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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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**COMMISSIONERS**

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

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

IN THE MATTER OF THE APPLICATION OF  
PALO VERDE UTILITIES COMPANY FOR AN  
EXTENSION FO ITS EXISTING CERTIFICATE  
OF CONVENIENCE AND NECESSITY.

Docket No. SW-03575A-07-0300

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-07-0300

ARIZONA WATER COMPANY, AN ARIZONA  
CORPORATION,

Docket No. W-01445A-06-0200

Docket No. SW-20445A-06-0200

COMPLAINANT,

Docket No. W-20446A-06-0200

VS.

Docket No. W-03576A-06-0200

Docket No. SW-03575A-06-0200

GLOBAL WATER RESOURCES, LLC, A  
FOREIGN LIMITED LIABILITY COMPANY;  
GLOBAL WATER RESOURCES, INC., A  
DELAWARE CORPORATION; GLOBAL

**Global Utilities'  
Reply Brief**

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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 – PALO VERDE UTILITIES COMPANY, AN ARIZONA CORPORATION; JOHN AND JANE DOES I-20; ABC ENTITIES I-XX,

RESPONDENTS.

IN THE MATTER OF THE JOINT APPLICATION OF CP WATER COMPANY AND FRANCISCO GRANDE UTILITIES COMPANY TO TRANSFER THEIR CERTIFICATES OF CONVENIENCE AND NECESSITY AND ASSETS TO PALO VERDE UTILITIES COMPANY AND SANTA CRUZ WATER COMPANY.

Docket No. WS-01775A-07-0485  
Docket No. SW-03575A-07-0485  
Docket No. W-02442A-07-0485  
Docket No. W-03576A-07-0485

**Global Utilities’  
Reply Brief**

Global Water – Palo Verde Utilities Company (“Palo Verde”), Global Water – Santa Cruz Water Company (“Santa Cruz”), Francisco Grande Utilities Company (“Francisco Grande”) and CP Water Company (“CP”) (collectively, the “Global Utilities”, and together with Arizona Water Company, the “Settling Utilities”) respectfully submit this Reply Brief.

**I. Introduction.**

There seems to be broad agreement on the benefits of the Settlement Agreement and planning areas, including resolving the current dispute, preventing future disputes, advancing regional planning and promoting recycled water use. The Settling Utilities have asked the Commission to approve the Settlement Agreement and the associated planning areas. While Staff recognizes the benefits of the settlement, Staff contends that the Commission should deny approval, in the hopes that the parties will follow the settlement even if it is denied. There is no guarantee that they will do so. And under Staff’s position, utilities would be able to agree to establish planning areas and to respect each other’s planning areas, all without Commission review

1 and approval. Such agreements clearly impact the public interest, and should not be made without  
2 Commission oversight.

3 The other disagreement between the Settling Utilities and Staff concerns extensions of  
4 CC&N areas. Staff argues that the Commission should extend its request-for-service policy  
5 requirements. Staff's recommendations go further than the Commission has ever gone before.  
6 The Global Utilities agree that requests for service are important – that's why they submitted  
7 original requests for service for each acre included within their requested extension areas. Staff's  
8 proposals to require multiple requests for service for each parcel, or to require requests for  
9 multiple services when only one is requested, simply go too far.

10 **II. Approval is in the public interest.**

11 **A. Staff's approach fails to recognize the Commission's authority.**

12 Staff argues that Commission approval is not necessary, because the Settling Parties can  
13 simply follow the settlement on their own. Staff's position could lead to unintended  
14 consequences. Agreements that allocate planning areas and prohibit utilities from entering  
15 uncertificated planning areas pose public policy issues. The Settling Utilities have carefully  
16 constructed the settlement to promote the public interest and to be acceptable to the Commission.  
17 There is no guarantee that other utilities will be as careful and restrained. The Commission  
18 should not give a "green light" to such agreements by stating that utilities can follow such  
19 agreements privately without prior review or approval by the Commission.

20 **B. Staff's concerns are unfounded.**

21 Staff contends that approval of the settlement would result in a host of supposed  
22 "regulatory dilemmas."<sup>1</sup> For example, Staff worries about possible pre-approval of the prudence  
23 of costs. But the Commission could, and should, include a statement in its order that no pre-  
24 approval of costs should be implied – as it often does in financing orders. Staff also frets that a  
25 newer, better utility could emerge within the planning areas, or that one or more of the Settling  
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27 <sup>1</sup> Staff Br. at 14:14.

1 Utilities could become unfit to provide service. Such concerns are speculative; and in any event,  
2 they can – and should -- be dealt within in future certificate cases.

3 **C. Approval is the only sure way to obtain the benefits of the settlement.**

4 Staff argues that the Settling Utilities will likely follow the settlement even if it is not  
5 approved by the Commission. Staff therefore suggests taking the benefits of the settlement  
6 without approving it. In fact, the settlement is expressly conditioned on Commission approval,  
7 and there is no assurance that it will go forward absent such approval. For example, Mr.  
8 Symmonds testified that the Global Utilities have not decided whether to withdraw from the  
9 settlement if it is not approved.<sup>2</sup> Likewise, Mr. Garfield testified “that decision has not been  
10 made” by Arizona Water.<sup>3</sup>

11 **D. Antitrust issues.**

12 Arizona Water’s Brief includes a lengthy discussion of antitrust law. Arizona Water has  
13 raised a serious concern. Indeed, in “a majority of the cases in which the question has arisen, the  
14 courts have held that contracts between public utilities dividing territory and customers were  
15 invalid as in restraint of trade.” *Validity of contract between public utilities other than carriers,*  
16 *dividing territory and customers*, 70 A.L.R.2d 1326 (1960, with cumulative supplement through  
17 2009).

18 Staff brushes off these concerns in a single sentence, with no citation to authority. Given  
19 the potential for liability, Staff’s approach is too dismissive. If the Settling Utilities choose to go  
20 ahead with the settlement without Commission approval, they could face an antitrust complaint by  
21 developers, or by the United States Department of Justice or the Arizona Attorney General’s  
22 office. Obviously, in such a case, the Settling Utilities would aggressively defend themselves –  
23 and there are a number of arguments that can be made. But the risk is both real and preventable.  
24 The Settlement Agreement and planning areas are in the public interest, and Commission approval  
25

26 <sup>2</sup> Tr. at 282:11-18.

27 <sup>3</sup> Tr. at 147:12-20.

1 would prevent antitrust risk. Staff does not acknowledge the risk, or explain why forcing the  
2 parties to take such a risk is in the public interest.

3 Staff's approach does not reflect the important role and powers the Commission has under  
4 federal and state antitrust law. Arizona's antitrust act "shall not apply to any conduct or activity of  
5 a public service corporation... which conduct or activity is approved... by the corporation  
6 commission." A.R.S. § 40-286. This is exactly the approval power the Settling Utilities seek to  
7 invoke. Other utility commissions have approved contracts between utilities concerning service  
8 territories, and courts have upheld the validity of such contracts. *See Validity of Contracts, supra*  
9 70 A.L.R.2d 1326 (noting cases from Ohio, Pennsylvania, and Florida). As explained in Arizona  
10 Water's brief, Commission approval will also be recognized under federal antitrust law.

11 **III. Requests for service.**

12 Staff breaks new ground in two respects: (1) its insistence on second (renewed) requests  
13 for service; and (2) its proposed requirement for requests for both water and wastewater service,  
14 even if only one service is included in the application. The Global Utilities have long been a major  
15 supporter and proponent of the Commission's use of requests for service, and the Global Utilities  
16 obtained requests for service covering each acre in their requested extension areas. Staff's  
17 recommendations go beyond what has ever been required before. Staff's unprecedented  
18 recommendations should be rejected.

19 Staff points to only one prior decision that has involved second (renewed) requests for  
20 service. That case also involved the Global Utilities. As in this case, the Global Utilities provided  
21 first (original) requests for service for 100% of the extension area. In that prior case, the ALJ  
22 required the Global Utilities to inquire of property owners whether they still desired to be included  
23 in the CCN extension, the Global Utilities obtained affirmative second requests for service from  
24 71% of the landowners – and no initially requesting entity sought to be excluded in response to  
25 Global Utilities' inquiry. As a result, the Commission granted the entire area to the Global  
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1 Utilities.<sup>4</sup> Here, the Global Utilities have provided a higher percentage of requests for service  
2 (75.4%, or 77% if the late-filed request for service is included).<sup>5</sup> And none of the initially-  
3 requesting entities has asked to be excluded for the extension request.

4 Staff attempts to distinguish that case by arguing that the first requests are older. But there  
5 is no evidence that any of these landowners changed their mind. And the Global Utilities have  
6 been able to obtain an even higher percentage of second requests this time, demonstrating strong  
7 ongoing support for the certificate extensions. Staff also points to the weak economy, quoting Mr.  
8 Symmonds:

9 I don't think anybody is really spending a lot of money, certainly on the  
10 development side, of trying to entitle land or make sure that it is developable.<sup>6</sup>

11 But Staff leaves out the next two sentences:

12 I think that changes as we pull out of the dive. You know, I think it's not so much  
13 an indication of a lack of desire for service; it's an indication of where we are as a  
14 state, really, in the development cycle.<sup>7</sup>

15 Staff's argument that the need to serve some of these areas has permanently disappeared is  
16 contrary to both the high level of second requests as well as the history of business and  
17 development cycles.

18 Staff also departs from existing precedent and tradition by recommending that requests for  
19 both water and wastewater service be required, even if an application concerns only one of those  
20 services. This ground-breaking recommendation for a new requirement came in a fleeting, brief  
21 portion of Mr. Gray's Staff Report.<sup>8</sup> Mr. Gray acknowledged that he was "not aware of any  
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23 <sup>4</sup> Ex. G-26 (Decision No. 70381, June 13, 2008) at Finding of Fact No. 36; *see also* Tr. at 365-68.

24 <sup>5</sup> Tr. at 266:13-15 (Symmonds); Tr. at 364:18-24 (no dispute from Mr. Gray). If an additional  
25 request received after the hearing is considered, the percentage rises to 77%. *See* the Global  
26 Utilities' Motion to Admit Late Filed Exhibit filed June 30, 2009, attaching an updated version of  
27 Ex. G-27.

<sup>6</sup> Staff Br. at 8:22-23, citing Tr. at 269-270.

<sup>7</sup> Tr. at 270:4-8.

<sup>8</sup> Tr. at 370-71.

1 decision that imposes it as the specific requirement.”<sup>9</sup> Instead, Mr. Gray suggested that “the  
2 Commission is moving in that direction” but he conceded that he is “not able to provide any  
3 specific decision where they actually reached that result.”<sup>10</sup> Mr. Gray’s testimony contradicts  
4 Staff’s arguments on brief that “Staff’s recommendation is more consistent with the policies the  
5 Commission has employed of late”<sup>11</sup> and that Staff’s position is supported by the “prevailing  
6 weight of recent Commission CC&N determinations.”<sup>12</sup>

7 Staff points to the Commission’s decision in the Woodruff / Arizona Water dispute as a  
8 possible source of support for its recommendations. In that case, the Commission granted the  
9 water certificate to Woodruff over Arizona Water, noting that Woodruff’s sister company would  
10 provide wastewater service. The Commission noted the benefits of integrated water and  
11 wastewater service.<sup>13</sup> The principal benefit was, of course, the use of recycled water to reduce  
12 groundwater use.<sup>14</sup> The Court of Appeals, in affirming the Commission’s order on appeal, noted  
13 the importance of recycled water:

14 This evidence would allow one to conclude that such a coordinated effort in the  
15 use of effluent could result in an overall reduction in the use of groundwater,  
16 which would be a benefit to the public. Although unaffiliated companies could  
17 coordinate such efforts, we cannot fault the Commission for concluding that  
18 affiliated companies would more likely do so. Indeed, evidence before the  
19 Commission suggested that such cooperation would not be forthcoming from  
20 Arizona Water.<sup>15</sup>

21 Those concerns are not relevant here. Indeed, settlement includes provisions for Arizona Water to  
22 sell recycled water obtained from the Global Utilities, and for the close coordination of such efforts

23 <sup>9</sup> Tr. at 370:20-21.

24 <sup>10</sup> Tr. at 371:1-5.

25 <sup>11</sup> Staff Br. at 7:6-7.

26 <sup>12</sup> Staff Br. at 8:4.

27 <sup>13</sup> Decision No. 68453 at Finding of Fact No. 129(4).

<sup>14</sup> Id. at Finding of Fact No. 38 (describing testimony concerning recycled water).

<sup>15</sup> *Arizona Water Co. v. Arizona Corp. Comm’n*, 217 Ariz. 652, 661 ¶ 31, 177 P.3d 1224, 1233 (App. 2008).

1 between the Settling Utilities. Even Staff concedes that Arizona Water’s change of position on  
2 recycled water is an important “step forward.”<sup>16</sup>

3 In addition, in the Woodruff case, Staff’s witness Mr. Olea testified in support of  
4 integrated utilities because of Staff’s past experiences with small, stand-alone wastewater  
5 companies failing.<sup>17</sup> As Arizona Water explains, in this region, wastewater service will be  
6 provided either by Global Water – Palo Verde Utilities Company or by the City of Casa Grande.  
7 Between them, these two utilities have the approved Section 208 wastewater plans for the entire  
8 area. And both are large, sophisticated entities. Palo Verde and Casa Grande are not the sort of  
9 tiny, disaster-prone utilities Mr. Olea was concerned about in the Woodruff case.

10 **IV. Conclusion.**

11 The settlement agreement and associated planning areas are in the public interest and  
12 should be approved. That will not be the case with every similar agreement. Agreements of this  
13 type should be closely reviewed by the Commission, and utilities should not be encouraged to  
14 enter such agreements without Commission oversight. Staff’s recommendation that the  
15 Commission not assert control over such agreements could lead to unknown consequences. Staff’s  
16 approach also fails to recognize the Commission’s important role under federal and Arizona  
17 antitrust law in controlling competition between utilities.

18 The Global Utilities have met or exceeded every requirement in prior Commission  
19 decisions concerning requests for service. Staff’s request for unprecedented additional  
20 requirements should be rejected.

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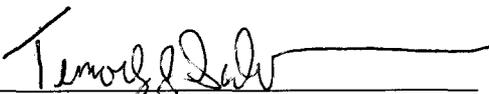
26 <sup>16</sup> Tr. at 43:1-7.  
27 <sup>17</sup> Decision No. 68453 at Finding of Fact No. 117; *see also Arizona Water Co.* at ¶ 30.

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RESPECTFULLY SUBMITTED this 31st day of August, 2009.

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