
Application of Kolob Heights Water Users Association for Exemption	<u>DOCKET NO. 21-2629-01</u> <u>ORDER GRANTING EXEMPTION FROM REGULATION</u>
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ISSUED: June 17, 2021

BACKGROUND

On May 11, 2021, Kolob Heights Water Users Association (“Kolob”) filed an Application and Attachments for Exemption (“Application”) from regulation by the Public Service Commission (PSC). The Application explains that the company will be serving its members only and not the public generally. In addition, the Application states that Kolob intends to serve up to 45 residential customers.

On June 10, 2021, the Division of Public Utilities (DPU) filed a memorandum (“DPU Recommendation”), recommending the PSC grant the Application. DPU states that Kolob is a new water company proposing to serve 45 residential lots in a proposed subdivision located in Washington County near New Harmony, Utah. DPU states that according to records of the Utah Division of Corporations, Kolob is listed as a “[c]urrent” or “[a]ctive” domestic non-profit corporation.¹ DPU further states that Kolob provided documentation in its Application showing that its plans have been submitted to the Utah Department of Environmental Quality, Utah Division of Drinking Water.²

¹ DPU Recommendation, at 1-2.

² *Id.*, at 2.

DISCUSSIONS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Utah Code Ann. § 54-4-1 vests the PSC with the power and jurisdiction to regulate public utilities, including water corporations. Utah Code Ann. § 54-2-1(38) defines a water corporation as “every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any water system for public service within this state.” It specifically states that a water corporation “does not include private irrigation companies engaged in distributing water only to their stockholders, or towns, cities, counties, water conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.”³

As represented in the Application and DPU Recommendation, Kolob intends to only serve its members. The Application and DPU Recommendation confirm Kolob will not provide water service to the public generally. The PSC agrees and finds and concludes that Kolob does not meet the definition of a water corporation under Utah Code Ann. § 54-2-1(38). Therefore, it is not subject to the PSC’s jurisdiction and is thus exempt from regulation.

ORDER

Because Kolob will serve only its members, and will not otherwise serve the general public, the PSC concludes Kolob is exempt from the PSC’s regulation and grants the Application in accordance with Utah Code Ann. § 54-2-1(38). The letter of exemption is attached to this Order as Exhibit A.

³ *Id.*

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DATED at Salt Lake City, Utah, June 17, 2021.

/s/ Yvonne R. Hogle
Presiding Officer

Approved and confirmed June 17, 2021 as the Order of the Public Service Commission
of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#319142

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

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Exhibit A



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Public Service Commission

THAD LeVAR
Chair

DAVID R. CLARK
Commissioner

RON ALLEN
Commissioner

LETTER OF EXEMPTION NO. 242

June 17, 2021

Jeff Burgess
Kolob Heights Water Users Association
1125 N Hovi Hills Dr.
Cedar City, UT 84757

Dear Mr. Burgess,

The Public Service Commission (PSC) has reviewed the proposed application for exemption for a new water company, filed on behalf of Kolob Heights Water Users Association (“Kolob”) on May 11, 2021.

On June 10, 2021, the Division of Public Utilities (DPU) recommended the PSC grant the request for exemption because Kolob “is a new water company planning to serve 45 residential lots in a proposed subdivision located in Washington County near New Harmony, Utah”⁴ and will be “serving members only.”⁵ Utah Code Ann. § 54-2-1(38) excludes water corporations from PSC regulation that distribute water only to their stockholders or members. Thus, it appears an exemption for Kolob is appropriate.

Please be advised that this Letter of Exemption No. 242 is granted pursuant to the representations contained in the Application and on the basis of DPU’s confirmation that Kolob will serve only its members and not the public generally. Kolob has a continuing obligation to update the PSC within 30 days of any change.

This Letter of Exemption No. 242 is revocable for cause at any time. Please refer to this letter number in any future correspondence with either the PSC or DPU.

Sincerely,

/s/ Gary L. Widerburg
PSC Secretary
DW#319142

⁴ DPU’s Action Request Response, at 1 (June 10, 2021).

⁵ *Id.*, at 2.

CERTIFICATE OF SERVICE

I CERTIFY that on June 17, 2021, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

Jeff Burgess (jeff@burgessinvestmentgroup.com)
Kolob Heights Water Users Association

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Administrative Assistant