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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY, AN ARIZONA CORPORATION, TO EXEND ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY IN THE CITY OF CASA GRANDE AND IN PINAL COUNTY, ARIZONA

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

**GLOBAL'S REPLY IN SUPPORT OF ITS  
MOTION TO VACATE CONSOLIDATION  
AND ALTERNATIVE MOTION TO SEVER  
(Oral Argument scheduled: July 27, 2006 at 10:00 a.m.)**

Santa Cruz Water Company, LLC; Palo Verde Utilities Company, LLC; Global Water – Santa Cruz Water Company and Global Water – Palo Verde Utilities Company (collectively, “Global”) reply in support of their motion to vacate consolidation.

1 **I. Preliminary Statement.**

2 These cases have radically different procedural postures. Staff issued Global a sufficiency  
3 letter more than a month ago, and the “time-clock” is ticking on Global’s Application. In contrast,  
4 Arizona Water Company (“AWC”) is far from obtaining a sufficiency letter, and the time-clock  
5 has yet to start on its case. Moreover, there are numerous factual differences between Global’s  
6 application and that of AWC:

- 7 1) Global’s application involves an integrated plan for providing water, wastewater  
8 and reclaimed water service, while AWC’s application involves only water.
- 9 2) Global’s application is supported by 100% requests for service, while AWC’s is  
10 supported by 0.3%;
- 11 3) A host of parties have intervened to oppose AWC’s application, while only AWC  
12 opposes Global’s application; and
- 13 4) The requested territories are mostly different.

14 AWC points to various Commission precedents where such factual differences did not exist.  
15 These precedents are not applicable, and consolidation should be vacated because the cases have  
16 different facts and a different procedural posture.

17 **II. The cases have a different procedural posture.**

18 Staff issued a sufficiency letter to Global on June 23, 2006. Accordingly, the “time-clock”  
19 has begun to tick, and the Commission must issue a final order in Global’s case by November 20,  
20 2006. *See* A.A.C. R14-2-411(C)(5); R14-2-411(C)(6). In addition, once a sufficiency letter is  
21 issued, the Commission “shall, [as] expeditiously as reasonably possible, schedule hearings.”  
22 A.A.C. R14-2-402(A)(4). Global’s Application was filed seven months ago, and it is appropriate  
23 that its Application be set for hearing and be resolved “expeditiously”, as contemplated by the  
24 Commission’s own rules.

25 In contrast, AWC’s Application was filed months later, and lags far behind. AWC just  
26 recently responded to Staff’s first insufficiency letter. Global assumes that Staff will apply the  
27 same level of scrutiny to AWC’s Application as was applied to Global’s. If that is the case, AWC

1 has numerous insufficiency letters in its future. For example, AWC has yet to provide the  
2 following information, which Global provided in response to Staff's insufficiency letters:

- 3 1. "the values and sizes of the proposed plant items. For example, the Company needs  
4 to specify for the reservoirs and pressure tanks, the size in gallons; the number of  
5 tanks; the horsepower for pumps, etc."<sup>1</sup>
- 6 2. Clarification of "what type of disinfection system (such as UV, ozone, chlorination,  
7 etc.) is proposed."<sup>2</sup>
- 8 3. Specification of "how much CAP water allocation the Company will deploy."<sup>3</sup>
- 9 4. A copy of "the construction schedule for Phase I of the water treatment plant."<sup>4</sup>
- 10 5. "estimated itemized engineering costs for the construction of Phase I of the water  
11 treatment plant."<sup>5</sup>
- 12 6. detailed information on tank construction costs.<sup>6</sup>
- 13 7. further details of the construction schedule for the treatment plant.<sup>7</sup>

14 These are only a few examples. AWC's initial application was much less detailed than Global's,  
15 so Staff will likely have numerous further questions. AWC is far from obtaining a sufficiency  
16 letter. And because AWC has no sufficiency letter, the "time-clock" is not ticking on its  
17 Application. Thus, the Global and AWC cases are in radically different procedural postures.

18 Consolidation is generally not appropriate where it will "cause delay in processing one or  
19 more of the individual cases." *See Wright & Miller, 9 Federal Practice and Procedure Civ.2d §*  
20 *2383. The Commission's own rule state that consolidation should be granted only when "the*  
21 *rights of parties will not be prejudiced by such procedure." A.A.C. R14-3-109(H). Here,*  
22  
23

24 <sup>1</sup> Staff Second Insufficiency Letter to Global, dated April 28, 2006, item # 5.

25 <sup>2</sup> *Id.*, item # 6.

26 <sup>3</sup> *Id.*, item # 7.

27 <sup>4</sup> Staff First Insufficiency Letter to Global, dated February 8, 2006, at item # 3.

<sup>5</sup> *Id.*, item # 4.

<sup>6</sup> Staff Third Insufficiency Letter to Global, dated June 1, 2006, at item # 2.

<sup>7</sup> *Id.*, item # 1.

1 consolidation will cause delay in Global's cases and will prejudice Global's rights under the time-  
2 clock rule. Thus, the cases should not be consolidated.

3 **III. There are stark factual differences between these cases.**

4 As shown in Global's motion, there are numerous factual differences between these cases:

- 5 1) Global's application involves an integrated plan for providing water, wastewater  
6 and reclaimed water service, while AWC's application involves only water.
- 7 2) Global's application is supported by 100% requests for service, while AWC's is  
8 supported by 0.3%;
- 9 3) A host of parties have intervened to oppose AWC's application, while only AWC  
10 opposes Global's application; and
- 11 4) The requested territories are mostly different.

12 There can be no dispute that AWC's application concerns only water service. AWC does  
13 mention its agreement with Southwest Water Company, under which Southwest may provide  
14 wastewater service. However, Southwest has not filed an application for this area. Indeed, in the  
15 agreement's four years of existence, Southwest has not even taken the basic step of applying for  
16 authority to do business in Arizona. Moreover, as explained in Global's Reply in Support of its  
17 Motion to Dismiss, the contractual relationship with Southwest is far different from the integrated  
18 service, under common management and ownership, provided by Global. AWC's Application is  
19 simply for a different kind of service.

20 Likewise, AWC does not dispute that it has requests for service for only 0.3% of its  
21 proposed extension area. In contrast, Global has requests for 100% of its proposed extension area.  
22 AWC insinuates that Global's requests are somehow not legitimate. This is ironic, because these  
23 same requests to Global were attached to AWC's own Application in an attempt to make it appear  
24 that AWC had more support than it actually did. Unless AWC is admitting that it willfully  
25 attached invalid requests to its own Application, there can be no dispute that the requests to Global  
26 are legitimate.

27

1 Another difference is that AWC's Application has generated an unprecedented level of  
2 opposition. In contrast, Global's Application has generated no opposition, and is supported by  
3 100% of the landowners, as well as the Cities of Maricopa and Casa Grande.

4 Finally, the proposed extension areas are also different. AWC makes much out of the fact  
5 that there are 20,000 acres of overlap. But AWC does not dispute that the overlap is only about a  
6 quarter of the combined extension areas.

7 **IV. AWC's precedents are not applicable.**

8 AWC states that no request for consolidation at the Commission has been contested in the  
9 last three years.<sup>8</sup> This proves too much. When issues are not litigated or contested, the resulting  
10 decision has little or no value as precedent. Moreover, the Commission would rightly evaluate an  
11 uncontested request for consolidation under a far more lenient standard than a contested request.  
12 The fact that a party contests the consolidation shows that there may be prejudice and that the  
13 question calls for closer scrutiny. Nor is it surprising that there is no precedent directly on point,  
14 since AWC's Application is itself wholly unprecedented in a number of respects, such as its vast  
15 size and its lack of landowner support.

16 AWC chiefly relies on the *Woodruff* case. But in response to our other motion, AWC  
17 argues that the *Woodruff* case "involves a completely different areas with completely different  
18 facts."<sup>9</sup> AWC also argues that *Woodruff* has little value since AWC's appeal of that case is  
19 pending. While AWC's new-found love for *Woodruff* is odd, there can be little doubt that  
20 *Woodruff* can be distinguished on this point. First, the consolidation in *Woodruff* was not  
21 contested. Second, the degree of overlap is much less in this case than in *Woodruff*. As our  
22 motion explained, there was substantial overlap in the *Woodruff* case.<sup>10</sup> AWC did not dispute this  
23 fact. Therefore, *Woodruff* can be distinguished.

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25  
26 <sup>8</sup> AWC Response at 5:19.

27 <sup>9</sup> AWC Response to Global Motion to Dismiss at 11:4.

<sup>10</sup> See Global Motion to Vacate Consolidation at 8.

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**V. Conclusion.**

The cases are in different procedural situations due to Global's sufficiency letter. Consolidation will impair Global's rights under the time-clock rule. Moreover, consolidation is simply not appropriate because of the many factual differences between these cases. Accordingly, Global respectfully requests that the procedural order consolidating these cases be vacated.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of July 2006.

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