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ROUNDTABLE ON COMPETITION AND REGULATION OF WATER SUPPLY

Submission of the United States

1. Provision of water and wastewater services in the U.S. is handled at the local level, with little federal oversight other than environmental regulation, including water safety standards, although federal financing plays an important role in the industry. Competitive forces have recently begun to affect the sector:

The water industry has and will continue to display many characteristics of monopoly. Nevertheless, the water industry in the late 1990s has felt the forces of competition. Water utilities are competing with themselves and with others in a number of venues, including: extending services to unserved or

private water companies, whether measured by customers served or volume of water handled, has remained close to 15 percent since World War II.

The term “privatization” covers a wide spectrum of water utility operations, management, and ownership arrangements. The four major classes of privatization options can be characterized as (1) private provision of various services and supplies such as laboratory work, meter reading, and supplying chemicals; (2) private contracting for water utility plant operation and maintenance (both 1 and 2 are often referred to as “outsourcing”); (3) negotiating a contract with a private firm for the design, construction, and operation of new facilities (this option is referred to as design, build, and operate, or DBO); and (4) outright sale of water utility assets to a private company. In the United States, the contracting of management and operations to a private provider (outsourcing) has been more common than the sale of utility assets to private companies. No major U.S. city has sold its utility assets in recent decades, although some smaller water utilities have done so.

Issues Relating to Privatization

3. The National Research Council addressed a number of issues in the conclusions to its study of privatization of water services in the United States:

Water services privatization takes many forms, and no one type fits all situations, complicating the choices that communities face if they consider reorganizing their water and wastewater-utilities. The range of choice extends from (1) “outsourcing” of various services such as provision of supplies and meter reading; (2) private contract operation and maintenance of existing plants; (3) contracts for the integrated design, construction, and subsequent operation of new facilities (DBO contracts); and (4) sale of public utility assets to investor-owned companies that take responsibility for all operations, maintenance, and expansion of services. Outright sale of public assets has been infrequent in the United States except for “regionalization” of small utilities. Nonetheless, investor-owned companies 10.6()12tsgnl

ownership. In the case of publicly owned utilities, the supposition is that city government will monitor performance and prevent abuses.

There are elements of an “uneven playing field” in the competition between public utilities and private operators, especially relating to the availability of capital funds. Municipalities can issue tax-free bonds that carry lower interest rates than private bonds or loans. They often have access to “state revolving funds” not available to private firms. Until recently, there have been legal constraints on the private operation of physical plants that have been financed through public funds. ... It is thus a major public policy debate whether the subsidies to public utilities thus provided are justified by public good advantages of public ownership and operation or whether they constitute an economically inefficient and unfair financial framework. Several financial reforms are now being debated that would tend to level the financial playing field.³

The use of water markets to effect transfers of water from lower-valued to higher-valued uses is a different form of privatization that has long existed in the western United States but that is becoming increasingly important in all parts of the country. Utility managers, public or private, will have to learn to deal with these institutional innovations. These transfers can be temporary or permanent and are usually from agriculture to urban uses. The use of systems of water ownership and marketing that were developed in western states is expanding to other parts of the United States to allow the voluntary transfer of established water rights or contracts to new permanent or emergency uses. Water markets are subject to some degree of state supervision to protect other water users and various social and environmental values that can be impacted by changes in water use. Acquisition of water supplies through water markets will require collaboration of utility managers with state regulatory agencies.⁴

Antitrust Enforcement Related to Water Supply

4. In 1998 the Department of Justice and the City of Stilwell, Oklahoma reached a settlement that prohibited the City from withholding water service from city residents who wanted to purchase electricity from other electric companies. The agreement settled a civil antitrust lawsuit filed by the Department against the City and the Stilwell Area Development Authority. The complaint alleged that Stilwell forced local customers to buy its electricity by refusing to provide them with water and sewer services unless customers also agreed to purchase their electricity from the City. Stilwell was the sole supplier of water and sewer services within the city limits. The complaint alleged that this “all-or-none” utility policy prevented consumers from receiving the benefits of competition from a rural electric cooperative that was seeking to serve new customers in Stilwell. Under the settlement, the City may no longer use its water and sewer monopoly to suppress competition from other electric companies.

³ When water systems are owned by municipalities, the municipality may elect to use some tax revenues to pay for part of the water system. This may be more efficient than charges that cover all costs (if one abstracts from the economic distortions caused by the added tax burden). One variation is to charge usage