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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

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GARY PIERCE COMMISSIONER	BOB STUMP COMMISSIONER	W-01212A-09-0082

IN THE MATTER OF THE APPLICATION OF GLOBAL WATER – PALO VERDE UTILITIES COMPANY FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZED A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. SW-20445A-09-0077

Arizona Corporation Commission
DOCKETED

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IN THE MATTER OF THE APPLICATION OF VALENCIA WATER COMPANY – GREATER BUCKEYE DIVISION FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. W-02451A-09-0078

IN THE MATTER OF THE APPLICATION OF WILLOW VALLEY WATER CO. FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO

DOCKET NO. W-01732A-09-0079

1 **REALIZE A REASONABLE RATE OF**
2 **RETURN ON THE FAIR VALUE OF TIS**
3 **PROPERTY THROUGHOUT THE STATE**
4 **OF ARIZONA**

5 **IN THE MATTER OF THE**
6 **APPLICATION GLOBAL WATER –**
7 **SANTA CURZ WATER COMPANY FOR**
8 **THE ESTABLISHMENT OF JUST AND**
9 **REASONABLE RATES AND CHARGES**
10 **FOR UTILITY SERVICE DESIGNED TO**
11 **REALIZE A REASONABLE RATE OF**
12 **RETURN ON THE FAIR VALUE OF ITS**
13 **PROPERTY THROUGHOUT THE STATE**
14 **OF ARIZONA**

DOCKET NO. W-20446A-09-0080

15 **IN THE MATTER OF THE**
16 **APPLICATION OF WATER UTILITY OF**
17 **GREATER TONOPAH FOR THE**
18 **ESTABLISHMENT OF JUST AND**
19 **REASONABLE RATES AND CHARGES**
20 **FOR UTILITY SERVICE DESIGNED TO**
21 **REALIZED A REASONABLE RATE OF**
22 **RETURN ON THE FAIR VALUE OF ITS**
23 **PROPERTY THROUGHOUT THE STATE**
24 **OF ARIZONA**

DOCKET NO. W-02450A-09-0081

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Intervenor, City of Maricopa, by and through its undersigned counsel hereby files its
Opening Brief in the above captioned matter.

RESPECTFULLY SUBMITTED this 5th day of February, 2010.

Rose Law Group pc

Court S. Rich

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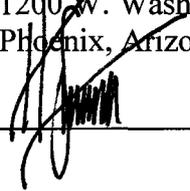
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**OPENING BRIEF
OF INTERVENOR CITY OF MARICOPA
(February 05, 2010)**

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1 **I. INTRODUCTION.**

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3 Global Water Resources (“Global”) and its subsidiary utilities are proposing a dramatic
4 and unreasonable 120% rate increase that comes during the worst economic time in the history of
5 the newly incorporated City of Maricopa. This increase comes at a time when the City’s
6 residents, like many in Arizona and throughout the Country, are struggling to keep up with house
7 payments and to keep their jobs. The prospect of finding money to pay for more than doubling
8 the water and sewer rates in the City is what drove hundreds of concerned citizens to the
9 Commission’s public meeting in Maricopa in early December to speak against this increase and
10 what drove the City of Maricopa to formally intervene in this matter.
11

12 Make no mistake; the City of Maricopa understands and appreciates that Global and its
13 subsidiary utilities are entitled to make a reasonable rate of return on their investments under
14 Arizona law. The City believes that the record in this docket shows that Global has overreached
15 in its Application and is seeking rate treatment resulting in a huge rate increase that is not just
16 poorly timed but also legally unjustified.
17

18 It is important that the City echo the many complaints that the Commission heard from
19 City residents at the December public meeting. The City is not satisfied with the level of
20 customer care that Global has provided to its customers. In addition, Global’s policies
21 concerning service shut off, collection of shut off fees, and restoration of service to customers
22 has caused many complaints and must be addressed.
23

24 At the heart of the issue in this rate case is the treatment of funds that Global received
25 from landowners under Infrastructure Coordination Financing Agreements (“ICFAs”). In
26 exchange for the ICFA funds Global contractually obligates itself to assure that its utilities
27 provide plant and service to the property owner’s property. Global spent the last several years
28

1 collecting landowner funds in exchange for promises to construct plant and provide service
2 under ICFAs in place of traditional Contributions in Aid of Construction (“CIAC”) and
3 Advances in Aid of Construction (“AIAC”). Global did this despite admitting that it has long
4 known that the treatment of ICFA funds is unsettled and that it was actually the only company it
5 knew of in the nation that employed such a financing scheme. The record is clear that ICFAs
6 were developed as an alternative to CIAC and as a way to get around the reductions in rate base
7 that comes when CIAC is accepted. The entire ICFA scheme is designed to allow Global to
8 continue to receive money from third parties at no cost to Global while keeping its utilities’ rate
9 bases high to maximize earnings.
10
11

12 Global responds that it is not spending the ICFA money on plant and that therefore, it
13 would be inappropriate to reduce the utilities’ rate bases accordingly. Under Global’s ICFA
14 scheme it allows the company to take in developer money and not suffer a reduction to rate base
15 as long as it spends some different or other money on the construction of plant. If the
16 Commission were to sanction this type of slight of hand then it should expect all utilities in the
17 State to employ this method to avoid reductions to rate base. Why would any utility that has
18 access to any amount of debt or equity not book a developer contribution as an ICFA
19 contribution and then go ahead and build plant with its debt or equity to avoid the reduction in
20 rate base?
21
22

23 The City appreciates the Commission’s thoughtful consideration of the issues presented
24 and asks that the Commission take all legal and reasonable steps to minimize the rate increase
25 being proposed.
26

27 **II. ALL FUNDS COLLECTED PURSUANT TO ICFAS MUST BE DEDUCTED**
28 **FROM GLOBAL’S RATE BASE AT THIS TIME.**

1 Global's acceptance of ICFA funds must trigger a corresponding reduction to rate base
2 that must be calculated as part of this rate case. The examination of the record will show that
3 ICFA funds were clearly designed as a substitution for CIAC and that Global went forward
4 collecting ICFA funds despite the fact that it was aware that the treatment of those funds was
5 unresolved. Further, Global's proposed treatment of ICFA funds is not necessary for regional
6 planning and would have a negative impact on rate payers of all utilities if approved.
7

8 **A. It is clear ICFA money was intended to be a substitution for traditional**
9 **CIAC/AIAC.**

10 The evidence is abundantly clear that the intent of the ICFA was to create an arrangement
11 whereby a landowner provides Global with cash in exchange for the promise to install plant to
12 serve that owner's land. The ICFA clearly is an attempt to avoid the rightful treatment of funds
13 received from a third party at no cost to the utility as a reduction from rate base. Several
14 excerpts from Global's own ICFAs demonstrate that the ICFA was entered into in exchange for a
15 promise to provide plant and to serve the property with utilities:
16

17 i. Example 1.

18 Under this Agreement, and irrespective of any regulatory treatment of this
19 Agreement by the ACC, Coordinator [Global] shall at its own expense, *guarantee*
20 that WUGT and HUC [the utilities] will secure all requisite permits and other
21 approvals and *causing [sic] the timely construction of any and all water,*
22 *wastewater, and reclaimed water facilities including without limitation, plant,*
23 *production, treatment, storage, transmission, pumping, receiving and delivery*
24 *facilities necessary to provide Utility Service to the Land...*

25 Exhibit A-48 at p. 4-5 (emphasis added). It could not be any clearer that the above provision
26 demonstrates that in exchange for the money paid under the ICFA, Global is guaranteeing
27 (Global's own word) the construction of plant to serve the owner's land.

28 ii. Example 2.

1 To the extent either [of the utilities] requests that Landowner contribute or
2 advance monies for Off-Site Facilities to provide Utility Service to the Land,
3 Coordinator [Global] hereby acknowledges and agrees that Coordinator shall pay
4 for such facilities. Coordinator shall be responsible for payment of any and all
such additional costs of Off-Site facilities as requested by [the utilities] or as
otherwise required.

5 *Id.* at p. 12. This provision further clarifies that the intent of the ICFA is to completely replace
6 any CIAC/AIAC that the utilities would otherwise seek from the landowner or could seek in the
7 future. This provision says that no matter what, the landowner is not paying another dollar for
8 service and that Global will cover any additional costs. During the testimony Staff witness Linda
9 Jaress testified that this language suggested to her that the money paid under an ICFA was
10 intended to be a substitute for money that would otherwise be paid as CIAC or AIAC. *See*
11 *Trans.* 901:7-11.

12
13
14 iii. Example 3.

15 Water and wastewater lines will be constructed to the property line of the Land
16 and reclaimed water lines will be constructed to a water storage facility within the
land, at locations to be designated by Coordinator [Global].

17 Exhibit S-2, Document Bates Stamp No. GW 560, ¶1. Here is another example of Global
18 promising to construct plant in exchange for the funds provided under the ICFA agreement.

19
20 iv. Example 4.

21 Coordinator [Global] shall coordinate its activities and *cause* SCW and PVU [the
22 utilities] to provide services more fully described in Exhibit D hereto...

23 *Id.* at ¶2 (emphasis added). This provision indicates that Global is committing to causing the
24 utilities to do the things listed in the exhibit attached to the ICFA. The referenced Exhibit D
25 provides that the “services” include among others:

- 26
27
28
- Confirm and or develop sufficient water plant capacity for the Land
 - Extend water distribution main line to the Delivery Point
 - Confirm and or develop sufficient wastewater plant capacity for the Land
 - Extend wastewater collection system main line to the Delivery Point

1 -Extend a reclaimed water line to a water storage facility within the Land

2 *Id.* at Document Bates Stamp No. GW 573. As a result of Global's commitment to cause the
3 completion of the items listed above it is clear that Global is committing to construct all
4 necessary plant to serve the landowner's land in exchange for the funds received in the ICFA.
5

6 v. Example 5.

7 In exchange for the payments by Landowner herein, and subject to the terms
8 herein, Coordinator [Global], through WUGT and HUC [the utilities], *shall*
9 *construct* any and all water, reclaimed water, and wastewater treatment plant,
10 delivery facilities and lines required by the development plan to the Delivery
11 Point....

12 Exhibit A-50 at 6, ¶1. This is yet another example of one of Global's own ICFA's making it clear
13 that the money paid to Global is in exchange for the construction of plant to serve the
14 landowner's property. Here Global makes the clear and unequivocal commitment to construct
15 plant in exchange for the funds received in the ICFA.

16 The 5 examples above come from three different forms of the ICFA all entered into
17 evidence at the hearing in this docket. In each of these different formats the ICFA always
18 includes provisions that make it clear that the money provided was in exchange for a direct
19 promise to provide the needed plant to serve the landowner's land.

20 **B. Global's assertion that it can show that funds other than those collected**
21 **through ICFA's were used to build plant is misleading and unpersuasive.**

22 The record clearly demonstrates that the ICFA funds allowed Global to expend debt or
23 equity on plant. Global repeatedly argues that ICFA funds should not be deducted from rate base
24 (treated as CIAC) because Global can demonstrate that its plant was constructed with debt or
25 equity from other sources. This argument ignores the fact that the mere presence of the ICFA
26 funds in Global's bank account frees up other cash or allows Global to acquire additional debt.
27 Certainly, the presence of ICFA funds in their bank account increases the financial health of
28

1 Global which, as Global itself admitted, in turn increases Global's access to debt. *See* Trans.
2 283:11-14. So while the exact dollar that a landowner provides to Global under the ICFA may
3 not go directly to plant construction, the mere presence of that dollar gives Global the ability to
4 borrow or invest other money in plant that it would not otherwise have been able to borrow or
5 invest without the ICFA money being in the account.
6

7 For example, Global alleges that it can prove that the not yet in service Southwest Plant
8 was constructed with funds derived from the sale of Industrial Development Authority bonds
9 (the "IDA Bonds"). Global acknowledges in its testimony that it intends to pay the carrying
10 costs for those bonds with monies collected under the ICFAs. *See* Trans. 292:18-24. If Global
11 cannot pay the interest costs (which it intends to do with ICFA funds) then it will default on the
12 bonds which could expose the company to great liability or forfeiture of the Southwest Plant.
13

14 Global asks the Commission to draw an illogical distinction between interest payments
15 on the bonds and the bond proceeds. Global argues that the money spent on plant needs to be
16 separated from any interest payments that provided access to such money. Global's argument
17 would be akin to someone concluding they can buy a house even though they cannot afford the
18 interest payments on the loan. Part of buying the house obviously is making the interest
19 payments on the house; if one cannot afford the interest payments then one cannot afford the
20 house. The economic truth is that Global simply will not be able to enjoy the benefit of the IDA
21 Bonds if it is unable to pay the interest on the IDA Bonds; interest it intends to pay with ICFA
22 money. Global itself admitted in the hearing that there is a direct relationship between the IDA
23 Bonds and the ICFA money. *See* Trans. 292:18.
24
25

26
27 C. **Global has known for years of the uncertainty regarding the treatment of**
28 **ICFA funds and assumed the significant risk that such funds could receive a**
different regulatory treatment.

1 During the evidentiary hearing it became clear that Global has known for years that the
2 status of ICFA agreements and their treatment was unresolved and despite knowledge of this
3 uncertainty Global continued to enter into numerous ICFAs. In fact, Mr. Hill testified that he
4 was aware that the ACC opened a docket to investigate the status of ICFA agreements in October
5 of 2006. See Trans. 290:16. Further, Mr. Hill testified that he had discussed the treatment of
6 ICFAs with the Commission on several occasions for years prior to the opening of the docket in
7 2006. See Trans. 291:3-20. In addition, as some of the ICFAs themselves point out, there was
8 an action filed against Global in 2006 alleging that the ICFAs were invalid under Arizona law.
9 See Exhibit A-49 at 15, *see also*, A-50 at 15.
10
11

12 In recognition of this apparent uncertainty Global appears to have routinely built
13 language into the ICFAs acknowledging the fact that status of the ICFAs themselves was in
14 question. In addition to the acknowledgements of the uncertainty referenced above in Exhibits
15 A-49 and A-50, another ICFA in the record states:
16

17 Coordinator [Global] shall be responsible for and assume the risk of any future
18 regulatory treatment of this Agreement by the ACC, including (without
19 limitation) the imposition of hook-up fees or other charges related to the extension
20 of Utility Services to the Land, and shall indemnify and hold harmless Current
21 Owner and Landowners for, from and against the consequences of same. Without
22 limiting the forgoing, Current Owner and Landowner shall not be liable for any
23 additional costs in the event that the ACC treats any payments under this
24 Agreement as contributions or advances in aid of construction, or in the event the
25 ACC imposes hook-up fees or other charges related to the Off-Site Facilities, and
26 Coordinator shall be responsible for payment of same.
27

28 Exhibit A-48 at 8, ¶3. This provision makes it perfectly clear that Global was aware of
uncertainty related to the treatment of the ICFA. Perhaps more importantly however, it makes it
clear that Global was willing to enter into the ICFAs even with the risk that the money would
receive a different regulatory treatment and that it may, as a result, require additional payments
from Global to payback the landowner who would otherwise be impacted. It can be concluded

1 that Global very clearly made a business decision to assume the risk of a different treatment of
2 ICFA funds.

3
4 **D. Correctly treating ICFA funds as a deduction from rate base would not be**
5 **punitive and would be consistent with Arizona law.**

6 Global claimed at the hearing that it would be “very punitive” (*See* Trans. 173: 17) to
7 treat the ICFA funds as a reduction from rate base despite the fact that Global took a business
8 risk in moving forward on the basis of what it unequivocally knew to be an untested method.
9 The City of Maricopa submits that there is nothing punitive about correctly classifying the ICFA
10 funds as a deduction from rate base when Global knew all along that it was using a risky and
11 unresolved approach. Allowing Global to accept ICFA funds without a corresponding deduction
12 from the rate base calculation encourages Global to make imprudent and risky business decisions
13 in direct contravention Arizona’s regulatory structure that encourages prudent investment and
14 expenditures of public service corporations. Arizona’s adopted regulatory structure for the rate
15 base calculation requires public service corporations to act reasonably and prudently in making
16 capital investments. *See* A.A.C. § R14-2-103(A)(3)(h).
17

18
19 While this Code section is not directly on point as to the specific issue of the collection of
20 ICFA funds, it does demonstrate that there is precedent for making sure that utilities such as
21 Global do not act irresponsibly and do not take unreasonable risk. In the context of *prudent*
22 *investments* the Code declares that term to mean:

23
24 Investments which under ordinary circumstances would be deemed reasonable
25 and not dishonest or obviously wasteful. All investments should be presumed to
26 have been prudently made, and such presumptions may be set aside only by clear
27 and convincing evidence that such investments were imprudent, when viewed in
28 light of all of the relevant conditions known or which in the exercise of reasonable
judgment should have been known, at the time such investments were made.

1 A.A.C. § R14-2-103(A)(3)(I). While the act of collecting ICFA funds was not an “investment”
2 in and of itself, this Code Section clearly demonstrates that Global has a duty to make prudent
3 decisions. By way of analogy it is helpful to imagine a situation where Global had invested
4 money in some questionable technology at its plant while knowing all along that the technology
5 could be a complete failure and may not even function. In fact, to liken it to the ICFA situation
6 even more, imagine that Global was the only company in the State and the entire Country that
7 invested in this technology and took this risk and that it did it 157 separate times (the number of
8 times Global entered into ICFAs) over the course of 5 or more years. In this example it is
9 unconscionable to imagine a situation where such a knowing investment in faulty plant would be
10 defined as anything other than imprudent under the Code.
11
12

13 Global’s claim that a treatment of ICFAs as a reduction from rate-base would be punitive
14 requires the Commission to simply ignore the fact that Global entered into those ICFAs with full
15 knowledge that their treatment was unresolved and that it was the only utility it knew of in the
16 State and the Country that was using such a mechanism.
17

18 **E. ICFAs are not necessary for quality regional planning**

19 In Global’s request for approval of the ICFA funding mechanism it bases a great deal of
20 its argument on the potential for benefits of greater efficiencies that can be achieved via regional
21 planning. Although Global has pointed out other utilities that have higher operating costs it is
22 not self-evident that AIAC and CIAC are responsible for this. Nor is it self evident that the
23 ICFA funding mechanism would actually achieve benefits that outweigh the potential risks
24 associated with the mechanism. AIAC and CIAC have been the basis of utility infrastructure
25 planning and development throughout the country for years. Changing this as Global proposes
26 to do requires an analysis not only of the perceived problems of AIAC and CIAC but the
27
28

1 potential dire consequences for rate payers of abandoning the demonstrated and well-tested
2 existing mechanisms

3 Using ICFA funds for regional planning efforts may arguably lead to greater operating
4 efficiencies (as Global suggests) when growth is strong and continuous. However, the opposite
5 is true as well. When growth stalls, ICFA funding leads to inefficiencies and risks, the expense
6 of which rate payers must bear. *See* Trans. 327:21. The question really comes down to who is
7 the appropriate party to bear that risk and which mechanism (ICFA or CIAC/AIAC) correctly
8 allocates that risk. When traditional CAIC and AIAC is used, the risk of stalled growth falls
9 squarely on the shoulders of the land owners. When ICFA funds are used (and not treated as
10 CAIC) then the risk of stalled growth falls on the utility and ultimately the ratepayers. *See*
11 Trans. 352-353:15-5. A perfect example of the risks of the ICFA mechanism can be found in the
12 now idle \$33 million dollar Southwest Plant that Global constructed. If landowners were
13 required to build/fund the Plant with CIAC it is unlikely this huge economic waste would have
14 occurred. Instead, the Southwest Plant would have been built along with development instead of
15 preceding development and the utilities and the rate payers would not have been at risk. As it
16 stands right now Global must pay carrying costs on the Southwest Plant for the foreseeable
17 future while it remains idle. In addition, if the Southwest Plant were used and useful today it
18 appears that Global would be seeking a rate of return on the plant even though it collected \$50
19 million from Maricopa landowners through ICFAs. This would be a windfall for the Company
20 and a bad deal for rate payers.

21 Furthermore, the Applicant has not presented any evidence as to why other means cannot
22 be used to support better regional planning and therefore achieve greater efficiencies. For
23 example, Global cites the fact that small utilities cannot be acquired without a “premium” due to
24

1 the differences in their market value vs. their rate base. *See* Trans. 331:1-13. However, the
2 Applicant does not explain why the Commission cannot use acquisition adjustors to account for
3 this difference and therefore, encourage regional planning in the right scenario. This mechanism
4 would achieve the presumed benefits of regional acquisitions of smaller companies without
5 exposing ratepayers to the potentially drastic risks associated with stalled growth and the ICFA
6 funding mechanism. The fact that acquisition adjustors have not been historically prevalent does
7 not mean they cannot be used more often and more effectively when appropriate.
8

9
10 Furthermore, the efficiencies that Global seeks via small utility acquisition and
11 consolidation can also be encouraged and achieved through other means such as coordinated
12 regional planning efforts. If it is determined that Arizona rate payers can benefit through greater
13 inter-utility coordination of water infrastructure planning then the Commission can and should
14 take efforts to ensure this occurs. A loose analogy could be drawn to the Commission's CEC
15 process for sighting and coordinating electric transmission service. Regardless of how this is to
16 be accomplished however, it is patently clear that it is not a goal worth pursuing if it means
17 exposing the ratepayers to the inherent risks of development growth that should be rightfully
18 borne by developers themselves.
19

20
21 Finally it is worth noting that if the Commission should allow the ICFA treatment as
22 Global has requested this could prove disastrous to the utility industry and ratepayers
23 everywhere. As an example, accepting the ICFA funding mechanism would essentially
24 encourage companies and investors to speculate on smaller water utilities. If they assume that
25 growth will eventually come to an area (which they would do if they have little to no risk
26 associated with that assumption because the risk is transferred to the ratepayers), then there is
27 nothing to discourage them from making this bet. This could mean that perfectly functioning
28

1 small utilities which provide adequate service at reasonable rates are suddenly a target of large
2 investors. If these investors speculate incorrectly, however, the ratepayers are the ones who pay
3 most dearly.
4

5 As we have seen in the most recent real-estate market collapse, when we transfer too
6 much risk away from investors and developers the market quickly becomes over-inflated and
7 suffers a drastic correction. Apply this model to something as essential as water service and the
8 Commission could be flirting with disaster.

9
10 **F. Commission precedent says that all ICFA money treated as CIAC must be**
11 **deducted from rate base as part of this proceeding even if the corresponding**
12 **plant is not yet in service.**

13 If the Commission agrees with Staff, RUCO and the City of Maricopa that ICFA funds
14 must be treated as CIAC then the Commission must reduce Global's rate base by the total
15 amount of the ICFA funds collected within each utility's service area. For the Palo Verde and
16 Santa Cruz utilities Global took in \$50 million in ICFA funds (*See Exhibit S-10 at p. 14:10*)
17 which in turn should trigger a \$50 million reduction in rate base. As recently as December of
18 2009, the Commission has upheld its longstanding practice of reducing rate base in accordance
19 with the CIAC or AIAC that a utility receives when it receives the CIAC or AIAC whether or not
20 the corresponding plant is in service at the time the rate case is brought. *See Decision 71410 at*
21 *28:1-2 (finding no reason to abandon the "traditional ratemaking treatment of deducting AIAC*
22 *and CIAC from rate base"). In 2007 Decision 70011 the Commission succinctly explained that*
23 *customer supplied funds must be deducted from rate base when received and that, "regulated*
24 *companies control the timing of their rate case filings and should not be heard to complain when*
25 *their chosen test periods do not coincide with the completion of plant that may be considered*
26 *used and useful and therefore properly included in rate base." Decision 70011 at p. 9:24-27. It*
27
28

1 is settled law before the Commission that if the ICFA funds are treated as CIAC then all the
2 funds must be treated as a reduction from rate base once accepted without regard for the status of
3 the corresponding plant's service.
4

5 In the alternative, should the Commission find that it believes it is inappropriate to deduct
6 the entire \$50 million in ICFA fees from rate base for the Maricopa utilities, the City of
7 Maricopa submits that the Commission is required to at least deduct the amount of the Southwest
8 Plant from rate base at this time. Treating the ICFA funds as CIAC as requested herein results in
9 a determination that the Southwest Plant was built with CIAC, or at least CIAC-equivalent funds.
10 As a result, the Commission has routinely held that even if the plant is not yet used and useful
11 the corresponding CIAC contribution must be deducted from rate base at the time of the rate
12 case. Global's Application indicates that the Southwest Plant cost \$32,391,318 (\$17,941,342
13 attributable to Santa Cruz and \$14,449,976 attributed to Palo Verde) (*See Exhibit A-1 at p. 2:15-*
14 *27*) and as a result that amount must be deducted from the rate base of the utilities.
15
16

17 **G. The fact that members of Global paid tax on the ICFA funds is irrelevant to**
18 **the treatment of those funds as CIAC because Global's self-imposed**
19 **corporate structure creates the potential tax liability and its members may**
20 **apply for credits and refunds under the Internal Revenue Code.**

21 Mr. Hill's rebuttal testimony urges the Commission to reject treatment of ICFA revenues
22 as AIAC or CIAC because he asserts that there is tax liability generated from the ICFA revenues.
23 *See Exhibit A-8 at p. 21:12-25, 22:1-9.* Mr. Hill explains that since ICFA's were intended as a
24 consolidation tool and executed at the parent level through Global, the utilities' parent company,
25 all such revenue received from ICFA's are taxable and passed through to the individual members
26 of Global. According to Mr. Hill, this is a reason that the Commission should not treat ICFA
27 funds as a deduction from rate base or should at least subtract the tax paid from any such
28 reduction.

1 Such tax liability is irrelevant to the Corporation Commission's regulatory treatment of
2 ICFA's because the tax liability is self-imposed by Global's organization as a limited liability
3 company and because members of Global may apply to the IRS for a credit or refund of taxes
4 paid on ICFA revenues under the Internal Revenue Code depending upon the Commission's
5 ruling.
6

7 i. Tax liability is self-imposed by Global Parent.

8 The City of Maricopa concurs with Staff's position that the tax liability of Global's
9 individual members is self-imposed by its election to organize as a limited liability company and
10 by failing to treat such funds as non-taxable contributions to the utilities themselves. *See* Exhibit
11 S-10 at p. 4-5. Of particular significance, and not adequately recognized by Mr. Hill in his
12 rebuttal testimony, is Staff's finding that Global makes distributions to all members to pay the
13 income taxes passed through to such members from the ICFA revenues. *Id.* at p. 4:16-19.
14 Although Staff correctly concludes that the ICFA revenues have "zero cost to the members" of
15 Global (*see id.* at p. 5:20), Global concludes that the tax liability must be offset from ICFA
16 revenues (along with several other parent-level costs), and then, and only then, could any
17 remaining funds possibly be considered AIAC or CIAC. *See* Exhibit A-8 at p. 22:4-14. Mr.
18 Hill's position is illogical when the tax treatment was self-imposed and the ICFA revenue could
19 properly be considered non-taxable contributions to the Global utilities. *See* Exhibit S-11 at p.
20 5:4-6.
21

22 ii. To the extent that members of Global Parent paid taxes on ICFA revenues,
23 they may apply for a refund or credit under the Internal Revenue Code.
24

25 Furthermore, the City of Maricopa also contends that the tax liability of the members of
26 Global Parent is inconsequential to characterization of all ICFA funds received by Global as
27 AIAC or CIAC because such members may apply to the Internal Revenue Service for a refund or
28

1 credit of taxes paid on the ICFA funds. *See* 26 U.S.C. § 6511. Although Global concludes that
2 the tax liability already must be offset from the ICFA revenues (*see* Exhibit A-8 at p. 22:4-14), it
3 fails to recognize that if the Commission characterizes all ICFA revenue as AIAC or CIAC, the
4 individual members may seek redress through the Internal Revenue Service for a refund or credit
5 of taxes actually paid within a three year period. *See id.* Section 6511 of the Internal Revenue
6 Code (Title 26 of the U.S. Code) authorizes a taxpayer to file a claim for a credit or refund of
7 taxes overpaid within three years of filing the return or within two years of when the tax was
8 paid, whichever is later. *See* 26 U.S.C. § 6511(a). Accordingly, the Commission should not
9 offset any amount of ICFA funds from AIAC or CIAC treatment due to taxes paid on amounts
10 received when the members of Global Parent can and should apply for refunds or credits on any
11 taxes actually paid for 2006, 2007 and 2008.

14 **III. GLOBAL'S APPLICATION FOR A RENEWABLE ENERGY RECOVERY**
15 **TARIFF SHOULD BE DENIED AS THE COMMISSION SHOULD HAVE AN**
16 **OPPORTUNITY TO ADDRESS RENEWABLE ENERGY COSTS IN A**
17 **REGULAR RATE CASE AND NOT BY AN ADJUSTOR.**

18 While the City of Maricopa certainly encourages and supports the use and
19 implementation of renewable energy by all utilities providing services to the City's residents, it
20 concurs with Staff's and RUCO's position that Global's proposed renewable energy recovery
21 tariff is the not a responsible mechanism for Global's recovery of renewable energy costs.

22 RUCO's direct testimony regarding the lack of necessity for employing an ACRM-like
23 adjustor proposed by Global to recover renewable energy costs is well founded and existing
24 Commission decisions support this conclusion. *See* Exhibit R-4 at p. 6:7-21, 7-9, 10:1-6. Like
25 RUCO, the City agrees that Global should be able to recover its renewable energy costs but that
26 such costs should be thoroughly reviewed with appropriate Commission oversight.
27
28

1 The City also supports Staff's position that the recent APS Settlement does not support
2 Global's ability to recover renewable energy costs on an accelerated basis through adjustors. *See*
3 Exhibit S-11 at p. 10:1-19. To ensure appropriate Commission consideration and oversight,
4 recovery should be addressed in a regular rate case as Staff aptly suggests. *Id.* at p. 10: 10-13.
5

6 **IV. USE OF A PASS THROUGH OR ADJUSTOR FOR GLOBAL'S REAL**
7 **PROPERTY TAXES IS NOT NECESSARY OR APPROPRIATE.**

8 In his rebuttal testimony, Mr. Jamie Moe of Global concludes that while the use of a pass
9 through for the costs of Global's real property tax liability may not be appropriate, such costs are
10 sufficiently volatile to warrant an adjustor. *See* Exhibit A-22 at p. 8:13-26, 9:1-13. The City of
11 Maricopa disagrees with Global and concurs with Staff and desires to clarify Mr. Moe's
12 statement regarding the City's increase of construction contracting taxes in 2005. *See id.* at p.
13 9:8-13. Mr. Moe's reference to the construction contracting tax is misleading because such tax is
14 a privilege tax and it neither relates to nor has any effect upon real property taxes (it is a tax
15 imposed on construction contractors within the City). In other words, there is absolutely no
16 relationship between a privilege tax that contractors pay when they choose to construct in the
17 City and the property tax rate that is imposed on all in the City. As a result Mr. Moe's analogy
18 fails and a fluctuation in the construction sales tax rate simply cannot be used to predict anything
19 with regard to property tax rates.
20
21

22 **V. GLOBAL SHOULD NOT BE GRANTED A PASS THROUGH FOR CAGR D**
23 **FEEES IT DOES NOT YET PAY.**

24 The City concurs with Staff's position regarding CAGR D fees in its entirety as presented
25 by Linda A. Jaress in her Direct Testimony. *See* Exhibit S-10 at p. 37:22-27, 38:1-8. Global
26 should not be permitted to take advantage of an accelerated cost recovery process for
27 unsubstantiated costs not yet incurred.
28

1 **VI. CONCLUSION**

2 The City of Maricopa has deep concerns about the extent of this proposed rate increase.
3
4 The key issue in this regard is the Commission's treatment of the ICFA funds that Global
5 collects. The evidence makes it clear that the sole purpose for Global's utilization and invention
6 of the ICFA model is to avoid the deduction from rate base that would occur if they did business
7 in the same manner as every other utility. Global will reap unfair benefits at the expense of the
8 City and its citizens if it is allowed to earn a return on ICFA money simply because it spends
9 different dollars on plant. In fact, should the Commission find that Global's ICFA scheme is
10 legitimate it can likely expect that all utilities will employ this model and rate payers across the
11 State would suffer. The City appreciates the Commission's close attention to this important
12 issue and thanks the Commission for coming to Maricopa to hear from its citizens in early
13 December.
14