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2007 APR 30 P 1:37

AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

ARIZONA WATER COMPANY, an Arizona corporation,

Complainant,

vs.

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 corporation; GLOBAL WATER - PALO VERDE UTILITIES COMPANY, an Arizona corporation; JOHN AND JANE DOES 1-20; 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
OBJECTION AND RESPONSE TO
GLOBAL'S COMMENTS
REGARDING PROCEDURAL
SCHEDULE**

Arizona Corporation Commission

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Arizona Water Company objects to the content and scope of Global's "Comments Regarding Procedural Schedule" submitted April 23, 2007. Administrative Law Judge Dwight Nodes, in an April 13, 2007 procedural conference, ordered the parties to meet and

1 confer, and then submit a proposed schedule for the handling of the issues in this Formal
2 Complaint docket. Arizona Water Company met and conferred with Global but the parties
3 were unable to reach agreement on a procedural schedule. However, Arizona Water
4 Company did discuss these matters with Staff, incorporated Staff's suggestions into Arizona
5 Water Company's proposed schedule, and filed the proposed schedule with which Staff
6 substantially agreed.¹ Global, however, submitted a rambling statement filled with
7 commentary and argument, in which it apparently seeks to reopen several rulings that have
8 already been made in this and the CCN application proceeding (Docket Nos. W-01445A-06-
9 0199, SW-03575A-05-0926 and W-03576A-05-0926) pending before ALJ Yvette Kinsey.

10 Arizona Water Company objects to the commentary provided by Global. To the
11 extent that Global is perceived to be seeking a ruling that the CCN application case be tried
12 first, or the matters be consolidated, Arizona Water Company strenuously objects to such
13 procedure and submits that the decision has already been made that this *not* be the order of
14 these proceedings. Further, ALJ Kinsey has already stayed the CCN application
15 proceedings in her docket, and it is highly inappropriate for Global to seek a "horizontal
16 appeal" by raising the same failed arguments in this Formal Complaint proceeding that have
17 already been rejected by ALJ Kinsey in the CCN application docket. Global filed a similar
18 commentary in that docket, to which Arizona Water Company has responded and objected.
19 A copy of Arizona Water Company's response to Global's comments in the CCN
20 application docket is attached as Exhibit A and incorporated into this memorandum by
21 reference.

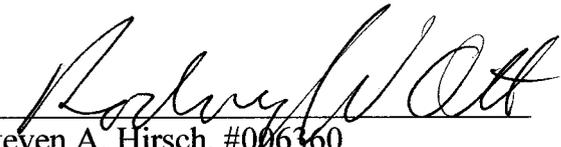
22 The Commission, Staff and Arizona Water Company appear to recognize that the
23 fundamental issues raised in Arizona Water Company's Formal Complaint need to be
24 addressed and resolved before the CCN application hearing may efficiently move forward.
25 The next issue to address in this docket is setting a schedule to address the Formal
26

27 ¹ It was Arizona Water Company's understanding that Staff was waiting only to
28 discuss the proposed schedule with Steve Olea before final agreement.

1 Complaint issues. The extraneous matters and proposals made by Global in its April 23,
2 2007 "Comments" should be rejected and, as contemplated by ALJ Nodes, a procedural
3 order entered addressing the issues pending in this Formal Complaint proceeding.

4 DATED this 30th day of April, 2007.

5 BRYAN CAVE LLP

6
7 By 
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EXHIBIT A

1 **COMMISSIONERS**

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- 6 **Gary Pierce**

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AZ CORP COMMISSION
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7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

8 IN THE MATTER OF THE APPLICATION
9 OF ARIZONA WATER COMPANY FOR AN
10 EXTENSION OF ITS EXISTING
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY

Docket No. W-01445A-06-0199

13 IN THE MATTER OF THE APPLICATION
14 OF PALO VERDE UTILITIES COMPANY
15 FOR AN EXTENSION OF ITS EXISTING
16 CERTIFICATE OF CONVENIENCE AND
17 NECESSITY

Docket No. SW-03575A-05-0926

18 IN THE MATTER OF THE APPLICATION
19 OF SANTA CRUZ WATER COMPANY FOR
20 AN EXTENSION OF ITS EXISTING
21 CERTIFICATE OF CONVENIENCE AND
22 NECESSITY

Docket No. W-03576A-05- 0926

**ARIZONA WATER COMPANY'S
RESPONSE TO GLOBAL'S
COMMENTS REGARDING
PROCEDURAL SCHEDULE**

23 Arizona Water Company hereby responds to Global's "Comments Regarding
24 Procedural Schedule" filed in this docket on April 23, 2007, and reminds the parties that by
25 Order of ALJ Kinsey entered on February 28, 2007, the proceedings in this docket have
26 been stayed pending a resolution of Arizona Water Company's Formal Complaint (the
27 "Formal Complaint") against the Global entities. To the extent that Global's filing is a
28 motion for reconsideration of ALJ Kinsey's Stay Order, it must be denied.

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1 **I. INTRODUCTION**

2 As is clear from ALJ Kinsey’s Stay Order in this case, the Commission should not
3 proceed in this docket until it has rendered a decision on the legality of the ICFAs and
4 whether the Unregulated Global Entities are acting as public service corporations. As
5 Staff’s March 12, 2007 brief states, the argument that the presence of one Global entity
6 allegedly benefits the CCN application of another Global entity makes a determination of
7 whether the Unregulated Global Entities are improperly acting as public service
8 corporations “inescapable.” [Brief of Commission Staff, filed March 12, 2007, p. 7] Arizona
9 Water Company’s Formal Complaint calls Global’s business model, activities, structure,
10 and financing schemes into question. If a decision adverse to Global is reached on the
11 Formal Complaint, Santa Cruz Water Company (“Santa Cruz”) and Palo Verde Utilities
12 Company (“Palo Verde”) will be unable and unfit to serve under any CCN they may be
13 granted, because the Unregulated Global Entities will no longer be able to unlawfully
14 manipulate service area commitments, or impose and collect fees for their captive utilities
15 Santa Cruz and Palo Verde.

16 For these reasons, at a procedural conference on February 28, 2007, ALJ Kinsey
17 stayed proceedings in this matter pending further order of the Commission. Moreover, on
18 April 13, 2007, in the Formal Complaint proceeding, ALJ Dwight D. Nodes made it clear
19 that he intended to have these issues addressed in that docket, and he directed that Arizona
20 Water Company, Global and the Commission Staff confer and file a proposed schedule for
21 proceedings in the Formal Complaint Docket on April 23, 2007. Global’s comments are an
22 attempt to evade those rulings and directions.

23 Pursuant to ALJ Nodes’ directions, Arizona Water Company met and conferred with
24 Global, but the parties were unable to reach agreement on scheduling in the Formal
25 Complaint Docket. However, Arizona Water Company did discuss these matters with Staff,
26 incorporated Staff’s suggestions into Arizona Water Company’s proposed schedule, and
27

28

1 filed the proposed schedule with which Staff substantially agreed.^{1/} In contrast, Global filed
2 its own proposed schedule in the Formal Complaint Docket, as well as in this docket,
3 essentially asking that the stay be lifted in this docket and that the CCN proceeding be
4 decided first, or that the two matters be consolidated. The Commission should reject all of
5 Global's arguments and continue the stay in this docket.

6 **II. PROCEDURAL BACKGROUND**

7 On December 28, 2005, Palo Verde and Santa Cruz filed an application with the
8 Commission for Certificates of Convenience and Necessity ("CCNs") in Docket Nos. SW-
9 03575A-05-0926 and W-03576A-05-0926.

10 On March 29, 2006, Arizona Water Company filed an application with the
11 Commission to extend its CCN in Docket No. W-01445A-06-0199. At the same time,
12 Arizona Water Company filed an application to intervene in Docket Nos. SW-03575A-05-
13 0926 and W-03576A-05-0926. On April 7, 2006, Palo Verde and Santa Cruz (collectively,
14 the "Regulated Global Entities") filed an application to intervene in Docket No. W-01445A-
15 06-0199. Arizona Water Company's application to intervene was granted by procedural
16 order dated April 12, 2006. Palo Verde and Santa Cruz were granted intervention on April
17 24, 2006 and the above-mentioned matters were consolidated for hearing. By procedural
18 order dated November 29, 2006, an evidentiary hearing was set to begin on March 5, 2007.

19 On March 29, 2006, in addition to its application to extend its existing CCN and its
20 request for intervention, Arizona Water Company filed the Formal Complaint with the
21 Commission alleging that Global Water Resources, LLC, a foreign limited liability
22 company; Global Water Resources, Inc., a Delaware corporation; and Global Water
23 Management, LLC, a foreign limited liability company (collectively, the "Unregulated
24 Global Entities"), were entering into non-traditional financing schemes that are illegal and
25 improperly benefit both the Unregulated Global Entities and Santa Cruz and Palo Verde.

26
27 ^{1/} It was Arizona Water Company's understanding that Staff was waiting only to
28 discuss the proposed schedule with Steve Olea before final agreement.

1 Additionally, the Formal Complaint alleged that the Unregulated Global Entities are
2 illegally and improperly acting as public service corporations without regulatory authority
3 and approval by the Commission. The Formal Complaint sought, among other relief, an
4 Order from the Commission requiring the Unregulated Global Entities to show cause why
5 they should not be declared to be acting as public service corporations subject to the
6 jurisdiction and regulation of the Commission (Relief, ¶ A, p. 15 of Formal Complaint) and
7 be ordered to cease and desist from soliciting and collecting improper charges and fees
8 assessed under the non-traditional financing schemes called “Infrastructure Coordination
9 and Finance Agreements” (“ICFAs”) (Relief ¶¶ B, C and D, p. 15 of Formal Complaint).

10 As set forth more fully in Arizona Water Company’s Renewed Motion for an Order to
11 Show Cause filed February 23, 2007 in the Formal Complaint proceeding, ALJ Nodes held the
12 Formal Complaint in abeyance pending a resolution of related issues in the Generic Docket^{2/}
13 opened by the Commission. At the time, it was believed that the Generic Docket would
14 proceed on an expedited basis. It did not.

15 In fact, the Generic Docket barely moved forward in any substantive way, despite calls
16 from Arizona Water Company, Arizona-American Water Company and others to regulate the
17 Global Entities’ improper activities and financing schemes. [Arizona-American Water
18 Company’s Answers to Commission Staff’s Questions filed in the Generic Docket, p. 1]. In
19 short, the Commission has yet to resolve the serious issues raised in the Formal Complaint,
20 which question the corporate structure and methods of the Regulated and Unregulated Global
21 Entities (collectively, “Global”), and which ultimately will have a direct bearing on the
22 Regulated Global Entities’ fitness to be awarded a CCN in this docket. That is why ALJ
23 Nodes issued a Procedural Order calling for discovery and hearings in the Formal Complaint
24 Docket.

25
26 _____
27 ^{2/} The Generic Docket, Docket No. W-000000C-06-0149, is an investigatory docket
28 into the regulatory treatment of non-traditional financing arrangements by the
Unregulated Global Entities and their affiliates.

1 On February 26, 2007, Arizona Water Company filed a Motion to Stay Proceedings in
2 this matter until the issues in the Formal Complaint and Generic Dockets are resolved. Global
3 responded in opposition. On February 28, 2007, ALJ Kinsey held a Pre-hearing Conference
4 and heard oral argument on Arizona Water Company's Motion to Stay by all parties. At the
5 conference, ALJ Kinsey granted Arizona Water Company's Motion to Stay pending further
6 order of the Commission. On March 6, 2007, ALJ Kinsey ordered Staff to file a report on
7 whether the proceedings of this docket should be stayed pending resolution of the Generic and
8 Formal Complaint Dockets and whether this docket should be used as a "test case" for the
9 Commission to determine its policies regarding ICFAs. Staff filed its report on March 12,
10 2007, to which the parties responded on March 30, 2007.

11 Rather than wait for a decision by the Commission, Global then filed its uninvited
12 "Comments Regarding Procedural Schedule" in this docket, which effectively sought to lift the
13 previously issued Stay Order in this matter. Global complains that Arizona Water Company's
14 proposed schedule in the Formal Complaint matter (to which the Commission Staff
15 substantially agreed) is "not acceptable," Global Comments at 2, and insists that the CCN
16 proceeding should be decided first or consolidated with the Formal Complaint matter. The
17 Commission should reject Global's argument (actually, re-arguments of its previous opposition
18 to the granted motion to stay) and continue the stay of proceedings in this matter until the
19 Commission can complete its scrutiny of Global's practices and determine whether those
20 practices are legal in the Formal Complaint proceeding.

21 **III. IT IS INAPPROPRIATE, WASTEFUL AND ADVERSE TO THE PUBLIC**
22 **INTEREST TO RENDER A DECISION IN THIS DOCKET UNTIL THE**
23 **COMMISSION HAS DETERMINED THE LEGALITY OF GLOBAL'S NON-**
24 **TRADITIONAL FINANCING SCHEMES AND THE PROPRIETY OF THE**
25 **UNREGULATED GLOBAL ENTITIES ACTING AS PUBLIC SERVICE**
26 **CORPORATIONS.**

27 As Arizona Water Company has previously noted, Staff's brief observes that the
28 presence of one Global entity benefiting another Global entity would make it impossible to
render a decision in this docket before a decision is made regarding whether the Unregulated
Global Entities are public service corporations. Specifically, Staff argues:

1 Certainly, the operations of Global with respect to its various
2 operating entities do make it difficult to distinguish the
3 activities of Global as opposed to its affiliates, such as Palo
4 Verde and Santa Cruz. If arguments are made that the presence
5 of one affiliate is beneficial to the [*sic*] another affiliate, the
6 lines that distinguish the common denominator for both
7 affiliates, their relationship to Global, **makes the issue of**
8 **Global's status as a public service corporation inescapable.**
9 [Brief of Commission Staff, filed March 12, 2007, p. 7]
10 (Emphasis added)

11 Arizona Water Company agrees with that Staff conclusion. Arizona Water Company submits
12 that Santa Cruz and Palo Verde could not serve under any CCN without the numerous
13 improper benefits they receive from the Unregulated Global Entities. Also, Staff
14 acknowledged in its February 9, 2007 brief in Docket No. W-01445A-06-0200:

15 Certainly, arguments can be made that non-regulated affiliates
16 and their operating companies using non-traditional financing
17 arrangements, such as ICFAs, for all intents and purposes are
18 together operating as a public service corporation. [Staff Brief,
19 p.2]

20 Further, in the conclusion of that brief, Staff accurately observed:

21 To the extent that such entities are bound up with the operating
22 entity to such a degree that it is difficult to separate the
23 activities of both, a very strong argument can be made for
24 public service corporation status. [Staff Brief, p. 12]

25 Santa Cruz and Palo Verde receive numerous improper "benefits" from the Unregulated
26 Global Entities. Santa Cruz and Palo Verde are thinly-capitalized puppet organizations that are
27 totally controlled by the Unregulated Global Entities. Santa Cruz and Palo Verde have no
28 employees. In fact, all of their work is performed by the Unregulated Global Entities'
employees. Moreover, funds that supports Santa Cruz and Palo Verde are obtained through the
Unregulated Global Entities use of ICFAs, which are agreements that the Commission does not
allow Santa Cruz and Palo Verde, as regulated public service corporations, to enter into. The
legality of the ICFAs is currently being investigated by the Commission. Thus, Santa Cruz and
Palo Verde could not provide service under any CCN without relying on the improperly-
executed ICFAs and other so-called "benefits" from the Unregulated Global Entities, the
legality and propriety of which must be investigated and determined before this docket can
proceed.

1 Accordingly, because the Regulated Global Entities' CNN applications rely so heavily
2 on the purported "benefits" from the highly-suspect activities of the Unregulated Global
3 Entities, there is an urgent need for the Commission to scrutinize and make determinations
4 about those activities before the Commission can even consider the Regulated Global Entities'
5 CNN applications in this docket.

6 Global has continually argued that the "benefits" Santa Cruz and Palo Verde receive
7 from the Unregulated Global Entities favor awarding a CCN to Santa Cruz and Palo Verde in
8 this docket. The relationship between Global's various entities and the alleged benefits they
9 provide one another is the foundation of Global's much ballyhooed "triad of conservation."
10 Global has incessantly argued that the Unregulated Global Entities' control of Santa Cruz and
11 Palo Verde make Global an "integrated utility," which is the basis of Global's contention that
12 the companies it controls should be awarded CCNs in this docket. Under Global's "integrated
13 utility" plan, the Unregulated Global Entities solicit landowners to enter into ICFA agreements,
14 which in turn promise the landowner that Palo Verde, Santa Cruz or one of the other public
15 service corporations controlled by the Unregulated Global Entities will provide them with
16 water and wastewater service. The landowner then pays a fee to the Unregulated Global
17 Entities (not Santa Cruz or Palo Verde) for this commitment to provide service. All of this
18 occurs before the Commission gives Santa Cruz, Palo Verde or any other public service
19 corporation controlled by Global a CCN to provide utility service in the area. In the event a
20 CCN is obtained, the Unregulated Global Entities convert their ICFA funds to equity and rate
21 base in the Regulated Global Entities so that the Regulated Global Entities can provide the
22 facilities and utility service promised by the Unregulated Global Entities.

23 The Commission cannot render a legitimate, enforceable decision in this docket until it
24 first resolves the issues raised in the Formal Complaint. The Formal Complaint calls into
25 question Global's corporate structure, business model, financing schemes and fitness to serve,
26 and requires that the Commission scrutinize and test those schemes before it proceeds with
27 Global's application for CCNs in this case. These issues must be resolved before the issues of
28

1 the Regulated Global Entities' fitness for CCNs can be tried in this proceeding. If the
2 Regulated Global Entities were awarded CCNs in this docket before these crucial issues are
3 resolved, and the Commission later determines that Global's non-traditional financing schemes
4 and other activities are improper or illegal, the expenditure of time and resources to conduct
5 the hearing and post-hearing briefing would be wasted. Because the financing schemes are
6 sources of funding for the Unregulated and Regulated Global Entities, including the
7 Unregulated Global Entities' recent, unapproved acquisition of regulated water companies in
8 an attempt to bolster its arguments for a CCN, it is unwise, inefficient and prejudicial for any
9 further proceedings, much less a decision to be made, in this docket without the Commission
10 first determining whether Global's business model and other activities are illegal.

11 In Global's "Comments Regarding Procedural Schedule," it argues that the CCN
12 application should go forward on a fast track because Global is "prepared to serve the
13 extension area in this case even if the ICFAs are banned." Global's Comments at 3. However,
14 the foundation of Global's CCN application and its assertions that it should be awarded the
15 CCN extension area are based on the ICFAs. If the ICFAs are ultimately "banned," as Arizona
16 Water Company believes they should be, then Global has few arguments remaining in support
17 of its CCN application. If Global actually sought to operate without using ICFAs or similar
18 financing schemes, it should at this point stipulate that it will no longer enter into or seek to
19 enforce any ICFA until it receives full approval from the Commission for such financing
20 mechanisms, and that it will immediately account for and then disgorge all funds received
21 under such ICFAs to their rightful owners. Global has not offered to do so, and, as it has done
22 since the Formal Complaint was filed, apparently plans to continue its operations under ICFAs
23 until the Commission orders it to stop. Most importantly, banning the ICFAs does not resolve
24 the question of whether the unregulated Global entities are alter egos of Santa Cruz and Palo
25 Verde and should be declared public service corporations subject to the jurisdiction and
26 regulation of the Commission. This, not simply the use of the ICFA proceeds, is the crux of
27 Arizona Water Company's Formal Complaint.
28

1 Global also contends that Santa Cruz and Palo Verde are adequately capitalized,
2 attaching an inch of financial documents to its Comments. Global's Comments at 3.
3 However, Global has been resisting disclosing its financial information in response to Arizona
4 Water Company's data requests through this proceeding. It is patently improper for Global to
5 make selective disclosures of its financial information at this stage, as an end-run to support a
6 self-serving scheduling argument that attempts to short-circuit full Commission review of
7 Global's financial arrangements in the Formal Complaint matter. The adequacy of Global's
8 capitalization of the Regulated Global Entities is a topic that should be and must be addressed
9 in the Formal Complaint Docket.

10 Global also contends that Arizona Water Company has been "dilatatory" in discovery in
11 the Formal Complaint matter. Global's Comments at 4. The suggestion is patently absurd.^{3/}
12 Rather, the Formal Complaint matter has been stayed virtually since Arizona Water Company
13 filed it on March 29, 2006. But for that stay, Arizona Water Company would have vigorously
14 sought discovery in that docket on Global's ICFAs and other practices. Why else would ALJ
15 Nodes now ask the parties for a discovery schedule? To argue that Arizona Water Company
16 should have sought discovery in a stayed matter demonstrates the logical weakness of Global's
17 position. Moreover, Arizona Water Company's discovery in the CCN Docket has been
18 thorough and aggressive but Global's responses have been evasive and incomplete.

19 Arizona Water Company has waited long enough to have its complaints regarding
20 Global's improper conduct to be heard. Staff has stated that it believes the Generic Docket and
21 Formal Complaint Docket are the proper dockets to scrutinize the legality of Global's non-
22 traditional financing schemes and the propriety of the Unregulated Global Entities acting as
23 public service corporations. Arizona Water Company agrees that the Formal Complaint
24 Docket is the appropriate docket to review these issues, and that the proceedings in this docket
25

26 _____
27 ^{3/} Arizona Water Company also notes that, at the April 13 Procedural Conference in the
28 Formal Complaint Docket, Staff announced that it, too, intended to begin an
aggressive discovery schedule.

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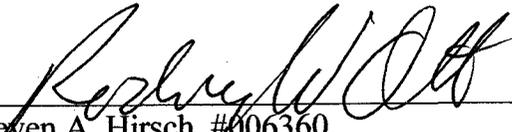
1 continue to be stayed until a decision is rendered in the Formal Complaint Docket. Arizona
2 Water Company submits that the public interest requires that a decision be made on the issues
3 in the Formal Complaint Docket before Global can execute its plan: which is to rush the
4 proceedings in this docket hoping to obtain CCNs, while simultaneously stalling a review of its
5 questionable financing schemes and flouting the Commission's authority in the Generic and
6 Formal Complaint Dockets.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Global's "Comments Regarding Procedural Schedule"
9 should be rejected and the well-reasoned Stay Order entered in this docket should remain in
10 effect.

11 DATED this 27th day of April, 2007.

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