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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

April 5, 2023 - 1:37 p.m.
21 South Fruit Street
Suite 10
Concord, NH

RE: **DW 22-082**
RESIDENTS OF COLONIAL DRIVE,
MOULTONBOROUGH: Complaint by
Residents of Colonial Drive in
Moultonborough Against Agape
Community Church Sewer System.
(Prehearing conference)

PRESENT: Cmsr. Carleton B. Simpson, *Presiding*
Cmsr. Pradip K. Chattopadhyay

Lynn Fabrizio, Esq./PUC Legal Advisor

Tracey Russo, Clerk

APPEARANCES: **Reptg. Residents of Colonial Drive:**
Marcia A. Brown, Esq. *(NH Brown Law)*

Reptg. Agape Community Church:
Kevin Straughan, President

Reptg. Lamprey Suburban Septic, Inc.:
Christopher L. Boldt, Esq.
(Donahue, Tucker & Ciandella)

Reptg. New Hampshire Dept. of Energy:
Matthew C. Young, Esq.
Jayson Laflamme, Dir./Water Group
Anthony Leone, Water Group
(Regulatory Support Division)

Court Reporter: Steven E. Patnaude, LCR No. 52

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P R O C E E D I N G

1
2 CMSR. SIMPSON: Good afternoon,
3 everyone. I'm Commissioner Simpson, serving as
4 Presiding Officer. I'm joined by Commissioner
5 Chattopadhyay.

6 We're here today in Docket DW 22-082
7 for a prehearing conference regarding the
8 Complaint filed on October 21st, 2022, by the
9 Residents of the Colonial Drive development in
10 Moultonborough, New Hampshire, against Agape
11 Community Church. The Residents have asked the
12 Commission to open a receivership proceeding,
13 pursuant to RSA 374:47-a, to oversee the ongoing
14 emergency response to a failure of the sewer
15 system that serves the Residents, and to grant
16 such other and further relief as may be just and
17 reasonable.

18 A preliminary hearing was held on
19 January 12th, 2023, to consider a number of
20 preliminary issues raised by the Complaint,
21 including whether the Agape Community Church is a
22 public utility, subject to regulation by the
23 Commission under RSA 362:2 and 362:4, and whether
24 the Commission has jurisdiction to establish a

1 receivership pursuant to RSA 374:47-a, as
2 requested in the Complaint.

3 Today's prehearing conference launches
4 an adjudicative process for the parties to
5 further discuss and address the issues raised by
6 this Complaint.

7 Let us begin by taking appearances.
8 I'll recognize Attorney Brown.

9 MS. BROWN: Thank you, Commissioners,
10 for this prehearing this afternoon. My name is
11 Marcia Brown, with NH Brown Law, representing
12 residents of the Colonial Drive subdivision. To
13 my immediate right is Michael Thurston; to his
14 right is Steven Hamilton; directly behind me is
15 Susan and Al Solomon; and to their right is Jim
16 Vocell and his wife, Paula Sheehan.

17 Thank you.

18 CMSR. SIMPSON: Thank you. Attorney
19 Young, for the Department of Energy?

20 MR. YOUNG: Good afternoon,
21 Commissioners. My name is Matthew Young, on
22 behalf of the Department of Energy. With me
23 today is Jayson Laflamme, who is the Director of
24 the Water Group in the Department's Regulatory

1 Support Division, as well as Jason Leone, who is
2 a Utility Analyst working on this docket --
3 Anthony, sorry, Anthony Leone, who is a Utility
4 Analyst working on this docket.

5 CMSR. SIMPSON: Thank you. Lamprey
6 Suburban Septic Service?

7 MR. BOLDT: Yes, Your Honor. Chris
8 Boldt, of Donahue, Tucker & Ciandella, on behalf
9 of Lamprey.

10 CMSR. SIMPSON: Thank you.

11 MR. BOLDT: And I have Mr. Lamprey with
12 us.

13 CMSR. SIMPSON: Thank you. Is the New
14 Hampshire Department of Environmental Services
15 present today?

16 *[No indication given.]*

17 CMSR. SIMPSON: I don't see them in the
18 room. Agape Community Church?

19 MR. STRAUGHAN: Yes. Kevin Straughan,
20 from Agape Community Church.

21 CMSR. SIMPSON: Thank you. Is the
22 Office of Consumer Advocate here?

23 *[No indication given.]*

24 CMSR. SIMPSON: I don't see him either.

1 And are there any other intervenors in
2 the room or parties that would like to identify
3 themselves?

4 *[No indication given.]*

5 CMSR. SIMPSON: No.

6 MS. BROWN: If I could make a comment
7 about the service list?

8 CMSR. SIMPSON: Sure.

9 MS. BROWN: Because the service list
10 does not include Agape Community Church, --

11 CMSR. SIMPSON: Okay.

12 MS. BROWN: -- which I consider a
13 necessary party to this proceeding. But I have
14 provided them with information on today's
15 prehearing, for example. But, at some point, I
16 think they need to be added to the service list.

17 Thank you.

18 CMSR. SIMPSON: Okay. Mr. Straughan,
19 do you have any comment with respect to Attorney
20 Brown's statement?

21 MR. STRAUGHAN: No. I'm thankful she
22 sent me, you know, the list of notice and so
23 forth, and that's how -- and then, between that
24 and an e-mail, that's how I was notified that

1 there was a meeting here today.

2 CMSR. SIMPSON: And would you like to
3 be added to the service list?

4 MR. STRAUGHAN: Yes.

5 CMSR. SIMPSON: Okay. If you could
6 send an e-mail to our Clerk's Office asking to be
7 added to the service list for this docket, that
8 would be the most efficient way to go about it.

9 MR. STRAUGHAN: Okay. Thank you.

10 CMSR. SIMPSON: Thank you.

11 MR. YOUNG: Commissioner, I would just
12 note, too, that I believe that Agape Community
13 Church was actually a mandatory party to this
14 proceeding. Not that it's necessary, but --

15 CMSR. SIMPSON: Thank you.

16 All right. For preliminary matters,
17 I'd like to discuss the affidavit of publication.
18 We note that, on February 3rd, 2023, the
19 Residents duly filed an affidavit of publication,
20 with copies of U.S. Postal Service receipts for
21 notices mailed to the residents, the Church, and
22 the Town of Moultonborough, along with a
23 screenshot of the Commission's Notice of
24 Adjudicative Proceeding posted on a bulletin

1 board at the Moultonborough Town Hall for the
2 benefit of any interested parties.

3 Furthermore, the Residents filed, on
4 September 6th, 2022, a Notice of Findings from
5 the New Hampshire Department of Environmental
6 Services. That included a September 6th, 2022,
7 Notice of Findings from NH DES, to the Bay
8 District Sewer Commission, asking for information
9 on inventory inspections, maintenance records,
10 correspondence, *et cetera*, and an October 5th,
11 2022 Letter of Deficiency from the Town of
12 Moultonborough to residents. Furthermore, a
13 January 13th, 2023 Demand for Repairs from the
14 Town of Moultonborough, to the Bay District, was
15 also filed.

16 Are there any preliminary matters that
17 parties here would like to address at this time?

18 I'll recognize Attorney Boldt.

19 MR. BOLDT: Yes, Your Honor. We did
20 file a Motion to Intervene that had the agreement
21 of the major parties. So, I just wanted to make
22 sure that was on the plate.

23 CMSR. SIMPSON: Thank you. Yes. We'll
24 rule on that in due course. Thank you for

1 raising that.

2 Now, we will take preliminary positions
3 of the parties, starting with the Residents of
4 Colonial Drive. I'll recognize Attorney Brown.

5 MS. BROWN: Thank you, Commissioner
6 Simpson.

7 Because the preliminary hearing was
8 already transcribed, I'm not going to reiterate
9 the bulk of the statement, because I think it's
10 already in the record. But I would like to
11 provide an update to the Commissioners.

12 The immediacy for the receivership
13 docket was that there were two sewer pumps that
14 had already failed. So, the system was not in
15 operation. So, that was the impetus for filing
16 the receivership. The residents, the majority of
17 them, pooled their resources and have paid and
18 had installed, with the permission of access from
19 the Church, pumps to alleviate that emergency.
20 The customers also have arranged for maintenance
21 of those pumps going forward. I had mentioned at
22 the prehearing that the customers had paid for
23 pumps through Lamprey, who is here today,
24 however, that did not happen. Lamprey did not

1 install any of the paid-for pumps.

2 As far as the integrity of the system,
3 and whether we still need a receivership, I would
4 say "yes", because there are still, as we're
5 learning from the residents, system issues.
6 There appears to be a leak on a town-owned
7 parcel, probably a service line, not a
8 distribution system issue. But there are still
9 some leaking in the system that we don't know
10 what jeopardy it could cause the entirety or
11 whether the -- the entirety of the system, or
12 whether that leak will hasten any wear on the
13 newly installed pumps.

14 So, I just put that out there that,
15 even though the pump emergency is resolved, as
16 far as the system, there's no one at the helm
17 managing, you know, covering any operations and
18 maintenance for the remainder of the system. So,
19 that is why I still think the receivership
20 statute is still applicable.

21 As far as the -- what I consider the
22 Order of Notice establishing the adjudicative
23 proceeding, there was suggestions on alternate
24 remedies. One of the remedies involved perhaps a

1 municipal ownership of the system. The residents
2 are aware that the Town is not interested in
3 taking over the system.

4 Bay District operates in the area.
5 And, right now, their system stops right at
6 the -- what I call the "curb stop" at Bean Road.
7 And, from my discussions with the super --
8 Superintendent of Bay District, there's a policy
9 not to go into subdivisions. So, I still haven't
10 chased that rabbit hole down to finality, but
11 it's not looking good that Bay District will
12 offer a municipal ownership option. And the
13 municipal ownership option, when we heard at the
14 last preliminary hearing from DES, was that, if
15 there is municipal ownership, there would be
16 eligibility for grant funds. So, you know, we're
17 still trying to suss out whether there could be
18 municipal ownership, and thus reap the benefit of
19 perhaps receiving grant funds.

20 Now, as far as some of the other issues
21 that were raised in the Commission's February 1st
22 order, regarding the ability to utilize the
23 services of a mediator, at least this lawyer
24 doesn't see that as being able to remedy all of

1 the issues, because, right now, we have an entity
2 owning the assets that isn't otherwise exempt.
3 And, so, I think exhaustion of administrative
4 remedies keeps that exemption issue from being
5 mediated.

6 The other issue was going through the
7 court system. Again, exhaustion of
8 administrative remedies I think pulls out the
9 exemption and what rates to pay from superior
10 court or circuit court, probably superior court,
11 I don't think that the civil court system is
12 going to be a adequate remedy for what is needed
13 here, because rates are before this
14 administrative body, not the courts, and whether
15 a receivership is established is certainly within
16 the venue here, not in the courts.

17 The other issue is regarding the
18 customers' recovery of funds that they had paid
19 for services not rendered. That could go the way
20 of the courts, but it is perhaps a side issue
21 that could be worked out among the parties here.

22 The other issue I would like to raise
23 is regards the homeowners association. The
24 residents do not have unanimity on forming a

1 homeowners association. They have indeed, you
2 know, given consideration of that, but we don't
3 have that yet.

4 And the only other receivership I am
5 aware of that the Commission has dealt with is
6 the Rolling Ridge receivership. But, having had
7 personal knowledge of that receivership, there
8 was a distinguishing fact between this example
9 and Rolling Ridge, in that the Rolling Ridge
10 ownership of assets for the water system, in that
11 subdivision, was to Mr. Demers personally, not to
12 Rolling Ridge as a water company. Therefore,
13 when Mr. Demers passed away, the easement
14 reverted back to each individual lot owner, such
15 that each individual customer or residents owned
16 a portion of the system.

17 You don't have that fact pattern here.
18 We still have a clear owner, and it is a, you
19 know, I'd say a "corporate owner", it's a, you
20 know, charitable corporation ownership of the
21 system assets. You know, you don't have any
22 abandonment reverting back to the homeowners or
23 to the residents, such as what was happening in
24 Rolling Ridge. And I say that, because it was

1 that reversion that gave the Commission leverage
2 to throw this back, that receivership back onto
3 the homeowners association, and order the
4 residents to create a homeowners association,
5 because they indeed already owned it. We don't
6 have that fact pattern here.

7 You know, the residents are, you know,
8 giving it at least a best shot of trying to see
9 if that would be an option, but we don't have
10 that to bring to the table at this point. So, I
11 think we are stuck with as I guess the closest
12 analogy would be Bedford Waste Corporation, which
13 is a utility, privately-owned sewer system, with
14 residents that are not interested in taking over
15 the system.

16 So, thank you for the opportunity to
17 make those preliminary remarks.

18 CMSR. SIMPSON: Thank you, Attorney
19 Brown. I'll recognize New Hampshire Department
20 of Energy, Attorney Young.

21 MR. YOUNG: Thank you, Commissioners.

22 The Department has reviewed the initial
23 filings made in this docket to date. I don't
24 know if we have any position here today. We do

1 look forward to hearing from the parties today,
2 and are available for any tech session after this
3 prehearing conference.

4 CMSR. SIMPSON: Are you aware of
5 parties wanting to engage in a tech session after
6 this prehearing conference?

7 MR. YOUNG: We have not. I think we
8 would be made available, if there were any
9 questions or willingness to do so.

10 CMSR. SIMPSON: Thank you. Suburb
11 Septic Service, Attorney Boldt.

12 MR. BOLDT: Thank you, Commissioners.
13 Basically, we need Mr. Lamprey paid.
14 He provided important emergency services for many
15 months, and is left holding the bag. We think,
16 however, that it is important that two other
17 parties be involved in this, and that is -- they
18 have been mentioned both by Attorney Brown, and
19 that is the Town of Moultonborough and Bay Area
20 Sewer System -- Sewer District.

21 It is something that both of those
22 entities have a stake in this affair. This Town,
23 by the approval of the subdivision, and Bay Area,
24 by the apparent setup of this to be -- to have to

1 have been taken over within five years of the
2 subdivision approval. So, I would ask that this
3 Commission think about mandating they be joined.

4 You are the arbiter of disputes
5 pursuant to, and I had the statute momentarily
6 ago, 363:17-a. The owners have put themselves
7 under the jurisdiction of the body by bringing
8 this case. And we think there is a way, if we
9 get everybody in the room, a way forward will be
10 had.

11 I'll reserve my comments or refutation
12 of some of Ms. Brown's statements for a later
13 day.

14 CMSR. SIMPSON: Thank you. Agape
15 Community Church, Mr. Straughan.

16 MR. STRAUGHAN: Yes. I really have
17 nothing new to add. We still are in the position
18 that we had no idea that we had ownership of
19 that, if, in fact, it does boil down to that.
20 And that we certainly didn't -- we don't use the
21 system, we've not been aware of anything until,
22 pardon me, I received the letter from Attorney
23 Brown explaining what was going on.

24 We are not at all averse to -- I don't

1 think I quite understand, Commissioner, what a
2 "receivership" means. It means that -- does it
3 mean that the Commission requires that the
4 ownership of the system go to somebody that can
5 manage it? Is that what we're speaking about?

6 CMSR. SIMPSON: So, we are here today
7 to take preliminary positions. We're not here to
8 rule on any issues.

9 MR. STRAUGHAN: I understand that. But
10 I'm looking for a definition.

11 CMSR. SIMPSON: So, the definition is
12 codified in New Hampshire RSA 374:47-a.

13 MR. STRAUGHAN: I'm sorry, I don't have
14 that, the RSAs in front of me.

15 CMSR. SIMPSON: Uh-huh.

16 MR. BOLDT: Here.

17 *[Atty. Boldt handing document to*
18 *Mr. Straughan.]*

19 MR. STRAUGHAN: I'll read through this
20 after we're done here. So, I don't think there's
21 anything other that I have to add.

22 CMSR. SIMPSON: Thank you.

23 So, we'll move to Commissioner
24 questions at this time. Do you have any

1 questions, Commissioner Chattopadhyay?

2 CMSR. CHATTOPADHYAY: I have one, in
3 response to Attorney Brown's, you know,
4 description of what the current situation is.

5 She mentioned something about "a leak
6 in the system, rather than in the distribution",
7 I forget what term she used, maybe "distribution
8 system". But, when you said "system", do you
9 know who owns that system?

10 MS. BROWN: This is when I wish DES
11 were here, because they have been investigating
12 the leak.

13 The parcel behind Susan and Al Solomon
14 is owned by the Town of Moultonborough. The
15 leak, by a layperson's observation, appears to be
16 coming from that -- a line that's on the Town
17 property. Now, if the line is on the Town
18 property, I'm not sure if it's a distribution
19 line, because there is a line that goes out
20 behind them and serves other properties, or
21 whether this is a service connection stub that is
22 leaking.

23 So, you know, I said "it's likely a
24 service line", but that's my, you know,

1 uneducated guess. But it is a part of the
2 system, to be determined whether it is
3 distribution, owned by the Church, service line,
4 owned by the customer, leak.

5 CMSR. CHATTOPADHYAY: And is that
6 determination being pursued? Like, are entities
7 trying to figure out where the leak is happening
8 and who is responsible for that?

9 And I'm kind of surprised that that --
10 that is not known.

11 *[Atty. Brown conferring with some of*
12 *the residents.]*

13 MS. BROWN: Sorry, I needed to consult
14 the residents who live directly near the
15 situation. They are aware that DES has made
16 visits to this, and inspected -- or, observed the
17 leak. I wish -- this is why I wish DES were
18 here, so we could get some finality on what type
19 of leak it is. Whether it's a Church
20 responsibility leak or whether it's a, you know,
21 Town-owned parcel service line leak.

22 But the point being, there's a leak,
23 there's, you know, no one at the helm for O&M for
24 this system, which, you know, goes back to my

1 argument why we still need a forum in the
2 receivership statute.

3 CMSR. CHATTOPADHYAY: I see someone
4 else wanted to speak. So, please go ahead, if
5 you want to add anything?

6 MR. BOLDT: Yes, Commissioner. I think
7 what is important to put in play is, the Town
8 owns lots via some tax liening situation. So, it
9 appears to be, what Attorney Brown is
10 referencing, is a stub leak, potentially, on one
11 of the lots owned by the Town. Another reason I
12 think it may be beneficial to have the Town
13 involved.

14 CMSR. CHATTOPADHYAY: Okay. I think
15 that's all. That's all I have.

16 CMSR. SIMPSON: This is, this question
17 of ownership and responsibility, is really at the
18 crux of the issue, from my perspective, and a
19 challenging legal area for the Commission,
20 because we don't have jurisdiction over water
21 quality, that's the Department of Environmental
22 Services. And we are not -- we do not have
23 jurisdiction over the real property rights that
24 the owners of these parcels or the owners of the

1 infrastructure might have. So, in order for us
2 to determine the questions at hand, in terms of
3 receivership, seemingly these are very important
4 for us to understand.

5 I guess I would ask DOE, have you had
6 any conversations with DES or Bay Area [sic] or
7 the Town of Moultonborough? Do you have any
8 insight into the issues that have been discussed
9 here?

10 MR. YOUNG: We have not had any
11 conversations with any of those parties
12 mentioned. We have had -- all the information we
13 have had has come from Attorney Brown.

14 CMSR. SIMPSON: Okay. And then,
15 Attorney Brown, just so I understand what you
16 stated earlier, when we had a -- when we were
17 last together in January, we had a preliminary
18 hearing, one of the issues that was discussed was
19 that Lamprey Suburban Septic had been pumping.
20 They alleged that they had invoices that had been
21 unpaid for their service. They stated that the
22 residents of Colonial Drive had paid for pumps
23 that were no longer working, but that Lamprey
24 would not install those pumps until the invoices

1 had been paid.

2 Have I summarized that correctly from
3 the last discussion that we had during the
4 preliminary hearing?

5 MS. BROWN: That is correct.

6 CMSR. SIMPSON: And, today, I take it
7 that the residents have paid Lamprey, and the
8 pumps have been installed?

9 MS. BROWN: That is not correct. The
10 residents paid Lamprey to install pumps, and that
11 service never happened. They found a different
12 company, paid for pumps again, and then had them
13 installed with a different company.

14 CMSR. SIMPSON: So, a totally different
15 set of pumps --

16 MS. BROWN: Correct.

17 CMSR. SIMPSON: -- have been paid for.
18 So, they have now bought two sets of pumps, is
19 that correct?

20 MS. BROWN: That is correct.

21 CMSR. SIMPSON: Okay. And then,
22 Attorney Boldt, can you summarize for us the
23 current state for your client, in terms of the
24 pumps that the residents of Colonial Drive have

1 alleged that they have paid for, have not been
2 installed, and the state of invoices for your
3 client's services --

4 MR. BOLDT: Sure.

5 CMSR. SIMPSON: -- to pump sewage from
6 this area over the last several months?

7 MR. BOLDT: Yes, Commissioner. In
8 short, the pumpage fee is roughly \$57,000, from
9 August through a date in January.

10 The amount for the pumps was estimated
11 at 17,000, but the agreement was never reached,
12 from a standpoint of what was to be -- he needed
13 the amounts for the pumpage to also be addressed,
14 and they didn't have a meeting of the minds. A
15 total of approximately \$15,000 was originally
16 paid -- excuse me, yes, that some of which was
17 withdrawn after payment. They paid by credit
18 card, and I believe Mr. Thurston and -- excuse
19 me, I had two different names, Bell and Landry
20 withdrew their credit card payments. So, the
21 amount was withdrawn.

22 There are approximately \$4,000 worth of
23 checks that have not been cashed from the owners,
24 and approximately \$9,200 is sitting in an account

1 that has been paid for towards those, that
2 estimate.

3 So, part of the -- part of the
4 negotiation that I would be suggesting, if we get
5 everybody in a room, is who pays for what, and
6 what has been paid, to apply to the pumpage.

7 But we've learned today that new pumps
8 have been installed by a third party.

9 CMSR. SIMPSON: Okay. Thank you. And,
10 Attorney Brown, so, the new pumps have been
11 installed. They're working properly, correct?

12 MS. BROWN: That is correct. But I'm
13 not sure I followed the explanation of the
14 amount. I thought the amount outstanding, I
15 thought it was higher than the 15,000 that was
16 what I call the "amount held hostage".

17 Yes, it is accurate, that Attorney
18 Boldt explained that some of the checks had a
19 stop put on them, credit card payments were
20 reversed, once they realized that Lamprey was
21 not -- had stated that he would not be fulfilling
22 the pump purchase and install.

23 But I just -- I thought that the amount
24 that -- the hostage amount was a little bit

1 higher than that, but I can't find it at the tip
2 of my tongue right now.

3 CMSR. SIMPSON: So, I want to ask my
4 question first, then I'll give you a moment -- an
5 opportunity to respond, Attorney Boldt.

6 So, the last time we were here in
7 January, my understanding was that the residents
8 of Colonial Drive had already paid for pumps to
9 be purchased, and Lamprey Septic had purchased
10 the pumps, and had those pumps physically
11 on-site. Did I misunderstand that?

12 MS. BROWN: Are you asking for us, the
13 residents to respond?

14 CMSR. SIMPSON: I'm asking for you to
15 respond.

16 MS. BROWN: The pumps were paid for.
17 My understanding was that they were at Prescott,
18 the distributor, but they were never on-site or
19 actually at Lamprey's premises. But I'm sure
20 that Scott Lamprey can have better facts than
21 what I'm explaining.

22 CMSR. SIMPSON: Okay. And, so, before
23 I move to Attorney Boldt, so, the residents of
24 Colonial Drive have paid for pumps through a

1 different vendor, and that other vender has
2 installed those pumps, and they're working today,
3 correct?

4 MS. BROWN: That part is correct, yes.

5 CMSR. SIMPSON: So, then, you've now
6 since identified a new issue with the system,
7 which you've described as "a leak on Town-owned
8 property", correct?

9 MS. BROWN: That is correct.

10 CMSR. SIMPSON: Okay. Thank you.

11 I'll recognize Attorney Boldt to
12 respond to the exchange that we just had.

13 MR. BOLDT: I think it eventually
14 worked out the right way. The pumps were never
15 with Lamprey. They stopped at the distributor.
16 And the dollar amounts, we double-checked this
17 morning, the 9,200 and the \$4,077.50 are the
18 amounts of the checks that have not been cashed,
19 \$4,000 of checks, 9,200 have been cashed.

20 CMSR. SIMPSON: So, what's, as of
21 today, what is the balance that your client
22 alleges is owed?

23 MR. BOLDT: The 57, less the --
24 assuming the checks are good, I mean, the 4,000

1 is there, you're looking at roughly 46.

2 CMSR. SIMPSON: Okay. Thank you.

3 Okay. So, I would like to ask the
4 parties to submit legal briefs on the issues.
5 Would two weeks be sufficient or do you require
6 further time?

7 MS. BROWN: I need clarification on
8 which issues, because there were numerous issues
9 in the order?

10 CMSR. SIMPSON: Those, the issues that
11 are as described in the order. And, if there are
12 other issues that you believe are relevant, raise
13 those in your brief.

14 MS. BROWN: Sorry to ask for
15 clarification. But, on Page 2 of the order,
16 "Issues Presented", I'm looking at Paragraphs
17 numbered (1) through (7). Then, there are some
18 bullet points that would be responsive, I don't
19 know that they -- I mean, they do have some legal
20 analysis to it, such as "mediator", which is the
21 second bullet down, which invokes exhaustion of
22 administrative remedies and jurisdiction issues.

23 But did you want both the numbered
24 paragraphs and the bulleted paragraphs covered?

1 CMSR. SIMPSON: I think the more
2 information that can be provided by each of the
3 parties on the record is helpful to the
4 Commission. So, this Commencement of
5 Adjudicative Proceeding and Notice of Prehearing
6 Conference identifies the issues from your
7 party's -- your clients' Complaint.

8 And we've, as the Commission, due to
9 the ambiguities present around jurisdiction,
10 we've tried to identify other concerns, and would
11 welcome responses to those.

12 Does that provide any clarity?

13 MS. BROWN: I guess I just -- I'm just
14 thinking I need two and a half weeks.

15 CMSR. SIMPSON: Okay.

16 MS. BROWN: Sorry, the 26th of April.

17 CMSR. SIMPSON: Let's call it three
18 then. If we set a briefing date of April 28th,
19 which is a Friday, would that provide a
20 sufficient amount of time for you and the other
21 parties in this room to provide briefs?

22 MS. BROWN: I will still, because I've
23 got commitments on that Thursday and Friday, I
24 will still be submitting it on the 26th, and

1 maybe that works better. I'd love to have my,
2 you know, arguments picked apart, if, you know,
3 parties -- you know, I want a fully vetted --

4 CMSR. SIMPSON: Uh-huh.

5 MS. BROWN: -- legal analysis for you.
6 So, I will still commit to the 26th.

7 CMSR. SIMPSON: Okay. The 26th works
8 for the Commission, if it works for the other
9 parties.

10 MS. BROWN: Or, if you wanted to
11 stagger it, and give the rest of the parties till
12 the 28th, that's fine with me.

13 CMSR. SIMPSON: I think I'd like to
14 keep it consistent. So, would the 26th work for
15 folks?

16 MR. BOLDT: Seeing that my side of the
17 aisle is relatively small, yes.

18 CMSR. SIMPSON: DOE?

19 MR. YOUNG: I think the 26th would be
20 okay with DOE. I guess I do have one question.
21 No, I think the 26th is okay.

22 CMSR. SIMPSON: Okay. Thank you.

23 And, Mr. Straughan, I recognize that
24 you're representing yourself in this proceeding.

1 At this point, I'm not aware of you being
2 represented by counsel, is that correct?

3 MR. STRAUGHAN: That is correct.

4 CMSR. SIMPSON: And would you be
5 amenable to provide your brief on these issues by
6 April 26th, if you choose to submit something?

7 MR. STRAUGHAN: Sure.

8 CMSR. SIMPSON: Great. Thank you. So,
9 we'll look forward to receiving legal briefs by
10 April 26th.

11 And, in the event that the parties or a
12 party collectively decides that, as identified in
13 their brief, that a receivership is warranted, as
14 requested by the moving party, the Commission
15 would anticipate that parties will provide
16 details of an agreed-upon arrangement, including
17 the identification of a facility administrator or
18 administrators with whom the Commission and
19 receivership would anticipate communicating with,
20 respect to the operation of the system, as well
21 as a detailed explanation of the management and
22 financing of the system going forward.

23 Is there anything else that we need to
24 cover today?

1 Commissioner Chattopadhyay.

2 CMSR. CHATTOPADHYAY: Sorry, I have
3 a -- sorry. I'm going to go back to the issue of
4 the leak. And I would appreciate, if you know
5 anything additional about that during these three
6 weeks, or, you know, provide us more on that.
7 Meaning, if you come to realize exactly which
8 entity or who owns, you know, the system there,
9 that would be helpful. So, I just wanted to flag
10 that.

11 CMSR. SIMPSON: DOE, do you have a
12 comment?

13 MR. YOUNG: Not to the Commissioner's
14 point. I was just going to clarify two things.

15 First, the Commission did ask if DOE
16 had any conversations with, I believe, DES. And
17 I did just want to, I guess, for the record
18 correct, I did speak with DES back in December,
19 when this was filed, just to --

20 *[Court reporter interruption --*
21 *multiple parties speaking in the*
22 *background.]*

23 MR. YOUNG: -- just to get some
24 background information. So, I just wanted to

1 clarify that.

2 And then, in regards to the legal
3 briefs, I would have to maybe review a little
4 closer, but I do think that some of the
5 questions, the DOE may lack some of the expertise
6 to answer, but we will, you know, endeavor to
7 answer everything to the best of our ability that
8 we can at this time.

9 CMSR. SIMPSON: Okay. Thank you.

10 Attorney Brown, did you have anything
11 else?

12 MS. BROWN: No. Thank you.

13 CMSR. SIMPSON: Okay. Thank you.

14 All right. Anything else, anyone?

15 *[No verbal response.]*

16 CMSR. SIMPSON: Thank you, everyone.

17 We're adjourned. Off the record.

18 ***(Whereupon the prehearing conference***
19 ***was adjourned at 2:14 p.m.)***

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