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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Docket No. W-03576A-05- 0926

**ARIZONA WATER COMPANY'S
RESPONSE TO COMMISSION
STAFF'S BRIEF**

Arizona Water Company hereby responds to Staff's brief filed March 12, 2007 and renews its request that the proceedings in this docket be stayed pending a resolution of Arizona Water Company's Complaint and the Generic Docket.

INTRODUCTION

The Commission should not proceed in this docket until it has rendered a decision on the legality of the ICFAs and whether the Unregulated Global Entities are acting as public service corporations. As Staff's brief states, the argument that the presence of one Global entity allegedly benefits the CCN application of another Global entity makes a

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1 determination of whether the Unregulated Global Entities are improperly acting as public
2 service corporations “inescapable.” [Brief of Commission Staff, filed March 12, 2007, p. 7]
3 The Generic Docket and Arizona Water Company’s Formal Complaint call Global’s
4 business model, activities structure, and financing schemes into question. If a decision
5 adverse to Global is reached in either docket, Santa Cruz Water Company (“Santa Cruz”)
6 and Palo Verde Utilities Company (“Palo Verde”) will be unable and unfit to serve under
7 any CCN they may be granted, because the Unregulated Global Entities will no longer be
8 able to improperly impose and collect fees or unlawfully manipulate service area
9 commitments for their captive utilities Santa Cruz and Palo Verde.

10 By Procedural Order just entered on March 27, 2007 in the Formal Complaint
11 proceeding by ALJ Dwight D. Nodes, it is apparent that Judge Nodes intends to have these
12 issues addressed in that docket, since he has set a conference “to discuss pending procedural
13 matters, including AWC’s Motion for an Order to Show Cause and potential hearing dates
14 regarding this matter.”

15 **BACKGROUND**

16 On December 28, 2005, Palo Verde and Santa Cruz filed an application with the
17 Commission for Certificates of Convenience and Necessity (“CCNs”) in Docket Nos. SW-
18 03575A-05-0926 and W-03576A-05-0926.

19 On March 29, 2006, Arizona Water Company filed an application with the
20 Commission to extend its CCN in Docket No. W-01445A-06-0199. At the same time,
21 Arizona Water Company filed an application to intervene in Docket Nos. SW-03575A-05-
22 0926 and W-03576A-05-0926. On April 7, 2006, Palo Verde and Santa Cruz (collectively,
23 the “Regulated Global Entities”) filed an application to intervene in Docket No. W-01445A-
24 06-0199. Arizona Water Company’s application to intervene was granted by procedural
25 order dated April 12, 2006. Palo Verde and Santa Cruz were granted intervention on April
26 24, 2006 and the above-mentioned matters were consolidated for hearing. By procedural
27 order dated November 29, 2006, an evidentiary hearing was set to begin on March 5, 2007.
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1 On March 29, 2006, in addition to its application to extend its existing CCN and its
2 request for intervention, Arizona Water Company filed a Formal Complaint with the
3 Commission alleging that Global Water Resources, LLC, a foreign limited liability
4 company; Global Water Resources, Inc., a Delaware corporation; and Global Water
5 Management, LLC, a foreign limited liability company (collectively, the “Unregulated
6 Global Entities”), were entering into non-traditional financing schemes that are illegal and
7 improperly benefited both the Unregulated Global Entities and Santa Cruz and Palo Verde.
8 Additionally, Arizona Water Company’s Formal Complaint alleged that the Unregulated
9 Global Entities were illegally and improperly acting as public service corporations without
10 regulatory authority and approval by the Commission. Arizona Water Company’s
11 Complaint sought, among other relief, an order to show cause why the Unregulated Global
12 Entities should not be declared to be acting as public service corporations subject to the
13 jurisdiction and regulation of the Commission (Relief, ¶ A, p. 15 of Formal Complaint) and
14 be ordered to cease and desist from soliciting and collecting improper charges and fees
15 assessed under the non-traditional financing schemes called “Infrastructure Coordination
16 and Finance Agreements” (“ICFAs”) (Relief ¶¶ B, C and D, p. 15 of Formal Complaint).

17 As set forth more fully in Arizona Water Company’s Renewed Motion for an Order to
18 Show Cause filed February 23, 2007 in the Formal Complaint Proceeding, Judge Dwight D.
19 Nodes ordered that the Formal Complaint be held in abeyance pending a resolution of related
20 issues in the Generic Docket opened by the Commission. At the time, it was believed that the
21 Generic Docket would proceed on an expedited basis. It has not.

22 Despite calls from Arizona Water Company, Arizona-American Water Company and
23 others to regulate the Global Entities’ improper activities and financing schemes, the Generic
24 Docket has barely moved forward in any substantive way. [Arizona-American Water
25 Company’s Answers to Commission Staff’s Questions filed in the Generic Docket, p. 1]. In
26 short, the Commission has yet to resolve the serious issues raised in the Formal Complaint,
27 which question the corporate structure and methods of the Regulated and Unregulated Global
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1 Entities (collectively, "Global"), and which ultimately will have a direct bearing on Global's
2 fitness to be awarded a CCN in this docket.

3 On February 26, 2007, Arizona Water Company filed a Motion to Stay Proceedings in
4 this matter until the issues in the Complaint and Generic Dockets are resolved. On February
5 28, 2007, a Pre-hearing Conference was held and oral argument was presented on Arizona
6 Water Company's Motion to Stay. At the conference, Arizona Water Company's Motion to
7 Stay was granted pending further order of the Commission.

8 On March 6, 2007, ALJ Kinsey ordered Staff to file a report on whether the
9 proceedings of this docket should be stayed pending resolution of the Generic and Complaint
10 Dockets and whether this docket should be used as a "test case" for the Commission to
11 determine its policies regarding ICFAs. Staff filed its report on March 12, 2007.

12 **I. IT IS INAPPROPRIATE, WASTEFUL AND UNFAIR TO RENDER A**
13 **DECISION IN THIS DOCKET UNTIL THE COMMISSION HAS**
14 **DETERMINED THE LEGALITY OF GLOBAL'S NON-TRADITIONAL**
15 **FINANCING SCHEMES AND THE PROPRIETY OF THE**
16 **UNREGULATED GLOBAL ENTITIES ACTING AS PUBLIC SERVICE**
17 **CORPORATIONS.**

18 Staff's brief observes that the presence of one Global entity benefiting another Global
19 entity would make it impossible to render a decision in this docket before a decision is made
20 regarding whether the Unregulated Global Entities are public service corporations.
21 Specifically, Staff argues:

22 Certainly, the operations of Global with respect to its various
23 operating entities do make it difficult to distinguish the
24 activities of Global as opposed to its affiliates, such as Palo
25 Verde and Santa Cruz. If arguments are made that the presence
26 of one affiliate is beneficial to the [*sic*] another affiliate, the
27 lines that distinguish the common denominator for both
28 affiliates, their relationship to Global, **makes the issue of**
Global's status as a public service corporation inescapable.
[Brief of Commission Staff, filed March 12, 2007, p. 7]

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

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

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

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

11 Accordingly, because the Regulated Global Entities' CNN applications relies so heavily on the
12 purported "benefits" from the highly-suspect activities of the Unregulated Global Entities, there
13 is an urgent need for the Commission to scrutinize and make determinations about those
14 activities before the Commission can even consider the Regulated Global Entities' CNN
15 applications in this docket.

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

28 Global has continually argued that the benefits Santa Cruz and Palo Verde receive from
the Unregulated Global Entities favor awarding a CCN to Santa Cruz and Palo Verde in this
docket. The relationship between Global's various entities and the alleged benefits they
provide one another is the foundation of Global's much ballyhooed "triad of conservation."

1 Global has incessantly argued that the Unregulated Global Entities' control of Santa Cruz and
2 Palo Verde make Global an "integrated utility," which is the basis of Global's contention that
3 the companies it controls should be awarded CCNs in this docket. Under Global's "integrated
4 utility" plan, the Unregulated Global Entities solicit landowners to enter into ICFA agreements,
5 which in turn promise the landowner that Palo Verde, Santa Cruz or one of the other public
6 service corporations controlled by the Unregulated Global Entities will provide them with
7 water and wastewater service. The landowner then pays a fee to the Unregulated Global
8 Entities (not Santa Cruz or Palo Verde) for this commitment to provide service. All of this
9 occurs before the Commission gives Santa Cruz, Palo Verde or any other public service
10 corporation controlled by Global a CCN to provide utility service in the area. In the event a
11 CCN is obtained, the Unregulated Global Entities use their financing and employees to provide
12 utility service on behalf of Global's regulated public service corporations.

13
14 Global's arguments that it should be awarded CCNs in this case are a perfect example of
15 how the Global entities allegedly provide benefits to each other. For example, Santa Cruz has
16 argued that the recently-disclosed acquisition of CP Water Company and Francisco Grande
17 Utility Company by the Unregulated Global Entities without Commission oversight and
18 approval are further reasons why Santa Cruz deserves a CCN.

19 Staff's brief states that the need to review whether the Unregulated Global Entities are
20 acting as public service corporations is obviated by Global's willingness to abandon its
21 argument that the Unregulated Global Entities' control of CP Water Company and Francisco
22 Grande Utility Company favor awarding Santa Cruz a CCN rather than Arizona Water
23 Company. This is simply not true. As detailed above, Santa Cruz's plan to serve under any
24 CCN it is granted in this docket is premised upon the benefits it receives from Palo Verde and
25 the Unregulated Global Entities. Just as Staff's brief concluded, the alleged benefits provided
26 to Santa Cruz by Palo Verde, CP Water Company, Francisco Grande Utility Company and the
27 Unregulated Global Entities make the determination of whether the Unregulated Global
28 Entities are acting as public service corporations "inescapable." Clearly, Santa Cruz could not

1 accomplish its proposed “integrated service” without receiving the alleged “benefits” from the
2 Unregulated Global Entities. Thus, the Commission cannot determine whether the Regulated
3 Global Entities deserve to be awarded CCNs without first investigating and scrutinizing the
4 ICFAs and other activities and the purported “benefits” from the presence of the other Global
5 entities.

6 The Commission cannot render a legitimate, enforceable decision in this docket until it
7 first resolves the issues raised in Arizona Water Company’s Formal Complaint. Arizona
8 Water Company’s Formal Complaint and the filings in the Generic Docket call into question
9 Global’s corporate structure, business model, financing schemes and fitness to serve. The
10 Formal Complaint Proceeding and the Generic Docket both require that the Commission
11 scrutinize and test the very foundation of Global’s application for CCNs in this case. These
12 issues must be resolved before the issues of the Regulated Global Entities’ fitness for CCNs
13 can be tried in this proceeding. If the Regulated Global Entities were awarded CCNs in this
14 docket before these crucial issues are resolved, and the Commission later determined that
15 Global’s non-traditional financing schemes and other activities are improper or illegal, the
16 expenditure of time and resources to conduct the hearing and post-hearing briefing would be
17 wasted. Because the financing schemes are sources of funding for the Unregulated and
18 Regulated Global Entities, including the Unregulated Global Entities’ recent, unapproved
19 acquisition of water companies in an attempt to bolster its arguments for a CCN, it is unwise,
20 inefficient and prejudicial for a decision to be made in this docket without the Commission
21 first determining whether Global’s business model and other activities are illegal.

22 Arizona Water Company has waited long enough to have its complaints regarding
23 Global’s improper conduct heard. Staff has stated that it believes the Generic Docket and
24 Complaint Docket are the proper dockets to review the legality of Global’s non-traditional
25 financing schemes and the propriety of the Unregulated Global Entities acting as public service
26 corporations. Arizona Water Company agrees that the Complaint Docket is the appropriate
27 docket to review these issues, but only on the condition that the proceedings in this docket
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1 continue to be stayed until a decision is rendered in the Complaint Docket. However, if
2 Commission scrutiny of Global's ICFAs and improper activities does not go forward in the
3 Complaint docket, it is appropriate and necessary for such scrutiny to take place in this docket.
4 Arizona Water Company submits that the public interest requires that a decision be made on
5 these issues in some docket before Global can execute its plan: which is to rush the
6 proceedings in this docket hoping to obtain CCNs, while simultaneously stalling a review of its
7 financing schemes and flouting the Commission's authority in the Generic and Complaint
8 dockets.

9
10 **II. DECISIONS 67240 AND 67830 DID NOT GIVE GLOBAL THE**
11 **COMMISSION'S PERMISSION TO ACQUIRE CP WATER COMPANY**
12 **AND FRANCISCO GRANDE UTILITY COMPANY.**

13 Arizona Water Company agrees with Staff that Decision Nos. 67240 and 67380 do not
14 authorize Global to ignore the Commission's authority by acquiring public service
15 corporations without Commission approval. Global has disingenuously argued that Decision
16 Nos. 67240 and 67830 expressly authorized Global's acquisitions of CP Water Company
17 and Francisco Grande Utility Company. [Global's Opposition to Motion to Stay filed
18 February 27, 2007, at p. 4] But those decisions only set forth a process for Global to notify the
19 Commission of its acquisitions so that it may assert additional oversight. They by no means
20 are a blanket, advance approval of such acquisitions. Those decisions do not approve of future
21 acquisitions such as the acquisitions of CP Water Company and Francisco Grande Utility
22 Company. Furthermore, Global's argument sidesteps the real issue, which is that the
23 Regulated Global Entities would be required to seek the Commission's approval before they
24 acquired a public service corporation, if they were not circumventing Commission authority by
25 instead utilizing the Unregulated Global Entities as alter egos to acquire public service
26 corporations.
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3 **III. THE COMMISSION DOES NOT NEED TO “PIERCE THE CORPORATE**
4 **VEIL” BEFORE IT CAN ASSERT JURISDICTION OVER THE**
5 **UNREGULATED GLOBAL ENTITIES AND DECLARE THEM TO BE**
6 **PUBLIC SERVICE CORPORATIONS.**

7 Staff’s brief appears to mistakenly argue that in order to declare the Unregulated Global
8 Entities to be public service corporations, the Commission must first “pierce the corporate
9 veil.” [Id. at p. 4] Litigants seek to pierce the corporate veil when facts disclose
10 undercapitalization of the corporation, that corporate formalities have been ignored, or that
11 observance of the corporate form will sanction a fraud or promote injustice. *Washington*
12 *National Corporation v. Thomas*, 117 Ariz. 95, 101, 570 P.2d 1268, 1274 (App. 1977);
13 *Gatecliff v. Great Republic Life Ins. Co.*, 821 P.2d 725, 728-730, 170 Ariz. 34, 37-39 (1991).

14 But Staff’s discussions miss the point: Arizona Water Company’s Complaint does not
15 argue that the Global “corporate veils” must be pierced; instead, the Complaint simply asks the
16 Commission to determine whether the Unregulated Global Entities are acting as public service
17 corporations.¹ The Commission analyzes the factors set forth in *Natural Gas Service Co. v.*
18 *Serv-Yu Cooperative*, to determine whether a company is a public service corporation. *Serv-*
19 *Yu Cooperative*, 69 Ariz. 328, 213 P.2d 677 (1950), *approved on rehearing*, 70 Ariz. 235,
20 219 P.2d 324 (1950). The factors in *Serv-Yu* do not include a requirement that the
21 Commission find evidence supporting piercing the corporate veil. Thus, the Commission is
22 not required to pierce the corporate veil and disregard the Unregulated Global Entities’
23 corporate status before it can bring them under its jurisdiction by declaring the Unregulated
24 Global Entities to be public service corporations.

25
26 ¹ Even though the Commission need not pierce the corporate veil in order to declare
27 the Unregulated Global Entities to be public service corporations, Arizona Water Company
28 asserts that evidence to pierce the Global corporate veil is present. Santa Cruz and Palo
Verde have no employees, no funding other than what Global provides them, and are totally
controlled by the Unregulated Global Entities, which operate as their alter egos.

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CONCLUSION

Arizona Water Company respectfully requests this docket be stayed pending a resolution of Arizona Water Company's Complaint and the Generic Docket because: 1) if the ICFAs are declared illegal by the Commission, Global's financial viability will be in question, which will drastically affect its fitness and ability to serve under any CCN it is granted in this docket; 2) if the Unregulated Global Entities are considered public service corporations, the Unregulated Global Entities' acquisition of CP Water and Francisco Grande will be illegal and void, because they failed to obtain Commission approval for the acquisitions; and 3) Global's refusal to disclose the fact of its new acquisitions until the eve of the evidentiary hearing precipitated the need for Arizona Water Company to conduct additional discovery so it can adequately present its case at the evidentiary hearing. Such an Order would be consistent with actions taken by Judge Nodes in the Formal Complaint proceeding.

DATED this 30th day of March, 2007.

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