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COMMISSIONERS

- 1
- 2 **Jeff Hatch-Miller, Chairman**
- 3 **William A. Mundell**
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2007 FEB 26 P 1:13

AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

9 IN THE MATTER OF THE GENERIC
10 EVALUATION OF THE REGULATORY
11 IMPACTS OF NON-TRADITIONAL
12 FINANCING ARRANGEMENTS BY
13 WATER UTILITIES AND THEIR
14 AFFILIATES

DOCKET NO.
W-00000C-06-0149

**ARIZONA WATER COMPANY'S
EXHIBIT TO NOTICE OF FILING
ITS RESPONSE TO STAFF'S BRIEF
AND REPORT**

15 Attached to this Notice is the Response to the Brief of the Commission Staff filed
16 February 2, 2007 which inadvertently was not attached to Arizona Water Company's Notice
17 of Filings its Response to Staff's Brief and Report.

18 RESPECTFULLY SUBMITTED this 26th day of February, 2007.

19 BRYAN CAVE LLP

20
21 By *St A. Hirsch*
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Attorneys for Arizona Water Company

26 **ORIGINAL and 13 COPIES** of the foregoing
27 filed this 26th day of February, 2007 with:

28 ...

Arizona Corporation Commission
DOCKETED

FEB 26 2007

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4 Phoenix, AZ 85007

5 **COPY** of the foregoing mailed/delivered/
6 this 26th day of February, 2007 to:

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14 Chief Counsel, Legal Division
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17 Phoenix, AZ 85007

18 Ernest Johnson, Director [hand delivered]
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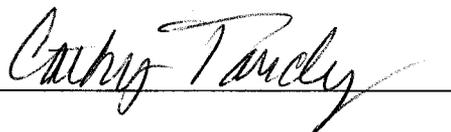
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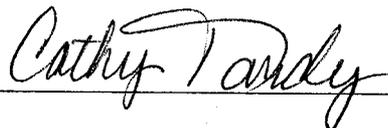
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AZ CORP COMMISSION
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7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 ARIZONA WATER COMPANY, an Arizona
10 corporation,

11 Complainant,

12 vs.

13
14 GLOBAL WATER RESOURCES, LLC, a
15 foreign limited liability company; GLOBAL
16 WATER RESOURCES, INC., a Delaware
17 corporation; GLOBAL WATER
18 MANAGEMENT, LLC, a foreign limited
19 liability company; SANTA CRUZ WATER
20 COMPANY, LLC, an Arizona limited liability
21 corporation; PALO VERDE UTILITIES
22 COMPANY, LLC, an Arizona limited liability
23 corporation; GLOBAL WATER - SANTA
24 CRUZ WATER COMPANY, an Arizona
25 corporation; GLOBAL WATER - PALO
26 VERDE UTILITIES COMPANY, an Arizona
27 corporation; JOHN AND JANE DOES 1-20;
28 ABC ENTITIES I - XX,

Respondents.

DOCKET NOS.

W-01445A-06-0200

SW-20445A-06-0200

W-20446A-06-0200

W-03576A-06-0200

SW-03575A-06-0200

**ARIZONA WATER COMPANY'S
RESPONSE TO THE BRIEF OF
THE COMMISSION STAFF FILED
FEBRUARY 9, 2007**

Complainant Arizona Water Company hereby submits its response to the Brief by Commission Staff ("Staff") filed February 9, 2007. Staff makes a number of observations about the status of the unregulated Global entities, Global Water Resources, LLC, Global

1 Water Resources, Inc. and Global Water Management, LLC (collectively, the Unregulated
2 Global Entities”)¹, but appears hesitant to recommend any immediate action by the Arizona
3 Corporation Commission (the “Commission”). Arizona Water Company agrees with many
4 of the observations by the Staff, and furthermore contends that these are significant and
5 pressing issues which require the Commission to take immediate action to prevent the
6 Unregulated Global Entities from continuing to act outside of the jurisdiction and oversight
7 of the Commission. Additionally, Arizona Water Company agrees with the Staff’s position
8 that whether or not the Unregulated Global Entities are acting as public service corporations,
9 the Commission has the power and indeed the obligation to exercise jurisdiction over such
10 affiliate arrangements (Staff’s Brief at p. 12, ll. 17-19) as well as jurisdiction over and
11 review of the Infrastructure Coordination and Financing Agreements (“ICFAs”) financing
12 scheme as well as the parties entering into ICFAs (*Id.* at p. 12, l. 27 through p. 13, l. 3).

13
14 In contrast, the Staff is wrong on a number of other issues. As noted above, the Staff
15 is reluctant to take any position on Global’s conduct or recommend any course of action by
16 the Commission. However, the record is clear that the Commission can and should take
17 immediate action to halt the ICFA financing scheme and subject the Unregulated Global
18 Entities to its jurisdiction. The Staff also wrongly suggests that the Commission should
19 engage in a “weighing” process under which an end (alleged “important policy
20 considerations”) justifies the means (violations of A.R.S. § 40-285 and other applicable
21 statutes and regulations). *Id.* at 10. Arizona Water Company disagrees with the Staff’s
22 position on these points. There is no authority to support this proposition; no amount of
23

24
25 ¹ Disclosures in the Arizona Water Company/Global Water CCN Extension Case, W-
26 01445A-06-0199 (the “CCN Extension Case”) have revealed yet another unregulated Global
27 entity acting as a public service corporation: Global Water, Inc. (the alter ego by which
28 Global has acquired Francisco Grande Utility Company and CP Water Company without
Arizona Corporation Commission approval or permit). In using the term “Unregulated
Global Entities” in this response, Arizona Water Company includes Global Water, Inc.

1 alleged "policy considerations" or pro-conservation marketing slogans can justify or excuse
2 violations of Arizona law and Commission regulations.

3
4 **I. THE STAFF CORRECTLY IDENTIFIES THE MANY INSTANCES IN WHICH THE UNREGULATED GLOBAL ENTITIES ACT AS PUBLIC SERVICE CORPORATIONS AND ALTER EGOS OF THE REGULATED ENTITIES.**

5
6 The Staff correctly states that the test under *Natural Gas Service Co. v. Serv-Yu*
7 *Cooperative, Inc.*, 70 Ariz. 235, 219 P.2d 324 (1950) should be used to determine whether
8 an entity is acting as a public service corporation. Under this eight factor test, the
9 Unregulated Global Entities clearly should be deemed to be public service corporations. For
10 example, the Staff notes that, under the ICFAs, one way of looking at the Unregulated
11 Global Entities' conduct is that they are "organizing and facilitating many of the functions
12 routinely performed by a water and wastewater utility in Arizona," and have "operations . . .
13 so closely and inextricably bound up with the water and wastewater utility that for all
14 practical purposes they should be treated as one for purposes of determining the entities'
15 regulated status." Staff's Brief at p. 8, ll. 12-16. Moreover, the Staff observes that arguably
16 "the unregulated Global Coordinator is collecting various fees, actually in the nature of
17 hook-up fees, from landowners that the regulated water company is prohibited from
18 collecting." *Id.* at ll. 16-19.

19
20 The Staff further correctly notes that it could be argued that "the ICFAs permit the
21 Global Coordinator to do things the operating company cannot do under Arizona law. As
22 such, one could argue that an injustice occurs or that misconduct is taking place." *Id.* at p.
23 10, ll. 21-23 The Staff also observes that the Unregulated Global Entities clearly intend to
24 act as monopolies in areas covered by ICFAs: "The Coordinator is actively soliciting new
25 customers by enticing them to sign binding contracts for water service in the future. The
26 contract does not provide that they are free to obtain service from another company, if they
27 so choose." *Id.* at p. 11, ll. 6-9. The Staff also notes that the Unregulated Global Entities
28 are "obtaining binding commitments from landowners to use [their] services and [their]

1 affiliate's water and wastewater services" and "are thus competing with other corporations
2 such as Arizona Water whose business is clothed with a public interest." *Id.* at p. 12, ll. 3-5,
3 In short, "[t]he [Global] Coordinator 'walks and talks' like a public service corporation in
4 many respects yet it is not the corporate entity actually offering service." *Id.* at ll. 7-8.

5
6 **II. THE STAFF IMPROPERLY RECOMMENDS A WEIGHING OF ALLEGED**
7 **POLICY GOALS AGAINST ILLEGAL CONDUCT, AND FAILS TO**
8 **ADVOCATE URGENT ACTION TO ADDRESS GLOBAL'S ILLEGAL AND**
9 **IMPROPER ACTIONS.**

10 Arizona Water Company disagrees with many of the other observations and
11 arguments presented by the Staff. For example, in a recent rate-making case involving
12 Black Mountain Sewer Corporation, Docket No. SW-02361A-05-0657, the Staff argued that
13 the corporate veil between Black Mountain Sewer Corporation and Algonquin Water
14 Resources of America should be pierced so as to avoid the injustice that would result if rate
15 payers paid excessive rates:

16 The record easily supports the conclusion that Black Mountain Sewer is a mere
17 agency or instrumentality of the Algonquin affiliates. Black Mountain Sewer can
18 only operate through Algonquin affiliates. The record also easily supports the
19 conclusion that observing the corporate legal fictions would result in an injustice to
20 rate payers.

21 Closing Brief of the Commission Staff, Docket No. SW-02361A-05-0657, at 13. In its final
22 decision, the Commission ultimately agreed with Staff that the injustice of higher rates
23 justified piercing the corporate veil:

24 We agree with Staff that, at a minimum, the profit component of both capitalized
25 costs and expenses by BMSC affiliate companies should not be allowed. *We will not*
26 *countenance a corporate shell game that allows companies to hide behind corporate*
27 *structures in order to avoid scrutiny of what would normally be the function of the*
28 *regulated public service company.* BMSC criticizes the Staff's failure to present
evidence as to the unreasonableness of the subsidiary costs. Although Staff could
have pursued discovery of the affiliate companies, given Staff's heavy caseload and
the constraints for processing this matter under the time clock rules, it was not
unreasonable for Staff to pursue other means [that is, piercing the corporate veil] of
supporting its recommendation to disallow affiliate company profits.

1 Decision 69164, Docket No. SW-02361A-05-0657, at 17 (emphasis added). If the
2 considerations of the time clock, Staff's caseload, and the injustice of excessive rates allow
3 piercing the corporate veil in the Black Mountain Sewer Corporation case, similar
4 considerations justify piercing the corporate veil in this case so as to hold the Unregulated
5 Global Entities are improperly acting as public service corporations and entering into illegal
6 ICFAs. The facts suggesting public service corporation status are just as compelling here
7 than in Black Mountain Sewer Corporation (if not moreso): the Regulated Global Entities
8 have no employees and literally could not exist or function without the alter egos of the
9 Unregulated Global Entities in place.

10 Staff appears to assert that Global should have a free pass to engage in illegal
11 conduct so long as it allegedly aims for "some favorable public policy aspects":

12
13 In this case, the Coordinator is not providing water service itself, so it can be easily
14 argued that it does not meet [the *Serv-Yu*] criteria. One may further argue that the
15 Coordinator is performing a separate service with some favorable public policy
16 aspects, and as such should not be subject to regulation as a public service
17 corporation.

18 *Id.* at 9. Arizona Water Company takes issue with the Staff's argument on a number of
19 grounds. First, it is clear that the Regulated Global Entities have no employees and rely
20 totally on employees provided by one or more Unregulated Global Entities. In this
21 situation, it is the unregulated alter ego entities that have the employees who are actually
22 "providing water service," not the regulated entities, which exist solely on paper. Second,
23 there is no authority whatsoever for the proposition that the law can be ignored so long as
24 there is some stated goal of providing "some favorable public policy aspects." This is
25 obviously wrong: a utility cannot escape Commission regulation simply by claiming to act
26 in the public interest, and the Commission cannot and should not weigh unsupported policy
27 goals against clear and deliberate violations of Arizona law in analyzing whether the
28 Unregulated Global Entities are acting as public service corporations. Such illegal "ends",

1 which in and of themselves violate strong Arizona public policy, cannot justify the “means”
2 of ignoring the requirement of oversight and regulation by the Commission.

3
4 The Staff repeats this fallacious argument when it suggests that the Commission
5 should engage in “weighing . . . any injustice likely to result from such [ICFA] agreements
6 versus any important public policy considerations which support their use.” *Id.* at 10. For
7 the same reasons as set forth above, the Commission cannot and should not weigh violations
8 of the law against alleged noble ends as suggested by the Staff. The Arizona Legislature has
9 enacted various statutes governing the behavior of public service corporations, including
10 A.R.S. § 40-285, and it is the Commission’s obligation to ensure that public service
11 corporations comply with those laws.

12 Arizona Water Company submits that this alarming portrait of unauthorized,
13 improper and illegal actions by the Unregulated Global Entities requires immediate action
14 by the Commission to place the Unregulated Global Entities under the Commission’s
15 supervision and to restrain them from further improper conduct. On this same date, Arizona
16 Water Company filed in this docket a Motion for an Order to Show Cause requesting just
17 such action by the Commission, setting forth facts indicating that Global is actually
18 expanding its improper conduct since these proceedings were initiated, and is brazenly
19 challenging the Commission to take action against it. Arizona Water Company hereby
20 incorporates and restates the arguments made in that motion in response to the Brief of the
21 Commission Staff filed on February 9, 2007 in this matter.

22 Moreover, even though the circumstances present compelling evidence of
23 misconduct and the need to prevent an injustice that would permit a traditional piercing of
24 the corporate veil through the Regulated Global Entities to reach the Unregulated Global
25 Entities, the Commission need not undertake such an analysis to exercise jurisdiction over
26 the Unregulated Global Entities. It is enough that the *Serv-Yu Cooperative* factors have
27 been met by the Unregulated Global Entities. This is not so much a question of whether the
28 Commission should “disregard the corporate forms” of the various Global entities, but

1 rather whether the actions they are undertaking render them a public service corporation
2 under Arizona law. But even without declaring them to be public service corporations, for
3 the reasons stated by Staff and as set forth above, the Commission can and should exercise
4 its jurisdiction to halt the Unregulated Global Entities from soliciting, entering into,
5 recording and collecting fees under the ICFA's to protect the ultimate customers of the utility
6 services and the rights of regulated utilities such as Arizona Water Company that have
7 complied with Arizona law and operated pursuant to the Commission's rules for decades.

8 DATED this 23rd day of February, 2007.

9
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11 By 
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