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BEFORE THE ARIZONA CORPORATIO

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AZ CORP COMMISSION  
DOCKET CONTROL

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**

Arizona Corporation Commission  
**DOCKETED**

OCT 18 2013

DOCKETED BY

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 FOR APPROVAL OF A  
RATE INCREASE.

**DOCKET NO. W-03720A-12-0311**

IN THE MATTER OF 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**

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1 IN THE MATTER OF THE APPLICATION  
2 OF VALENCIA WATER COMPANY—  
3 GREATER BUCKEYE DIVISION FOR THE  
4 ESTABLISHMENT OF JUST AND  
5 REASONABLE RATES AND CHARGES  
6 FOR UTILITY SERVICE DESIGNED TO  
7 REALIZE A REASONABLE RATE OF  
8 RETURN ON THE FAIR VALUE OF ITS  
9 PROPERTY THROUGHOUT THE STATE  
10 OF ARIZONA.

**DOCKET NO. W-02451A-12-0313**

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

**DOCKET NO. W-20446A-12-0314**

12 IN THE MATTER OF THE APPLICATION  
13 OF WILLOW VALLEY WATER  
14 COMPANY FOR THE ESTABLISHMENT  
15 OF JUST AND REASONABLE RATES AND  
16 CHARGES FOR UTILITY SERVICE  
17 DESIGNED TO REALIZE A REASONABLE  
18 RATE OF RETURN ON THE FAIR VALUE  
19 OF ITS PROPERTY THROUGHOUT THE  
20 STATE OF ARIZONA.

**DOCKET NO. W-01732A-12-0315**

21 **INITIAL CLOSING BRIEF OF NEW WORLD PROPERTIES, INC.**

22  
23 **October 18, 2013**  
24  
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1       **I. INTRODUCTION.**

2           New World Properties, Inc. (“NWP”), on behalf of First American Title Company Trust  
3 No. 8559 (the “Trust”),<sup>1</sup> hereby files its Initial Closing Brief in the above captioned consolidated  
4 rate case dockets. On August 13, 2013, Utilities Division Staff (“Staff”) of the Arizona  
5 Corporation Commission (“Commission”) filed a proposed Settlement Agreement (“Settlement  
6 Agreement”) between Staff, the Residential Utility Consumer Office (“RUCO”), the Global  
7 Applicants,<sup>2</sup> the Global Intervenors,<sup>3</sup> Province Community Homeowners Association, Rancho El  
8 Dorado Phase III Homeowners Association, and Cobblestone Farms Homeowners Association.  
9 Subsequently, intervenors City of Maricopa, Alterra Homeowners Association, Desert Cedars  
10 Homeowners Association, Homestead North Homeowners Association, Maricopa Meadows  
11 Homeowners Association, Ranch El Dorado Homeowners Association, Senita Community  
12 Association, Sorrento Community Master Association, Acacia Crossings Homeowners  
13 Association, Glennwilde Homeowners Association and Rancho Mirage Master Planned  
14 Community Homeowners Association signed the Settlement Agreement.

15           Although NWP participated actively in the discussions which produced the Settlement  
16 Agreement, neither NWP nor fellow intervenors Sierra Negra Ranch, LLC, and Sierra Negra  
17 Management, LLC (collectively, “SNR”) were able to support the Settlement Agreement. While  
18 the Settlement Agreement asserts that it resolves issues regarding Infrastructure Coordination and  
19 Financing Agreements (“ICFAs”), in reality it fails to address critical issues and concerns raised  
20 by the two intervenors in this case which have ICFAs with Global—NWP and SNR. These  
21 unresolved issues include:

- 22           •       The ICFAs continue to impose a consumer price index (“CPI”) adjuster on  
23                   that portion of the landowner payment (\$3,500 in the case of NWP) even

24           <sup>1</sup> NWP is authorized to act on behalf of Trust 8559 as it relates to this docket pursuant to a letter  
25 of authorization that was filed in this docket as an exhibit to NWP’s Reply in Support of the  
26 Motion to Intervene. References in this brief to NWP or Trust 8559 are interchangeable.

27           <sup>2</sup> The Global Applicants are comprised of Valencia Water Company, Inc.-Town Division, Global  
28 Water-Palo Verde Utilities, Water Utility of Northern Scottsdale, Inc., Water Utility of Greater  
Tonopah, Inc., Valencia Water Company, Inc.-Greater Buckeye Division, Global Water-Santa  
Cruz Water Company, and Willow Valley Water Company, Inc.

<sup>3</sup> The Global Intervenors are comprised of Global Water-Picacho Cove Water Company, Global  
Water-Picacho Cove Utilities Company, Hassayampa Utilities Company, Inc., and Global Water  
Resources, Inc.

1           though a substantial portion of such payments will now be treated as hook-  
2           up fees (“HUFs”), or contributions in aid of construction, to Global Water  
3           Resources, Inc. (“GWR”) under the Settlement Agreement. This will  
4           create an unlevel playing field for NWP and SNR as they are forced to  
5           compete with developers which do not sign ICFAs are therefore not  
6           subject to the CPI adjustor.

- 7           • Pursuant to the Settlement Agreement, CPI adjustor funds received by  
8           GWR will certainly be used to fund utility infrastructure and will therefore  
9           end up in rate base. No analysis has been done in this rate case to  
10          determine the impact of CPI adjustor fees received by GWR and invested  
11          in utilities as equity on rates.
- 12          • The Settlement Agreement fails to adequately protect future monies that  
13          will be paid by developers under ICFAs which exceed the amount  
14          allocated to HUFs, which according to NWP’s ICFA, are to be used for  
15          financing of utility infrastructure and transmission facilities. These  
16          monies need to be segregated to ensure that they are available to the  
17          utilities which have the obligation to construct utility infrastructure for the  
18          developers.
- 19          • Under the Settlement Agreement, the proposed 70%-30% split of future  
20          payments to GWR under the ICFAs results in an underpayment of HUFs  
21          to Water Utility of Greater Tonopah (“WUGT”) and Hassayampa Utility  
22          Company (“HUC”), the two utilities which will provide water and sewer  
23          service to NWP’s property. At the hearing, however, GWR and its utility  
24          affiliates agreed that the 70%-30% split would be implemented in a way  
25          which ensures that HUFs will be fully funded with developer payments,  
26          regardless of the split set forth in Section 6.4.4 the Settlement Agreement.
- 27          • The Settlement Agreement also fails to require Global to modify the  
28          ICFAs in a manner which protects its regulated utility subsidiaries and the  
29          public in the event of a default or bankruptcy by GWR. At the hearing,  
30          however, GWR and its utility affiliates agreed to modify ICFAs of NWP  
31          and SNR to address this issue.
- 32          • The Settlement Agreement lacks any meaningful enforcement  
33          mechanisms against GWR and the non-regulated affiliates of GWR to  
34          ensure compliance with the obligations imposed under the Settlement  
35          Agreement.
- 36          • The Settlement Agreement lacks any meaningful reporting by GWR and  
37          its affiliates to ensure compliance with the obligations imposed under the  
38          Settlement Agreement.
- 39          • The Settlement Agreement converts large amounts of cost-free developer-  
40          supplied capital to rate base in order to “repair” GWR’s balance sheet.  
41          The true cost of this impact on ratepayers needs to be calculated in order

1 to determine whether the benefit justifies the cost of ratepayers.

2 In addition to these unresolved issues regarding ICFAs, the Settlement Agreement  
3 authorizes a rate increase for WUGT (96.28% increase in revenue requirement) which  
4 approximately doubles the existing water rates starting in the year three. This is far and away the  
5 largest rate increase allowed for any of the Global utilities under the Settlement Agreement. The  
6 next largest increase is the Willow Valley utility with an increase in revenue requirement of  
7 57.53%. Even though WUGT would phase in the rates over three years under the Settlement  
8 Agreement, this will still have a direct, dramatic and immediate effect on ratepayers. Rates for  
9 the utilities which serve the Town of Maricopa are phased in over eight years. There is no good  
10 reason why the rates of WUGT should not be phased in over a similar time period which would  
11 help address the rate shock which rate payers will undoubtedly experience.  
12

13 For the reasons set forth above, approval of the Settlement Agreement is not in the public  
14 interest without additional requirements imposed upon GWR, its regulated utility affiliates and its  
15 non-regulated affiliates. NWP urges the Commission to impose the following additional  
16 requirements as conditions of approving the Settlement Agreement in any order issued by the  
17 Commission:  
18

- 19 • GWR should be prohibited from applying the CPI adjuster to funds  
20 received from NWP under its ICFA that are to be applied as HUFs and  
21 treated as contributions in aid of construction to WUGT and HUC.
- 22 • GWR should be required to segregate all funds received under ICFAs.
- 23 • Notwithstanding the language of Section 6.4.4 of the Settlement  
24 Agreement which provides for a 70%-30% split of future payments  
25 received by GWR under the ICFAs, the order should make clear that  
26 NWP, SNR and all other parties to ICFAs may fully fund applicable HUFs  
27 for the utilities that will provide service to the properties covered under the  
28 ICFAs.
- GWR should be required to amend its ICFAs with NWP and SNR to make  
clear that monies allocated to WUGT and HUC as HUFs may be paid  
directly to WUGT and HUC.

- GWR and its non-regulated affiliates must agree to submit to the jurisdiction of the Commission regarding enforcement of the terms of the Settlement Agreement and the order approving the Settlement Agreement, and waive the right to assert that the Commission lacks jurisdiction over GWR and its non-regulated affiliates. Likewise, GWR must agree that its ICFAs are subject to the Commission's jurisdiction.
- GWR should be required to provide annual reports certified by an officer of GWR and its regulated subsidiaries allowing for verification of compliance with all obligations imposed under the Settlement Agreement.
- GWR should be required to phase-in the rate increase for WUGT over eight years instead of the three-year phase-in required under the Settlement Agreement.

**II. THE NEW WORLD PROPERTY ICFA.**

NWP, on behalf of Trust 8559, entered into an ICFA with Global Water Resources, LLC, the predecessor-in-interest to GWR, on July 11, 2006, in order to procure water, wastewater and reclaimed water services for a master planned development in west Maricopa County known as Copperleaf.<sup>4</sup> Pursuant to Section 4 of the ICFA, NWP must make a landowner payment ("Landowner Payment") of \$5,500 per equivalent dwelling unit ("EDU") to GWR, and GWR must fulfill the obligations set forth in Sections 1 and 2 of the ICFA. At the hearing, Utilities Division Director Steve Olea acknowledged in questioning from Judge Nodes that the obligations of GWR under the ICFAs are essentially those of a regulated utility company:

Q. [By Judge Nodes] Right. But those are, the actions or the activities that the parent agreed to undertake, weren't they essentially acting in the capacity of a utility company? And isn't that one of Staff's primary concerns, at least up until this point?

A. [By Mr. Olea] That's correct. And that's, I think, if you look at Mr. Armstrong's testimony, he talked about the blurred lines. What we believe the settlement agreement does is unblur the line, make it a real, definite demarcation. The parent company, you do what you do. Utility, you do what you do. The parent company, don't be doing utility stuff. That's why no more ICFAs.

<sup>4</sup> The NWP ICFA was introduced as Exhibit NWP-1 at the hearing.

1 Q. [By Judge Nodes] On a going forward basis.

2 A. [By Mr. Olea] Correct.<sup>5</sup>

3 With a planned development of 3,750 EDUs, NWP will pay GWR approximately  
4 \$21,000,000 under its ICFA.<sup>6</sup> In addition, pursuant to Section 4 of the ICFA, the \$5,500  
5 Landowner Payment per EDU is adjusted upward based upon a consumer price index adjustment  
6 factor, the so-called CPI adjuster. Global witness Ron Fleming acknowledged that the CPI  
7 adjuster added another \$449.43 per EDU, or approximately \$1.685 million in total, as of the date  
8 of the hearing, and that that amount will continue to increase until NWP completes its payments  
9 under the ICFA.<sup>7</sup>

10 To date, NWP has paid \$1,000 of the \$5,500 per EDU Landowner Payment to GWR  
11 (\$3,750,000), and \$500 per EDU of that amount was used by GWR to purchase WUGT, the water  
12 provider for Copperleaf.<sup>8</sup> Thus, NWP itself provided a public service by funding the acquisition  
13 of WUGT which will provide benefits to all those who will receive water service from the utility.<sup>9</sup>

14 **III. APPLYING A CPI ADJUSTOR TO ICFA FEES THAT ARE TREATED AS HUES**  
15 **UNDER THE SETTLEMENT AGREEMENT UNFAIRLY DISCRIMINATES**  
16 **AGAINST DEVELOPERS WITH ICFAS AND PLACES THEM AT A**  
17 **COMPETITIVE DISADVANTAGE AGAINST DEVELOPERS WITHOUT ICFAS.**

18 Section 6.4.1 of the Settlement Agreement fundamentally changes the treatment of the  
19 Landowner Fees received by GWR under the 172 ICFAs<sup>10</sup> that are currently in effect. Section  
20 6.4.1 states as follows:

21 ICFA fees received after December 31, 2013, will be handled as follows: a  
22 portion of funds received by Global Parent will be paid to the associated utility as  
23 a hook-up fee (“HUF”) to be established in accordance with this Agreement, and  
24 the remaining portion of the funds will be available to Global Parent for use  
25 pursuant to the provisions of the applicable ICFA.<sup>11</sup>

26 <sup>5</sup> Hearing Transcript Vol. IV at pp. 729-730 (emphasis added).

27 <sup>6</sup> Hearing Exhibit NWP-4 (Jellies Direct Testimony in Opposition to Settlement Agreement) at p.  
28 4, line 4.

<sup>7</sup> Hearing Transcript Vol. I at p. 125, line 25 to p. 126, line 1-3, and p. 127, lines 1-11.

<sup>8</sup> Hearing Exhibit NWP-4 at p. 4, lines 3-5, and Hearing Exhibit NWP-3 at p. 3, lines 20-24.

<sup>9</sup> The ICFAS signed by NWP and SNR were different than almost every other ICFA because a  
portion of the Landowner Payments received by GWR was used to purchase West Maricopa  
Combine (“WMC”), and NWP and SNR were required to provide more money as a down  
payment.

<sup>10</sup> Hearing Transcript Vol. I at p. 86, lines 9-11.

<sup>11</sup> Hearing Exhibit A-17 at p. 9.

1 Pursuant to Section 7.1 of the Settlement Agreement, HUFs of \$1,750 will be established  
2 for each of WUGT and HUC, the utilities that will serve NWP's Copperleaf development.  
3 Section 7.2 of the Settlement Agreement further states that the HUFs will be in the form of Staff's  
4 standard HUF tariff, copies of which are attached as Attachment C to the Settlement Agreement.  
5 There is no provision in any of the HUF tariffs attached to the Settlement Agreement for a CPI  
6 adjustor on the HUFs. Global witness Fleming testified that he is not aware of any HUF  
7 approved by the Commission in Arizona which includes a CPI adjustor.<sup>12</sup> Likewise, Pat Quinn,  
8 the Executive Director of RUCO, testified that "the way hookup fees are set up, I don't know if  
9 there would ever be a CPI adjustor on that."<sup>13</sup> Similarly, Utilities Division Director Steve Olea  
10 also testified that he is not aware of any HUF with a CPI adjustor.<sup>14</sup> Notwithstanding, Mr.  
11 Fleming acknowledged that the CPI adjustor in the ICFA "pertains to the HUF ... component as  
12 well."<sup>15</sup>

13 According to Global witness Ron Fleming, the CPI adjustor is included in ICFAs "to  
14 cover the future ... inflationary effects of changes in costs."<sup>16</sup> However, the very same argument  
15 would also apply to HUFs, which similarly place a utility at risk of "inflationary effects of  
16 changes in costs." Global witness Paul Walker acknowledged as much—and implicitly, the  
17 obvious inequity of applying a CPI adjustor to Landowner Fees recharacterized as HUFs under  
18 the Settlement Agreement—in the following exchange with Judge Nodes:

19 Q. [By Judge Nodes] I guess the question is why, if you have now agreed to a  
20 particular level of HUF fees and you don't know when  
21 those are ever going to be collected either, I mean it might  
22 be 20 years before you have somebody, and maybe that's an  
23 exaggeration, but some number of years, but why shouldn't  
24 that be the baseline for everyone that then, if, you know, in  
25 a subsequent case that HUF is increased, why should the  
CPI not be somehow tied to whatever level of increase  
there is in a HUF from this point in time to effectively  
replace or mimic the CPI adjustor so that developers are left  
basically on an equal footing?

26 <sup>12</sup> Hearing Transcript Vol. I at p. 118, lines 18-21.

27 <sup>13</sup> Hearing Transcript Vol. I at p. 204, lines 19-21.

28 <sup>14</sup> Hearing Transcript Vol. IV at p. 727, lines 9-11.

<sup>15</sup> Hearing Transcript Vol. I at p. 100, lines 22-24.

<sup>16</sup> Hearing Transcript Vol. I at p. 94, lines 20-21.

1 A. [By Mr. Walker] I think I understand exactly your point. And I completely  
2 expect that in the next rate case Staff and RUCO are going  
3 to want to do exactly that to our hookup fee.

4 Q. [By Judge Nodes] Exactly what? To increase it?

5 A. [By Mr. Walker] Adjust, increase it. And I think, if I was Staff or RUCO,  
6 the first thing I would do is say what has the CPI been. So  
7 I don't want to get into litigating the next case.<sup>17</sup>

8 This exchange at the hearing clearly highlights the inequity and discrimination that will  
9 exist between developers with ICFAs on the one hand and developers without ICFAs on the other  
10 if the Commission fails to order a modification of the CPI adjustor in the ICFAs as a condition of  
11 approving the Settlement Agreement. NWP witness Rick Jellies testified regarding the unlevel  
12 playing field that will result unless the Commission addresses the CPI adjustor:

13 My biggest concern is the fact that the settlement agreement sets up, like I said, a  
14 class of competitor that does not have a CPI adjustor. Given -- like I testified on  
15 Friday, I would gladly live up to my agreement if the playing field were to remain  
16 unchanged. Okay? But if you change a little piece, then you need to, from my  
17 perspective, look at the whole thing.<sup>18</sup>

18 Similarly, the inequity and discrimination that will result by imposing the CPI adjustor on  
19 that portion of the Landowner Payments that are recharacterized as HUFs under the Settlement  
20 Agreement is highlighted by the following exchange between Judge Nodes and Director Olea:

21 Q. [By Judge Nodes] But for past developers subject to ICFAs, aren't they going  
22 to experience effectively a discriminatory impact because  
23 other non-ICFA developers only have to pay the HUF and  
24 don't have to pay a CPI adjustor on top of that amount?  
25 And if -- well, let me just ask that.

26 A. [By Mr. Olea] And, again, sitting here myself, because to me, in my mind,  
27 that's sort of a legal question, but I don't think so, because  
28 those developers that entered into the ICFAs entered  
knowing they were going to have a CPI, knowing that this  
Commission at any time could set up whatever tariff they  
wanted to that would treat new customers different than old  
customers. It happens all the time. So this is one of those  
where, at least from Staff's standpoint, we are saying let's,  
you know, let's try and mitigate that, let's try and lessen that  
impact. And the way we did that was whatever ICFA you  
pay, part of that is going to pay your hookup fee for you, so

<sup>17</sup> Hearing Transcript Vol. IV at pp. 646-647.

<sup>18</sup> Hearing Transcript Vol. III at p. 364, lines 3-9.

1 you don't have to pay twice. But you are still obligated to  
2 pay the ICFA because you signed a contract, just like any  
3 other contract that's outside of this Commission, and that  
was done because that's what you thought you should do at  
the time.

4 Q. [By Judge Nodes] But what if those developers seeking utility service were  
5 not offered, say, an MXA under a traditional arrangement  
6 and they were required to sign an ICFA or not be able to  
7 provide the utility service that they needed to get whatever  
8 county approvals they needed?

9 A. [By Mr. Olea] And I, and I guess we would have to look at that, but I  
10 haven't seen anywhere -- and I have talked to the county.  
11 And as far as I got from the county, they weren't forcing  
12 anybody to do anything.<sup>19</sup>

13 Mr. Olea acknowledges that developers which signed ICFA's "did what they thought they  
14 should do at the time" but then seems to suggest that those same developers must live with an  
15 admittedly discriminatory result because they "signed a contract ... that's outside of this  
16 Commission." NWP strongly disagrees that the ICFA's are outside of the Commission's  
17 jurisdiction, and GWR and its affiliates would agree, as illustrated by the following exchange  
18 between counsel for NWP and Global witness Walker:

19 Q. [By Mr. Hays] Okay. If you could turn to the next page, line 16 and 17,  
20 Mr. Armstrong says: Global Parent has never contended  
21 that ICFA's are nonjurisdictional to the ACC. Do you  
22 believe the Commission has jurisdiction over the ICFA's?

23 A. [By Mr. Walker] I think the Commission has jurisdiction over the Global  
24 Utilities and I think it has sort of an implied jurisdiction  
25 over Global Parent. And we have always said that we are  
26 not going to argue that the ICFA's are nonjurisdictional  
27 because we understand there is significant concern and  
28 interest in them from the Commission. So we weren't  
going to dispute whether they had legal jurisdiction or  
not.<sup>20</sup>

In addition, it is also significant that the Utilities Division Staff requested that GWR  
intervene in this docket and GWR did, in fact, intervene as a party in this docket, thereby  
subjecting itself to the Commission's jurisdiction. Thus, Mr. Olea underestimates the

<sup>19</sup> Hearing Transcript Vol. IV at pp. 730-731 (emphasis added).

<sup>20</sup> Hearing Transcript Vol. IV at pp. 574-575 (emphasis added).

1 Commission's jurisdiction and authority with respect to GWR and the ICFA's. There is certainly  
2 no doubt that GWR could agree to modify the CPI adjustor under the ICFA's so that it does not  
3 apply to that portion of the Landowner Payments which will be recharacterized as HUFs, just as  
4 GWR agreed to the recharacterization of the Landowner Payments as HUFs. And, the  
5 Commission certainly has the jurisdiction and authority to order the modification of the CPI  
6 adjustor as a condition of approving the Settlement Agreement.

7 NWP would also like to address Judge Nodes' question to Mr. Olea regarding developers  
8 which may not have been offered a traditional main extension agreement as an alternative to  
9 signing an ICFA. Mr. Jellies testified—and his testimony was not controverted by any witness or  
10 evidence at the hearing— that GWR never offered NWP the option of a traditional main  
11 extension agreement:

12 Q. [By Mr. Crockett] We talked earlier about the options that were available to  
13 Copperleaf or to New World Properties. Was New World  
14 Properties ever offered the option of a conventional main  
15 extension agreement with Global to provide services to the  
property, a master utility agreement, main extension  
agreement type of deal?

16 A. [By Mr. Jellies] No. We were told specifically you must enter into the  
17 ICFA because of the need to acquire Western Maricopa  
Combine.

18 Q. [By Mr. Crockett] So that was not an option that was on the table insofar as  
19 you were concerned?

20 A. [By Mr. Jellies] That was absolutely not an option.<sup>21</sup>

21 The fact that NWP did not have the option of a traditional main extension agreement from  
22 GWR further supports NWP's request to modify the CPI adjustor.

23 In addition, Section 4 of the ICFA states that "[t]he Parties ... further agree to renegotiate  
24 this CPI Factor in good faith in the event that it results in a Landowner Payment in excess of  
25 related financing requirements."<sup>22</sup> With the recharacterization of \$3,500 of the Landowner  
26 Payment as a HUF under the Settlement Agreement, this amount is no longer includable as part of

27 <sup>21</sup> Hearing Transcript Vol. II at pp. 314-315.

28 <sup>22</sup> NWP-1 at p. 15, starting on line 6.

1 the “financing requirements” under the ICFA. Thus, an order of the Commission modifying the  
2 CPI adjustor under the ICFA as it applies to the recharacterized HUFs is consistent with the ICFA  
3 itself.

4 Finally, it is also significant to note that Section 15 of the ICFA confers “most favored  
5 nation” status on NWP and SNR. Specifically, Section 15 states as follows:

6 Coordinator [GWR] agrees that for the CC&N expansion and CC&N extension  
7 contemplated to commence in the July 2006 timeframe in the area West of the  
8 Hassayampa River, that if the Coordinator enters into an Infrastructure  
9 Coordination Finance and Option Agreement or an agreement with similar terms  
10 with another landowner that lies within the CC&N area of WUGT and HUC as  
11 extended (with the exception of Belmont), the Coordinator will not provide  
12 pricing, terms, or conditions more favorable to that landowner than provided  
13 herein to the Landowner, unless Coordinator amends this Agreement with the  
14 written consent of Landowner to include such pricing, terms, or conditions so that  
15 this Agreement is at least as favorable to the Landowner as the pricing, terms, and  
16 conditions offered to the other landowner.<sup>23</sup>

17 The intent of this section is to prevent other entities from receiving a better deal than  
18 NWP. This section was no doubt included as a result of NWP’s willingness to help GWR with  
19 the acquisition of West Maricopa Combine and its subsidiary WUGT. The adoption of the  
20 Settlement Agreement without a corresponding amendment to the CPI adjustor will effectively  
21 eviscerate Section 15 of the ICFA. An order of the Commission modifying the CPI adjustor as  
22 requested by NWP is fully consistent with the spirit of Section 15 of the ICFA.

23 In summary, NWP is not seeking to eliminate the CPI adjustor from the ICFA entirely,  
24 but only as it applies to the \$3,500 in landowner fees paid under the ICFA which are to be  
25 counted as HUFs to WUGT and HUC under the Settlement Agreement.<sup>24</sup> By requiring such a  
26 modification of the CPI adjustor as a condition of approving the Settlement Agreement, the  
27 Commission will ensure that developers such as NWP and SNR with ICFAs have a level playing  
28 field with developers that do not have ICFAs. This is equitable and in the public interest.

<sup>23</sup> Hearing Exhibit NWP-1 at p. 34.

<sup>24</sup> Hearing Transcript Vol. III at p. 379, lines 5-12.

1 **IV. THE PUBLIC INTEREST REQUIRES THE SEGREGATION AND TRACKING**  
2 **OF FUTURE LANDOWNER PAYMENTS RECEIVED BY GWR IN EXCESS OF**  
3 **THE HUF\$ PAID UNDER ICFA\$.**

4 To date, NWP has paid \$1,000 per EDU, or \$3,750,000, under its ICFA with GWR.<sup>25</sup> Of  
5 this amount, \$500 per EDU, or \$1,875,000, was already allocated toward the cost of acquiring  
6 West Maricopa Combine and its subsidiaries, including WUGT.<sup>26</sup> The remaining \$500 per EDU,  
7 or \$1,875,000, was to be used for the coordination and financing of construction of substantial  
8 regional infrastructure, including utility plant (which will now be constructed, at least in part,  
9 with HUF monies), and significant transmission infrastructure as set forth in Exhibits D and H of  
10 the ICFA.<sup>27</sup>

11 In addition, future Landowner Payments of \$3,500 per EDU due under the ICFA will be  
12 allocated to the new \$1,750 HUF for WUGT and the new \$1,750 HUF for HUC and paid directly  
13 to those utilities under the terms of the Settlement Agreement. The remaining Landowner  
14 Payment of \$1,000 per EDU, or \$3,750,000, will be paid by NWP to GWR under the ICFA.  
15 Thus, exclusive of the amounts that will be treated as HUFs under the Settlement Agreement,  
16 NWP has made and will make Landowner Payments to GWR totaling \$1,500 per EDU, or  
17 \$5,625,000 (comprised of the \$500 per EDU that has already been paid and the \$1,000 per EDU  
18 that is yet to be paid). While these funds are “to be used only in accordance with the terms of the  
19 applicable ICFA,” as required under Section 6.4.3 of the Settlement Agreement, there is no  
20 mechanism included in the Settlement Agreement to ensure that this actually occurs.

21 The utility plant and transmission infrastructure that GWR has obligated its regulated  
22 utilities to construct in the Tonopah area alone will cost millions of dollars on day one and untold  
23 millions of dollars over time. NWP cannot even begin to calculate the cost of the financial  
24 obligations under all of the other ICFA\$ combined. The public interest requires, at a minimum,  
25 that the Commission ensure that the funds designated to support the financing and construction of  
26 essential utility infrastructure are ready and available to the utility which has the underlying  
27 obligation to provide the utility infrastructure when that infrastructure is needed.<sup>28</sup> The allocation

28 <sup>25</sup> Hearing Exhibit NWP-4 at p. 4, lines 4-5.

<sup>26</sup> Hearing Exhibit NWP-4 at p. 7, lines 12-13.

<sup>27</sup> Hearing Exhibit NWP-4 at p. 7, lines 13-17.

<sup>28</sup> Hearing Exhibit NWP-4 at pp. 9-10.

1 of a portion of the Landowner Fees to applicable HUFs is an important part of this assurance.  
2 However, the Settlement Agreement fails to include necessary safeguards to protect that portion  
3 of the Landowner Payments which exceeds the HUFs (\$5,625,000 in the case of NWP).

4 According to a report prepared by Ullmann & Company and cited in the pre-filed direct  
5 testimony of James Armstrong dated July 8, 2013, GWR has entered into approximately 180  
6 ICFA's (or ICFA-like agreements) and "could be entitled to receive (over several decades) as  
7 much as \$1.476 billion of ICFA fees under the provisions of these existing agreements."<sup>29</sup> While  
8 GWR will certainly receive large inflows of cash as ICFA's are performed by the developers,  
9 GWR will also incur the companion liability of constructing immense amounts of utility  
10 infrastructure under those ICFA's. In fact, Staff witness Armstrong testified that "[t]he magnitude  
11 of Global Parent's ultimate obligations under the ICFA's could be measured in the billions of  
12 dollars when we include both Global Parent's direct obligations and the infrastructure  
13 investments that could be partially supported through line extension agreements."<sup>30</sup>

14 NWP is dependent upon GWR to provide for the construction of the regional water and  
15 sewer infrastructure needed to serve the Copperleaf development, and NWP is rightfully  
16 concerned that the Landowner Payments it provides to GWR under the ICFA will be available to  
17 WUGT and HUC when the utility infrastructure is needed. Staff witness Armstrong shares this  
18 concern, as discussed in his pre-filed testimony:

19 [T]he company's response regarding how the level of landowner payments were  
20 negotiated indicated that the size of the required landowner payments ultimately  
21 agreed to under each ICFA agreement was the result of very high level, or macro  
22 level, discussions or analysis. Such response further indicated that Global Parent  
23 did not perform detailed calculations or undertake any detailed cash-flow analysis  
24 reaching agreement with regard to what a reasonable landowner payment would  
25 be under each agreement. Conversely, the due diligence undertaken by the Global  
26 Parent with regards to possible acquisitions appears to have involved very  
27 detailed analysis of economic, legal, and financial considerations.

28 This contrast is startling when we consider the fact that the water system  
29 acquisitions involve less than \$125 million in initial financial commitments, while  
30 Global Parent's direct long-term delivery obligations under the ICFA agreements

29 Hearing Exhibit S-2 (Direct Testimony of James Armstrong) at p. 3, lines 3-8; *see also* Hearing Exhibit A-32 (Ullmann Report).

30 Hearing Exhibit S-2 at p. 13, lines 5-9.

1 could exceed \$1.4 billion, since Global Parent has committed to providing  
2 infrastructure investments to make its Total Water Management plans a reality in  
the areas covered by the ICFAs.

3 \* \* \*

4 The timing and magnitude of the revenue/cash inflows from the ICFA landowner  
5 payments are going to be very different from the cash outflows required by  
Global Parent's commitments under these agreements.

6 Anytime a going concern is faced with significant cash flow timing differences,  
7 such as when cash receipts or inflows occur far ahead of the future required cash  
8 outflows, caution must be exercised to assure that money is not spent on other  
9 indulgences, leaving the bank accounts empty (so to speak) when it comes time to  
10 actually fund the entity's obligations.<sup>31</sup>

11 The concerns raised by Mr. Armstrong appear to be well-founded based upon the way that  
12 GWR has handled Landowner Payments received in the past. Mr. Armstrong testified that Staff  
13 raised concerns regarding ICFA cash flows, and more specifically the tracking of ICFA cash  
14 flows, during GWR's last rate case in Docket SW-20445A-09-0077. While GWR went through  
15 the motions to establish separate ICFA bank accounts, it turned out to be an empty gesture, as  
16 described in Mr. Armstrong's Direct Testimony:

17 **Q. Has establishing these separate ICFA bank accounts helped to  
18 provide assurance that the ICFA funds received subsequent to their  
19 establishment will be available to meet the Global Parent's ICFA-  
20 driven obligations in the years to come?**

21 **A.** Unfortunately it has not. The Company's response to STF-8.45 indicates  
22 that once the funds are initially placed in the segregated ICFA bank  
23 accounts, the funds are then transferred out of these accounts and  
24 combined with the Company's general bank account. The company  
25 provided Staff with "confidential" copies of the bank statements related to  
26 this segregated account and a review of those statements confirms that the  
27 funds deposited into this account are routinely (and almost immediately)  
28 transferred out of this account and into what Staff presumes is the  
Company's general purpose bank account.

The limited ICFA fee segregation steps taken to date by the Global Parent  
are not adequate. Prospectively, a portion of the future ICFA cash inflows  
need to be truly separated from the Global Parent's general bank account  
funds. Not truly separating these funds only heightens Staff's concerns  
regarding how future commitments under the ICFA agreements will be  
financed.<sup>32</sup>

<sup>31</sup> Hearing Exhibit S-2 at pp. 12-13 (emphasis added).

<sup>32</sup> Hearing Exhibit S-2 at p. 19, lines 1-10.

1 Pursuant to Section 6.4.3 of the Settlement Agreement, GWR agrees that Landowner  
2 Payments for HUFs may be made directly to the applicable utility companies (WUGT and HUC  
3 in the case of NWP). This is an essential provision. However, for that portion of the Landowner  
4 Payments which exceeds the applicable HUFs, Section 6.4.3 of the Settlement Agreement  
5 provides only that “[t]he Global Parent portion (ICFA Fee minus HUFs) is to be used only in  
6 accordance with the terms of the applicable ICFA. Based upon the legitimate concern of Staff  
7 witness Armstrong that monies received under ICFA’s “not be spend on other indulgences,  
8 leaving the bank accounts empty ... when it comes time to actually fund the entity’s obligations,”  
9 Section 6.4.3 of the Settlement Agreement is too weak.

10 Requiring a segregated fund for all ICFA monies is appropriate and necessary given the  
11 risks articulated by Mr. Armstrong and the past history of GWR.<sup>33</sup> Thus, NWP urges the  
12 Commission to require, as a condition of approving the Settlement Agreement, that GWR be  
13 required to segregate in separate bank accounts all ICFA monies and provide an annual report to  
14 Utilities Division Staff of the cash flows into and out of such accounts, together with such other  
15 information as Staff may reasonably request.

16 In addition, it is essential that NWP’s ICFA be amended to make clear that Landowner  
17 Payments which are allocated as HUFs to WUGT and HUC can be made directly to those utilities  
18 and that the HUFs belong to those utilities and not GWR. This will help ensure that in the event  
19 of a bankruptcy of GWR, a judge does not rule that Landowner Payments made directly to  
20 WUGT and HUC are, instead, monies that should have come to GWR under the ICFA.<sup>34</sup> GWR  
21 has agreed to such amendment of its ICFA’s,<sup>35</sup> and this condition should be included in any order  
22 of the Commission approving the Settlement Agreement.

23  
24  
25  
26  
27 <sup>33</sup> Hearing Exhibit NWP-4 at p. 8, lines 5-6.

28 <sup>34</sup> Hearing Exhibit NWP-4 at p. 8, lines 7-13.

<sup>35</sup> Hearing Transcript Vol. IV at p. 590, lines 6-16.

1 V. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 6.4.4 OF**  
2 **THE SETTLEMENT AGREEMENT, THE PARTIES HAVE AGREED THAT**  
3 **NWP AND SNR MAY FULLY FUND THE APPLICABLE HUFs OF WUGT AND**  
4 **HUC OUT OF THE LANDOWNER PAYMENTS DUE UNDER THE ICFA.**

5 Section 6.4.4 of the Settlement Agreement states as follows:

6 Because all the ICFA fees due for each Equivalent Dwelling Unit (“EDU”) are  
7 not due at the same time, it is necessary to allocate any payment received between  
8 the HUF and the portion of the payment which will go to Global Parent. The  
9 Signatories agree that each payment received under the ICFA shall be allocated  
10 on the following basis: 70% of the payment shall go toward payment of the HUF  
11 and the remaining payment shall be allocated to Global Parent. However,  
12 regardless of the timing of payments that may be required for any particular  
13 ICFA, Global Parent shall be responsible for ensuring that the entire HUF is paid  
14 no later than the time the ICFA payment is received for: (1) final plat, (2) the start  
15 work date, or (3) the date required by the HUF tariffs, whichever is earliest.  
16 When constructing facilities required under a HUF of ICFA, Global Utilities shall  
17 first use the HUF moneys received, and only after those funds are spent, shall it  
18 use debt or equity financing.<sup>36</sup>

19 In his Direct Testimony in Opposition to the Settlement Agreement, NWP witness Jellies  
20 identified a potential problem with the operation of Section 6.4.4 in the case of NWP, which he  
21 illustrated as follows:

22 Since NWP has already paid \$1,000 of the \$5,500 due per EDU, the amount  
23 remaining for NWP is \$4,500 per EDU. As I read the Settlement Agreement,  
24 NWP will be required to write Global Parent a check for \$1,350 per EDU [30% x  
25 \$4,500] while writing checks to WUGT and HUC totaling only \$3,150 [70% x  
26 \$4,500]. This number is well below the required \$3,500 hook-up fee required by  
27 the Settlement Agreement. \*\*\* [I]t would appear that NWP might well be  
28 responsible for the additional \$350 per EDU that would be “short” under the  
Settlement Agreement.<sup>37</sup>

At the hearing, NWP believes that Global witness Walker clarified that notwithstanding  
anything to the contrary in Section 6.4.4 of the Settlement Agreement, the parties agree that NWP  
and SNR may fully fund the applicable HUFs of WUGT and HUC in the combined amount of  
\$3,500 out of the Landowner Payments due under their respective ICFAs. This agreement is  
reflected in the following exchange between counsel for GWR and Mr. Walker:

<sup>36</sup> Hearing Exhibit A-17 at p. 10.

<sup>37</sup> Hearing Exhibit NWP-4 at p. 8, lines 17-24.

1 Q. [By Mr. Sabo] And there has been a lot of discussion during the hearing  
2 on this topic about amending the ICFA to allow for  
3 payment of the hookup fee directly to the water and  
4 wastewater utility. You have heard some of that?

5 A. [By Mr. Walker] I have.

6 Q. [By Mr. Sabo] And is it Global's position that the provisions in the  
7 settlement agreement are very clear that that would be  
8 allowed?

9 A. [By Mr. Walker] Yes.

10 Q. [By Mr. Sabo] And were you here for the testimony of Mr. O'Reilly?

11 A. [By Mr. Walker] Not all of it, but a good part of it, yes.

12 Q. [By Mr. Sabo] And you are aware that there is a provision in the ICFA that  
13 Global believes also would allow for such a payment?

14 A. [By Mr. Walker] That's correct.

15 Q. [By Mr. Sabo] And so it would be the position of Global that any  
16 amendment to the ICFA would be unnecessary?

17 A. [By Mr. Walker] That's correct.

18 Q. [By Mr. Sabo] All that being said, in the spirit of being cooperative and so  
19 forth, would Global be willing to enter into a limited  
20 amendment to the ICFA specifically on this topic of  
21 allowing the portion of the ICFA fee that goes towards the  
22 hookup fee to be paid directly to the applicable water and  
23 wastewater companies?

24 A. [By Mr. Walker] Yes. To the extent that that might help ameliorate some of  
25 the concerns that SNR and NWP have, we are willing to  
26 amend each of their ICFAs to reflect what we believe the  
27 settlement says, *i.e.*, you can send in a check for the water  
28 utility, the wastewater utility, and a check to Global Parent  
as well.<sup>38</sup>

NWP requests that the Commission order as a condition of any approval of the Settlement Agreement that NWP and SNR can fully fund the applicable HUFs of WUGT and HUC in the combined amount of \$3,500 out of the Landowner Payments due to GWR under the ICFA.

<sup>38</sup> Hearing Transcript Vol. III at pp. 467-468.

1 **VI. THE ICFAS SHOULD BE AMENDED TO EXPRESSLY PERMIT THE DIRECT**  
2 **PAYMENT OF HUFs TO THE APPLICABLE UTILITY PROVIDERS.**

3 Section 6.4.2 of the Settlement Agreement states as follows:

4 For amounts due after the effective date of the Commission's order in this docket,  
5 Global Parent will agree to accept separate checks for the ICFA fees owed, as  
6 follows: (1) a check payable to the applicable water utility in the amount of the  
7 water HUF; (2) a check payable to the applicable wastewater utility in the amount  
8 of the wastewater HUF; and (3) a check payable to Global Parent for the  
9 remainder of the ICFA fee.<sup>39</sup>

10 Notwithstanding this language in the Settlement Agreement, the ICFAs do not expressly  
11 authorize landowners to send Landowner Payments covering applicable HUFs directly to the  
12 utilities that will provide the utility services. As a result, NWP requested that the Commission  
13 order GWR to amend the ICFAs to expressly authorize landowners to send Landowner Payments  
14 covering applicable HUFs directly to the utilities that will provide the utility services.<sup>40</sup> At the  
15 hearing, Mr. Walker, on behalf of GWR, agreed to such an amendment of the ICFAs, as stated in  
16 his testimony:

17 Okay. Well, what we are willing to do is amend each of those ICFAs to reflect  
18 the settlement provisions regarding the hookup fees. In particular the settlement  
19 says that Global should be willing to accept checks directly to the water utility  
20 and directly to the wastewater utility for the hookup fee amounts. So generally  
21 speaking, I expect developers will just write a check to Global and then we will  
22 divide it out. But the settlement and our offer to amend these ICFAs will make it  
23 more clear to your clients that they can send in three checks.<sup>41</sup>

24 NWP requests that the Commission include this agreement by GWR as a condition of any  
25 approval of the Settlement Agreement.

26 **VII. THE SETTLEMENT AGREEMENT LACKS MEANINGFUL ENFORCEMENT**  
27 **MECHANISMS.**

28 The Settlement Agreement imposes significant obligations on GWR in Sections 6.1.2,  
6.2.1, 6.2.3, 6.3, 6.3.4, 6.3.4.1, 6.3.4.2, 6.4, 6.4.1, 6.4.2.1, 6.4.3, and 6.4.4. Yet, there is virtually  
nothing in the Settlement Agreement regarding enforcement or the jurisdiction of the

<sup>39</sup> Hearing Exhibit A-17 at p. 9.

<sup>40</sup> Hearing Exhibit NWP-4 at p. 8, lines 5-13.

<sup>41</sup> Hearing Transcript Vol. IV at p. 590, lines 6-16.

1 Commission over GWR. Absent a robust mechanism to enforce the provisions of the Settlement  
2 Agreement, approval of the agreement is not in the public interest.

3 In Staff's initial direct testimony, Staff recommended fairly intensive reporting  
4 requirements from GWR on a going forward basis. Unfortunately, those reporting requirements  
5 were not included in the Settlement Agreement. During questioning from Judge Nodes, Global  
6 witness Paul Walker agreed to amending the Settlement Agreement to require GWR to submit an  
7 affidavit attesting to GWR's compliance with the Settlement Agreement in the prior year.<sup>42</sup>  
8 While this concession is an important part of addressing the enforcement issue, it may not go far  
9 enough.

10 Additionally, there remains a question as to whether the Commission has jurisdiction over  
11 GWR and what actions the Commission could take if GWR violates the Settlement Agreement.  
12 Mr. Walker testified that he anticipates Staff would file an order to show cause ("OSC") against  
13 GWR or any other GWR affiliate which violated the Settlement Agreement.<sup>43</sup> NWP agrees with  
14 Mr. Walker's statement and believes that an OSC proceeding would be an appropriate venue to  
15 address violations of the Settlement Agreement by GWR or any of its non-regulated affiliates.  
16 Mr. Walker goes on further to agree that the Commission has the ability to enforce the Settlement  
17 Agreement against GWR:

18 Q. [By Mr. Crockett] So the fact that Global Water Resources, Inc. is a party to  
19 this settlement agreement, does that in your mind create  
20 any jurisdiction on the part of the Commission over Global  
Water Resources, Inc.?

21 A. [By Mr. Walker] I think it does in the question of compliance to the  
22 settlement agreement.

23 Q. [By Mr. Crockett] So do you believe that the Commission would be able to  
24 pursue some kind of enforcement action against Global  
25 Water Resources, Inc. if Global Resources Water, Inc.  
failed to follow through with any of its obligations under  
the settlement agreement?

26 A. [By Mr. Walker] As a nonlawyer? I mean I don't know if that calls for a  
27 legal decision, but I mean I would think Global Parent's

28 <sup>42</sup> Hearing Transcript Vol. III at p. 517, lines 5-17.

<sup>43</sup> Hearing Transcript Vol. IV at p. 663, lines 23-25.

signature on here means it agrees that the Commission has the ability to oversee its compliance with the settlement.<sup>44</sup>

During questioning of Mr. Olea by RUCO, Mr. Olea testified that Staff is “going to proceed as if [Global Parent or Global Water Resources Canada] were bound” by the Settlement Agreement. Mr. Olea goes on further to state that if those entities were “entering into ICFAs, then Staff would immediately proceed with an order to show cause.” NWP agrees with Mr. Olea and Mr. Walker that if the Settlement Agreement is violated by any Global entity, regulated or otherwise, the Commission has the jurisdiction to proceed with an OSC.

In order to have a clear understanding on enforcement of the Settlement Agreement, NWP requests that any order approving the Settlement Agreement contain a provision which makes clear that all GWR affiliates are under the jurisdiction of the Commission as it relates to both the Settlement Agreement and the ICFAs. Additionally, NWP would request that any order approving the Settlement Agreement contain a provision requiring GWR to file annual affidavits certifying that GWR and all GWR-affiliated entities are in compliance with the Settlement Agreement.

**VIII. PHASE-IN OF RATE INCREASE FOR WUGT.**

In his Direct Testimony in Opposition to Settlement Agreement, Mr. Jellies testified that a 100% increase in rates as proposed for WUGT under the Settlement Agreement will hurt rate payers directly and the perception of potential purchasers of NWP’s properties.<sup>45</sup> Even though WUGT would phase in the higher rates over three years, this will still have a direct, dramatic and immediate effect on ratepayers.<sup>46</sup> The ratepayers in the Town of Maricopa are seeing smaller rate increases (by percentage) yet the increase are being phased in over eight years under the Settlement Agreement.<sup>47</sup> There is no good reason why the rates of WUGT should not be phased in over a similar time period.

<sup>44</sup> Hearing Transcript Vol. III at pp. 491-492.

<sup>45</sup> Hearing Exhibit NWP-4 at p. 9, lines 4-6.

<sup>46</sup> *Id.* at lines 6-8.

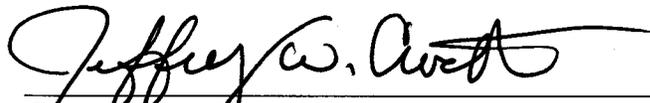
<sup>47</sup> *Id.* at 8-10.

1 **IX. CONCLUSION.**

2 For all of the reasons set forth herein, NWP requests that the Administrative Law Judge  
3 issue an order as follows:

- 4 • GWR should be prohibited from applying the CPI adjuster to funds  
5 received from NWP under its ICFA that are to be applied to applicable  
6 HUFs and treated as contributions in aid of construction to WUGT and  
7 HUC.
- 8 • GWR should be required to segregate funds received under ICFAs as  
9 contemplated in the testimony of Staff witness James Armstrong.
- 10 • Notwithstanding the language of Section 6.4.4 of the Settlement  
11 Agreement which provides for a 70%-30% split of future payments to  
12 GWR under the ICFAs, the order should make clear that NWP, SNR and  
13 all other parties to ICFAs may fully fund applicable HUFs due to the  
14 utilities that will provide service to the property covered by the ICFAs.
- 15 • GWR should be required to amend its ICFA with NWP to make clear that  
16 monies allocated to WUGT and HUC as HUFs may be paid directly to  
17 WUGT and HUC.
- 18 • GWR and its non-regulated affiliates must agree to submit to the  
19 jurisdiction of the Commission regarding enforcement of the terms of the  
20 Settlement Agreement and the order approving the Settlement Agreement,  
21 and waive the right to assert that the Commission lacks jurisdiction over  
22 GWR and its non-regulated affiliates. GWR must agree to the ICFAs  
23 being under the jurisdiction of the Commission.
- 24 • GWR should be required to provide annual reports certified by an officer  
25 of GWR regarding compliance with the settlement agreement.
- 26 • GWR should be required to phase-in the rate increase for WUGT over  
27 eight years instead of the three-year phase-in required under the  
28 Settlement Agreement.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of October, 2013.

23  
24   
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