

ATTACHMENT J

MEMORANDUM

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DATE: September 20, 2012

TO: Gene Eckhardt, Assistant Director
Water and Transportation

FROM: Donald T. Trotter, Assistant Attorney General
Utilities & Transportation Division

SUBJECT: Sandy Point Improvement Company

I am sending this memo to supplement my September 6, 2012, memo regarding Sandy Point Improvement Co., Inc. (Sandy Point). Since I wrote that memo, I received a phone call from Mr. Rehberger, attorney for Sandy Point, who informed me the corporation has redeemed the Class B shares, or soon would redeem those shares.

The absence of Class B shares does not change my legal conclusion, because the primary issue I have identified is that the Class C shareholders have no right or claim to the earnings of Sandy Point's water operations, or to Sandy Point's water property upon dissolution of the corporation.¹

As I explained, having such a right or claim was a key basis for the court's conclusion in the *Inland Empire* and *Nob Hill* cases that the owners/customers of a cooperative did not need the protection of the public service laws, and hence the cooperatives in those cases were not subject to UTC regulation.²

However, the absence of Class B shares changes some of the discussion in my September 6, 2012, memo, because I had expressed uncertainty whether the 250 Class B shares were proportional to the underlying interest of the shareholder, and whether that shareholder's

¹ September 6, 2012, memo at 4-6 and at 8.

² *Id.*

interests were the same as the other shareholders, who are Sandy Point water customers. I noted that how those issues were resolved could help determine whether the other shareholders had a sufficient "voice" in the affairs of the water utility. As I explained, this "voice" element is another factor considered by the court in both *Inland Empire* and *Nob Hill*.³ However, if Sandy Point redeemed the Class B shares, that issue is no longer relevant.

In sum, while my earlier discussion requires clarification due to updated information regarding the status of the Class B shares, my conclusion is unchanged: there are sufficient facts to support a UTC Staff recommendation that the UTC initiate a classification proceeding for Sandy Point.⁴

DTT:klg