertainty.” 66 Pa.C.S. § 331(f). The issuance of a declaratory order is within the Commission's discretion and is not a matter of right. *Petition of Philadelphia Gas Works for Establishment of Interim Rate Procedures and for a Declaratory Order*, Docket No. P-00001831, (Order entered August 17, 2000). The Commission will issue a declaratory order only when there is no outstanding issue of material fact. *Petition of the Pennsylvania State University for a Declaratory Order*, Docket No. P-2007-2001828, (Order entered April 9, 2008).

Upon consideration of the facts and circumstances presented, we find that it is appropriate to exercise our discretion and issue a Declaratory Order under 66 Pa.C.S. § 331(f) to resolve uncertainty regarding whether SLB's proposed provision of

extraterritorial water service to the Church and to Stoneboro Plaza constitutes the provision of public utility service.

### **Legal Standards – Definition of a Public Utility**

Section 102 of the Code defines “public utility” to include “[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(1)(ii). Notwithstanding this definition, the Commission does not typically regulate municipal water systems, meaning those water systems owned and operated by cities, boroughs, or townships, that are offering water utility service within their own corporate boundaries. However, as it pertains to a municipal water system that is seeking to offer extraterritorial service or water service to customers residing and located outside of its corporate boundaries, the provisions of the Code and case law decided thereunder governs whether such service is subject to Commission jurisdiction and regulation.

In particular, Section 1501 of the Code, 66 Pa.C.S. § 1501 (relating to character of service and facilities), provides that “[a]ny public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the Commission . . . as if such service were rendered by a public utility.” 66 Pa.C.S. § 1501.<sup>14</sup>

Thus, under the Code, extraterritorial wastewater service rendered by a municipality is considered public utility service within the Commission’s jurisdiction when that service is provided “for the public.” 66 Pa.C.S. § 102.

---

<sup>14</sup> In Pennsylvania, the Commission does not regulate a municipal water authority that is incorporated under the Municipal Authorities Act, 53 Pa.C.S. §§ 5601–5622.

The Commission relies on the test set forth in *Borough of Ambridge v. Pa. Pub. Serv. Comm'n*, 165 A. 47 (Pa. Super. 1933) (*Ambridge*) to determine whether utility service is being rendered “for the public” within the meaning of the Code. See *Lehigh Valley Cooperative Farmers v. City of Allentown*, Docket No. C-79081344 (Order entered September 18, 1980) (*Lehigh*); *Re New Albany Borough*, Docket No. P-00991775 (Order entered March 3, 2000); *Petition of Laceyville Borough for a Declaratory Order*, Docket No. P-2008-2064117 (Order entered December 23, 2008); *Petition of Cochranton Borough for a Declaratory Order*, Docket No. P-2008-2035741 (Order entered May 14, 2009); *Petition of the City of Titusville for a Declaratory Order*, Docket No. P-2013-2376600 (Order entered April 23, 2014; Secretarial Letter issued October 29, 2014); *Petition of the Borough of Driftwood for a Declaratory Order*, Docket No. P-2016-2533069 (Order entered June 14, 2017); *Petition of Upper Saucon Township for a Declaratory Order*, Docket No. P-2024-3050965 (Order entered March 27, 2025; Secretarial Letter issued April 2, 2025) (*Upper Saucon*).

The *Ambridge* test focuses on whether the service offered is open for use by all members of the public, residential or commercial, who may require it up to the full extent of the provider’s capacity. *Ambridge* at 49. In *Ambridge*, the Superior Court stated that:

The test is, therefore, whether or not such person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as contradistinguished from holding himself out as serving or ready to serve only particular individuals. The public or private character of the enterprise does not depend, however, upon the number of persons by whom it is used, but upon whether or not it is open to the use and service of all members of the public who may require it, to the extent of its capacity; and the fact that only a limited number of persons may have occasion to use it does not make of it a private undertaking if the public generally has a right to such use.

*Ambridge* at 49; see also *Drexelbrook Assoc. v. Pa. Pub. Util. Comm'n*, 212 A.2d 237, 239-240 (Pa. 1965) (*Drexelbrook*) (utility service provided by a landlord to a defined, privileged, and limited group is generally private). The Commonwealth Court reiterated the *Ambridge* approach more recently in *Pilot Travel Center, LLC v. Pa. Pub. Util. Comm'n*, 933 A.2d 123 (Pa. Cmwlth. 2007), appeal denied, 938 A.2d 1054 (Pa. 2007) (*Pilot*). The Court stated that utility service is considered to be for the public when the provider represents itself as serving all members of the public who require service, as opposed to only serving a limited number of particular individuals. *Pilot* at 128. Whether service is private or public in nature is not determined by the number of customers actually served but “rests upon whether or not the service is available to all members of the public who may require it.” *Pilot* at 128.

In sum, where the general public has a right to subscribe to the service at issue, it constitutes public utility service within the meaning of the Code and is subject to Commission jurisdiction. *Pilot* at 128. If the service is limited, however, to only a defined, privileged, and limited group, the service is generally considered private and is not subject to Commission jurisdiction. *Pilot* at 128 (citing *Drexelbrook*).

The municipality in *Upper Saucon* provided evidence that an adjacent township did not oppose the municipality’s petition and that an existing water authority has no ability to provide the water service in question.<sup>15</sup> SLB has not provided similar assurances. Furthermore, the extraterritorial service in *Upper Saucon* is being provided under special circumstances; connection is being provided to resolve a unique issue resulting from a municipality well interfering with the extraterritorial customer’s on-site well.

---

<sup>15</sup> *Upper Saucon* at 9.

**Policy Guidance – 52 Pa. Code § 69.1401 *Guidelines for Determining Public Utility status (2007)***

In 2007, the Commission articulated policy guidance for determining whether service is public utility service at 52 Pa. Code § 69.1401 *Guidelines for Determining Public Utility status (2007)* (Jurisdictional Guidelines).<sup>16</sup> The adoption of the Jurisdictional Guidelines started out as a process to adopt jurisdictional guidelines for projects covered by the Alternative Energy Portfolio Standards (AEPS) Act, 73. P.S. §§ 1648.1–1848.8.<sup>17</sup> Upon final adoption, the Jurisdictional Guidelines are now a non-binding statement of Commission policy relative to jurisdictional questions and may be applied in Commission consideration of any utility project or service, including alternative energy systems.<sup>18</sup> Having delineated a fact-based determination process, the Jurisdictional Guidelines indicate the criteria that the Commission may take into consideration in formulating a jurisdictional decision:

---

<sup>16</sup> We note that Section 69.1401 does not expressly mention extraterritorial service by a municipality. Several dockets addressing questions of extraterritorial service do cite Section 69.1401. *See, e.g., Application of Laser Northeast Gathering Company, LLC for Approval to Begin to Offer, Render, Furnish, or Supply Natural Gas Gathering and Transporting or Conveying Service by Pipeline to the Public in Certain Townships of Susquehanna County, Pennsylvania*, Docket No. A-2010-2153371 (Order on Reconsideration entered December 5, 2011) (allowing applicant to withdraw application); *Petition of Skytop Lodge Corporation for a Declaratory Order Under 66 Pa. C.S. Sections 102 and 331(d) that Water and Sewer Service to Limited Privileged Recreational Easement Holders/Property Owners Within its Resort is not Service to or for the Public and Subject to Commission Jurisdiction*, Docket No. P-2354659 (Order entered July 24, 2014) (finding that mountain lodge was rendering public utility service to private properties on its resort grounds), (order on consideration of verification entered March 16, 2017) (finding that mountain lodge was not rendering public utility service); *Petition of NP Falls Township Industrial, LLC for a Declaratory Order for the Provision of Electric, Natural Gas, Steam, and Water and Sewer Services By NP Falls Township Industrial, LLC to Tenants, Property Owners, and Other Utility Service Customers in the Geographic Area Formerly Known as the Fairless Works Site*, Docket No. P-2020-3021886 ) (Order entered November 19, 2020) (petitioner sought to provide extraterritorial service under the same constraints and control within an industrial park as the prior extraterritorial service provider); *Conyngham Township v. Sanitary Sewer Authority of the Borough of Shickshinny*, Docket No. C-2021-3023624 (Order entered November 1, 2023) (Commission does not have jurisdiction over municipal authorities) (Order on reconsideration entered January 18, 2024).

<sup>17</sup> *See Implementation of Alternative Energy Portfolio Standards Act of 2004*, Docket No. M-00051865 (order entered November 16, 2005), <https://www.puc.pa.gov/PcDocs/577948.doc> (Motion); <https://www.puc.pa.gov/PcDocs/578780.doc> (entered Order posted to PUC website on December 29, 2005); *see also* 35 Pa.B. 6906 (December 23, 2004).

<sup>18</sup> *In re Alternative Energy Portfolio Standards Act of 2004*, Docket No. M-00051865 (Order entered November 16, 2005), 37 Pa.B. 29 (January 6, 2007).

(1) The service being provided is merely incidental to the nonutility business with the customers which creates a nexus between the provider and customer. [52 Pa. Code § 69.1401(c)(1).]

(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. [52 Pa. Code § 69.1401(c)(2).]

(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, and resale of the service is prohibited, except to the extent that a building or facility owner/operator that manages the internal distribution system serving the building or facility supplies electric power and related electric power services to occupants of the building or facility. *See* 66 Pa.C.S. §§ 102 and 2803 (relating to definitions). [52 Pa. Code § 69.1401(c)(3).]

## **Disposition**

In the Commission's judgement, the circumstances articulated by SLB in 2024 relative to the Church and in 2012 relative to Stoneboro Plaza are similar to those presented in *Titusville*, where the Commission concluded that service to a limited number of isolated individuals outside of the municipal boundaries under special circumstances did not constitute public utility service. *Titusville* at 3. In *Titusville*, the Commission found that water service provided by the municipality to 101 customers located in close proximity to the municipality's boundaries was not public utility service because the municipality: (1) never held itself out as being engaged in the business of supplying utility service to the public; (2) passed an ordinance stating that it would apply the same rules, regulations, and rates to its extraterritorial customers as it did to customers residing within City limits; (3) asserted that it would not repeal or modify the ordinance without

providing advance notice to the Commission; and (4) assured the Commission that it would not solicit or serve any additional extraterritorial customers beyond those already being served. *Titusville* at 3-4. The Commission conditioned its determination in *Titusville* on the requirements that the municipality continue to charge its extraterritorial customers the same rates as resident customers and not provide service to any extraterritorial customers beyond those already defined. *Titusville* at 5.

Like the municipality in *Titusville*, SLB asserts that it has never held itself out as being engaged in the business of providing utility service to the public. SLB's Resolution 2011-1 explicitly states that it has committed to providing service to its extraterritorial customers at the same rates charged to customers within its municipal boundary. Additionally, in its Resolution 2011-1, SLB further agreed to not provide service to any additional extraterritorial customers without Commission authority. Lastly, SLB has assured the Commission that it will provide prior notice of any changes to its Resolution 2011-1. In this regard, we hasten to remind SLB, and others, that Commission authority in matters such as requests to provide extraterritorial service is granted by the Commission in an entered order relative to the specific proposed service, and not, for example, by an opinion of counsel letter.

In the instant Petition, SLB requests authorization to extend its System in such a manner as to provide service to the Church, which abuts the territory of SLB's System but is located outside of SLB's territorial limits. We note that based on the language of SLB's Resolution 2011-1, the general public does not have a right to use these System services and that SLB's extraterritorial service is restricted to a defined, privileged, and limited group. To the extent that SLB will be providing extraterritorial water service only to its existing extraterritorial customers and the Church, we conclude that it will not be engaging in the provision of public utility service and that its service to the Church is not subject to Commission jurisdiction.

## **Stoneboro Plaza and the 2012 Opinion of Counsel Letter**

The Commission has not previously addressed whether the extraterritorial service to Stoneboro Plaza is jurisdictional public utility service in a Commission Order. We note that an opinion of counsel letter is only considered as an aid to the public, does not have the force and effect of law or legal determinations, and is not binding on the Commonwealth or the Commission under 52 Pa. Code § 1.96. Since SLB has only obtained the non-binding 2012 Opinion of Counsel Letter relative to the nature of SLB's extraterritorial service to Stoneboro Plaza and not a formal determination from the Commission regarding the jurisdictional status of such extraterritorial service, we determine that it is prudent to also address that extraterritorial water service in this Declaratory Order. In this regard, we hasten to remind SLB, and others, that Commission authority in matters such as requests to provide extraterritorial service is granted by the Commission in an entered order relative to the specific proposed service, and not, for example, by an opinion of counsel letter. Thus, we now review jurisdictional nature of the offering of extraterritorial water service to Stoneboro Plaza, which occurred in 2012, in our determination relative to the extraterritorial service to the Church.

Despite having made all of the relevant assertions and commitments that are required for a finding of non-jurisdictional, non-public-utility service, SLB failed to seek a formal Commission decision that water service to Stoneboro Plaza was non-jurisdictional, non-public-utility service under the Code, applicable Commission regulations, and case law.

We note that there is case law that arguably could support a finding that the existing extraterritorial service to Stoneboro Plaza is jurisdictional public utility service. *See, e.g., Borough of Phoenixville v. Pa. Pub. Util. Comm'n and Phoenix Plaza, Inc.,*

280 A.2d. 471 (Pa. Cmwlth. 1971) (distinguished in *Lehigh* on the facts).<sup>19</sup> *Phoenixville* held that when the municipality rendered uncertificated extraterritorial service it was within the discretionary power of the Commission to make decisions regarding extensions of service. This line of cases highlights the Commission’s discretion.

In the absence of any indication that SLB provided service to any applicants outside its boundaries in the period between connecting Stoneboro Plaza to its system and the filing of the 2024 Petition, we will not refer SLB for investigation for its failure to seek a declaratory order relative to the extraterritorial service to Stoneboro Plaza prior to rendering that service. Further, we will include the extraterritorial service to Stoneboro Plaza in our determination relative to the extraterritorial service to the Church.

As we review the existing extraterritorial service to Stoneboro Plaza, we note that SLB has already agreed to certain requirements in its Resolution 2011-1, as in *Titusville* and *Upper Saucon*, as such we conclude here that the extraterritorial service to Stoneboro Plaza also does not constitute public utility service subject to the conditions established herein. These findings are also consistent with our guidelines for determining public utility status codified at 52 Pa. Code § 69.1401, *Guidelines for Determining Public Utility Status*.<sup>20</sup> Therefore, we conclude that SLB’s extraterritorial service to Stoneboro Plaza is not “for the public” within the meaning of Section 102 of the Code and it is not a public utility and therefore not subject to the Commission’s jurisdiction.

---

<sup>19</sup> *Phoenixville* was cited in *New Garden Twp. v. Artesian Resources Corp., Inc.*, 2019 WL 2400114 (Pa. Cmwlth, 2019), wherein the Commonwealth Court noted that when a municipality renders uncertificated, extraterritorial water service, the Commission has authority to order extensions of the extraterritorial service *nunc pro tunc* as long as the ordered extensions are reasonable. A public utility’s actions taken prior to Commission approval do not bar a positive outcome for the public utility.

<sup>20</sup> 52 Pa. Code § 69.1401 (provides a method for evaluating whether a proposed service is a public utility service consistent with appellate case law).

## CONCLUSION

Based upon our consideration of the law as well as the facts and circumstances identified in SLB's 2024 Petition, which includes the description of its existing extraterritorial service to Stoneboro Plaza, we hereby grant SLB's 2024 Petition and issue this Declaratory Order that extraterritorial water service to the Church is not public utility service. We further determine that the existing extraterritorial water service to Stoneboro Plaza is not public utility service.

Having been granted authority to provide extraterritorial service for this set of customers, SLB's authority applies only to that specific set of customers. It is not authority to provide extraterritorial service to additional customers or additional locations outside the municipality's boundaries without approval of the Commission.

Consistent with the Ordering Paragraphs below, we note especially the following conditions on which our conclusions that SLB's provision of extraterritorial water service to Stoneboro Plaza and to the Church are not jurisdictional and are not public utility service under 66 Pa.C.S. § 102 are predicated:

- (1) That SLB shall charge its extraterritorial customers the same rates for service and under the same terms and conditions, including fire hydrants and flushing, as provided to its SLB customers.<sup>21</sup>
- (2) That SLB shall not provide water service to any additional customers outside of SLB's municipal limits absent express authority from the Public

---

<sup>21</sup> We expressly note that this provision regarding the rates and terms and conditions is a mandatory condition of the determination that the service addressed in this proceeding is not public utility service. The requirement is not a mere "expectation" that SLB will continue to apply the same rates and terms of service outside as well as within SLB's boundaries. *See* 2011 Tentative Order at 5, wherein the Commission qualified the continuing condition as an "expectation."

Utility Commission, noting that an opinion of counsel letter is not binding on the Public Utility Commission.

- (3) That SLB shall not amend or repeal its Resolution 2011-1 without providing advance notice to the Commission; **THEREFORE,**

**IT IS ORDERED:**

1. That Sandy Lake Borough's Petition for Declaratory Order is hereby granted, consistent with this Order.

2. That Sandy Lake Borough's provision of extraterritorial water service to the Sandy Lake Wesleyan Church, 3096 Sandy Lake-Grove City Road, Stoneboro, Mercer County, Pennsylvania, is not jurisdictional because it is not public utility service within the meaning of 66 Pa.C.S. § 102 (relating to definitions).

3. That Sandy Lake Borough shall charge the Sandy Lake Wesleyan Church the same rates for water service as it charges its customers within its municipal boundaries and under the same terms and conditions, including fire hydrants and flushing, as it provides said water service to customers residing within its municipal limits.

4. That Sandy Lake Borough's provision of extraterritorial water service to the Stoneboro Plaza, 2449 Mercer Road, Stoneboro, Mercer County, Pennsylvania, is not jurisdictional because it is not public utility service within the meaning of 66 Pa.C.S. § 102 (relating to definitions).

5. That Sandy Lake Borough shall charge the Stoneboro Plaza the same rates for water service as it charges its customers within its municipal boundaries and shall

provide service under the same terms and conditions, including fire hydrants and flushing, as it provides said water service to customers residing within its municipal limits.

6. That Sandy Lake Borough shall continue to charge its extraterritorial water customers (or locations) in Mercer County, Pennsylvania, as identified in Docket Nos. P-2024-3051940, P-2011-2224488, and in the 2012 Opinion of Counsel Letter, the same rates for service as it charges its customers within its municipal limits, and under the same terms and conditions, including fire hydrants and flushing, as it provides said water service to customers within its municipal limits.

7. That Sandy Lake Borough shall not provide extraterritorial water service to any additional customers outside of Sandy Lake Borough's municipal boundaries absent express authority of the Public Utility Commission, noting that an opinion of counsel letter under either 52 Pa. Code § 1.96 (relating to unofficial statements and opinions by Commission personnel) or 52 Pa. Code § 69.1401 (relating to guidelines for determining public utility status – statement of policy) does not have the force and effect of law, is not a legal determination, and is not binding on the Public Utility Commission.

8. That the determination that provision of extraterritorial water service to the Sandy Lake Wesleyan Church and all other extraterritorial water service identified herein, is non-jurisdictional is expressly conditioned upon the terms of Sandy Lake Borough's Resolution 2011-1.

9. That Sandy Lake Borough may not amend or repeal Resolution 2011-1 without providing advance notice to the Public Utility Commission and without receiving a determination from the Public Utility Commission regarding the impact of said amendment or repeal on the nature of the extraterritorial service being provided under Resolution 2011-1.

10. That a copy of this Declaratory Order be served on Sandy Lake Borough; Cocca Development Ltd; Stoneboro Plaza; the Commission's Bureau of Investigation and Enforcement; the Office of Consumer Advocate; and the Office of Small Business Advocate.

11. That this docket is to be closed.

**BY THE COMMISSION,**



Matthew Homsher  
Secretary

(SEAL)

ORDER ADOPTED: November 20, 2025

ORDER ENTERED: December 17, 2025