

- 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	DOCKET NO. <u>23-2639-01</u>  <u>ORDER GRANTING REQUEST FOR RECONSIDERATION AND MODIFYING PREVIOUS ORDER</u>
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ISSUED: June 15, 2023

SYNOPSIS

Kane Creek Preservation and Development, LLC's Request for Reconsideration filed May 22, 2023 ("Request") is granted and the Order ("CPCN Order") of the Public Service Commission (PSC) dated April 20, 2023, granting *the 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") is modified as set forth herein.<sup>1</sup>

On May 22, 2023, Kane Creek Preservation and Development, LLC ("Kane Creek") filed the Request, seeking "clarification and modification of one provision of the [CPCN] Order."<sup>2</sup> The Request specifically requests "that the [PSC] issue a corrected [CPCN] Order incorporating the clarifications outlined [in the Request] and removing the requirement that Kane Creek provide the final District and Board approvals from [the Grand County Commission]."<sup>3</sup>

<sup>1</sup> As required by Utah Code Ann. § 63G-4-301, this Modified Order is issued pursuant to Utah Code Ann. §§ 54-7-14.5 and 54-7-15, and Utah Admin. Code R746-1-801.

<sup>2</sup> Request at 1.

<sup>3</sup> Request at 5. The term "District" is defined in the CPCN Order to mean the "Kane Springs Improvement District." CPCN Order at 3. The term "Board" refers to the members of the District's board of directors.

**Procedural Background**

On February 17, 2023, Kane Creek filed the 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 Certificate of Public Convenience and Necessity (“CPCN”) as requested in the Application to Kane Creek (“DPU Comments”). Kane Creek did not file reply comments to DPU’s Comments, and no other comments or reply comments were filed.

On April 20, 2023, the PSC issued the CPCN Order, granting Kane Creek’s Application conditional on Kane Creek meeting certain requirements.<sup>4</sup>

On May 22, 2023, Kane Creek filed the Request. DPU had until June 6, 2023, to file a reply to the Request, and did not file a reply.

**Discussion, Findings, and Conclusions**

In support of the Request, Kane Creek offers explanations for why the CPCN Order “appears to [be] based on an incomplete and incorrect understanding of the future potential role of the District in the context of the [proposed] System.”<sup>5</sup> The Request provides new and clarifying comments and information supporting a modified order removing from the CPCN Order the requirement that Kane Creek provide the final District and Board approvals from the Grand County Commission.

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<sup>4</sup> See CPCN Order at 5-6.

<sup>5</sup> Request at 2. “System” is a term defined in the CPCN Order to mean a system that “provide[s] sanitary sewer service to” Kane Creek’s development project in unincorporated Grand County, Utah. CPCN Order at 2.

In its Comments supporting the Application, DPU provided a discussion about events that transpired between Kane Creek and the Grand County Commission (“GCC”). For example, citing GCC meeting minutes, DPU stated that Kane Creek “worked with Grand County Commissioners to facilitate the establishment of ... Kane Springs Improvement District[,]” and concluded that “[t]he establishment of [that district] is not yet final[.]”<sup>6</sup> Kane Creek similarly commented that “[o]nce Kane Creek has constructed the System, it may consider transferring the operations of the System to a special purpose entity created exclusively for that purpose.”<sup>7</sup>

In reliance on DPU’s discussion concerning the GCC, and Kane Creek’s comments, the PSC determined that issues concerning the District were directly relevant to the Application and found “that Kane Creek is in the process of obtaining final authorization for the formation of the District and its board of directors from the GCC.”<sup>8</sup> Based on this finding, the PSC included as a condition in the CPCN Order “that Kane Creek ... submit to the PSC[,]” among other things, “the final approval by the GCC of both the District and its board of directors[.]”<sup>9</sup>

However, and notwithstanding the above comments by Kane Creek, the Request now asserts that “Kane Creek’s Application did not mention the potential assumption

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<sup>6</sup> DPU Comments at 2.

<sup>7</sup> Application at 3.

<sup>8</sup> CPCN Order at 4- 5.

<sup>9</sup> *Id.* at 5.

of the System by the District in any way.”<sup>10</sup> According to the Request, and in contrast to the PSC’s previous understanding, the interactions between Kane Creek and the GCC were apparently not directly relevant to the Application and the subsequent CPCN Order. Specifically, the Request asserts “a public utility such as Kane Creek may be privately owned and operated as a ‘sewerage corporation’ ... and need not be approved by a local government such as a county or local district.”<sup>11</sup> Therefore, represents Kane Creek, “[t]he only role of the District with respect to the System is a potential alternative to regulation by the [PSC]. If, at a future date, the District were to assume ownership and control of the System, the System would no longer be subject to [PSC] regulation because it would no longer be operating as a public utility[.]”<sup>12</sup>

The Request also provides greater detail regarding the requirements of the Utah Department of Water Quality (DWQ) and DPU as a “sponsoring body politic.”<sup>13</sup> In this regard, Kane Creek provides two new exhibits, Exhibits D<sup>14</sup> and E.<sup>15</sup> Each exhibit addresses different issues, such as that DPU will be the “sponsoring body politic in order to implement and obtain a construction permit for Kane Creek’s sewer

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<sup>10</sup> Request at 3.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 2-3.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> Exhibit D is a Memorandum of Understanding dated February 15, 2023, between Kane Creek and DPU concerning DWQ’s sponsoring body politic requirement.

<sup>15</sup> Exhibit E is a document dated March 27, 2023, with the subject line “Approval-in-Concept for Wastewater Treatment Kane Creek – Proposed Development Grand County, Utah.” The Request refers to Exhibit E as a “copy of the permit.” However, is unclear why this reference is made because Exhibit E clearly states it “is not a construction permit or a permit to operate.”

system[,]”<sup>16</sup> and the conditions that DPU required of Kane Creek in exchange, namely the requirement that Kane Creek seek a CPCN from the PSC.<sup>17</sup> We find these documents helpful and note that neither were provided to the PSC by Kane Creek when the Application was filed on February 17, 2023, by DPU, or in reply to DPU’s Comments, which Kane Creek had until April 4, 2023, to provide.

Accordingly, based on Kane Creek’s clarifying comments, representations, and new information regarding the role of the District and Board in Kane Creek’s development and operations, and with respect to the requirements of DWQ as they relate to the same, and there being no comments or opposition regarding Kane Creek’s clarifying comments, representations, and new information, the Request is granted and the CPCN Order is modified as indicated below.

### **ORDER**

Based on the foregoing findings and conclusions, and that the Request is unopposed, Kane Creek’s Request is granted. The CPCN Order is modified to exclude the condition that Kane Creek must submit to the PSC “the final approval by the [Grand County Commission] of both the District and its board of directors.” All other conditions and limitations set forth therein remain. Kane Creek is granted the conditional Amended CPCN attached as Exhibit A, incorporated by reference into this

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<sup>16</sup> Request Ex. D and see Ex. E at ¶ 3. Paragraph 3 of Exhibit E’s reference to the “Public Service Commission” as the sponsoring body politic is obviously a typo and must mean the DPU.

<sup>17</sup> See *e.g.*, Request Ex. D at ¶¶ 7-10.

Order. Except as modified above, Kane Creek is directed to file with the PSC all final Required Approvals as defined in the CPCN Order, and all other required items identified in the CPCN Order 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 Amended CPCN will no longer be conditional.

DATED at Salt Lake City, Utah, June 15, 2023.

/s/ John E. Delaney  
Presiding Officer

Approved and Confirmed June 15, 2023, as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#328390

DOCKET NO. 23-2639-01

- 7 -

Notice of Opportunity for Judicial Review

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

- 8 -

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	<p><u>DOCKET NO. 23-2639-01</u></p> <p><u>AMENDED CERTIFICATE NO. 2639</u></p>
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ISSUED: June 15, 2023

The Public Service Commission of Utah (PSC), pursuant to Utah Code Ann. § 54-4-25, issues an Amended 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's Modified Order dated June 15, 2023, in the above referenced docket.

DATED at Salt Lake City, Utah, June 15, 2023.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#328390



CERTIFICATE OF SERVICE

I CERTIFY that on June 15, 2023, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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Division of Public Utilities

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Administrative Assistant