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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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William A. Mundell
Jeff Hatch-Miller
Kristin K. Mayes
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2007 MAR 30 P 4: 43

AZ CORP COMMISSION
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Arizona Corporation Commission
DOCKETED

MAR 30 2007

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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 RESPONSE TO STAFF'S BRIEF

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 Utilities”) respond to Staff’s Brief filed on March 12, 2006.

I. Preliminary Statement.

Arizona Water Company (“AWC”) seeks to cause yet more delay in this case by
introducing extraneous issues. These extraneous issues involve recent acquisitions by Global
Water Resources, LLC (“Global Parent”), and the Infrastructure Coordination and Financing
Agreements (“ICFAs”) signed by Global Parent. Staff recognizes that these issues are not relevant

1 to this case. Staff and the Global Utilities agree that the ICFA issues should be resolved in a future
2 rate case. Staff and the Global Utilities also agree that the acquisitions require Commission
3 approval only if Global Parent is a public service corporation. Further, Staff and the Global
4 Utilities agree that there is no evidence at present which would justify a finding that Global Parent
5 is a public service corporation.¹ Finally, the landowners who requested service from the Global
6 Utilities cannot move forward with the full use and enjoyment of their property until a CC&N
7 issues. Accordingly, this case should proceed without further delay, and should be set for hearing
8 at the earliest opportunity. Further, AWC should be precluded from litigating the acquisition and
9 ICFA issues in this case.

10 However, in the event the Commission determines that the acquisition and ICFA issues
11 should be decided in this docket, then the Commission should establish a schedule to resolve these
12 issues without undue delay. Such a schedule would involve additional discovery, testimony, and
13 then a hearing on all issues. In addition, if the Commission decides to resolve the acquisition and
14 ICFA issues in this docket, then this docket should perhaps be consolidated with the AWC
15 complaint docket.² In any event, the Commission should schedule a joint procedural conference in
16 this docket and the AWC complaint docket, and possibly the generic docket.

17 **II. The acquisition issues are not pertinent to this docket.**

18 **A. Background.**

19 The Global Utilities firmly believe that the acquisition and consolidation of utility
20 companies is in the public interest. There are more than 400 water companies in this state. Many
21 of them are small, undercapitalized, poorly managed, and without technical expertise. Further,
22 their small size often results higher expenses per customer (i.e. "diseconomies of scale") which
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25 ¹ Moreover, even if such evidence existed, there would be substantial legal impediments to the
26 Commission deciding the issue. *See Williams v. Arizona Corp. Comm'n*, 102 Ariz. 382, 430 P.2d
27 144 (1967)(Commission may not determine jurisdiction over unconsenting, previously unregulated
entity).

² Docket No. W-01445A-06-0200 et al.

1 results in higher rates. These problems can be solved though the acquisition of these companies
2 by larger, better capitalized companies with managerial and technical expertise.

3 The Commission's Water Task Force concluded that "[m]any of Arizona's water
4 companies are quite small.... [and] many of these small companies are quite problematic."³
5 Further, the Task Force stated that "because of economies of scale, larger companies are likely to
6 be more efficient."⁴ Thus, the Task Force concluded that "reducing the number of small non-
7 viable water systems is a desirable goal."⁵

8 Global Parent has always made clear that one of its chief purposes is fulfilling this goal by
9 consolidating water utilities. Under Decision No. 67240 and Decision No. 67830, the
10 Commission established a process to provide notice of future acquisitions by Global Parent. That
11 process requires the Global Utilities to file, after the closing of an acquisition, an "Acquisition
12 Schedule" reporting the acquisition. The Commission did not require prior approval of
13 acquisitions.

14 **B. Recent Acquisitions.**

15 Global Parent – through its subsidiary, Global Water, Inc. ("Global Inc.", together with
16 Global Parent, "Global") – recently acquired Francisco Grande Utility Company ("Francisco
17 Grande") and CP Water Company ("CP"), which are both in or near the extension area requested
18 by AWC in this case. In response to AWC's discredited "first in the field" argument, the Global
19 Utilities noted in pre-filed testimony that these acquisitions meant that AWC was not the "first in
20 the field" even if that doctrine was valid. Staff expressed concerns about this fleeting reference.
21 In response to Staff's concerns, the Global Utilities agreed to strike this argument, and never
22 mention it again in this case. Staff found this "remedial action"⁶ to be "satisfactory."⁷ Thus, Staff
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24 ³ Interim Report of the Arizona Corporation Commission's Water Task Force at 4, dated October
25 28, 1999, and filed January 5, 2000 in docket no. W-00000C-98-0153.

26 ⁴ Id.

27 ⁵ Id.

⁶ Staff Brief dated March 12, 2007 at 4:4.

⁷ Procedural Conference Tr. at 53 (February 28, 2007).

1 does not believe that challenges to the acquisition of Francisco Grande and CP are pertinent to this
2 case. The Global Utilities agree – this is not the right docket to consider any challenge to these
3 acquisitions.

4 **C. The acquisitions were legal.**

5 As noted above, the acquisition of Francisco Grande and CP are simply not relevant to this
6 case. However, even if they were relevant, AWC’s objections to those acquisitions have no merit.
7 It appears that the Global Utilities, Staff, and AWC agree that Commission approval is not needed
8 unless Global is a public service corporation. Staff states that there is no “need to approach the
9 question [of] whether Global is a public service corporation” in this case.⁸ Further, as Staff states,
10 Global Parent and Global Inc. “are not considered collectively or individually public service
11 corporations and until such time as evidence indicates otherwise, there does not appear to be a
12 compelling need to pierce the corporate veil....”⁹ Further, Staff states that “there are not facts
13 present in this case that necessitate reaching a conclusion that Global is a public service
14 corporation.”¹⁰

15 The Global Utilities agree with these statements of Staff. The Global Utilities also agree
16 with Staff that Decision No. 67240 and Decision No. 67830 do not authorize the acquisitions if
17 Global is a public service corporation and these decisions do not constitute approvals under A.R.S.
18 § 40-285. However, those decisions clearly contemplate further acquisitions by Global and set a
19 notice mechanism for those further acquisitions. Thus, at the time the Commission issued
20 Decision No. 67240 and Decision No. 67830, it must have not considered Global to be a public
21 service corporation. Nothing has changed in the interim to modify that conclusion. At the time,
22 Global was looking for further acquisitions, just it is now. And at that time, Global Parent was
23 signing ICFAs, just as it does now. After Decision No. 67240, and in accordance with that order,
24 Global has closed several acquisitions with an aggregate value of more than \$ 70 million, each

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26 ⁸ Staff Brief dated March 12, 2007 at 4:17-18.

27 ⁹ Id. at 1-2.

¹⁰ Id. at 7:8-9.

1 time providing the notice required by that order. Changing course now and finding Global to be a
2 public service corporation would result in those acquisitions possibly being void under A.R.S. §
3 40-285(E), but would leave Global with little prospect of getting all its money back. That result
4 would be unjust. It would also be impractical, as the former owners are likely not in a position to
5 provide service.

6 The Global Utilities have also addressed the acquisition issue in greater detail in their
7 briefs filed on February 2, 2007 and March 9, 2007 in the AWC complaint docket.

8 **III. The ICFA issue is not pertinent to this docket.**

9 The Commission established the generic docket¹¹ to examine the ICFAs and other issues.
10 That process remains underway. The Hearing Division indicated that it will request further
11 comments in that docket.¹² In addition, Commissioner Mundell and Commissioner Hatch-Miller
12 filed letters in the generic docket requesting a public presentation on ICFAs by the Global Utilities.
13 The Global Utilities are ready to make that presentation at any time and place requested by the
14 Commission.

15 In resolving the generic docket, the Commission will likely reach tentative conclusions
16 about how to evaluate ICFAs. However, actual decisions regarding the treatment of the ICFA
17 funds will likely have to be decided on a case-by-case basis in future rate cases. The Staff Report
18 in the generic docket includes a “preliminary position” that the ICFAs may be treated as advances
19 or contributions.¹³ Advances or contributions are off-sets to rate base. Thus, they are part of
20 determining a utility’s rate base. The determination of rate base is a core function of a rate case.
21 Thus, our witness, Cindy Liles, stated that ICFAs are a “classic rate case issue....”¹⁴ Staff agrees,
22 stating that as “Global witness Cindy Liles suggested in prefiled rebuttal testimony... and Staff
23 agrees, the proper place for considering such issues is in a rate proceeding.”¹⁵

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25 ¹¹ Docket No. W-00000C-06-0149.

26 ¹² Comments made during the Commission’s Staff Meeting on January 17, 2007.

27 ¹³ Staff Report at 4-6, filed October 6, 2006 in the generic docket.

¹⁴ Rebuttal Testimony of Cindy Liles at 20:9.

¹⁵ Staff Brief dated March 12, 2007 at 6:4-6.

1 Staff has never stated – in the generic docket, this docket, the AWC complaint docket or
2 anywhere else – that the ICFAs may be illegal or contrary to ACC rules. Instead, Staff merely
3 suggests that ICFA fees may be considered advances or contributions in a future rate case. There
4 is no need to examine this accounting issue in this case. Thus, Staff is correct to recommend that
5 this docket “not be used as a test case for ICFAs.”¹⁶

6 **IV. In any event, the Commission should set a hearing as soon as possible.**

7 For the above reasons, the acquisition and ICFA issues are not pertinent to this docket.
8 Accordingly, AWC should be barred from litigating these issues in this docket, and the
9 Commission should set a hearing in this docket as soon as possible. The Global Utilities filed
10 their joint application more than 450 days ago. They received their sufficiency letter 280 days ago.
11 The Commission has a strong policy in favor of prompt hearings and decisions in CC&N cases,
12 and ordinarily, the Commission’s rules require a final decision within 150 days of sufficiency.¹⁷
13 Even if a hearing is scheduled immediately, a final decision will not be possible for well over
14 twice that timeline. AWC should not be allowed to cause yet further delay. Accordingly, this
15 matter should be set for hearing as soon as possible.

16 However, if the Commission elects to consider the acquisition and ICFA issues in this
17 docket, then it should establish a schedule to do so as soon as reasonably possible. In that event, it
18 may be sensible to consolidate this docket with the AWC complaint docket, as the same issues
19 would be pending in both dockets. If this comes to pass, the Global Utilities propose the following
20 schedule:

21	Further Direct Testimony by Global:	May 14, 2007
22	Rebuttal Testimony by any party:	May 31, 2007
23	Motions to Intervene deadline:	May 31, 2007
24	Surrebuttal Testimony by any party:	June 11, 2007

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26 ¹⁶ Id. at 5:8-9.

27 ¹⁷ A.A.C. R14-2-411.C.

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Discovery cut-off: June 13, 2007
Hearing: Weeks of June 18 and 25

The Global Utilities also propose that, if this schedule is adopted, after May 14, 2007, discovery be limited to matters referenced in testimony. Further, under this schedule, the 150 day time-clock in A.A.C. R14-2-411.C.5 should be reset to begin counting as of today.

Regardless of the decisions made on any of these issues, the Global Utilities note that the AWC's acquisition and ICFA issues are the same as those it raised in the AWC complaint docket. The Global Utilities therefore suggest that the Commission schedule a joint procedural conference in both dockets to consider how best to proceed. A conference is currently scheduled in the AWC complaint docket, and that conference may be used for these purposes if the Commission so desires.

V. Conclusion.

The Global Utilities agree with Staff that the acquisition and ICFA issues are not pertinent to this docket. Accordingly, AWC should not be able to litigate those issues in this docket, and this matter should be set for hearing as soon as possible. However, if the Commission elects to consider those issues in this docket, then the Commission should adopt a schedule similar to the one suggested above, and it should also reset the time-clock to begin "ticking" today. Further, if the Commission does consider the acquisition and ICFA issues in this docket, it should consider consolidating this docket and the AWC complaint docket. In any event, the Commission should hold a joint procedural conference for this docket and the AWC complaint docket, and possibly the generic docket, to discuss how to proceed with these matters.

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1 RESPECTFULLY SUBMITTED this 30th day of March 2007.

2 ROSHKA DEWULF & PATTEN, PLC

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