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BEFORE THE ARIZONA CORPORATIC...

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COMMISSIONERS

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AZ CORP COMMISSION
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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
VALENCIA WATER COMPANY – TOWN 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-01212A-12-0309

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 REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE OF ITS
PROPERTY THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. SW-20445A-12-0310

IN THE MATTER OF THE APPLICATION OF WATER
UTILITY OF NORTHERN SCOTTSDALE, INC. FOR A
RATE INCREASE

Docket Nos. W-03720A-12-0311

IN THE MATTER OF THE APPLICATION OF
WATER UTILITY OF GREATER TONOPAH 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-02450A-12-0312

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-12-0313

GLOBAL'S POST-HEARING BRIEF

1 IN THE MATTER OF THE APPLICATION OF
2 GLOBAL WATER – SANTA CRUZ WATER COMPANY
3 FOR THE ESTABLISHMENT OF JUST AND
4 REASONABLE RATES AND CHARGES FOR UTILITY
5 SERVICE DESIGNED TO REALIZE A REASONABLE
6 RATE OF RETURN ON THE FAIR VALUE OF ITS
7 PROPERTY THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. W-20446A-12-0314

5 IN THE MATTER OF THE APPLICATION OF
6 WILLOW VALLEY WATER COMPANY FOR THE
7 ESTABLISHMENT OF JUST AND REASONABLE
8 RATES AND CHARGES FOR UTILITY SERVICE
9 DESIGNED TO REALIZE A REASONABLE RATE OF
10 RETURN ON THE FAIR VALUE OF ITS PROPERTY
11 THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. W-01732A-12-0315

12 **GLOBAL'S POST-HEARING BRIEF**

13 **October 18, 2013**

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TABLE OF DEFINED TERMS

<i>Term</i>	<i>Definition</i>
208	Approved Plan Amendment in accordance with Section 208 of the Clean Water Act
ACC	Arizona Corporation Commission
APS	Arizona Public Service Company
CIAC	Contribution in Aid of Construction
CC&N	Certificate of Convenience and Necessity
City	The City of Maricopa, Arizona
CPI	Consumer Price Index, calculated in accordance with a formula set forth in each ICFA
Ex.	Exhibit
Global	The Global Applicants and the Global Intervenors
Global Applicants	Global Water – Palo Verde Utilities Company, Global Water – Santa Cruz Water Company, Valencia Water Company – Town Division, Valencia Water Company – Greater Buckeye Division, Water Utility of Greater Tonopah, Willow Valley Water Co. and Water Utility of Northern Scottsdale
Global Intervenors	Global Water Resources, Inc., Hassayampa Utility Company, Inc., Global Water – Picacho Cove Utilities Company and Global Water – Picacho Cove Water Company
Global Parent	Global Water Resources, Inc.
Global Utilities	The Global Applicants and Hassayampa Utility Company, Inc., Global Water – Picacho Cove Utilities Company and Global Water – Picacho Cove Water Company
HUF	Hook Up Fee
ICFA	Infrastructure Coordination and Finance Agreement, also sometimes termed an Infrastructure Coordination, Finance and Option Agreement
IDA	Industrial Development Authority, a type of local government agency used to issue tax-free debt. The proceeds of IDA bonds may be lent to private utilities for certain specified purposes. See A.R.S. § 35-701.

<i>Term</i>	<i>Definition</i>
Maricopa HOAs	The following Maricopa Arizona Home Owner's Associations: Acacia Crossings Homeowners Association, Alterra Homeowners Association, Cobblestone Farms Homeowners Association, Desert Cedars Homeowners Association, Desert Passage Community Association, Glennwilde Homeowners Association, Homestead North Homeowners Association, Maricopa Meadows Homeowners Association, Province Community Association, Rancho El Dorado Homeowners Association, Rancho El Dorado Phase III Homeowners Association, Rancho Mirage Master Planned Community Homeowners Association, Senita Community Association, and Sorrento Community Master Association
NWP	New World Properties, Inc.
Palo Verde	Global Water – Palo Verde Utilities Company, and where appropriate, its predecessor companies including Palo Verde Utilities Company, LLC
RUCO	Residential Utility Consumer Office
Santa Cruz	Global Water – Santa Cruz Water Company, and where appropriate, its predecessor companies including Santa Cruz Water Company, LLC
SIB	System Improvement Benefits Mechanism, a type of Distribution System Improvement Charge
SNR	Sierra Negra Ranch, LLC
Staff	The Utilities Division of the Arizona Corporation Commission
Tr.	Transcript of the evidentiary hearing in these dockets.
WMC	West Maricopa Combine, Inc., parent company of Water Utility of Greater Tonopah, Inc., Valencia Water Company, Inc., Water Utility of Greater Buckeye, Inc., Water Utility of Northern Scottsdale, Inc. and Willow Valley Water Co., Inc.

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1 **I. Introduction.**

2 **A. The settlement agreement is fair, widely-supported and should be approved.**

3 The settlement agreement in this case is supported by a remarkably large and diverse array of
4 parties. The settlement was signed by 17 parties, and only 2 parties oppose it. The 17 parties that
5 support the settlement include Global, Staff, RUCO, the City of Maricopa, and thirteen homeowners'
6 associations within the City of Maricopa. In addition, State Senator Al Melvin and Pinal County
7 Supervisor Anthony Smith—who both represent the Maricopa area—provided public comment in
8 support of the settlement.¹ A matrix listing all parties to this case and their position on the settlement
9 agreement is included as Attachment A.

10 The settlement agreement also resolves a number of thorny issues, including the complex and
11 long-standing regulatory issues surrounding ICFA's. The ICFA issues have been before the
12 Commission for many years. If approved, the settlement will finally resolve the ICFA issues. As
13 RUCO Director Pat Quinn explained, in his view “the main primary benefit, is that we finally have the
14 ICFA's ... fixed for past, present, and future.”² Notably, in the last Global rate case, Staff, RUCO and
15 the City all opposed Global regarding the ICFA issues, yet today these parties all support the
16 settlement.

17 The settlement agreement was reached only after lengthy negotiations. It was possible only
18 because Global, Staff, RUCO, the City and the Maricopa HOAs were willing to compromise and work
19 together to develop an agreement that is in the public interest. Many of the benefits of the settlement
20 could not have been achieved by litigation.³ The settlement meetings were open to all parties, and all
21 parties had a chance to express their views.⁴ As Mr. Olea testified, the settlement discussions were
22 “frank and vigorous” and “all the parties had a chance to air their views.”⁵

23 _____
24 ¹ Tr. at 225 to 227 (Supervisor Smith); Tr. at 570 to 572 (Senator Melvin).

25 ² Tr. at 191:11-14.

26 ³ Ex. S-5 (Olea Testimony) at 14:6-7; Tr. at 482 to 484 (Walker).

27 ⁴ Ex. R-5 (Quinn Testimony) at 2:18 to 3:8; Ex. S-5 (Olea Testimony) at 5:1-5; Ex. A-19 (Fleming Testimony) at 3:21 to 4:18.

⁵ Tr. at 688:20-24.

1 The settlement agreement also includes a number of important customer benefits:

- 2 ● An eight year phase-in of rates for the Maricopa area, and three years for all other
- 3 areas.
- 4 ● The revenue “lost” under the phase-in is not deferred for later recovery.
- 5 ● There is no rate increase in 2014, the first year of the phase-in.
- 6 ● The Global Applicants are prohibited from filing a new rate case until May 2017 in the
- 7 Maricopa area, and May 2016 in all other areas.
- 8 ● The complex ICFA issues are resolved.
- 9 ● Global’s financial condition is improved, benefiting customers as Staff and RUCO
- 10 recognize.⁶

11 **B. The SIB Mechanism will protect customers from rate shock and promote critical**

12 **investment in infrastructure.**

13 One issue was not resolved by the settlement agreement. That issue was the SIB mechanism.

14 Global originally sought a distribution system improvement charge for a number of systems. But

15 Global now seeks a SIB only for the system with the most urgent need—its Willow Valley system.

16 This system is one of the systems Global acquired as part of the West Maricopa Combine transaction

17 in 2006⁷, and since that time Global has invested millions of dollars in fixing urgent issues within the

18 Willow Valley system.⁸ There is no question that the Willow Valley pipeline distribution system was

19 old and in poor repair when Global bought it, that it remains so despite millions in investment by

20 Global, and that the distribution system must be largely replaced.⁹ The SIB mechanism will allow this

21 necessary replacement to begin while protecting ratepayers from large “rate shock” type rate

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23 ⁶ Tr. at 689:3-18 (Olea); Ex. S-5 (Olea Testimony) at 10:19-26; Tr. at 197 to 198 (Quinn).

24 ⁷ See e.g. Ex. A-25 (updated acquisition list and schedule).

25 ⁸ Tr. at 789:22 to 790:3 (Fleming).

26 ⁹ Ex R-7 (Global engineering report); Ex. A-10 (Fleming Direct) at Attachment 3 (2011 Global

27 engineering report); Ex. A-19 (Fleming Testimony) at Attachment 1 (August 2013 Global engineering

report); Ex. A-40 (pipe photographs); Ex. A-41 (water sample photographs); Ex. A-42 (revised

engineering report and schedules); Ex. A-43 (response to RUCO data request regarding SIB); Ex. A-

44 (revised Figures 3, 12, and 15 to engineering report); Tr. at 787 to 789 (Fleming).

1 increases.¹⁰ The SIB mechanism proposed for Willow Valley is identical to the SIB previously
2 approved by the Commission for Arizona Water Company.¹¹ The SIB mechanism for Willow Valley
3 is supported by Global and Staff.

4 **II. Benefits of the Settlement Agreement.**

5 **A. Benefits to Customers.**

6 **1. Phase-Ins of rate increases.**

7 A significant benefit of the settlement agreement is the very extended rate phase-in required
8 under the settlement agreement. The rates for Global's utilities in the Maricopa area¹² are phased-in
9 over eight years.¹³ The last rate phase will not occur until 2021.¹⁴ Such a lengthy phase-in is
10 unprecedented.¹⁵ This extremely lengthy phase-in was agreed by the settling parties to limit the rate
11 impact of repairing the balance sheets of the Global Utilities as part of the resolution of the complex
12 ICFA issues in this case. Because the rates for the other Global Applicants are not impacted by the
13 resolution of the ICFA issues, those rates will be phased-in over three years, with the exception of
14 Water Utility of Northern Scottsdale, which has no rate increase.¹⁶ In the non-Maricopa areas, the
15 driver of the rate increase is primarily operating expense increases, and not plant in service investment
16 (as in the City of Maricopa).

17 In addition, the recycled and non-potable water rates in Maricopa will be phased-in over eight
18 years, a significant benefit to the Maricopa HOAs who were very concerned with the increase in their
19 irrigation expenses. Moreover, under all of these phase-ins, there will be no rate increase at all in the
20
21

22 _____
23 ¹⁰ Ex. A-30 (Walker testimony) at 10:26; Tr. at 899 to 903 (Walker).

24 ¹¹ Ex. A-45 (ACC Decision No. 73938, June 27, 2013); Ex. A-30 (Walker testimony) at 10:4-8.

25 ¹² Global Water – Santa Cruz Water Company and Global Water – Palo Verde Utilities Company.

26 ¹³ Ex. A-17 (Settlement Agreement) at § 3.4; *see also* Ex. A-24 (timeline of rate phase-in).

27 ¹⁴ Ex. A-24 (timeline of phase-in); Tr. at 692:3-6 (Olea).

¹⁵ *See e.g.* Tr. at 692:7-9(Olea)(no knowledge of any phase-in of that length).

¹⁶ Ex. A-17 (Settlement Agreement) at §§ 3.4 and 3.6; *see also* Ex. A-24 (timeline of rate phase-in).

1 first year of the phase-in, i.e. 2014. Further, the millions of dollars in revenue Global is foregoing
2 under all of these phase-ins will not be recovered or deferred for later recovery.¹⁷

3 **2. Rate case “stay outs.”**

4 The Global Applicants also agree to not file new rate applications for several years. For the
5 utilities outside of Maricopa, they may not file a new rate case before May 31, 2016.¹⁸ At the request
6 of the City, Global has agreed to an even longer stay out for its Maricopa utilities (Palo Verde and
7 Santa Cruz); those utilities may not file new rate applications before May 31, 2017.¹⁹ This concession
8 was clearly important to the City, as the City Council explained in its Resolution:

9 As a special negotiated concession for Santa Cruz and Palo Verde system ratepayers
10 and the City of Maricopa, Santa Cruz and Palo Verde will not file another rate
11 increase application before May 31, 2017, and will not use a rate case test period
12 ending before December 31, 2016, which means any rate increase resulting from
13 Santa Cruz’s or Palo Verde’s next rate case would not take effect until mid 2018 or
14 later, with rates between now and then being based upon Santa Cruz’s and Palo
15 Verde’s 2009-2011 expenses, as adjusted downward by the Commission Staff in the
16 current case.²⁰

17 As Mr. Olea explained, this means that there will be at least five years between test years for
18 Maricopa area ratepayers.²¹ Moreover, as recognized by the City Council Resolution, in practical
19 terms, given the time needed to process a rate case, any new rates from a subsequent rate case could
20 not take effect until mid-2018 at the earliest. Staff, RUCO and the City all recognize that the stay out
21 is a benefit of the settlement agreement.²²

22 **3. Lower revenue requirement.**

23 The revenue requirement proposed in the settlement agreement is less than half that requested
24 by Global. Staff, RUCO and the City all recognize that the lower revenue requirement is a benefit for
25

26 ¹⁷ Ex. A-17 (Settlement Agreement) at § 3.4.

27 ¹⁸ Ex. A-17 (Settlement Agreement) at § 2.1.1.

¹⁹ Ex. A-17 (Settlement Agreement) at § 2.1.1.

²⁰ Ex. City-2 (Jepson Testimony) at Appendix A (City Council Resolution No. 13-30, dated August 20, 2013) at page 2, paragraph no. 5.

²¹ Tr. at 689:19 to 690:8.

²² Ex. S-5 (Olea Testimony) at 8:17-19; Tr. at 690:6-8 (Olea); Ex. R-5 (Quinn Testimony) at 5:17 and 8:1-7; Ex. City-2 (Jepson Testimony) at Appendix A (City Council Resolution No. 13-30, dated August 20, 2013) at page 2, paragraph no. 5.

1 customers in the settlement agreement.²³ The percentage reduction of the revenue requirement (as
 2 compared to the rate application) for each of the seven applicants is shown in the table below²⁴:

Utility	Revenue Increase Requested in Global's July 9, 2012 Application	Settlement Revenue Increase	% Decrease Compared to Application
Palo Verde	\$3,662,560	\$1,888,939	48%
Santa Cruz	\$2,730,367	\$1,556,046	43%
Valencia-Town Division	\$823,424	\$252,554	69%
Valencia-Greater Buckeye Division	\$36,423	\$9,289	74%
WUGT	\$677,458	\$199,983	70%
Willow Valley	\$507,537	\$404,269	20%
WUNS	\$0	\$0	0%
TOTAL	\$8,437,769	\$4,311,080	49%

17 A major component of the reduced revenue requirement comes from the settlement's use of
 18 Staff's expense levels (with one exception).²⁵ This is especially significant because Staff used a three
 19 year average "normalization" for many of its expenses.²⁶ Staff's three year period was 2009 to 2011.²⁷

21 ²³ Tr. at 34:4-8 (Opening Statement of Ms. Scott)(noting that "the parties also attempted, and Staff
 22 believes successfully, to hold ratepayers harmless to a great extent and to give them significant
 23 benefits in this agreement as well"); Tr. at 38:2-8 (Opening Statement of Ms. Scott); Ex. R-5 (Quinn
 24 Testimony) at 5:14-15; Tr. at 21 (Opening Statement of Mr. Robertson for the City)("there has been an
 25 appropriate reduction and mitigation in the revenue requirement increase and the increase in rates as
 they would impact ratepayers on the Santa Cruz Water and the Palo Verde Utilities systems"); Ex.
 City-2 (Jepson Testimony) at Appendix A (City Council Resolution No. 13-30, dated August 20,
 2013) at page 2, paragraph no. 1.

26 ²⁴ Ex. A-26 (Rowell Testimony) at Page 3, Table 2, with percentages added.

27 ²⁵ Ex. A-7 (Settlement Agreement) at § 2.5.

²⁶ Tr. at 691; Ex. S-1 (Becker Direct) at 17-25.

1 The normalized period substantially understates Global's ongoing expenses because 2009 and 2010
2 were recession years where Global was in survival mode and substantially curtailed expenses beyond
3 the level that can be sustained in the long-term.²⁸ Yet due to the three year phase-in of expenses,²⁹ this
4 reduced, normalized level of expenses will not be recovered until 2016 at the earliest.³⁰ As Mr.
5 Walker explained, accepting the reduced expenses was a "pretty significant" concession for Global.³¹

6 In addition, Global requested a cost of equity of 11.44%³², but the settlement agreement
7 proposes a cost of equity of only 9.5%.³³ This is 50 basis points less than the cost of the equity
8 approved for Arizona Water Company last month.³⁴

9 Overall, the increases in revenue requirements will be relatively modest for most customers
10 and most utilities, even if rates were not phased-in. Another benefit of the settlement is that it
11 provides relatively moderate rate increases for most customers, even at the end of the phase-in periods.

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23 ²⁷ Tr. at 691:11-14 (Olea); Ex. A-24 (timeline of rate phase-in).

24 ²⁸ Tr. at 441 to 442 (Rowell).

25 ²⁹ Ex. A-17 (Settlement Agreement) at § 1.5, 4th bullet point.

26 ³⁰ Tr. at 691:20-23 (Olea).

27 ³¹ Tr. at 483:5-7.

³² Ex. A-14 (Rowell Direct – Cost of Capital) at 52-53.

³³ Ex. A-17 (Settlement Agreement) at 4.2; Ex. A-26 (Rowell Testimony) at 6:9-15.

³⁴ Decision No. 74081 (Sept. 23, 2013).

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1 The overall revenue requirements are summarized in this table³⁵:

2 **Summary of Revenue Requirements**

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Utility	Test Year (2011) Revenue	Settlement Revenue Requirement	Settlement Revenue Increase	Settlement Revenue Increase as Percent of Test Year Revenue
Palo Verde	\$13,107,528	\$14,996,467	\$1,888,939	14.4%
Santa Cruz	\$10,463,460	\$12,019,506	\$1,556,046	14.9%
Valencia-Town Division	\$4,940,316	\$5,192,870	\$252,554	5.1%
Valencia-Greater Buckeye Division	\$462,043	\$471,331	\$9,289	2%
WUGT	\$207,705	\$407,689	\$199,983	96.3%
Willow Valley	\$702,652	\$1,106,922	\$404,269	57.5%
WUNS	\$147,513	\$147,513	\$0	0%

12 Global's largest utilities, in the Maricopa area, have increases of less than 15% at the end of the
13 eight year phase-in. However, two smaller utilities do have larger increases, Willow Valley Water
14 Company and Water Utility of Greater Tonopah. Willow Valley's increase is due in large part to the
15 \$3.2 million invested by Global in this system after it was purchased by Global, as well as increased
16 treatment costs due to new, improved treatment facilities that were required to correct serious
17 compliance and water quality issues.³⁶ For Greater Tonopah, special measures were taken to reduce
18 the impact. The settlement uses an operating margin to set rates for Greater Tonopah, resulting in an
19 increase of only \$199,983, as compared to an increase of \$560,000 under the traditional rate base / rate
20 of return method.³⁷ And that lower rate increase will be phased-in over three years, with no increase at
21 all in 2014.

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25 ³⁵ This table is included in Ex. A-26 (Rowell Testimony) at 3.

26 ³⁶ Tr. at 789:22 to 790:3 (Fleming); Ex. A-19 (Fleming Testimony) at 7-9; Ex. A-10 (Fleming Direct)
at 25-31.

27 ³⁷ Ex. A-27 (Rowell Rebuttal) at 2:13-19.

1 **4. Improved financial condition for Global Parent and the Global Utilities**

2 Another major benefit of the settlement is improving the financial condition of Global Parent
3 and the Global Utilities. The improvement is chiefly achieved through improving the balance sheets
4 of the Global Utilities by reversing the effect of the “imputation” of CIAC in Global’s last rate case.³⁸
5 Mr. Fleming explained that the imputation caused a net loss of \$79 million to Global in 2010, which
6 was a “major blow to Global’s consolidated balance sheet.”³⁹ Mr. Fleming emphasized that repairing
7 the balance sheet was “very important to Global,” but [h]aving a financially healthy utility is important
8 to everyone, including the ACC.”⁴⁰

9 Mr. Olea agreed that one of the benefits of the settlement is that it will “strengthen the balance
10 sheets” of the utilities impacted by the imputation.⁴¹ Mr. Quinn explained how residential ratepayers
11 benefit from improving the balance sheets of the affected utilities:

12 Well,... if you have a negative equity, that's probably not a good thing to have....
13 And I think it does affect them financially, even a possibility of securing loans or
14 other people to invest in them. So... it seemed to me that something needed to be
15 done to get this... once and all and ever resolved, put the company... in a good
16 situation to go forward and operate and provide quality of service both in water and
17 wastewater and at reasonable prices to the residential ratepayers.

18 So that was kind of our mission. We have got to make sure the company is going to
19 be around and stable to provide it to our customers at a reasonable rate.⁴²

20 Remarkably, the settlement agreement provides the benefit of fixing the impaired balance
21 sheets and improving the financial condition of Global Parent and the Global Utilities, *all while*
22 *limiting the rate impact to ratepayers.*

23 To achieve these apparently contrary objectives, much of the de-imputation is focused on plant
24 that is not currently in active rate base and thus not in rates. Indeed, only 28% of the de-imputation
25 impacts used and useful active rate base in this case.⁴³ And the rate impact of the 28% is further

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27 ³⁸ Ex. A-17 (Settlement Agreement) at 6.3.

³⁹ Ex. A-19 (Fleming Testimony) at 4:26 to 5:8; *see generally* Tr. at 56-58 and 60-63.

⁴⁰ Ex. A-19 (Fleming Testimony) at 4:26 to 5:8.

⁴¹ Tr. at 689:10-15 and 695:4-21.

⁴² Tr. at 198:14-20.

⁴³ Ex. A-30 (Walker Testimony) at 5:11-22.

1 reduced by the eight year phase-in. As a further protection, the rate impact of all of the de-imputation
2 for the Global Applicants is also subject to separate eight year phase-ins.⁴⁴ Overall, only Maricopa-
3 area customers will have a rate impact from the de-imputation in this case, and their impact will be
4 about 1% per year, with the full impact not felt until 2021.⁴⁵

5 In sum, the balance sheets of the Global Utilities (and thus the consolidated balance sheet of
6 Global Parent) will be restored, yet customers will be protected because the de-imputation is focused
7 on plant not in active rate base and because of the multiple eight year phase-ins. The restored balance
8 sheets will improve the financial health of the Global Utilities and Global Parent, thus improving their
9 access to debt and equity and ensuring they can continue to provide safe, reliable and adequate service
10 to all of their customers, which includes the communities in which they serve, HOAs, and even
11 developers.

12 **5. Other benefits.**

13 Customers also benefit from the continuation of the Global Utilities' low income program,
14 which will also be extended to the Water Utility of Northern Scottsdale.⁴⁶ In addition, customers
15 benefit because they will continue to be able to earn a rebate from their water bill for water use that is
16 lower than the conservation threshold for each utility.⁴⁷

17 **B. Benefits to Staff and RUCO.**

18 Staff and RUCO benefit from all of the customer benefits listed above. In addition, Staff and
19 RUCO view Global's commitment to not enter into any new ICFAs as a major benefit to the
20 settlement.⁴⁸ Staff also benefits from the Code of Conduct they requested. Under the settlement
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23 ⁴⁴ Ex. A-17 (Settlement Agreement) at §§ 6.3.2.3 (Santa Cruz and Palo Verde active rate base), 6.3.3.3
(Santa Cruz and Palo Verde Plant Held for Future Use); and 6.3.4.4 (Greater Tonopah).

24 ⁴⁵ Ex. A-30 (Walker Testimony) at 6:8-10.

25 ⁴⁶ Tr. at 690:9-12 (Olea); Ex. A-17 (Settlement Agreement) at § 1.5 (listing benefits), 7th bullet point.

26 ⁴⁷ Tr. at 690:13-17 (Olea); Ex. A-17 (Settlement Agreement) at § 1.5 (listing benefits), 8th bullet point.

27 ⁴⁸ Tr. at 693:19-23(Olea) and 698:14-17(Olea)("major goal"); Tr. at 191:11-15 (Quinn)("main primary
benefit" is resolution of ICFAs including that they are "gone"); Tr. at 199:10-18 (Quinn)("an
important aspect of the settlement agreement from RUCO's perspective" is elimination of new ICFAs).

1 agreement, the Code of Conduct will be developed by Global and Staff.⁴⁹ Mr. Olea explained that the
2 Code of Conduct will ensure that Global's intra-affiliate transactions will be "all transparent so we can
3 go and look at anything we need to look at and it will be easy to find," exceeding the requirements of
4 the Commission's affiliate rules.⁵⁰

5 **C. Benefits to ICFA holders.**

6 The settlement agreement also provides a number of benefits to developers or landowners that
7 are parties to ICFAs. It is important to remember that the opponents to the settlement – SNR and
8 NWP – represent only two of the 172 ICFAs.⁵¹ The other landowners with the other 170 ICFAs will
9 benefit from not having the contracts they voluntarily negotiated and entered into altered or even
10 voided at the request of SNR and NWP. As Mr. Olea testified, under the settlement, "the ICFAs aren't
11 being changed by the settlement agreement."⁵²

12 Landowners will also benefit from increased certainty in their ICFA contracts if the settlement
13 agreement is approved. If the settlement is approved, the ICFAs each landowner negotiated will
14 remain in place and unaffected. Mr. Olea explained that the settlement contemplates that the ICFA
15 payments will continue to be made as specified in each agreement.⁵³

16 Landowners also benefit from improvements to Global's financial health that will occur if the
17 settlement is approved because that financial improvement will increase their confidence that Global
18 Parent will be able to fulfill its obligations to them. As Mr. Fleming testified in response to a question
19 from Mr. Hays:

20 Q. Okay. Mr. Fleming, my client has given your company almost \$4 million and is still
21 responsible for almost 16 more million dollars. Do you, reading that last statement, do
22 you understand why there has been some questions about Global's viability when it
23 comes time to perform?

24 ⁴⁹ Ex. A-17 (Settlement Agreement) at § 8.7.

25 ⁵⁰ Tr. at 717:5-14.

26 ⁵¹ The 174 includes all "ICFA type agreements" listed on Attachment B to the Settlement Agreement.

27 ⁵² Tr. at 726:19-20.

⁵³ Tr. at 694:4-7.

1 A. As I stated earlier, I understand the concern. I am baffled by your opposition to the
2 settlement which helps fix that.⁵⁴

3 Going forward, landowners with ICFAs will also benefit from having 70% or more of their
4 payments treated as hook-up fees and placed in segregated, restricted bank accounts.⁵⁵

5 **D. Benefits to Global.**

6 Of course Global will also benefit from the settlement agreement. There were a number of
7 provisions in the settlement that were difficult for Global to accept – such as the eight year phase-in in
8 Maricopa, using outdated 2009 expenses as part of the expense “normalization”, and the prohibition
9 on future ICFAs. Nevertheless Global believes that overall the settlement is beneficial and will allow
10 Global to improve its financial condition and continue to meet its obligations to its customers, its
11 communities, its regulators, its bondholders and its contractual obligations under the ICFAs. Global
12 benefits from the repair to the balance sheets of its utilities. Global will also benefit from modestly
13 increased revenues, as they are slowly phased-in.

14 **III. The settlement will resolve longstanding regulatory issues with the ICFAs.**

15 **A. ICFA background.**

16 Global Parent developed the ICFAs out of agreements used by the prior owners of its
17 Maricopa-area utilities, Santa Cruz and Palo Verde.⁵⁶ Global Parent used the agreements to fund
18 acquisitions of troubled utilities and to deal with rapid growth in areas with long term water scarcity
19 issues, by constructing efficient, regionally-sized facilities. Mr. Olea agreed that he could see “both
20 sides” of the ICFAs, that they “had good things” and “bad things” about them.⁵⁷ He also stated that he
21 told then-Director Ernest Johnson that the ICFAs were a “good idea”, that “from an engineering
22 standpoint, this is how you would want to build a system” but they also carried financial risks.⁵⁸

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⁵⁴ Tr. at 157:12-20.

25 ⁵⁵ Ex. A-17 (Settlement Agreement) at § 6.4.1 and 7.3.

26 ⁵⁶ Tr. at 489:2-10 and 489:24 to 490:3. (Walker).

27 ⁵⁷ Tr. at 693:2-5.

⁵⁸ Tr. at 710:16 to 711:14.

1 Global and Staff have been discussing the regulatory issues related to ICFAs for the last nine
2 years. Mr. Walker testified that when he began to work with Global in 2004, he briefed the Staff
3 about the ICFAs, explaining that “yes, we did have conversations about it, including, I think, we had
4 to develop some sort of handouts that we went over, in particular with Staff, explaining what they
5 were and how we were using them.”⁵⁹ In addition, ICFAs have always been public knowledge,
6 because ICFAs are recorded in the county recorder’s office.⁶⁰

7 Beginning in 2006, the ICFA issue heated up with various filings in the Commission’s generic
8 water financing docket.⁶¹ In addition, from 2006 to 2008, the ICFAs were at issue in numerous
9 dockets between Arizona Water Company and Global, including a formal complaint filed by Arizona
10 Water.⁶² Global settled its disputes with Arizona Water, but the ICFA issue sprang up again in
11 Global’s 2009-2010 rate case.⁶³ In that case, Staff, RUCO and the City all opposed Global’s proposed
12 rate treatment of the ICFA issues.⁶⁴

13 The Commission ultimately sided with Staff, RUCO and the City, but the Commission ordered
14 that the ICFA issues be re-examined in a series of workshops in the generic docket.⁶⁵ The
15 Commission expressly left open the rate and regulatory issues regarding ICFAs, stating, “While we
16 decline to approve the Applicants’ requested treatment of ICFAs in this Order, we believe the issue
17 could be more fully informed by the Commission’s workshop process.”⁶⁶ The Commission
18 specifically directed that the workshops examine ICFAs and how they relate to “the Commission’s
19 objectives with regard to encouraging the acquisition of troubled water companies and the
20 development of regional infrastructure where appropriate.”⁶⁷

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⁵⁹ Tr. at

22 ⁶⁰ Tr. at 653:18-25 (Walker); Ex. A-17 (Settlement Agreement) at Attachment B (showing recording
23 numbers).

24 ⁶¹ ACC Docket No. W-00000C-06-0149.

25 ⁶² Tr. at 658:15 to 659:15 (Walker).

26 ⁶³ ACC Docket No. SW-20445A-09-0077 et al.

27 ⁶⁴ See Ex. NWP-6 (ACC Decision No. 71878, Sept. 15, 2010) at 12 to 31.

⁶⁵ Ex. NWP-6 (ACC Decision No. 71878, Sept. 15, 2010) at 30-31 and 84.

⁶⁶ Id. at page 84, Finding of Fact No. 85.

⁶⁷ Id. at page 84, Finding of Fact No. 84.

1 The ICFA workshops occurred as ordered by the Commission, directly leading to this rate
2 case.⁶⁸ After the workshops, Staff hired the accounting firm of Ullmann & Co. to conduct an
3 independent review and prepare a report regarding ICFA's.⁶⁹ The CIAC imputation in Global's last
4 rate decision was based on the conclusion that all of the ICFA money went to fund utility plant.⁷⁰ The
5 Ullmann report calls that conclusion into serious question.

6 Mr. Olea explained that the Ullmann report "showed that but for a small portion, the Global
7 Applicants could have paid for plant-in-service additions made between 2004 and 2008 without using
8 funds generated from the ICFA's."⁷¹ At the hearing, Mr. Olea elaborated: "... the Ullmann report said
9 that Global had other money that they could have put in.... But there was enough money, except for a
10 small portion, and it was very small, Global could have actually paid for all of this [plant] without the
11 ICFA's."⁷²

12 Further, as Mr. Walker pointed out, Global had \$122,250,000 in long term debt in the form of
13 Industrial Development Authority bonds.⁷³ Those bond funds must be spent on plant.⁷⁴ Indeed, the
14 last Global rate order explained that "... the IDA Bond proceeds were used to fund projects for Palo
15 Verde and Santa Cruz."⁷⁵

16 Logically, plant paid for with IDA bonds could not also be paid for with ICFA funds. And as
17 Mr. Walker points out, "If ICFA funds were not invested in rate base, then there is no reason to deduct
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21 ⁶⁸ Tr. at 679:1-7 (Walker).

22 ⁶⁹ Tr. at 693:12-15 (Olea).

23 ⁷⁰ See Ex. NWP-6 (ACC Decision No. 71878, Sept. 15, 2010) at pages 19 to 22 and 30. See also Ex.
A-13 (Walker Direct) at 2 to 5 (discussing rate order).

24 ⁷¹ Ex. S-5 (Olea Testimony) at 15:14-17.

25 ⁷² Tr. at 713:6-14 (Olea); see also Tr. at 718:1-9 (Olea) and Tr. at 667 (Walker)(discussing Ullmann
findings).

26 ⁷³ Tr. at 665:18 to 666:16 (Walker)(discussing Ex. SNR-4 (Global financial statements) at page 16,
note 7).

27 ⁷⁴ See A.R.S. § 35-701(8)(a)(ix)(defining projects eligible for IDA bond financing)

⁷⁵ Ex. NWP-6 (ACC Decision No. 71878, Sept. 15, 2010) at 48:12-15.

1 those funds from rate base.”⁷⁶ It appears that SNR agrees; Mr. O’Reilly testified that “SNR has not
2 advocated that ICFA funds be considered CIAC.”⁷⁷

3 **B. ICFA-related acquisitions.**

4 Global’s use of ICFA funds to pay for acquisitions of troubled utilities must also be
5 considered. The acquisitions included two egregious utilities, the Sonoran / 387 water and wastewater
6 utility in Maricopa, and West Maricopa Combine, the parent company of five dilapidated water
7 companies.

8 Sonoran was a scheme under which a privately-owned company owned the utility assets and
9 operated the utility, ostensibly on behalf of county-created special districts and thus outside of
10 Commission oversight.⁷⁸ The scheme fell apart when customers were connected to the system, despite
11 the water utility being unable to meet federal and state drinking water standards, and the wastewater
12 utility having no operating treatment plant. Numerous Commission decisions recognized the
13 emergency and extraordinary nature of this situation.⁷⁹ Global stepped in, purchased the assets and
14 solved the problems.

15 The West Maricopa Combine utilities also had severe problems, as Mr. Fleming explained at
16 considerable length.⁸⁰ For example, one of the WMC utilities, Willow Valley, did not chlorinate its
17 water, despite “a history of coliform events” creating “a significant public health risk.”⁸¹ In addition,
18 under the former owners, water samples were tampered with and false water quality reports were
19 filed.⁸² Moreover, WMC was not prepared to meet the new Federal arsenic standards, and a group of
20 WMC employees were illegally hooking up new customers and pocketing the connection funds.⁸³

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22 ⁷⁶ Ex. A-13 (Walker Direct) at 4:14-15.

23 ⁷⁷ Ex. 35 (SNR response to Global’s data requests), page 7, response to question 4(d).

24 ⁷⁸ See Ex. A-10(Fleming Direct) at 2-3; Ex. A-13 (Walker Direct) at 8-9.

25 ⁷⁹ Ex. A-13 (Walker Direct) at 9, quoting Decision Nos. 68498 and 70133.

26 ⁸⁰ Ex. A-10 (Fleming Direct) at 4-8 and Attachment 2 (53 page attachment listing 53 issues with West
27 Maricopa Combine utilities.)

⁸¹ Ex. A-10 (Fleming Direct) at 4:17-20.

⁸² Ex. A-10 (Fleming Direct) at 4:20-22.

⁸³ Ex. A-10 (Fleming Direct) at 5.

1 What's more, much of the distribution system was in poor condition.⁸⁴ Indeed, in some cases "crud
2 and mineral buildup is about the only thing holding the pipe together."⁸⁵

3 Even SNR and NWP—who agree with Global on very little—agree that WMC was not able to
4 meet their needs. For example, NWP witness Mr. Jellies testified he met with WMC's owners and
5 inspected their facilities. He found that WMC's facilities were "deficient" and that WMC "was not a
6 good option" and "had a long way to go."⁸⁶ SNR agreed, stating that WMC was not able to provide
7 the regional, integrated water and wastewater services required by Maricopa County.⁸⁷ SNR also
8 referred to WMC's utilities as "troubled utilities."⁸⁸ Because SNR and NWP recognized that WMC
9 was not capable of providing adequate service to them, they required that Global buy WMC as a
10 condition of their ICFAs.⁸⁹

11 The Ullman report verified the prices and acquisition premiums paid by Global for these
12 companies through 2008.⁹⁰ Global updated those figures through 2012.⁹¹ Global spent over \$58
13 million on acquisition premiums to buy the Sonoran and WMC systems.⁹² These urgently needed
14 acquisitions were clearly in the public interest, and they were funded with ICFA funds.⁹³ As such,
15 ICFA funds spent on acquisition premiums in acquiring these troubled companies should not be
16 considered CIAC.⁹⁴

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20 ⁸⁴ Ex. A-10 (Fleming Direct) at 4:14-15 and 6:20-26; Ex. A-19 (Fleming Testimony) at 7-10; Ex. A-40
and A-41 (photographs); Ex. A-42 (revised engineering report) and Tr. at 781 to 790.

21 ⁸⁵ Tr. at 790:22-24.

22 ⁸⁶ Tr. at 353 to 354.

23 ⁸⁷ Ex. A-35 (SNR responses to Global's data requests) at pages 21-22, response to question 15(c) and
(d); Tr. at 251:22 to 252:3.

24 ⁸⁸ Ex. A-35 (SNR responses to Global's data requests) at page 19, response to question 13.

25 ⁸⁹ Tr. at 248:18 to 249:8 (O'Reilly)(agreeing that ICFA requires purchase of WMC).

26 ⁹⁰ Ex. A-32 (Ullman Report) at page 16; Tr. at 667-668 (Walker)(discussing Ullmann findings);

27 ⁹¹ Ex. A-25; Tr. at 54 (Fleming)(discussing Ex. A-25); Tr. at 667-668 (Walker)(discussing Ex. A-25).

⁹² Ex. A-25, Column F, total of Sonoran Utility Services, LLC and West Maricopa Combine, Inc.

⁹³ Ex. A-13 (Walker Direct) at 8:15-21.

⁹⁴ Ex. A-13 (Walker Direct) at 5 to 15.

1 **C. ICFA resolution.**

2 Mr. Olea testified that it was an “understatement” to call the ICFA’s “a fairly complex issue.”⁹⁵
3 It is no surprise that there have been a variety of viewpoints and positions taken about ICFA’s over the
4 years. If there was no settlement, undoubtedly Global, Staff, RUCO, the City and the Maricopa HOAs
5 would all put forward various theories and positions. The 17 parties to the settlement chose a different
6 path; through give and take they reached a compromise position on ICFA’s that is fair to all concerned.
7 The settlement agreement, if approved, will bring an end to these long-running disputes and bring
8 years of litigation to a close.

9 The Staff has been dealing with this complex issue since 2004, and they have participated in
10 numerous ICFA dockets since 2006.⁹⁶ Likewise, RUCO has lengthy experience with ICFA’s,
11 including in the last Global rate case. The City also has much experience with ICFA’s; the City
12 participated in the last rate case and after lengthy discussions with Global, they entered into a
13 Memorandum of Understanding with Global and passed a Resolution approving of ICFA’s subject to
14 certain conditions.⁹⁷ Thus, Staff, RUCO and the City had extensive knowledge of ICFA’s and great
15 experience with ICFA issues before they agreed to the settlement.

16 The solution adopted by the 17 settling parties is to “de-impute” the CIAC that was imputed in
17 the last Global rate case, while limiting the impact to ratepayers through an eight year phase-in, as well
18 as directing much of the de-imputation away from active rate base. The financial impact to Global and
19 the rate impact to customers has already been described in this brief.

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25 ⁹⁵ Tr. at 693:23-25.

26 ⁹⁶ See e.g. Ex. NWP-8 (2006 Staff statement on emergency relief).

27 ⁹⁷ Ex. A-13 (Walker Direct) at 7:18 to 8:13; Ex. City-1 (Jepson Direct) at 1-6.

1 The specific de-imputations contemplated by the settlement are:

Utility	De-imputation, net of amortization	Impacts rates in this case?	Settlement Agreement Reference
Palo Verde – active rate base	\$10,323,747	Yes	6.3.2.1
Santa Cruz – active rate base	\$6,105,227	Yes	6.3.2.3
Santa Cruz / Palo Verde – Plant Held for Future Use	\$32,391,318	No	6.3.3
Water Utility of Greater Tonopah	\$6,784,409	No (operating margin)	6.3.4.1
Hassayampa Utility Company	\$2,140,455	No	6.3.5
Global Water – Picacho Cove Water Company and Global Water – Picacho Cove Utilities Company	\$500,500	No	Inadvertently omitted. See Tr. at 397; 404 (Rowell) and 695 (Olea)

16 Reaching a settlement required Global, Staff, RUCO, the City and the Maricopa HOAs to all
 17 accept a compromise and thus change their pre-settlement position. Doing so was well-justified. It
 18 puts an end to a complex, long-running dispute about ICFAs. It recognizes the new information
 19 provided by the Ullmann report. It will restore the balance sheets and financial condition of Global
 20 and the Global Utilities. Ratepayers will be protected. All the benefits outlined earlier in this brief
 21 will be achieved. Mr. Olea summarized why Staff changed its position: "... in the last rate case, I
 22 believe that the Commission provided that we would look at it and, if we needed to change it, we
 23 would.... you know, the main concern for Global, the parent, was their balance sheet was all out of
 24 whack. And that wasn't good and that's not healthy. And [also] the piece you just talked about, that
 25 was in the Ullmann report."⁹⁸

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 27 ⁹⁸ Tr. at 718:12-19.

1 **IV. Response to SNR's and NWP's objections to the settlement.**

2 **A. The ICFAs solved a major problem for SNR and NWP.**

3 SNR and NWP wanted to cash in on Arizona's go-go real estate market in the mid-2000's.
4 Hoping to capitalize on this bonanza, SNR and NWP acquired thousands of acres in the far West
5 Valley of Maricopa County, near 411th Avenue and only 25 miles from the La Paz county line.⁹⁹ Their
6 properties are west of the Hassayampa River and north of the Palo Verde Nuclear Station. They
7 needed utility services for their land, especially water and wastewater service. They were largely
8 stuck in the water CC&N of Water Utility of Greater Tonopah, one of the ramshackle utilities owned
9 by WMC. They knew that Maricopa County required an integrated, regional water and wastewater
10 solution before they would allow these vast parcels to be developed.¹⁰⁰ For example, NWP's witness
11 Mr. Jellies explained how he met with multiple senior County officials and "everybody beat the same
12 drum and said we must, if we wanted to develop in this new and emerging area, come up with both a
13 regional and consolidated approach to utilities."¹⁰¹

14 SNR and NWP considered a number of options, such as forming their own wastewater utility,
15 or accepting service from Balterra Sewer Corp., then owned by a competing developer.¹⁰² They
16 rejected those alternatives, and they chose Global to solve this problem for them.

17 They then negotiated ICFAs with Global to resolve their problems. To fix the WMC problem,
18 they required Global to purchase WMC. They also required Global to obtain a wastewater CC&N and
19 208 permit, so they could receive integrated water and wastewater service as required by Maricopa
20 County.¹⁰³

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23 ⁹⁹ Ex. A-20 (Fleming Rebuttal) at Attachment H (location map); Ex. A-22 (map of SNR); Ex. A-23
(map of NWP's Copperleaf property).

24 ¹⁰⁰ Ex. SNR-1 (O'Reilly Testimony) at 7; Ex. A-35 (SNR responses to Global's data requests) at page
17, response to question 12(a); Tr. at 294:11-25 (Jellies).

25 ¹⁰¹ Tr. at 294:11-25.

26 ¹⁰² Ex. A-20 (Fleming Rebuttal) at 2-4.

27 ¹⁰³ Ex. SNR-1 (O'Reilly Testimony), Exhibit 2 (ICFA with SNR) at pages 16 to 17, § 4.1; Ex. NWP-3
(Jellies Direct) at Exhibit A (Copperleaf ICFA) at pages 16 to 18, § 4.1.

1 Global lived up to its end of the deal. It acquired WMC, paying a hefty price.¹⁰⁴ It obtained
2 the required CC&Ns and the 208 permit.¹⁰⁵ SNR and NWP failed to pay, and Global had to take them
3 to arbitration.¹⁰⁶ NWP ultimately paid after losing the arbitration, while SNR filed bankruptcy and
4 has still not paid what it owes.¹⁰⁷ The arbitrators found that by fixing SNR's and NWP's problems,
5 Global "greatly benefited SNR and NWP and increased the value of their land holdings."¹⁰⁸

6 Yet now SNR and NWP seek to get out of the contract they agreed to. They are not neophytes
7 or dilettantes; they are highly sophisticated real estate investors who knew exactly what they were
8 signing. NWP is owned by investors in Hong Kong; it has investments "worldwide" and has been
9 doing real estate business in Arizona for over 30 years.¹⁰⁹ SNR's representative, Mr. O'Reilly, is a
10 heavy-hitter in Las Vegas. He is a past Chairman of the Nevada Gaming Commission and the Clark
11 County Bar Association.¹¹⁰ He is also a long-standing member of the board of Nevada Energy and has
12 served on the boards of numerous business and non-profit entities.¹¹¹

13 In negotiating the ICFAs, SNR and NWP were also represented by highly qualified attorneys
14 who were well-versed in utility issues, including issues at the ACC. For example, NWP was
15 represented by Mike Grant and Todd Wiley.¹¹² SNR was also represented by counsel.¹¹³ Not to
16 mention that Mr. O'Reilly is a highly-experienced business lawyer in his own right.

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21 ¹⁰⁴ See Ex. A-25.

22 ¹⁰⁵ See Ex. A-37 (Judgment affirming arbitration award), attached arbitration award, at page 2.

23 ¹⁰⁶ See Ex. A-37.

24 ¹⁰⁷ Tr. at 258:15-24 (O'Reilly).

25 ¹⁰⁸ See Ex. A-37 (Judgment affirming arbitration award), attached arbitration award, at page 9, lines
26 12-13.

27 ¹⁰⁹ Tr. at 354:24 to 355:10 (Jellies).

¹¹⁰ Ex. SNR-1 (O'Reilly Testimony) at Exhibit 1.

¹¹¹ Id.

¹¹² Tr. at 389:1-10 (Jellies).

¹¹³ Tr. at 280:16-23 (O'Reilly).

1 The ICFA's were not "take it or leave it" deals. The specific ICFA's signed by SNR and NWP
2 were the result of extensive negotiation.¹¹⁴ The attorneys for SNR and NWP worked closely together
3 in negotiating the ICFA's.¹¹⁵ Countless emails were exchanged between Global, SNR and NWP in
4 negotiating the ICFA's.¹¹⁶

5 In short, SNR and NWP are highly sophisticated parties who had the assistance of experienced
6 counsel, and who signed the ICFA's only after lengthy and extensive negotiation. The Commission
7 should not take the extraordinary step of rewriting these contracts long after the fact just to benefit
8 these sophisticated parties.

9 **B. Alleged "competitive disadvantage".**

10 SNR and NWP complain that the settlement will put them at a competitive disadvantage. But
11 they have not been able to identify any actual competitors that would be advantaged.¹¹⁷ As the
12 arbitration award found, they "greatly benefited" from the ICFA's. And in practical terms, the existing
13 groundwater in the area is already spoken for by SNR, NWP and other similarly situated ICFA
14 holders.¹¹⁸ As Mr. Walker explained: "And just the reality is there is just not that much water that's
15 going to be available in that area. And to get water out there, it looks like it is going to be very, very
16 expensive. So to the extent that someone else is going to come in and compete with them, I think my
17 view is the ICFA holders who are in that DAWS application have a very, very significant competitive
18 advantage over someone who wants to enter that sub basin."¹¹⁹

19 It is notable that the only developers claiming alleged competitive disadvantage are SNR and
20 NWP, parties with pre-existing disputes with Global. Notice of the settlement was sent to all 172
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23 ¹¹⁴ Tr. at 280-281 (O'Reilly); Tr. at 351:17-24 (Jellies)(four or five meetings and "numerous" emails
24 to negotiate ICFA); Ex. A-20 (Fleming Rebuttal) at 4:10 ("extensive negotiations leading up to these
25 ICFA's").

26 ¹¹⁵ Tr. at 280-281 (O'Reilly).

27 ¹¹⁶ Tr. at 281:11-16 (O'Reilly).

¹¹⁷ Ex. A-35 (SNR Responses to Global's data requests) at page 41, response to question 26.

¹¹⁸ Ex. A20 (Fleming Rebutal) at 5-6.

¹¹⁹ Tr. at 644:7-15.

1 ICFA parties.¹²⁰ The other 170 have not objected. In addition, developer Philip Miller noted that the
2 numerous property owners he represents support the settlement.¹²¹

3 **C. CPI Factor.**

4 SNR and NWP implore the Commission to remove the CPI factor that applies to their ICFA
5 payments. The factor is a standard provision in all ICFA's.¹²² The ICFA's will be in effect for many
6 years. For example, Mr. O'Reilly could not say when the first home would be built on SNR's
7 property, much less when the last, 8,000th home would be built.¹²³ Likewise, the arbitration award
8 against NWP and SNR found that even under the original development timeframe, development would
9 extend "far into the future" and that after the recession, that timeframe is now "greatly extended."¹²⁴
10 There is likely to be inflation over this long time period. The CPI provision serves to protect Global
11 Parent from this inflation risk.¹²⁵ The CPI provision benefits future ratepayers by ensuring that the
12 ICFA fees paid, ten, fifteen, or twenty years from now, will reflect inflation – and thus provide
13 sufficient money to Global for its costs, and for the Commission to consider in rate cases five, ten, and
14 fifteen years from now when it resets the hook-up fee portion of the ICFA fees.

15 It is completely unrealistic to assume that hook-up fees will remain unchanged over that period
16 of time. Instead, the hook-up fee will likely be changed in future rate cases.¹²⁶ SNR and NWP cannot
17 show that the Commission would rule unfairly in those future cases or that the Commission would *not*
18 consider inflation in resetting the hook-up fees.

19 Moreover altering the CPI provisions of 172 ICFA's would be unprecedented and would raise
20 serious legal and policy issues. It would also be a material modification to the settlement for
21 Global.¹²⁷ SNR and NWP were well aware of the CPI provision when they signed the agreements.¹²⁸

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23 ¹²⁰ Tr. at 55 (Fleming); Ex. A-34 (sample notice letter); Ex. NWP-5 (notice letter to NWP).

24 ¹²¹ Tr. at 16-17.

25 ¹²² Ex. A-20 (Fleming Rebuttal) at 4:18-19.

26 ¹²³ Tr. at 255 to 257.

27 ¹²⁴ Ex. A-37 (Judgment), attached arbitration award, at 5:24 to 6:4.

¹²⁵ Ex. A-20 (Fleming Rebuttal) at 4-5; Tr. at 640 to 650 and 669 to 670 (Walker).

¹²⁶ Tr. at 640 to 650 (Walker).

¹²⁷ Tr. at 670:7-11 (Walker).

1 It is not worth rejecting the settlement agreement signed by the other 17 parties simply to let SNR and
2 NWP out of a term in contracts they signed.

3 **D. Affiliate regulation.**

4 SNR also asks the Commission to regulate Global Parent. But SNR does not explain what
5 regulations or requirements it would impose.¹²⁹ The Commission already has affiliated interest rules
6 governing holding companies. SNR's witness admitted he was not familiar with those rules.¹³⁰
7 Moreover, the settlement agreement already calls for additional regulation of Global through the Code
8 of Conduct. There is no reason to do anything further.

9 **V. The Commission should approve a SIB mechanism for the Willow Valley system.**

10 **A. Urgent and substantial repairs are needed in the Willow Valley system.**

11 As already discussed, the Willow Valley system was part of the West Maricopa Combine
12 acquisition in 2006. The system was in a very poor condition when it was acquired. Particularly
13 alarming was the complete failure to chlorinate the water, despite a history of coliform issues.¹³¹
14 Chlorinating the water serves to "disinfect the water, to ensure that it is safe for human
15 consumption."¹³² Global responded by immediately chlorinating the water.¹³³ Global then invested
16 approximately \$3.2 million into the Willow Valley system – part of over \$17 million spent by Global
17 to date for repairs to the WMC systems.¹³⁴ The Willow Valley investments focused on urgently
18 needed treatment upgrades rather than the pipeline distribution system.

19 Willow Valley's pipeline distribution system is in poor repair and requires complete
20 replacement in many places.¹³⁵ Some of the pipes are 40 or 50 years old and had suffered the effects
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23 ¹²⁸ See e.g. Ex. A-35 (SNR responses to Global's data requests) at page 36, response to question 21.

24 ¹²⁹ Ex. A-35 (SNR's responses to Global's data requests) at page 16, response to question 11(a).

25 ¹³⁰ Tr. at 252:20-25 (O'Reilly).

26 ¹³¹ Ex. A-10 (Fleming Direct) at 4:17-23.

27 ¹³² Ex. 782:10-11.

¹³³ Ex. A-10 (Fleming Direct) at 4:22-23; Tr. at 847:3-5.

¹³⁴ Tr. at 789:21 to 790:4 (\$3.2 million); Ex. A-10 (Fleming Direct) at 6:4 (\$17 million).

¹³⁵ Tr. at 790:7-21.

1 of significant mineral buildup prior to Global building the new treatment facilities.¹³⁶ Some pipes are
2 structurally fragile and often break, and when that occurs, they are difficult to repair due to their
3 condition and location (in customer backyards).¹³⁷ In addition, Mr. McDonald reported that some
4 customers are still experiencing discoloration, and Mr. Fleming explained that this was due to
5 accumulation in the pipes and frequent line breaks and could only be addressed by replacing the
6 pipes.¹³⁸ Global has developed a 20 year plan to replace most of the distribution system.¹³⁹

7 Out of that overall 20 year plan, Global selected the area with the most urgent need for a five
8 year SIB plan. The SIB area suffers from numerous and recurring line breaks.¹⁴⁰ The pipes in this
9 area are 50 years old. The pipes are inadequately sized, four inch, asbestos cement pipes.¹⁴¹ The pipes
10 are located in backyards, making them difficult to access. In at least one known case, these potable
11 water pipes are located near septic systems, a situation that must urgently be addressed – and thus why
12 it is the first project planned under the SIB.

13 **B. The SIB mechanism benefits customers.**

14 Global proposes that the Commission adopt the same SIB mechanism that was approved in the
15 recent Arizona Water decision.¹⁴² The legal and policy arguments for and against SIBs are recounted
16 at length in that decision. Even RUCO's witness, Mr. Mease, concedes that customers benefit from
17 the SIB, including through reduced line breaks and improved water quality.¹⁴³ But the primary benefit
18 of the SIB is rate gradualism. Leaving the system the way it is not an option; the system is in very
19 poor condition, and even starting today it will take 20 years to carry out Global's replacement plan in
20 full.

21 _____
¹³⁶ Id.

22 ¹³⁷ Tr. at 829:24 to 830:17 (Fleming).

23 ¹³⁸ Tr. 766:10-19 (McDonald); Tr. at 812:6-18 (Fleming).

24 ¹³⁹ Tr. at 811:19-20.

25 ¹⁴⁰ Tr. at 789 to 802; Ex. A-42 (revised engineering report); Ex. A-44 (revised figures) at Figure 12.

26 ¹⁴¹ Tr. at 789 to 802.

27 ¹⁴² See Ex. A-45 (Decision No. 73938, June 27, 2013)(Arizona Water Eastern Group); *see also*
Decision No. 74081 (Sept. 23, 2013)(Arizona Water Northern Group) at 58-62 (approving SIB
mechanism).

¹⁴³ Tr. at 962:21 to 963:13 and 973:6-15.

1 The question then is, what will be the rate impact of replacing much of the distribution system?
2 Under traditional ratemaking, the replacements would be added to rate base after they are completed
3 and after a rate case occurs. This would cause large amounts of plant to be added to rate base in each
4 rate case. Ratepayers would see large increases in each case.

5 In contrast, under the SIB mechanism, rates are changed gradually, with a rate adjustment each
6 year. Most customers strongly prefer gradual rate increases to less frequent but larger increases.¹⁴⁴
7 Gradual rate increases prevent customers from being surprised by large rate increases and allow
8 customers to plan and budget with greater certainty.

9 In addition, because the SIB mechanism will reduce regulatory lag on the investments subject
10 to the SIB, the utility's cash flow will be improved, enhancing its capability to attract the equity and
11 debt investment needed to fund these projects. Notably, the Willow Valley system suffered a
12 "significant net operating loss every year" after it was purchased by Global.¹⁴⁵ Even worse, the
13 system also has negative cash flow.¹⁴⁶ Without getting into a debate with RUCO about its views on
14 using depreciation to fund capital investment, that is not an option where there is negative cash flow.
15 Despite these serious financial difficulties, Global invested \$3.2 million in capital improvements to
16 this system, because it was the right and necessary thing to do. Under the SIB, Global will have to
17 fund all of the future system replacements, and complete each project and place them into service. All
18 the SIB does is allow a return of and on that investment after it is placed into service. That will
19 provide additional cash flow that, for example, can be used to cover the interest on additional loans
20 needed for such investments. Given the large and long term need for capital investment in the Willow
21 Valley system, the SIB is a sound method of encouraging those investments.

22 **C. The SIB fully complies with the Arizona Constitution.**

23 RUCO's primary objection is that the SIB somehow violates Article XV of the Arizona
24 Constitution. The SIB complies with the Arizona Constitution, because: (1) the SIB mechanism is an

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144 Tr. at 870 to 872 (Walker).

26 145 Tr. at 805:8-18 (Fleming); see also Tr. at 958:1-6 (Mease)("not disputing" net loss).

27 146 Tr. at 805:8-18 (Fleming).

1 adjustor mechanism; and (2) even if the SIB is not an adjustor mechanism, it complies with the
2 Constitution's fair value requirement because SIB surcharges will be set only after a finding of fair
3 value.

4 It is well established that adjustor mechanisms are permitted under the Arizona Constitution, as
5 long as the mechanism is established as part of a rate case. As the Arizona Court of Appeals explained
6 in *Scates*, adjustor mechanisms "usually embody a formula established during a rate hearing to permit
7 adjustment of rates in the future to reflect changes in specific operating costs...."¹⁴⁷

8 Adjustors are not limited to expenses as RUCO contends. Indeed, there are numerous
9 examples of other adjustor mechanisms approved by the Commission that involve plant costs, not just
10 expenses. The cost of arsenic treatment plant was included in the Arsenic Cost Recovery Mechanisms
11 the Commission approved in numerous cases.¹⁴⁸ Plant costs have also been included in Arizona
12 Public Service Company's renewable energy¹⁴⁹, energy efficiency / demand side management¹⁵⁰, and
13 environmental improvement surcharge¹⁵¹ adjustors. Likewise, many ratemaking authorities and
14 treatises recognize that adjustors may be for costs, not just expenses.¹⁵²

15

¹⁴⁷ *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 535, 578 P.2d 612, 616 (Ct. App. 1978).

16 ¹⁴⁸ See e.g. Ex. A-45 (Decision No. 73938, June 27, 2013) at page 50, lines 20-22, noting that "From a
17 practical perspective, the SIB would operate very similarly to the existing ACRM, with which the
18 Commission now has extensive experience, and which the Commission has determined to be
19 lawful."; Decision No. 66400 (October 14, 2003)(extensively discussing legality of ACRM);
20 Decision No. 741081 (Sept. 23, 2013)(most recent approval of an ACRM); Decision No. 71236
21 (August 6, 2009)(Appaloosa Water Co.) at Finding of Fact No. 24 (explaining that "According to
22 Staff, the purpose of the ACRM is to permit recovery of the capital and operating costs of providing
23 arsenic remediation once the plant is in place and when the in-service date occurs subsequent to the
24 end of the test year."); Decision No. 71410 (December 8, 2009)(extending ACRM for Arizona-
25 American Water Company to additional district).

26 ¹⁴⁹ Decision No. 73183 (May 24, 2012) at Exhibit A, Page 9 of 22, Section 8.2; see also Decision No.
27 71448 (December 30, 2009)(approving earlier version of renewable energy adjustor).

¹⁵⁰ Decision No. 71448 (December 30, 2009).

¹⁵¹ Decision No. 73183 (May 24, 2012) at Exhibit A, Page 16 of 22, Section 11.2.

¹⁵² See, e.g., Morin, *New Regulatory Finance* (2006) at 556 (defining adjustors relative to costs and
noting that "[u]nder this style of regulation, an automatic adjustment factor is applied to individual
cost components that are outside the control of management."); 73B C.J.S. Public Utilities § 120
("Approval by a public utility regulatory commission of tariff provisions for automatic adjustments in
rates according to a predetermined formula, without the necessity for proceedings by the commission

1 Further, the SIB is a type of Distribution System Improvement Charge (DSIC) and the courts
2 in Pennsylvania have recognized that DSICs are adjuster mechanisms.¹⁵³ Thus, the SIB mechanism
3 falls well within established concepts of adjuster mechanisms, both in Arizona and nationally.

4 Here, there is no question that the SIB, if approved, would be approved as part of a general rate
5 case with full consideration of all rate base, expenses, and cost of capital for all the Global Applicants.
6 Further, the SIB only applies to projects meeting specific criteria. The SIB mechanism is based on a
7 set formula applied to readily identifiable and defined plant.¹⁵⁴ On top of these requirements, the SIB
8 uses the rate of return set in this case, thereby ensuring that the utility's authorized rate of return does
9 not change.¹⁵⁵ Under these circumstances, the SIB mechanism is a lawful adjuster mechanism under
10 *Scates* and other Arizona case law.

11 Further, even if the Commission were to determine that the SIB is not an adjuster mechanism,
12 it is still a lawful ratemaking surcharge based on a determination and evaluation of the Company's fair
13 value rate base.¹⁵⁶ What the Arizona Constitution actually says is that the Commission must
14 "ascertain the fair value of the property" of a utility when setting rates.¹⁵⁷ Thus the Commission is
15 authorized to impose rate surcharges for specific costs or issues as long as the Commission first
16 determines and considers the utility's fair value rate base. As the Court of Appeals explained, "We
17 hold that in the absence of an emergency or automatic adjustment clause, the Arizona Corporation
18 Commission cannot impose a rate surcharge based on a specific cost increase without first determining
19 a utility's fair value rate base." *Residential Utility Consumer Office v. Ariz. Corp. Comm'n*, 199 Ariz.

20 whenever specified costs of the utility change by a certain amount, may be permissible."); 16 U.S.C. §
21 824d(f)(4) ("As used in this subsection, the term "automatic adjustment clause" means a provision of a
22 rate schedule which provides for increases or decreases (or both), without prior hearing, in rates
reflecting increases or decreases (or both) in costs incurred by an electric utility...").

23 ¹⁵³ See *Popowsky v. Pennsylvania Pub. Util. Comm'n*, 869 A.2d 1144, 1158 (Pa. Comm. Ct. 2005)
(stating that "water utilities may recover certain capital costs through an automatic adjustment clause
24 in its tariff" and treating a DSIC for water as an automatic adjustment clause).

25 ¹⁵⁴ Ex. A-45 (ACC Decision No. 73938, June 27, 2013), attached SIB Settlement Agreement at 5-8, ¶¶
3.0, 6.3.

26 ¹⁵⁵ *Id.* at 5, ¶ 3.2

27 ¹⁵⁶ *RUCO v. Ariz. Corp. Comm'n*, 199 Ariz. 582, 583, 20 P.3d 1169, 1170 (Ct. App. 2001).

¹⁵⁷ Arizona Constitution, Article XV, § 14.

1 582, 583, 20 P.3d 1169, 1170 (Ct. App. 2001)(emphasis added). Here, it is undisputed that the SIB
2 requires an evaluation and finding of fair value rate base before the Commission can approve the SIB
3 mechanism. The SIB Settlement Agreement requires the utility to provide “SIB Schedule D ...
4 showing an analysis of the impact of the SIB Plant on the fair value rate base, revenue, and the fair
5 value rate of return...”¹⁵⁸ RUCO’s witness, Mr. Mease, concedes that the Commission will make a
6 fair value finding for each SIB surcharge.¹⁵⁹

7 **D. Additional SIB requirements.**

8 Global has agreed to all requirements of the SIB mechanism as established in the recent
9 Arizona Water case. Those requirements include an earnings test, an annual cap on SIB surcharges,
10 and the efficiency credit. The rate impacts to customers are modest, especially as compared to placing
11 all of the plant into service at once in a subsequent rate case.¹⁶⁰ In addition, Global agrees to develop a
12 Plan of Administration for the SIB Mechanism, working with the Staff, and to submit the Plan for
13 Commission approval.¹⁶¹

14 **VI. Miscellaneous Approvals.**

15 The Settlement Agreement also contemplates a number of additional approvals or requirements
16 on the Global Utilities; Global asks that these be included in the Recommended Opinion and Order.

17 These additional approvals or requirements include:

- 18 • Approval of the Hook Up Fees as set forth in Sections 7.1, 7.2 and 7.3 of the Settlement
19 Agreement, in the form of the standard tariffs included as Attachment C to the
20 Settlement Agreement.

23 ¹⁵⁸ Ex. A-45 (Decision No. 73938, June 27, 2013) at attached SIB Settlement Agreement, page9, ¶
24 7.1.7.

¹⁵⁹ Tr. at 947:3-7.

25 ¹⁶⁰ Staff, RUCO and Global prepared a Joint Bill Impact Analysis as a late filed exhibit. See Tr. at
26 891. The exhibit was filed on October 4, 2013 and can be viewed at:

<http://images.edocket.azcc.gov/docketpdf/0000148736.pdf>

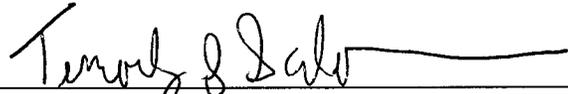
¹⁶¹ Tr. at 862:14-24 and 866.

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- Approval of the extension of the current low income tariff to the Water Utility of Northern Scottsdale system. (Settlement Agreement, § 8.1)
- Approval of the Central Arizona Groundwater Replenishment District adjustor mechanism as described in Attachment D to the Settlement Agreement. (Settlement Agreement, § 8.2)
- Requirement for Water Utility of Northern Scottsdale to file a water conservation Best Management Practices (BMP) tariff as described in Section 8.3 of the Settlement Agreement.
- Approval of the revised Terms and Conditions Tariff, in the form of Ex. A-18. (Settlement Agreement, § 8.4).
- Requirement to file the tariffs and reports set forth in Attachment F to the Settlement Agreement.
- Requirement for the Global Utilities to file the annual affidavit of compliance with the settlement agreement, as suggested by Judge Nodes and agreed by Global and Staff.¹⁶²
- Requirement to file the SIB Plan of Administration if the SIB mechanism is approved.¹⁶³

RESPECTFULLY SUBMITTED this 18th day of October, 2013.

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¹⁶² Tr. at 517:5-12 (Walker); Tr. at 696:10-13 (Olea).

¹⁶³ Tr. at 866 and 882 (Walker).

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Attachment

"A"

Matrix of Parties Supporting or Opposing Settlement

Parties to the rate case	Signed Settlement Agreement?
Global Water Parties	
Global Water – Palo Verde Utilities Company	Yes
Global Water – Santa Cruz Water Company	Yes
Valencia Water Company – Town Division	Yes
Valencia Water Company – Greater Buckeye Division	Yes
Water Utility of Greater Tonopah, Inc.	Yes
Willow Valley Water Co., Inc.	Yes
Water Utility of Northern Scottsdale, Inc.	Yes
Global Water – Picacho Cove Utilities Company	Yes
Global Water – Picacho Cove Water Company	Yes
Hassayampa Utilities Company, Inc.	Yes
Global Water Resources, Inc.	Yes
Public Bodies or Agencies	
Arizona Corporation Commission Utilities Division	Yes
Residential Utility Consumer Office	Yes
City of Maricopa	Yes
Maricopa Area Home Owner’s Associations	
Acacia Crossings Homeowners Association	Yes
Alterra Homeowners Association	Yes
Cobblestone Farms Homeowners Association	Yes
Desert Cedars Homeowners Association	Yes
Desert Passage Community Association	No

Glennwilde Homeowners Association	Yes
Homestead North Homeowners Association	Yes
Maricopa Meadows Homeowners Association	Yes
Provence Community Association	Yes
Rancho El Dorado Homeowners Association	Yes
Rancho El Dorado Phase III Homeowners Association	Yes
Rancho Mirage Master Planned Community Homeowners Association	Yes
Senita Community Association	Yes
Sorrento Community Master Association	Yes
Developer Parties	
New World Properties, Inc.	No (testimony in opposition)
Sierra Negra Ranch, LLC	No (testimony in opposition)
Other Parties	
Willow Valley Club Association	No (does not oppose)
Pro Se Intervenors	
Dana J. Jennings	No
Steven P. Tardiff	No
Andy and Marilyn Mausser	No
Total Signed Settlement Agreement	27 of 34 (79.4%)
Total Opposed to Settlement	2 of 34 (5.9%)