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DEPARTMENT OF ENERGY
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April 26, 2023

Daniel C. Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301

Re: DW 22-082; Residents of Colonial Drive, Moultonborough; Complaint by Residents of Colonial Drive, Moultonborough Against Agape Community Church Sewer System; Department of Energy Letter on Issues

Dear Chairman Goldner:

The Department of Energy (the Department) has reviewed the materials presented in this proceeding and attended the preliminary hearing on issues held January 12, 2023 and the pre-hearing conference held April 5, 2023. At the April 5 pre-hearing conference, the Commission requested legal briefs on the issues identified in the initial complaint and the Commission's Order No. 26,757 (January 11, 2023). The Department submits this letter in lieu of a legal brief, addressing the following issues identified by the Commission:

Public Utility

The Commission asks:

Whether Agape Community Church ACC is a "public utility" subject to regulation under RSA 362:2 and :4;

Whether there is a public utility involved (and, if so, who is it); and

Whether ACC is a public utility subject to Commission regulation?

The Department believes answering these questions would require in-depth legal analysis of property records (deeds, purchase and sale agreements etc..) concerning the specific facts and circumstances of the Colonial Drive sewer infrastructure. Such legal work falls outside of the scope of duties undertaken by the Department while participating in the regulation of public utilities.

The Department routinely participates in Public Utilities Commission dockets involving the rate and service quality regulation of water and sewer utilities as

defined in RSA 362:2 and 362:4. If a utility is identified through this docket process, then the Department would participate in the regulation of such utility.

Customer Complaint

The Commission asks:

Whether the complaint must first be filed with the New Hampshire Department of Energy; and
Whether the Complainants should first seek to resolve their complaint through a process administered by the New Hampshire Department of Energy, pursuant to RSA 365:1 through :5, as amended?

The Department believes the answer to both these questions is no. The Department handles customer complaints against public utilities under RSA 365:1 through 365:4. In this case, the issues raised should not be addressed by the Department as a complaint because:

- no public utility has been identified; and
- the remedy sought by the Colonial Drive residents is for the appointment of a receiver, which fall in the jurisdiction of the Commission (not the Department) under RSA 374:47-a.

Again, if a public utility or receiver is identified though this docket, the Department intends to fully participate in the regulation of said utility or receiver, as it does concerning other water and sewer utilities.

Consistent with the Commission's current practices this letter is being filed only in electronic form.

Sincerely,

/s/ Paul B. Dexter

Paul B. Dexter
Senior Hearings Examiner/Legal Director

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