

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Kane Creek Preservation and Development, LLC for a Certificate of Convenience and Necessity to Operate as a Public Utility Rendering Sanitary Sewer Service	<p style="text-align: center;"><u>DOCKET NO. 23-2639-01</u></p> <p style="text-align: center;"><u>ORDER</u></p>
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ISSUED: April 20, 2023

SYNOPSIS

The Public Service Commission (PSC) approves the request of Kane Creek Preservation and Development, LLC (“Kane Creek”) for a conditional certificate of public convenience and necessity (CPCN) authorizing Kane Creek to operate a public utility sewage system in Grand County.

On February 17, 2023, Kane Creek filed its *Application of Kane Creek Preservation and Development, LLC for a Certificate of Convenience and Necessity to Operate as a Public Utility Rendering Sanitary Sewer Service* (“Application”). The PSC requested comments by March 20, 2023, and reply comments by April 4, 2023. The Division of Public Utilities (DPU) filed comments March 20, 2023, recommending the PSC issue a CPCN to Kane Creek (“DPU Comments”). No other comments or reply comments were filed.

THE APPLICATION

The Application states that Kane Creek is developing approximately 180 acres in an unincorporated area of Grand County, Utah (the “Project”). The Project is isolated from existing sewerage systems by rugged terrain, plateaus, and canyons. Kane Creek has therefore, “by necessity, planned and designed its own sewage system . . . that will

be independent of other providers in Grand County and will serve only the Project.”¹ According to Kane Creek, the Project has been in process with Grand County for two years and the “only remaining item before the Project’s preliminary and final plat [approval] is evidence of [Kane Creek’s] ability to provide sanitary sewer service to the Project”² (the “System”). Kane Creek represents that it will assume responsibility for providing sewer service to the Project and has already completed System design and begun off-site engineering and manufacturing.

Kane Creek also states it has applied for and is in the process of obtaining the permit required by the Utah Division of Water Quality (DWQ). Kane Creek represents that the System “will not conflict with or adversely affect the operations of any existing certificated public utility, [and] development of the System will not constitute an extension of any such existing utility.”³ Finally, Kane Creek asserts that the issuance of a CPCN is in the public interest because “[t]here are no alternatives for sewer service in the area, ... [f]or many years, camping along the Colorado River has occurred within the proposed service area . . . for extended periods without adequate sanitary sewer service. This has degraded water quality and fostered unhealthy and unsanitary conditions. The introduction of the System will help alleviate this problem.”⁴

¹ Application at 2.

² *Id.*

³ *Id.* at 3.

⁴ *Id.*

DPU COMMENTS

DPU states that Kane Creek is registered as a foreign entity and is in good standing with the Utah Division of Corporations. DPU verified Kane Creek's interactions with the DWQ.⁵ DPU represents that DWQ has reviewed the System and, while DWQ found it to be reasonable and sound, DWQ had not yet issued its permit as of March 20, 2023, the date of the DPU Comments.

DPU also summarizes the Grand County Commission (GCC) regular September 6, 2022 meeting minutes in which the GCC addressed Kane Creek's efforts to establish the Kane Springs Improvement District ("District").⁶ DPU also comments on the capabilities of Kane Creek's management and states that Kane Creek understands that, before construction and operation, it must submit construction plans and a proposed tariff with just and reasonable rates.⁷ DPU further comments that it will act as the body politic for the Project to meet DWQ's requirements. Finally, after reviewing the Application and meeting with Kane Creek and DWQ, DPU recommends

⁵ DPU Comments at 2.

⁶ The DPU Comments specifically state Kane Creek "worked with Grand County Commissioners to facilitate the establishment of a particular special service district, Kane Springs Improvement District. During the County Commission's regular meeting[,] . . . [th]e Commission passed a resolution on September 6, 2022. The County Commissioners tabled the resolution. The establishment of the special service district is not yet final, based on discussions with Grand County staff." DPU Comments at 2 (citing Grand County Commission Regular meeting, September 6, 2022, Minutes, Item H, p. 7; quoting and citing Grand County Commission Regular meeting, September 6, 2022, Minutes, Item I, p. 8). See also, <https://www.grandcountyutah.net/AgendaCenter/ViewFile/Item/610?fileID=41892>.

⁷ See DPU Comments at 3 (noting the applicability of Utah Admin. Code R746-401 (construction plans requirement) and R746-700 (tariff requirement)).

the PSC approve the Application for a CPCN with the number of residential and commercial connections limited to 599.

FINDINGS AND CONCLUSIONS

Kane Creek's System is still in the process of being finalized. Applicants for a CPCN like Kane Creek must provide evidence establishing, among other things, that it "has received or is in the process of obtaining the required" approvals.⁸ The PSC has the discretion to issue a conditional CPCN even if final Required Approvals or other items have not yet been obtained or provided.⁹

In this case, the PSC understands that as of March 20, 2023, DWQ had not yet issued its permit for construction of the System. According to DPU, DWQ has, however, reviewed and approved the System content plan but has not officially approved the System. We thus find that Kane Creek is in the process of obtaining the final permit from DWQ. The PSC also understands that, as of March 20, 2023, the District had not yet been formally established and the GCC had not yet approved the District's board of directors,¹⁰ which is the body that will manage the sewerage services once it is formed and approved by the GCC at a regular GCC meeting and by resolution, before the System becomes operational. We thus find that Kane Creek is in

⁸ Utah Code Ann. § 54-4-25(4)(a)(i). These approvals include the required consent, franchise, or permit of the proper county, city, municipal, or other public authority ("Required Approvals").

⁹ See Utah Code Ann. § 54-4-25(4)(a).

¹⁰ See DPU Comments at 2.

the process of obtaining final authorization for the formation of the District and its board of directors from the GCC.

Based on representations made in the Application and DPU's Comments, we also find that the current management team for Kane Creek appears to have the skills, knowledge, and experience to complete the Project. We also find, based on Kane Creek's representations, that the System "will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to the existing fixed public utility."¹¹ And, consistent with DPU's recommendation, we also find that limiting the CPCN to a maximum number of 599 residential and commercial sewer connections is appropriate. We further find that the isolation of the Project and the lack of sewerage services in the area support our finding that a sewerage system is just, necessary, and in the public interest.

Accordingly, we issue the CPCN on a conditional basis and based on the understanding that Kane Creek will submit to the PSC the approved and final DWQ construction permit for the System, the final approval by the GCC of both the District and its board of directors, the proposed tariff with just and reasonable rates, and any other Required Approvals before construction and operation of the System begins.

¹¹ See Utah Code Ann. § 54-4-25(4)(b).

ORDER

Based on the foregoing findings and conclusions, and that the Application is unopposed, Kane Creek is granted the conditional CPCN attached as Exhibit A, incorporated by reference into this Order. The CPCN is limited to a maximum number of 599 residential and commercial sewer connections. Kane Creek is directed to file with the PSC all final Required Approvals, and all other required items identified herein that have not yet been obtained or provided, after they are obtained and before construction and operation of the System begins. Once the foregoing have been filed and accepted by the PSC, the CPCN will no longer be conditional.

DATED at Salt Lake City, Utah, April 20, 2023.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#327680

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.

DOCKET NO. 23-2639-01

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EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Kane Creek Preservation and Development, LLC for a Certificate of Convenience and Necessity to Operate as a Public Utility Rendering Sanitary Sewer Service	<u>DOCKET NO. 23-2639-01</u> <u>CERTIFICATE NO. 2639</u>
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ISSUED: April 20, 2023

The Public Service Commission of Utah (PSC), pursuant to Utah Code Ann. § 54-4-25, issues a Certificate of Public Convenience and Necessity authorizing KANE CREEK PRESERVATION AND DEVELOPMENT, LLC to construct and operate a public utility sewage system as described in Kane Creek's February 17, 2023, Application and consistent with satisfying the conditions described in the PSC Order dated April 20, 2023, in the above referenced docket.

DATED at Salt Lake City, Utah, April 20, 2023.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#327680

CERTIFICATE OF SERVICE

I CERTIFY that on April 20, 2023, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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