

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 22-082**

**RESIDENTS OF COLONIAL DRIVE, MOULTONBOROUGH**

**Complaint by Residents of Colonial Drive, Moultonborough  
Against Agape Community Church Sewer System**

**Order on Motion for Continuance**

**ORDER NO. 26,757**

**January 11, 2023**

On January 9, 2023, the Agape Community Church (ACC), by and through its President, filed a motion for a 60-day continuance of the hearing on preliminary issues scheduled for January 12, 2023. On the same day, the residents of Colonial Drive, the Complainants, filed an objection to the motion. We deny the motion for continuance for the reasons provided below.

ACC states it has been unable to hire counsel in time for the January 12<sup>th</sup> hearing. It therefore requests a continuance of 60 days. Complainants argue the failure of the septic system serving residences on Colonial Drive has been ongoing since August 2022, and a delay of 60 days would be contrary to the public interest.

As stated in the Commission's December 9, 2022, procedural order, the hearing scheduled for January 12, 2023, is a hearing solely on preliminary issues:

(1) whether ACC is a "public utility" subject to regulation under RSA 362:2 and :4; and

(2) whether the complaint must first be filed with the New Hampshire Department of Energy (DOE).

At this time, the Commission has not convened an adjudicative proceeding in this matter. The initial determination to be made is whether to commence an adjudicative proceeding. The intent of the January 12<sup>th</sup> hearing is to give the Complainants, the

ACC (the alleged utility), the Department of Energy, and the Department of Environmental Services an opportunity to be heard regarding whether the Commission should commence an adjudicative proceeding. The Commission notes any prejudice to ACC by denying the continuance is minimal because, if the Commission ultimately commences an adjudicative proceeding, ACC would be free to challenge the jurisdiction of the Commission in that proceeding. Additionally, a transcript of the hearing will be made publicly available after the hearing. If ACC retains counsel for a subsequent adjudicative proceeding, the transcript will be available to readily review. Given the preliminary and narrow scope of this hearing and the serious nature of the alleged underlying problem (a sewer system in failure), the Commission denies ACC's motion. The hearing will occur on Thursday, January 12, 2023, at 9:00 a.m. as scheduled.

Again, the Commission looks forward to hearing from the Complainants, the ACC, the Department of Energy,<sup>1</sup> and the Department of Environmental Services on whether it is appropriate for the Commission to convene an adjudicative proceeding at this time. Hearing participants should be prepared to respond to questions pertaining to the filings received thus far in the docket. Participants should also be prepared to respond to questions focused on whether the Commission should act on this complaint, such as:

- (1) whether there is a public utility involved (and, if so, who is it);
- (2) whether ACC is a public utility subject to Commission regulation;

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<sup>1</sup> The Department of Energy has not yet filed in this docket, but we do anticipate participation by the Department of Energy as a statutory party in all Commission proceedings. The Commission is particularly interested in hearing from the Department of Energy regarding the agency's position regarding the public utility complaint process and the appropriate forum for this complaint.

(3) whether the Colonial Drive development is part of the Winnepesaukee River Basin Program;

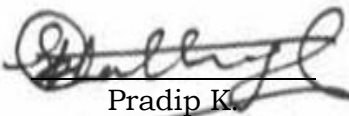
(5) what role, if any, does the New Hampshire Department of Environmental Services – or any other entity, such as, Bay District Sewer and the Bay District Sewer Commission – have in this matter; and

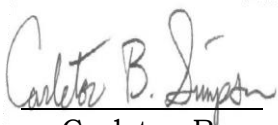
(6) whether the Complainants should first seek to resolve their complaint through a process administered by the New Hampshire Department of Energy, pursuant to RSA 365:1 through :5, as amended.

**Based upon the foregoing, it is hereby**

**ORDERED**, the motion for continuance of the hearing scheduled for January 12, 2023, filed by Agape Community Church is **DENIED**.

By order of the Public Utilities Commission of New Hampshire this eleventh day of January, 2023.

  
Pradip K.  
Chattopadhyay  
Commissioner

  
Carleton B.  
Simpson  
Commissioner

# Service List - Docket Related

Docket#: 22-082

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