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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF
 ARIZONA WATER COMPANY FOR AN
 EXTENSION TO ITS EXISTING
 CERTIFICATE OF CONVENIENCE AND
 NECESSITY.

DOCKET NO. W-01445A-06-0199

IN THE MATTER OF THE APPLICATION OF
 PALO VERDE UTILITIES COMPANY FOR
 AN EXTENSION OF ITS EXISTING
 CERTIFICATE OF CONVENIENCE AND
 NECESSITY.

DOCKET NO. SW-03575A-05-0926

IN THE MATTER OF THE APPLICATION OF
 SANTA CRUZ WATER COMPANY FOR AN
 EXTENSION OF ITS CERTIFICATE OF
 CONVENIENCE AND NECESSITY.

DOCKET NO. W-03576A-05-0926

BRIEF OF THE COMMISSION STAFF

I. INTRODUCTION

By procedural order issued March 6, 2007, Staff of the Arizona Corporation Commission ("Staff") was directed to file a legal brief addressing the issue of whether the matter could proceed without awaiting determinations in two other dockets. In addition, Staff was directed to discuss whether the present matter is an appropriate test case for the application of Infrastructure Construction Financing Agreements ("ICFA") and to distinguish two cases, Decisions 67240 and 67830 from the issues presented in this matter.

Staff hereby files its brief on the issues identified by the Administrative Law Judge. The remedial action Palo Verde Utilities Company ("Palo Verde") and Santa Cruz Water ("Santa Cruz") propose appear sufficient to quell concerns that issues better reserved to other dockets will arise in this matter. As Staff explained in the brief filed February 9, 2007, in the complaint docket, Global Water Resources, LLC, Global Water Resources, Inc., and Global Water Management, LLC (collectively "Global") are not considered collectively or individually public service corporations and

1 until such time as evidence indicates otherwise, there does not appear to be a compelling need to
2 pierce the corporate veil and initiate an evaluation whether Global satisfies that classification.

3 Absent such a classification, the recent acquisition of two utilities by Global does not raise the
4 concern that misconduct has occurred by the application of ICFA funds toward the purchase of CP
5 Water Company ("CP Water") and Francisco Grande Utility Company ("Francisco Grande"). As
6 will be discussed further, Staff's principal concern regarding ICFAs in this case centers on whether
7 they were used by a public service corporation to purchase other utilities without having obtained the
8 approval of the Arizona Corporation Commission ("Commission").

9 **II. BACKGROUND**

10 On March 8, 2006, Staff opened an investigatory docket into the regulatory treatment of non-
11 traditional financing arrangements by water utilities and their affiliates. *In the Matter of the*
12 *Commission's Generic Evaluation of the Regulatory Impact from the Use of Non-Traditional*
13 *Financing Arrangements by Water Utilities and Their Affiliates* ("Generic Docket"), Docket No. W-
14 00000C-06-0149. On October 6, 2006, Staff filed a Staff report in the docket addressing comments
15 that had been received regarding the regulatory treatment of ICFAs. Staff reached the preliminary
16 conclusion that ICFA's should be treated as either advances ("AIAC") or contributions in aid of
17 construction ("CIAC").

18 On March 29, 2006, Arizona Water Company ("AWC") filed a complaint against Global
19 Water Resources, LLC, Global Water Resources, Inc., Global Water Management, LLC, Santa Cruz,
20 Palo Verde, Arizona Global Water – Santa Cruz Water Company and Arizona Global Water – Palo
21 Verde Utilities Company. Docket No. W-01445A-06-0200 ("Complaint Docket"). On February 9,
22 2007, Staff filed a brief in that docket that provided the *Serv-Yu*¹ test to determine whether an entity
23 satisfies the Arizona constitutional classification of a public service corporation. Staff further
24 indicated that before such a test could be applied to a collection of affiliated entities like the Global
25 family of companies, it would be necessary to pierce the corporate veil. As the brief concluded, "to
26 the extent that such entities are bound up with the operating entity to such a degree that it is difficult
27 to separate the activities of both, a very strong argument can be made for public service corporation
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¹ See *Natural Gas Service Co. v. Serv-Yu Cooperative, Inc.*, 70 Ariz. 235, 219 P.2d 324 (1950)

1 status.” Docket No. W-01445A-06-0200, Staff Brief filed February 9, 2007 at 12:24-26. However,
2 Staff explained that courts are generally hesitant to pierce the corporate veil absent circumstances
3 demonstrating injustice or misconduct has occurred. *Id* at 2:8-10, 12:26-27.

4 On January 26, 2007, Global filed direct testimony for use in this docket. Of significance was
5 a reference made by Global witness Trevor Hill at page 16 of his prefiled direct where Mr. Hill made
6 an ambiguous assertion that CP Water and Francisco Grande are closer to the requested Certificate of
7 Convenience and Necessity (“CC & N”) extension area than AWC, thereby deflating AWC’s first in
8 the field arguments. Docket No. W-01445A-06-0199, Prefiled Direct of Hill at 18. In light of those
9 comments and for other reasons, AWC filed a motion to stay the proceedings in this docket pending
10 resolution of the Generic Docket and the Complaint Docket.

11 **III. DISCUSSION**

12 **A. Staff Recommends that the Proceedings in this Matter go forward without** 13 **awaiting the outcomes of the Generic Docket or the Complaint Docket.**

14 As Staff discussed at pre-hearing conference held February 28, 2007, Mr. Hill’s statement
15 brought the potential of raising complex issues that, if actually introduced, need to be resolved in the
16 Complaint Docket before this matter can proceed. Foremost, is the issue of whether Mr. Hill’s
17 statements indicate that Global, is in fact a public service corporation. If the answer to that question
18 is an affirmative, then Global’s purchase of CP Water and Francisco Grande would be purchases of
19 public utilities made without first acquiring the approval of the Commission in accordance with the
20 requirements of A.R.S. §40-285. This could have a direct impact on the evaluation if Global is fit
21 and proper to receive a CC & N extension, and therefore would need to be resolved before the CC &
22 N extension application could proceed.

23 The answer to that important question in turn depends on resolution of the question whether
24 Mr. Hill’s statement regarding the purchase of CP Water and Francisco Grande is being used to
25 further the interests of the supposedly affiliated but independent entities of Santa Cruz and Palo
26 Verde. If so, then there would be indication that the corporate relationships of the Global family of
27 companies permits an injustice and misconduct and justify piercing the corporate veil. Further, this
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1 would open the door to a definitive determination that Global is in fact a public service corporation,
2 an issue whose consequences are properly dealt with in the Complaint Docket.

3 Staff believes that it will not be necessary to reach the ultimate question whether Global is a
4 public service corporation if Global takes the remedial actions outlined by Global's counsel in the
5 pre-hearing conference in this matter. Tr. of Pre-hearing Conf. at 50:23-53:11. The beneficial
6 connection between the recently acquired CP Water and Francisco Grande to the applicants Santa
7 Cruz and Palo Verde with respect to a first in the field argument is available only to Global. If
8 Global does not raise the issue here, or in any proceeding flowing from this one, then there is no
9 factual basis for reaching a conclusion that the corporate relationship between Global vis-à-vis Palo
10 Verde, Santa Cruz, CP Water, and Francisco Grande has permitted an injustice or misconduct to
11 occur.

12 This holds true when contemplating either the purchase of CP Water and Francisco Grande
13 without Commission approval or the potential that the purchase is being used to challenge a legal
14 argument for first in the field made by AWC. If the beneficial association between CP Water and
15 Francisco Grande is not made by Global, then AWC is not prejudiced by a public service corporation
16 bypassing Commission authority to buy its way into an advantageous legal position with respect to
17 the present CC & N extension application. Further, it removes the need to approach the question
18 whether Global is a public service corporation which would have had to obtain specific Commission
19 approval to acquire the two utilities pursuant to A.R.S. §40-285. Consequently, an evidentiary basis
20 that Staff discussed in the Staff brief filed in the Complaint Docket on February 9 would be necessary
21 to pierce the corporate veil and reach the *Serv-Yu* public service corporation analysis.

22 The proposed remedial action also obviates the need to speculate on the appropriateness of
23 ICFA's that are an ongoing issue in the Generic Docket. The Generic Docket exists to determine the
24 proper regulatory treatment of funds acquired using ICFAs. The acquisition of a public utility by
25 another public service corporation requires Commission approval regardless of the classification of
26 the funds used. If Global is not a public service corporation, the ICFA's, under any classification are
27 funds that Global has expended that will need to be accounted for in a rate case. If Global is a public
28 service corporation, its expenditure of the ICFA funds to acquire CP Water and Francisco Grande

1 would have required Commission approval regardless of how the funds are classified. Consequently,
2 the proper classification of ICFAs does not become an appropriate issue for this proceeding in either
3 circumstance.

4 **B. Staff Does Not Recommend Using This Proceeding As A "Test Case" For The**
5 **Commission To Determine Its Policies Regarding ICFAs.**

6 In addition, the procedural order directed Staff to make a recommendation whether the
7 present CC & N application would be a suitable test case for the Commission to determine its policies
8 with respect to ICFAs. Staff recommends that the present CC & N extension application not be used
9 as a test case for ICFAs. Staff has already reached a preliminary position on ICFAs that they are
10 either CIAC or AIAC. Either classification is essentially an accounting device to aid in categorizing
11 the application of funds. Such categorization is not typically relevant outside of a rate case.

12 There has been some indication from AWC that it disputes the legitimacy of utilizing ICFAs
13 for the acquisition of new regulated utilities. This potentially raises several issues, none of which are
14 pertinent to a CC & N extension application. Most obvious is AWC's contention that the
15 employment of these funds toward acquiring new utilities is contrary to the express terms of the
16 ICFA agreements. Global has already represented that the purpose of ICFAs includes the acquisition
17 of public utilities. Tr. of Pre-hearing Conf. at 28-30. Further, it has stated that the ICFA for the
18 acquisition of CP Water and Francisco Grande expressly obliged Global to use the funds for the
19 acquisition. Docket No. W-01445A-06-0200, Global's Response to Motion for Order to Show Cause
20 at 3:19-25.

21 Further, AWC has argued in the past and, based on prefiled testimony, will likely argue in this
22 case that it can offer substantial rate advantages to customers should it obtain the requested CC & N
23 extension. *See e.g.* Docket No. W-01445A-04-0755 (AWC argued that the public interest favored
24 granting it the CC & N over the original applicant on the basis of superior rates AWC could offer to
25 ratepayers). To that end, rate case issues will likely be discussed at length during the course of the
26 present matter. Extensive discussion will not transform the proceeding into a rate case, however.
27 Likewise, the proper attribution of funds according to their accounts is beyond the scope of a CC & N

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1 extension application. Discussion of the proper accounting treatment of the ICFAs in this proceeding
2 is unwarranted and best reserved for an actual rate proceeding.

3 Consequently, the present matter is not a suitable vehicle to provide a test case on the
4 application of ICFAs. As Global witness Cindy Liles suggested in prefiled rebuttal testimony in this
5 CC& N extension application and Staff agrees, the proper place for considering such issues is in a
6 rate proceeding. Docket No. W-01445A-06-0199, Prefiled Rebuttal of Cindy Liles at 20. While
7 Global has suggested that it would be advisable for the Commission to order it to apply for a rate case
8 in approximately five years, Staff points out that it is possible to provide an appropriate proceeding to
9 consider the ICFA issue sooner. *Id.* For instance, the Commission could order the Global entities
10 participating in this CC & N extension application to apply for a rate case as soon as 2008 based on a
11 test year ending December 31, 2007.

12 **C. The Issues Raised In Decision Nos. 67240 And 67830 Are Distinct And Not**
13 **Applicable To The Issues Raised In This Docket.**

14 The procedural order further directed Staff to distinguish the issues presented by Decision
15 Nos. 67240 and 67830. These decisions were referred to by Global in its filing in opposition to
16 AWC's motion to stay filed on February 27, 2007. In that brief, Global indicates that

17 Global Parent (through Global Water, Inc.) acquired the stock of CP Water and
18 Francisco Grande and did not need approval under A.R.S. § 40-285. Instead,
19 acquisitions by Global Parent are governed by Decision No. 67240 (Sept. 23, 2004)
20 and Decision No. 67830 (Sept. 23, 2004). Those decisions expressly contemplate
21 future acquisitions by Global Parent, and require only post-closing notice to the
22 Commission. Docket No. W-01445A-06-0199, Global filing in opposition to Motion
23 to Stay filed Feb. 27, 2007 at 4:13-18.

24 Decision No. 67240 approved Global's acquisition of Santa Cruz and Palo Verde. It further
25 approved a settlement agreement that specified the method for Global's future acquisitions. Though
26 Global styles the decisions as removing it from the requirements of A.R.S. § 40-285, Staff believes
27 that position is incorrect. A.R.S. § 40-285, specifically paragraphs (d) and (e) apply if the entity
28 making an acquisition is a public service corporation. This status exists by satisfying the
constitutional definition, not agreement of the Commission. Arizona Constitution Article 15 § 2.
Consent of parties to a settlement agreement cannot remove Global from the operation of the

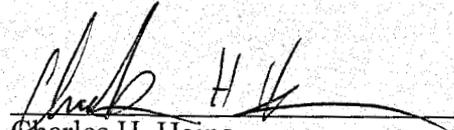
1 constitution. Therefore, Global is in error to the extent that its statement is intended to mean that
2 Decision 67240 removes it entirely from complying with the requirements of A.R.S. § 40-285.

3 Decision No. 67830 granted a CC & N extension for Palo Verde and Santa Cruz Water. In
4 addition, it referred to the acquisition schedule mechanism contained in the settlement agreement
5 attached to Decision No. 67240. Though it refers to and implicitly approves the provisions of the
6 settlement agreement, the Decision only operates to the extent that Global is not a public service
7 corporation. The Decision cannot serve to exempt Global from A.R.S. § 40-285 if it actually does
8 satisfy the constitutional classification. As discussed above, there are not facts present in this case
9 that necessitate reaching a conclusion that Global is a public service corporation, however.

10 IV. CONCLUSION

11 Certainly, the operations of Global with respect to its various operating entities do make it
12 difficult to distinguish the activities of Global as opposed to its affiliates, such as Palo Verde and
13 Santa Cruz. If arguments are made that the presence of one affiliate is beneficial to the another
14 affiliate, the lines that distinguish the common denominator for both affiliates, their relationship to
15 Global, makes the issue of Global's status as a public service corporation inescapable. However, if
16 the arguments are not made, then it is not necessary to confront the issue in this docket. This further
17 precludes the need to resolve other issues, such as the ICFAs whose relevance to this docket relate
18 solely to whether they were applied toward an unapproved purchase of a public utility.

19 RESPECTFULLY SUBMITTED this 12th day of March 2007.

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