

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 22-082

RESIDENTS OF COLONIAL DRIVE, MOULTONBOROUGH

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

**COMMENCEMENT OF ADJUDICATIVE PROCEEDING
AND NOTICE OF PREHEARING CONFERENCE**

On December 2, 2022, the residents of Colonial Drive in Moultonborough, New Hampshire (Residents) filed a complaint regarding Agape Community Church (ACC) for failure to provide reasonably safe and adequate sewer utility service as required by RSA 374:1, arguing that ACC owns the sewer system that serves the Residents' homes (the Complaint).¹ The Complaint and subsequent docket filings are available on the Commission's website at www.puc.nh.gov/Regulatory/Docketbk/2022/22-082.html.

I. BACKGROUND AND PROCEDURAL HISTORY

The Complaint asked the Commission to open a receivership proceeding under RSA 374:47-a to oversee the ongoing emergency response to the failure of the sewer system that serves the Residents, and to grant such other and further relief as may be just and reasonable. In support of their Complaint, the Residents filed deed documentation regarding their properties, as well as copies of an estimate for new sewer pumps and an invoice for pumping service fees from Lamprey Septic & Drain. On January 12, 2023, Suburban Septic Service filed a letter in this docket, noting certain work that it has provided related to the sewer system at issue at the request of the New Hampshire Department of Environmental Services (NHDES), which regulates its license.²

¹ The Complaint requested a receivership proceeding. For purposes of this adjudicative proceeding, we will treat the Complaint as a petition for receivership under RSA 374:47-a.

² Our understanding is that Lamprey Septic & Drain and Suburban Septic Service are related entities; we will refer to Lamprey Septic for purposes of this order.

On January 12, 2023, the Commission held a preliminary hearing on issues raised by the Complaint. The Residents, Agape Church, Lamprey Septic, NHDES, and the New Hampshire Department of Energy (DOE) participated in the preliminary hearing. Based on that preliminary hearing, the Commission believes there is a good faith basis to convene an adjudicative proceeding in this matter to determine whether there is a public utility subject to Commission jurisdiction and whether the Commission should initiate a receivership action under RSA 374:47-a, as requested by the Residents.

II. ISSUES PRESENTED

The Complaint, including documents pertaining to certain deed transfers provided in Attachment A to the Complaint, presents the following preliminary issues:

(1) whether the sewer system is owned or operated by an entity that constitutes a 'public utility' under RSA 362:2 and RSA 362:4 that is subject to Commission regulation and, if so, whether the Complaint must first be filed with DOE, served upon the utility, and investigated under RSA chapter 365, as amended;

(2) whether the sewer system is a public utility regulated by the Commission under RSA 374:41-47 and therefore subject to receivership under RSA 374:47-a;

(3) whether, if the sewer system is a public utility, it is providing safe and adequate and just and reasonable service under RSA 541-A:31;

(4) whether the deeds of transfer for the Residents' individual lots on Colonial Drive carry forward the provisions of: Article III – Reserved Easement and Rights, section 3.2; and Article VII – Miscellaneous, section 7.1, which provides that:

[t]he covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by an Association of the Lot owners, or the Owners of any land subject to this Declaration or any Declaration supplemental hereto, their respective legal representatives, heirs, successors and assigns; and

(5) what entities or persons bear responsibility for the operation and maintenance of the sewer system that serves the Residents.

The Complaint also raises the following issues:

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

(7) whether there are alternative remedies or potential guidance and/or assistance available through: (a) NHDES, (b) Bay District Sewer, (c) the Bay District Sewer Commission, (d) an appropriate department or committee of the Town of Moultonborough, or (e) any other entity.

Given the current nature of the issues and the lack of clear Commission jurisdiction, the parties may wish to consider expeditiously resolving the ongoing sewerage concerns while concurrently participating in this proceeding. Beneficial alternative avenues to pursue outside of the Commission's jurisdiction, may include:

- reviewing applicable municipal requirements, for more cost-effective solutions than upkeep and operation of the sewer system and pump station, such as alternative qualified service providers, the installation of individual septic systems, and/or the establishment of a homeowners' association;

- considering the services of a mediator to assist in identifying relevant documentation, applicable municipal and state laws and regulations, and potential avenues for resolution of the issues raised with respect to legal and financial responsibility and assistance for the operation and maintenance of the sewer system mains, the pump station, and related elements of the system;

- working with other agencies, such as NHDES, to receive information concerning potential sources of assistance – financial, regulatory, or otherwise – with respect to the issues raised in their Complaint; and

- considering recourse through the court system for resolution of any issues raised in the Complaint.

III. Initiation of Adjudicative Proceeding

Based on the Complaint and preliminary discussions at the hearing held before the Commission on January 12, 2023, an adjudicative proceeding is convened to address the foregoing issues.

The Commission will conduct the prehearing conference and hearing in this matter in person. The Commission will consider requests to use a hybrid format. The Commission will permit remote participation by a specific individual if the Commission determines a sufficient reason has been provided for why that individual is unable to attend in person. Any party requesting a specific individual be permitted to participate remotely must file a written request with the Clerk's Office no later than fifteen days prior to the prehearing conference or hearing date. If the Commission determines one or more individuals will be permitted to appear remotely, then individuals in the Commission's hearing room, including the Commissioners, will be broadcast on a web-enabled platform.

Based upon the foregoing, it is hereby

ORDERED, that an adjudicative proceeding be commenced for the purpose of reviewing and resolving the foregoing issues under RSA chapter 541-A, RSA 365:1, RSA 374:1, RSA 374:47-a, and the Commission's procedural rules; and it is

FURTHER ORDERED, that ACC shall participate in this proceeding as a mandatory party; and it is

FURTHER ORDERED, that the Commission will hold a prehearing conference, under N.H. Admin. R., Puc 203.15, at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on February 23, 2023, at 1:30 p.m., at which each party should be prepared to address any of the issues set forth in N.H. Admin. R., Puc 203.15; and it is

FURTHER ORDERED, that during the prehearing conference, the Commission will consider the matters listed in Puc 203.15(c) and (d), including potential simplification of the issues; stipulations or admissions as to issues of fact or proof, by consent of the parties; the establishment of a procedural schedule governing the remainder of the proceeding; and any other matters which aid in the disposition of the proceeding; and it is

FURTHER ORDERED, that parties and potential parties are encouraged to facilitate the development of a procedural schedule by conferring prior to the prehearing conference, so that the presiding officer can address any matters on which there is disagreement during the prehearing conference. Any procedural schedule, however, will not be approved until after the prehearing conference and after consulting the Commission's calendar; and it is

FURTHER ORDERED, that parties shall make appropriate representatives available, as needed, for a technical session to review the filing, immediately following the prehearing conference; and it is

FURTHER ORDERED, that any entity or individual may petition to intervene and seek to be admitted as a party in this proceeding. Each party has the right to have an attorney represent the party at the party's own expense; and it is

FURTHER ORDERED, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any entity or individual seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to all parties on the service list, on or before February 14, 2023. The petition shall state the facts demonstrating how the petitioner's rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Admin. R., Puc 203.17; and it is

FURTHER ORDERED, that any party objecting to a petition to intervene make said objection on or before February 17, 2023; and it is

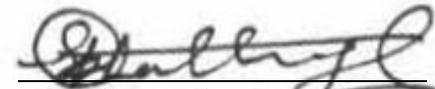
FURTHER ORDERED, that parties shall file any proposed exhibits, written testimony, motions, or other documents intended to become part of the record in this proceeding with the Commission. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf>, all Commission rules requiring the filing of paper copies are suspended until further notice. Parties may elect to submit any filing in electronic form unless otherwise ordered by the Commission. Filings will be considered filed as of the time the electronic copy is received by the Commission; and it is

FURTHER ORDERED, that routine procedural inquiries may be made by contacting the Clerk's Office at (603) 271-2431 or ClerksOffice@puc.nh.gov. All requests to the Commission should be made in a written pleading filed with the Commission. Unless otherwise authorized by law, *ex parte* communications are prohibited; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. R., Puc 203.12, the Residents shall send a copy of this order of notice by certified and First Class U.S. mail to each resident on Colonial Drive, the Agape Community Church, and the Town Clerk of the Town of Moultonborough, and shall post a copy of this order of notice at the Moultonborough Town Hall at 6 Holland Street in Moultonborough, no later than two business days after the date of issue, such mailings and posting to be documented by affidavit filed with the Commission on or before February 15, 2023. In addition, the Clerk shall publish this order of notice on the Commission's website no later than two business days after the date of issue; and it is

FURTHER ORDERED, that any hearings in this matter shall be conducted in accordance with the hearing guidelines issued on December 9, 2022.

So ordered, this first day of February, 2023.



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

Service List - Docket Related

Docket#: 22-082

Printed: 2/1/2023

Email Addresses

ClerksOffice@puc.nh.gov
kelvin.a.brooks@doj.nh.gov
mab@nhbrownlaw.com
Energy-Litigation@energy.nh.gov
jayson.p.laflamme@energy.nh.gov
anthony.j.leone@energy.nh.gov
ocalitigation@oca.nh.gov
Matthew.C.Young@energy.nh.gov
Kerry.d.barnsley@des.nh.gov
Kurt@devylderlaw.com
mserge@dwmlaw.com