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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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2007 FEB -9 P 3:30

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF:

ARIZONA WATER COMPANY, AN
ARIZONA CORPORATION,

Complainant,

v.

GLOBAL WATER RESOURCES, LLC, A
FOREIGN LIMITED LIABILITY COMPANY;
GLOBAL WATER RESOURCES, INC., A
DELAWARE CORPORATION; GLOBAL
WATER, MANAGEMENT, LLC, A FOREIGN
LIMITED LIABILITY COMPANY; SANTA
CRUZ WATER COMPANY, LLC, AN
ARIZONA LIMITED LIABILITY
CORPORATION; PALO VERDE UTILITIES
COMPANY, LLC, AN ARIZONA LIMITED
LIABILITY CORPORATION; GLOBAL
WATER - SANTA CRUZ WATER
COMPANY, AN ARIZONA COPRORATION;
GLOBAL WATER - PALO VERDE UTILITIES
COMPANY, AN ARIZONA CORPORATION;
JOHN AND JANE DOES 1-20; ABC ENTITIES
I-XX.

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BRIEF OF THE COMMISSION STAFF

Arizona Corporation Commission
DOCKETED

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I. INTRODUCTION

By Procedural Order issued December 20, 2006, Staff of the Arizona Corporation Commission ("Commission") was directed to file a legal brief addressing the issue of whether entities which employ non-traditional financing arrangements, such as Infrastructure Coordination and Finance Arrangements ("ICFAs"), should be considered public service corporations or otherwise subject to the Commission's jurisdiction. Staff was also directed to discuss any other issues that may be relevant to the Commission's consideration of whether it should assert jurisdiction over ICFAs

1 and the entities employing such arrangements and, if so, what action should be taken regarding such
2 devices. On January 19, 2007, Staff requested and was subsequently granted an extension of time to
3 file its brief until February 9, 2007.

4 Commission Staff hereby files its brief on the issues identified by the Administrative Law
5 Judge. As discussed below, Staff does not believe that a hard and fast rule can be applied in such
6 cases. Certainly, arguments can be made that non-regulated affiliates and their operating companies
7 using non-traditional financing arrangements, such as ICFAs, for all intents and purposes are together
8 operating as a public service corporation. However, Courts are hesitant to pierce the corporate veil
9 except where there has been a demonstration of injustice or misconduct. Whether such injustice or
10 misconduct can be demonstrated in all cases is not clear at this point.

11 Absent such a showing, important policy considerations along with legal considerations may
12 support a finding that such entities are not acting as public service corporations.

13 Finally, even if the Commission finds that entities engaged in non-traditional financing
14 arrangements are not public service corporations, the Staff believes that the Commission has the legal
15 authority and should exercise jurisdiction over such arrangements.

16 **II. BACKGROUND**

17 On March 29, 2006, Arizona Water Company ("AWC") filed a complaint against Global
18 Water Resources, LLC, Global Water Resources, Inc., Global Water Management, LLC, Santa Cruz
19 Water Company, LLC, Palo Verde Utilities Company, LLC, Arizona Global Water – Santa Cruz
20 Water Company and Arizona Global Water – Palo Verde Utilities Company (collectively
21 "Respondents").

22 On March 8, 2006, the Staff opened an investigatory docket into the regulatory treatment of
23 non-traditional funding mechanisms.¹ On October 6, 2006, Staff filed a Staff Report in Docket No.
24 W-00000C-06-0149 addressing the comments that had been received regarding the regulatory
25 treatment of non-traditional funding mechanisms. Staff concluded that ICFAs should be treated as
26 advances or contributions instead of equity for ratemaking purposes.

27
28 ¹ *In the Matter of the Commission's Generic Evaluation of the Regulatory Impact from the Use of Non-Traditional Financing Arrangements by Water Utilities and Their Affiliates ("Generic Docket")*, Docket No. W-00000C-06-0149.

1 On December 20, 2006, the Administrative Law Judge ordered Staff to filed a legal brief in
2 this docket as well as the investigatory docket addressing the issue of whether entities which employ
3 non-traditional financing arrangements, such as ICFAs, should be considered public service
4 corporations or otherwise subject to the Commission's jurisdiction. Staff was also ordered to discuss
5 any other issues that may be relevant to the Commission's consideration of whether it should assert
6 jurisdiction over ICFAs and the entities employing such arrangements and, if so, what action should
7 be taken regarding such devices.

8 **III. DISCUSSION**

9 **A. Depending upon the facts and circumstances, the Serv-Yu Factors could support**
10 **a finding either way with respect to the regulated nature of entities participating**
11 **in such arrangements.**

12 Traditionally, the Commission and the Courts utilize the "Serv-Yu" factors to determine
13 whether a particular entity is operating as a public service corporation under Arizona law.² Those
14 factors³ are as follows:

- 15 1. What the corporation actually does;
- 16 2. Is there a dedication to public use?;
- 17 3. What is stated in the articles of incorporation with respect to authorization and
18 purposes;
- 19 4. Is the entity dealing with the service of a commodity in which the public has
20 been generally held to have an interest?;
- 21 5. Is the entity monopolizing or intending to monopolize the territory with a
22 public service commodity?⁴;
- 23 6. Will there be an acceptance of substantially all requests for service?⁵;
- 24 7. Is service to be provided by contract and does such contract reserve the right to
25 discriminate?⁶; and

26 ² See *Natural Gas Service Co. v. Serv-Yu Cooperative, Inc.*, 70 Ariz.235, 219 P.2d 324 (1950).

27 ³ *Serv-Yu* refers to *Rural Electric Co. v. State Board of Equalization*, 45 Wyo. 451, 120 P.2d 741, rehearing denied
122 P.2d 189, for a collection and analysis of applicable cases.

28 ⁴ *Serv-Yu* (citing *Valcour v. Village of Morrisville*, 110 Vt. 93, A.2d 312.

⁵ *Serv-Yu* (citing *Consolidation Coal Co. v. Martin*, 8th Cir., 113 F.2d 813, 817; *Wingrove v. Public Service
Commission*, 74 W.Va. 190, 81 S.E. 734, L.R.A. 1918A, 210).

1 8. Will there be actual or potential competition with other corporations whose
2 business is clothed with public interest?

3
4 **1. What the Corporation Actually Does.**

5 Like many public utilities, Global's operations⁷ are handled by both regulated and non-
6 regulated entities. The regulated Global entities conduct business as public service corporations
7 providing water and wastewater service. There are three non-regulated Global Entities, at least one
8 of which, namely Global Water Resources, LLC ("GWR") however, is according to the facts in this
9 case, entering into agreements and receiving various fees and charges from landowners and
10 prospective utility customers in Arizona in exchange for commitments to provide water and
11 wastewater service in the future.

12 The particular arrangement in this case works as follows. One of Global's unregulated
13 affiliates, GWR enters into and Infrastructure Coordination, Finance and Option Agreement
14 ("ICFA") with a development or other end-user in which it acts as a "coordinator" of water services.
15 Specifically, paragraph 1 of the Recitals of what appears to be a typical agreement in many respects
16 provides:

17 Coordinator is engaged in the business of, among other things,
18 acquiring and consolidating water and wastewater utilities,
19 coordinating the provision of water, wastewater and reclaimed water
20 services to landowners through Coordinator's regulated public service
21 corporation affiliates and providing services or benefits to landowners,
22 such as: (i) developing master utility plans for services including
23 natural gas, electricity, cable television, Internet, intranet, and
24 telecommunications; (ii) providing coordination of construction
25 services for water, reclaimed water and wastewater treatment facilities,
26 and (iii) providing financing for the provision of infrastructure in
27 advance of growth. Coordinator's services to be provided pursuant to
28 this Agreement shall, however, be provided as set forth hereinafter.

23 It then goes on to state that the Coordinator owns several regulated utilities in the State of
24 Arizona and is in the process of acquiring a Water Utility which is expected to include the
25

26 ⁶ *Serv-Yu (Citing State ex rel. Bricker v. Industrial Gas Co., 58 Ohio App. 101, 16 N.E.2d 218; Industrial Gas Co.
v. Public Utilities Commission of Ohio, 135 Ohio St. 408, 21 N.E.2d 166).*

27 ⁷ The following regulated Global entities are named defendants in this complaint proceeding: Santa Cruz Water
28 Company, LLC, Palo Verde Utilities Company LLC, Global Water – Santa Cruz Water Company, Global Water – Palo
Verde Utilities Company. The following non-regulated Global entities are named defendants in this complaint
proceeding: Global Water Resources, LLC, Global Water Resources, Inc. and Global Water, Management, LLC.

1 development at issue as a particular end-user. The Coordinator intends to coordinate and facilitate
2 water utility service to the Land through WUGT [the regulated Water Utility] and any and all of
3 Landowner's obligations under the Agreement relating to water utility service are contingent on final
4 closing of the acquisition of the particular Water Utility. The Coordinator also takes on the
5 obligation to coordinate and arrange for the filing of Certificate of Convenience and Necessity
6 ("CC&N") extension applications by the Water Utility to the extent necessary with the Commission
7 to provide water, reclaimed water, and wastewater service to the land. The Recitals also provide that
8 the Coordinator shall financially guarantee to Landowner that the Water Utility will have sufficient
9 financial resources to provide water, wastewater and reclaimed water service to the Land. Under the
10 Agreement, the Coordinator and Water Utility are together responsible for any and all engineering,
11 design, construction, licensing, permits and financing for and of any and all water, wastewater, and
12 reclaimed water plant, production, treatment, storage, pumping and delivery facilities constructed on
13 or off the Land to provide water and wastewater service to the Land.

14 The Recitals also contain the following provision:

15 The parties recognize and acknowledge that this Agreement is a
16 financing, coordination, and option agreement only as more fully set
17 forth herein. The fees contemplated in this Agreement represent an
18 approximation of the carrying costs associated with interest and
19 capitalized interest associated with the financing of infrastructure for
20 the benefit of the Landowner or its successors until such time as the
21 rates associated from the provision of services within the areas to be
22 served as contemplated by this agreement generate sufficient revenue to
23 carry the ongoing carrying costs for this infrastructure. Nothing in this
24 Agreement should be construed as a payment of principal, a
25 contribution or advance to the utilities and will bear no repayment of
26 any kind or nature in the future, unless otherwise agreed by the parties,
27 or except as otherwise required in this Agreement.

28 Paragraph 2 of the Agreement provides that the Landowner or its successor must enter into
separate Extension Agreements with the Water Utility. In addition to the extent the Water Utility
requests that the Landowner contribute or finance additional monies for the Off-Site Facilities to
provide water, reclaimed water or wastewater services to the land, Coordinator agrees that the
Landowner shall not be responsible for payment of such additional costs for off-site facilities to the
Water Utility.

1 With respect to payment, under paragraph 4 of the Agreement, the Landowner is required to
2 pay the Coordinator as an acquisition; interest and financing fee as full and final compensation to the
3 Coordinator in consideration for its services and performance of its covenants and agreements in the
4 Agreements, at such times specified in the Agreement, the total sum of \$5,500.00 per EDU in the
5 developments, with any unpaid portion subject to upward adjustment using a Consumer Price Index.

6 In the event that a decision by the Commission materially alters the substance of the
7 transaction between the Landowner and Coordinator, and precludes Coordinator from fulfilling its
8 obligations or materially increases the costs to Landowner, the Parties agree that this Agreement may
9 be voided and Coordinator shall refund any and all payments made under the Agreement to
10 Landowner that are in excess of costs incurred for services or construction to date as previously
11 approved by Landowner which costs shall not be more than 15% of the Landowner payments made
12 to date if such Commission decision occurs prior to issuance of the SWN by Landowner.

13 Finally, Exhibit D provides the following description of Water Utility and Wastewater Utility
14 services to be coordinated by the Coordinator:

15 **Water Utility Services**

- 16 1. Expand CC&N water service area to include the land, if necessary, including filing for
17 a CC&N expansion within 30 days of closing of the acquisition of WMC and WUGT;
- 18 2. Prepare a master water plan with respect to the Land;
- 19 3. Confirm, construct and/or develop sufficient water plant, well source capacity and
20 Central Arizona Project water source capacity and delivery systems for the Land;
- 21 4. Extend a water distribution main line to the Delivery Points;
- 22 5. Provide will-serve letters to applicable governmental agencies necessary for final Plat
23 Approvals with a schedule of commitment dates personalized for the Land;
- 24 6. Provide a 100 year assured water supply through Department of Water Resources via
25 an Assured Water Designation or assist Landowner with the Certificate for Assured
26 Water Supply application required for final Plat Approvals and Department of Real
27 Estate approvals;
- 28 7. Prepare Interim use Permit for Land as described within this Agreement;
8. Provide expedited final subdivision plat water improvement plan check and
coordination with the Arizona Department of Environmental Quality for Approvals to
Construct; and,

- 1 9. Obtain/Develop facilities extension agreement for construction of infrastructure within
2 the Land (subject to reimbursement).

3 **Wastewater Utility**

- 4 1. Expand CC&N wastewater service area to include the Land, including filing for a
5 CC&N or CC&N expansion within 30 days of closing of the acquisition of WMC and
6 WUGT;
7 2. Prepare a master wastewater plan with respect to the Land;
8 3. Develop a master reclaimed water treatment, retention, and distribution plan including
9 interim well water supply for lake storage facilities;
10 4. Confirm, construct and/or develop sufficient wastewater plant capacity and Off-site
11 facilities for the Land;
12 5. Extend a wastewater collection system main line to the Delivery Points;
13 6. Extend a reclaimed water line to a water storage facility within the Land;
14 7. Provide all permitting and regulatory approvals including but not limited to an Aquifer
15 Protection Permit and Maricopa County Association of Governments (MAG) 209
16 Water Quality Plan as necessary;
17 8. Provide will-serve letters to applicable governmental agencies necessary for final Plat
18 Approvals with a schedule of commitment dates personalized for the Land;
19 9. Provide expedited final subdivision plat wastewater improvement plan check and
20 coordination with the Arizona Department of Environmental quality for Approvals to
21 Construct; and
22 10. Obtain/Develop facilities extension agreement for construction of infrastructure within
23 the Land (subject to reimbursement).

24 There are really two ways of looking at the Global affiliate Coordinator's role in the ICFA.
25 One way of looking at the Coordinator is that it is a separate legal entity which is providing services
26 that are designed to achieve certain objectives, some of which may have even been identified by the
27 Commission in the past as important and desirable in this area.⁸ The Coordinator itself is not
28 providing water service, another affiliate regulated or to be regulated by the Commission is providing
the service. Therefore, such an arrangement may be permissible under Arizona law. Indeed, absent
some fraud or injustice, Courts are hesitant to simply ignore the corporate separation.

26 ⁸ See September 13, 2006, Response of Global to Arizona Water Company's Request for Oral Argument or
27 Disposition of its Request for Injunction Relief at p. 2. ("The ICFA's allow Global to pursue the "3 Cs" – (1) conservation
28 of groundwater; (2) consolidation of small or unviable utilities; and (3) cooperation with regulators, local government,
and developers. "); Id. at p. 3 ("The Commissioners have often spoken of their desire to promote consolidation of the
hundreds of small water companies in this state – many of whom have limited financial, technical, and managerial
resources.").

1 In *Arizona Public Service Company v. ACC*, 746 P.2d 4 (Az.App. 1987), *approved in part*,
2 *vacated in part* 760 P.2d 532 (1988), the Court refused to ignore the corporate separation between
3 APS and AZP, APS' holding company, for purposes of acquiring certain information from the
4 holding company. The Commission argued in that case that APS' holding company could be found
5 to be a public service corporation because it was engaged in furnishing electricity to the public
6 through its wholly-owned subsidiary, APS. The Court rejected this argument stating:

7 ...we simply note that the constitutional definition is to be strictly
8 construed and that AZP [APS' holding company] itself does not
9 provide any public service listed in the definition. *See Ariz. Const. Art.*
10 *15, Section 2; Rural/Metro Corp.*, 129 Ariz. at 117, 629 P.2d at 84.
11 Furthermore, the lower court did not make a finding as to whether AZP
was a public service corporation and the Commission has pointed to no
instance in which a holding company has been determined to be a
public service corporation.

12 On the other hand, another way of looking at the functions of the Coordinator is that it is
13 organizing and facilitating many of the functions routinely performed by a water and wastewater
14 utility in Arizona. Its operations are so closely and inextricably bound up with the water and
15 wastewater utility that for all practical purposes they should be treated as one for purposes of
16 determining the entities' regulated status. In addition, it may be argued, as Arizona Water, the
17 complainant argues here, that the unregulated Global Coordinator is collecting various fees, actually
18 in the nature of hook-up fees, from landowners that the regulated water company is prohibited from
19 collecting. In addition, there may be other actions that the Global Coordinator is taking that the
20 regulated water or wastewater utility may be prohibited from doing under Arizona law. As already
21 discussed, Courts look at this situation much differently:

22 A basic axiom of corporate law is that a corporation will be treated as a
23 separate entity unless sufficient reason appears to disregard the
24 corporate form. *Standage v. Standage*, 147 Ariz. 473, 475, 711 P.2d
25 612, 614 (App. 1985). When the facts disclose undercapitalization or
26 when observance of the corporate form will sanction a fraud or promote
27 an injustice, the corporate fiction will be disregarded. *Washington*
28 *National Corporation v. Thomas*, 117 Ariz. 95, 101, 570 P.2d 1268,
1274 (App. 1977), *disapproved on other grounds, Greenfield v. Cheek*,
122 Ariz. 57, 593 P.2d 280 (1979). We decline to 'pierce the corporate
veil' because both AZP and APS have maintained their separate
corporate identities and because the Commission has offered no
evidence of undercapitalization, fraud, misconduct, or impropriety in
the management or operation of the two companies.

1 If the underlying purpose of the arrangement is to allow the Coordinator to take actions that
2 the regulated entity cannot by law take, and as a result misconduct or an injustice occurs, piercing of
3 the corporate veil, is certainly sanctioned by the Courts.

4 **2. A Dedication to the Public Use.**

5 The second factor examined when determining whether an entity is acting as a public service
6 corporation is whether there is a dedication to the public use. The case law indicates that “a
7 dedication to the public” is always a question of intention.⁹ That intention may be shown by the
8 circumstances in a case.

9 This much, doubtless is true, that an owner of such a plant must at least
10 have undertaken to actually engage in business and supply at least some
11 of his commodity to some of the public.¹⁰

12 In determining whether one is dealing with a public utility much enlightenment is gained if it
13 is known that the utility is dealing with the service of a commodity in which the public has generally
14 been held to have an interest.¹¹

15 If the service is rendered pursuant to contract or limited membership, it
16 is difficult to hold that one has expressly held himself out as ready to
17 serve the public generally. But the text does not require an express
18 holding out. It may be done impliedly, as by wide solicitation and
19 other factors.¹²

20 In this case, the Coordinator is not providing water service itself, so it can be easily argued
21 that it does not meet this criteria. One may further argue that the Coordinator as a separate legal
22 entity is performing a separate service with some favorable public policy aspects, and as such should
23 not be subject to regulation as a public service corporation.

24 On the other hand, the Coordinator’s functions are so inextricably bound up with the
25 operations of the regulated water and wastewater company, that for all intents and purposes, the
26 Coordinator should be viewed as one and the same for purposes of determining whether it is acting as
27 a public service corporation. Its operations and the water and wastewater’s operations, while

28 ⁹ *Serv-Yu* at p. 326.

¹⁰ *Id.* (citing *Rural Elec. Co.*, 120 P.2d 747).

¹¹ *Van Dyke v. Geary*, 244 U.S. 39.

¹² *Serv-Yu* at p. 327 (citing *Keystone Warehousing Co. v. Public Service Commission*, 161 A.891; *Bingaman v. Public Service Commission*, 161 A. 892).

1 purportedly separated on paper or by contract, cannot in reality be held to be so separate as to permit
2 one entity to be classified differently than the other. However, as already discussed, something more,
3 is generally required by the Courts for a piercing of the corporate veil to occur, and for two entities
4 which under corporate formalities are separate, to suddenly become one in the eyes of law. Courts
5 are hesitant to pierce the corporate veil without some finding of injustice.¹³

6 The ultimate determination as to whether these agreements are appropriate under Arizona
7 law, will involve a weighing by the Commission of any injustice likely to result from such
8 agreements versus any important policy considerations which may support their use.

9 **3. Articles of Incorporation.**

10 Articles of incorporation which authorize the corporation to act as a public utility are not
11 conclusive, but may be considered in the ultimate determination of the status of the entity.¹⁴
12 However, in the end, what is important is what the corporation is actually doing rather than what the
13 purpose clause says.¹⁵

14 **4. Dealing with the Service of a Commodity in which the Public Has Been**
15 **Generally Held to Have an Interest.**

16 On the one hand it can be persuasively argued that the Global Coordinator is not directly
17 dealing with the service of a commodity in which the public has an interest. The Coordinator itself
18 does not provide water service. It is simply engaged in a coordinating or managerial role with respect
19 to the water and wastewater utilities' operations. It is entering into private contracts with end-users
20 as a separate corporate entity and its operations are designed to meet certain policy objectives.

21 On the other hand, it could be argued that the ICFAs permit the Global Coordinator to do
22 things that the operating company cannot do under Arizona law. As such, one could argue that an
23 injustice occurs or that misconduct is taking place. In such instances, Arizona law sanctions piercing
24 of the corporate veil to eliminate the injustice or misconduct in the management or operation of the
25 companies.¹⁶ However, absent a more developed record on such injustices or misconduct, it is

26 _____
27 ¹³ *APS v. ACC, supra.*

¹⁴ *Serv-Yu* at p. 326 (citing *Lamb v. Calif. Water & Telephone Co.*, 121 P.2d 852, affirmed on appeal, 129 P.2d 371.

28 ¹⁵ *Serv-Yu* at 241.

¹⁶ *APS v. ACC, supra.*

1 impossible to determine at this point with certainty whether piercing of the corporate veil is
2 appropriate.

3
4 **5. Monopolizing or Intending to Monopolize the Territory with a Public Service Commodity.**

5 There is little question after reviewing the contracts in question, that they are designed in part
6 to “monopolize” the territory” with a public service commodity. The Coordinator is actively
7 soliciting new customers by enticing them to sign binding contracts for water service in the future.
8 The contract does not provide that they are free to obtain service from another company, if they so
9 choose.

10 **6. Acceptance of Substantially all Requests for Service.**

11 While it is true that the Coordinator chooses whom to contract with, those contracts commit a
12 substantial number of end-users to water service from one of the Coordinator’s affiliates. In the areas
13 in which it seeks to bind end-users to its affiliates’ service, it is highly unlikely that it would not
14 accept substantially all requests for service. But, since the unregulated affiliate is not actually
15 providing the water service, one would have to find sufficient cause to pierce the corporate veil. As
16 discussed above, certainly an argument can be made that the ICFA permits the unregulated affiliate to
17 perform functions that the regulated entity otherwise would be unable to perform. This may or may
18 not be sufficient reason to pierce the corporate veil. The ultimate question to be answered is whether
19 there is misconduct that is taking place as a result or an injustice results.

20 **7. Service under Contracts and Reserving the Right to Discriminate is not Always Controlling.**

21
22 Entering into private contracts has been held not to be controlling.¹⁷ If entering into contracts
23 with customers controlled the determination whether an owner is a public utility or not, that would be
24 an easy way of avoiding the law.¹⁸ Here, while private contracts were entered into, those contracts
25 involved the provision of water service by the Coordinator’s operating company to a substantial
26 number of end-users.

27
28 ¹⁷ *Serv-Yu* at p. 327 (citing *Erb v. Public Service Commission*, 93 Pa.Super. 421; *Keystone Warehousing Co. v. Public Service Commission*, 161 A. 891.

¹⁸ *Serv-Yu* at p. 327.

1
2 8. **Actual or Potential Competition with Other Corporations Whose Business**
3 **is Clothed with Public Interest.**

4 The Coordinator is obtaining binding commitments from landowners to utilize its services and
5 its affiliate's water and wastewater services. It and its operating company are thus competing with
6 other corporations such as Arizona Water whose business is clothed with a public interest. The
7 Coordinator and its operating affiliate would together meet this criteria.

8 The Coordinator "walks and talks" like a public service corporation in many respects yet it is
9 not the corporate entity that is actually offering water service. Thus despite the fact that in many
10 ways inextricably bound up with the utility's operations, that practically speaking, it is difficult to
11 separate the two, that may not be enough in the eyes of the law to treat the two entities as one.

12 **B. Even if such entities are found by the Commission to not be acting as public**
13 **service corporations, the Commission has the legal authority to and should**
14 **exercise jurisdiction over such ICFAs through the public utilities which are**
15 **subject to their provisions.**

16 The ALJ has also asked Staff to comment on whether the Commission should alternatively
17 exercise jurisdiction over ICFAs and the entities entering into them and what action the Commission
18 should take with respect to them.

19 Staff believes that if the Commission finds that the non-regulated "Coordinator" entities are
20 not acting as "public service corporations" per se, the Commission should exercise jurisdiction over
21 such affiliate arrangements and it has the legal authority to do so.¹⁹ Beyond the recommendations
22 made in the Generic Docket, Staff is hesitant at this time to suggest further treatment without
23 additional guidance from the Commission.

24 **IV. CONCLUSION**

25 There is no hard and fast rule that can be applied with respect to the status of entities
26 participating in ICFA's. To the extent that such entities are bound up with the operating entity to
27 such a degree that it is difficult to separate the activities of both, a very strong argument can be made
28 for public service corporation status. However, Courts are hesitant to pierce the corporate veil in
instances unless such action will prevent an injustice or misconduct. Even if the Commission finds

¹⁹ See *Arizona Corporation Commission v. Woods*, 830 P.2d 807 (1992).

1 that such entities are not acting as public service corporations, Staff believes that it should still
2 exercise jurisdiction over these arrangements in which an affiliate binds the operating company to
3 undertake service and other commitments.

4 RESPECTFULLY SUBMITTED this 9th day of February 2007.

5
6 

7
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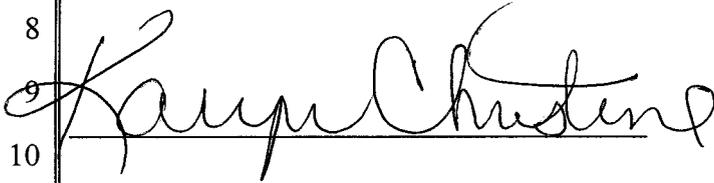
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