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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

10 ARIZONA WATER COMPANY, an Arizona
11 corporation,

12 Complainant,

13 vs.

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
REPLY IN SUPPORT OF ITS
RENEWED MOTION FOR AN
ORDER TO SHOW CAUSE**

Arizona Corporation Commission

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Complainant Arizona Water Company hereby submits its Reply in Support of its
Renewed Motion for an Order to Show Cause filed February 23, 2007 with the Commission.

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1 **I. THIS IS THE PROPER DOCKET TO RULE ON GLOBAL'S ILLEGAL**
2 **ACTIONS AND FINANCING SCHEMES, AND THERE IS AN URGENT**
3 **NEED FOR SUCH A RULING.**

4 On March 29, 2006, nearly one year ago, Arizona Water Company filed a Formal
5 Complaint in this docket seeking, among other relief, an order for Global to show cause why
6 the previously-defined Unregulated Global Entities¹ should not be declared to be acting as
7 public service corporations subject to the jurisdiction and regulation of the Commission.
8 [Relief, ¶ A, p. 15 of Formal Complaint]. The Formal Complaint also sought an order that
9 Global cease and desist from soliciting and collecting improper charges and fees assessed
10 under so-called "Infrastructure Coordination and Finance Agreements" ("ICFAs"). [Relief
11 ¶¶ B, C and D, p. 15 of Formal Complaint]. Arizona Water Company filed its Formal
12 Complaint in large part because it was being frustrated in the planned expansion of its public
13 utility service by the uneven playing field created by the Global Entities' scheme to circumvent
14 the Commission's rules, and because of the overwhelmingly negative, adverse and long-term
15 repercussions of the Global Entities' conduct in the provision of reliable, cost-effective utility
16 services in Arizona to ratepayers and developers alike.

17 Previously, on March 8, 2006, the Commission opened a Generic Docket, W-00000C-
18 06-0149, to evaluate the regulatory impacts of the use of so-called non-traditional financing
19 arrangements ("Generic Docket"). At the June 15, 2006 procedural conference in this
20 proceeding, Judge Dwight D. Nodes stated that some of the issues raised in Arizona Water
21 Company's Complaint were similar to those raised in the Generic Docket. In response, Staff
22 recommended that Arizona Water Company's Complaint be "held in abeyance" pending
23 resolution of the Generic Docket. Staff further stated that it was processing the Generic
24 Docket "on an expedited basis" and would bring a recommendation before the Commission "in
25 August 2006." [Procedural Order dated September 20, 2006, p. 2]. Despite Arizona Water
26 Company's observations that the dockets were materially different and this docket should go

27 _____
28 ¹ The Unregulated Global Entities and Regulated Global Entities are defined in Arizona
Water Company's Renewed Motion for an Order to Show Cause.

1 forward, this docket was stayed on the basis of Staff's commitment to process the Generic
2 Docket on an expedited basis. As discussed more fully in Arizona Water Company's Renewed
3 Motion for an Order to Show Cause and Memorandum in Support, the Generic Docket opened
4 by the Commission to investigate the Global Entities' activities has *not* proceeded on an
5 expedited basis.

6 Despite calls from both Arizona Water Company, Arizona-American Water Company
7 and others to regulate the Global Entities' improper activities and financing schemes, the
8 Generic Docket has barely moved forward in any substantive way. [Arizona-American Water
9 Company's Answers to Commission Staff's Questions filed in the Generic Docket, p. 1]. In
10 the intervening time, the Unregulated Global Entities have continued—unfettered and
11 boundless—to behave as public service corporations. Specifically, in recent weeks, the
12 Unregulated Global Entities have obtained funds through ICFAs for the benefit of their
13 investor-owners, and then used these funds for acquisitions of more CCN territory in an
14 attempt to thwart Arizona Water Company's orderly growth plans.

15 Because the issues raised in Arizona Water Company's Formal Complaint have not
16 been resolved by the Commission, and because the Global Entities continue to circumvent
17 Commission authority, Arizona Water Company has been prejudiced in its attempts to expand
18 its CCN in Docket No. W-01445A-06-0199 before ALJ Kinsey (the "CCN Expansion
19 Proceeding"). If the Commission fails to resolve the issues set forth in Arizona Water
20 Company's Formal Complaint before the CCN Expansion Proceeding moves forward, any
21 decision the Commission makes regarding a CCN may later be invalidated if the Commission
22 determines that the Unregulated Global Entities are public service corporations and that the
23 ICFA financing scheme is illegal. Clearly, there is an urgent need for the Commission to rule
24 on the issues raised in Arizona Water Company's Formal Complaint in the first instance.

25 Global argues that this is not the appropriate docket to determine whether the
26 Unregulated Global Entities should be declared public service corporations and to review the
27
28

1 legality of ICFAs.² But Arizona Water Company's purpose in filing its Formal Complaint in
2 this docket was to induce the Commission to do exactly that and fulfill its constitutional
3 mandate. Arizona Water Company's Formal Complaint and its other filings in this docket
4 provide details as to how the Unregulated Global Entities and Regulated Global Entities are
5 acting in concert to circumvent the Commission's rules and authority. This docket is the only
6 docket questioning both the legality of the ICFAs and whether the Unregulated Global Entities
7 should be declared to be public service corporations, whereas the Generic Docket is only
8 inviting comment on a variety of financing methods, including the ICFAs and related issues.
9 Thus, this is the proper docket for the Commission to scrutinize Global's ICFAs, determine
10 whether the Unregulated Global Entities should be declared public service corporations, and
11 require these entities to cease and desist from using the ICFAs without first applying for and
12 receiving Commission approval.
13

14 **II. THE UNREGULATED GLOBAL ENTITIES SHOULD BE DECLARED**
15 **PUBLIC SERVICE CORPORATIONS AND BROUGHT UNDER THE**
16 **COMMISSION'S JURISDICTION.**

17 **A. The Commission Has The Authority And The Constitutional Mandate To**
18 **Determine Whether A Business Is A Public Service Corporation.**

19 In its brief, Global has failed to rebut the fact that the Commission's authority derives
20 from the Arizona Constitution, and its authority is broad. Arizona Constitution, Art. 15, § 3;
21 *Southwest Gas Corp. v. Arizona Corp. Comm'n*, 169 Ariz. 279, 283, 818 P.2d 714, 718
22 (App. 1991). Indeed, "[n]o other state's constitution has given its commission the
23 extensive power and jurisdiction that the Arizona Corporation Commission possesses."
24 *Arizona Corp. Comm'n v. Superior Court*, 107 Ariz. 24, 26, 480 P.2d 988, 990 (1971)(citing
25 *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 300, 138 P. 781, 783 (1914)).
26 Article 15, § 3 of the Arizona Constitution gives the Commission broad regulatory power

27 ² However, Global also argued that the CCN Docket was not the appropriate forum to
28 investigate Global's conduct. Apparently, no docket is appropriate for this purpose, from
Global's point of view.

1 over public service corporations. *Southwest Gas*, 169 Ariz. at 283, 818 P.2d at 718. The
2 Commission is empowered to exercise legislative, judicial, administrative and executive
3 functions of government within the sphere of its responsibilities. *Id.* at 283. The
4 Commission's judicial power "includes the determination of whether a particular business is
5 a public service corporation." *Id.* at 284. Accordingly, such a determination requires that
6 the Commission conduct an investigation to gather all the facts about the Global Entities'
7 activities. An order to show cause is the most effective procedure for facilitating this fact-
8 finding effort.

9
10 **B. The Unregulated Global Entities Are Acting As Public Service
Corporations Outside The Commission's Jurisdiction.**

11 Arizona courts have focused on the following factors, set forth in *Natural Gas*
12 *Service Co. v. Serv-Yu Cooperative*, 69 Ariz. 328, 213 P.2d 677 (1950), *approved on*
13 *rehearing*, 70 Ariz. 235, 219 P.2d 324 (1950), to determine whether a business is a public
14 service corporation: (1) what the corporation actually does; (2) a dedication to public use;
15 (3) articles of incorporation, authorization, and purposes; (4) dealing with the service of a
16 commodity in which the public has been generally held to have an interest; (5)
17 monopolizing or intending to monopolize the territory with a public service commodity; (6)
18 acceptance of substantially all requests for service; (7) service under contracts and reserving
19 the right to discriminate is not always controlling; and (8) actual or potential competition
20 with other corporations whose business is clothed with public interest. *Southwest Gas*, 169
21 Ariz. at 237-38, 219 P.2d at 325-36 (1956).

22 Arizona Water Company's February 9, 2007 filing and Staff's brief of the same date
23 concerning whether entities employing non-traditional financing arrangements should be
24 considered public service corporations set forth multiple reasons why the Unregulated Global
25 Entities should be declared to be public service corporations. Among other reasons, Staff's
26 brief states that: 1) the Unregulated Global Entities are collecting fees that the Regulated
27 Global Entities cannot collect without Commission approval; and 2) the Unregulated Global
28 Entities are "organizing and facilitating many of the functions routinely performed by a water

1 and wastewater utility in Arizona.” [Brief of the Commission Staff, February 9, 2007, p. 8]
2 Staff’s brief notes that “[t]here is little question” that the ICFAs were “designed in part to
3 ‘monopolize the territory’ with a public service commodity.” [*Id.* at p. 11] Additionally, Staff
4 observed that “certainly an argument can be made that the ICFA permits the unregulated
5 affiliate to perform functions that the regulated entity otherwise would be unable to perform.”
6 [*Id.*] Furthermore, the Staff brief characterized the Unregulated Global Entities as being in the
7 position of a utility “Coordinator,” and noted that:

8 The Coordinator is obtaining binding commitments from
9 landowners to utilize its services and its affiliate’s water and
10 wastewater services. It and its operating company are thus
11 competing with other corporations such as Arizona Water
12 whose business is clothed with a public interest. The
13 Coordinator and its operating affiliate would together meet this
14 criteria. The Coordinator “walks and talks” like a public
15 service corporation in many respects yet it is not the corporate
16 entity that is actually offering water service. [*Id.* at p. 12]

17 Staff concluded that “a very strong argument can be made for public service corporation
18 status” of the Unregulated Global Entities. [*Id.*]

19 **C. The Commission Does Not Need To “Pierce The Corporate Veil” Before It
20 Can Assert Jurisdiction Over The Unregulated Global Entities And Declare
21 Them To Be Public Service Corporations.**

22 Staff’s brief, filed February 9, 2007, appears to mistakenly argue that in order to declare
23 the Unregulated Global Entities to be public service corporations, the Commission must first
24 “pierce the corporate veil.” [*Id.* at p. 8-13] Litigants seek to pierce the corporate veil when, as
25 here, facts disclose undercapitalization of the corporation, that corporate formalities have been
26 ignored, or that observance of the corporate form will sanction a fraud or promote injustice.
27 *Washington National Corporation v. Thomas*, 117 Ariz. 95, 101, 570 P.2d 1268, 1274 (App.
28 1977); *Gatecliff v. Great Republic Life Ins. Co.*, 821 P.2d 725, 728-730, 170 Ariz. 34, 37-39
(1991).

29 But Global’s and Staff’s discussions miss the point: Arizona Water Company is not in
30 arguing that the Global “corporate veils” must be pierced; instead, Arizona Water Company is
31 simply asking the Commission to perform a *Serv-Yu* analysis and assert its authority over the

1 Unregulated Global Entities. That analysis and remedy has nothing to do with piercing the
2 corporate veil. The Commission is not required to pierce the corporate veil and disregard the
3 Unregulated Global Entities' corporate status before it can bring them under its jurisdiction by
4 declaring the Unregulated Global Entities to be public service corporations.

5
6 **D. Alternatively, However, The Commission Can Also Assert Jurisdiction**
7 **Over The Unregulated Global Entities By Finding that they are the Alter**
8 **Egos of the Regulated Global Entities And Are Using the Regulated Entities**
9 **as Mere Instrumentalities.**

10 Arizona Water Company's arguments that the Unregulated Global Entities are evading
11 Commission authority and public policy by acting as the alter egos of the Regulated Global
12 Entities and using the Regulated Entities as their mere instrumentalities constitute separate,
13 independent grounds for the exercise of Commission authority over the Unregulated Global
14 Entities. Global and Staff confuse the standards for piercing the corporate veil with the *Serv-*
15 *Yu* standards by which the Commission can determine when an entity is acting as a public
16 service corporation. As stated above, if the Commission finds that any of the Unregulated
17 Global Entities is acting as a public service corporation under the *Serv-Yu* standards, that is
18 the end of the inquiry and those Global Entities must be brought under the Commission's
19 oversight. That inquiry is separate and apart from piercing any of the Global Entities'
20 corporate veils. Alternatively, though, if the Commission finds that any of the Unregulated
21 Global Entities is ignoring or playing fast and loose with corporate formalities, or that
22 observance of the unregulated corporate form will sanction a fraud or promote injustice, the
23 Commission has an entirely separate basis on which to exercise oversight over the Unregulated
24 Global Entities involved.

25 **III. GLOBAL'S NONTRADITIONAL FINANCING SCHEMES SHOULD BE**
26 **DECLARED TO BE ILLEGAL.**

27 As is set forth more fully in Arizona Water Company's filings in this docket, the
28 ICFA agreements illegally and improperly enable the Unregulated Global Entities to impose
and collect large fees for utility services which the Regulated Global Entities are not
permitted to collect. Under the terms of the ICFAs, Unregulated Global Entities serve as a

1 “Coordinator” to arrange for the provision of utility services by the Regulated Global
2 Entities. The ICFAs are “binding commitments from landowners to utilize” the
3 Coordinator’s “services and its affiliate’s water and wastewater services.” [Brief of the
4 Commission Staff, February 9, 2007, p. 12] Landowners that sign ICFAs are required to pay
5 the Unregulated Global Entities a fee of \$3,300 or more per defined “equivalent dwelling
6 unit,” adjusted upward over time based on the consumer price index. [Arizona Water
7 Company’s Formal Complaint, ¶ 33] The Unregulated Global Entities have used the ICFAs
8 to charge such up-front fees despite the fact that the Commission has expressly denied
9 requests by the Regulated Global Entities to charge similar up-front fees to developers and
10 landowners. [Decision No. 61943]

11 Moreover, Global recently disclosed that it used funds it obtained from ICFAs to
12 purchase other public service corporations in transactions that are not approved by the
13 Commission. Global disingenuously argues that Decision Nos. 67240 and 67830 expressly
14 authorized Global’s acquisitions of CP Water Company and Francisco Grande Utility
15 Company. But those decisions only set forth a process for Global to notify the Commission of
16 its acquisitions so that it may assert additional oversight. They by no means are a blanket,
17 advance approval of such acquisitions. Those decisions do not approve of future acquisitions
18 such as the acquisitions of CP Water Company and Francisco Grande Utility Company.
19 Furthermore, Global’s argument sidesteps the real issue, which is that the Regulated Global
20 Entities would be required to seek the Commission’s approval before they acquired a public
21 service corporation if they were not circumventing Commission authority by utilizing the
22 Unregulated Global Entities to acquire public service corporations instead.

23 By admitting it uses ICFA funds to acquire public service corporations, Global has
24 effectively admitted that it funds its unregulated expansion by violating the terms of the
25 ICFAs it has improperly executed. Under the terms of the majority of the ICFAs, Global is
26 supposed to use the funds it receives for “coordinating,” planning and constructing utility
27 plant. Instead, Global has begun (no doubt emboldened by the lack of Commission
28

1 oversight and inquiry) to use the funds to purchase other utility companies and then
2 blatantly cite those unapproved purchases to support a Regulated Global Entity's application
3 in the CCN Expansion Proceeding. Again, for the reasons stated above, this is the
4 appropriate docket to investigate the Global Entities' unregulated activities and determine
5 whether such activities should be brought under Commission authority.

6 **IV. CONCLUSION.**

7 For the foregoing reasons, Arizona Water Company requests that the Commission grant
8 its requests in its Renewed Motion for an Order to Show Cause by entering an order that
9 requires Global to show cause as to why: (1) the admitted recent acquisition of public service
10 corporations CP Water Company and Francisco Grande Utility Company by Global Water,
11 Inc. should not be voided as having been accomplished without oversight, approval and a
12 permit from the Commission under A.R.S. §40-285, (2) Global and its affiliates should not be
13 prohibited from continuing to operate as unregulated public service corporations in violation of
14 the Commission's rules and regulations, (3) the ICFA financing schemes can continue to be
15 employed contrary to the public interest and without Commission oversight and approval, and
16 (4) such other and further relief as may be justified in the circumstances should not be ordered
17 in the Commission's discretion.

18 RESPECTFULLY SUBMITTED this 21st day of March, 2007.

19
20 BRYAN CAVE LLP

21
22 By 

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1 **ORIGINAL and 13 COPIES** of the foregoing
2 filed this 21st day of March, 2007 with:

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