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BEFORE THE ARIZONA CORPORATION COMMISSION

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2013 OCT 31 P 2:40  
AZ CORP COMMISSION  
DOCKET CONTROL

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

Arizona Corporation Commission

**DOCKETED**

OCT 31 2013

DOCKETED BY

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

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

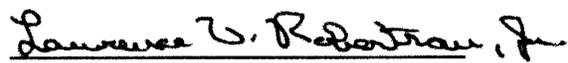
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1 IN THE MATTER OF THE APPLICATION OF )  
GLOBAL WATER – SANTA CRUZ WATER ) DOCKET NO. W-20446A-12-0314  
2 COMPANY FOR THE ESTABLISHMENT OF JUST )  
AND REASONABLE RATES AND CHARGES FOR )  
3 UTILITY SERVICE DESIGNED TO REALIZE A )  
REASONABLE RATE OF RETURN ON THE FAIR )  
4 VALUE OF ITS PROPERTY THROUGHOUT THE )  
STATE OF ARIZONA. )  
5  
6 IN THE MATTER OF THE APPLICATION OF ) DOCKET NO. W-01732A-12-0315  
WILLOW VALLEY WATER COMPANY FOR THE )  
7 ESTABLISHMENT OF JUST AND REASONABLE )  
RATES AND CHARGES FOR UTILITY SERVICE ) NOTICE OF FILING OF CITY OF  
8 DESIGNED TO REALIZE A REASONABLE RATE ) MARICOPA, ARIZONA'S POST-  
OF RETURN ON THE FAIR VALUE OF ITS ) HEARING REPLY BRIEF  
9 PROPERTY THROUGHOUT THE STATE OF )  
ARIZONA. )  
10

11 The City of Maricopa, Arizona hereby provides notice of filing of its Post-Hearing Reply  
12 Brief.

13  
14 Dated this 31<sup>st</sup> day of October 2013.

15 Respectfully submitted,  
16   
17 Lawrence V. Robertson, Jr.  
Attorney for City of Maricopa

18 and  
19 Denis Fitzgibbons  
20 City Attorney for  
21 City of Maricopa, Arizona

22 The original and thirteen (13) copies  
23 of the foregoing will be filed the 31<sup>st</sup>  
day of October 2013 with:

24 Docket Control Division  
25 Arizona Corporation Commission  
1200 West Washington Street  
26 Phoenix, Arizona 85007

27 A copy of the same served by e-mail  
28 or first class mail that same date to:

All Parties of Record

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# City of Maricopa Post-Hearing Reply Brief

October 31, 2013

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1 Pursuant to Assistant Chief Administrative Law Judge Dwight Nodes' oral directive at the  
2 conclusion of the evidentiary hearing in the above-captioned and above-docketed proceedings  
3 ("Instant Proceeding") on September 12, 2013, the City of Maricopa, Arizona ("City") submits  
4 its Post-Hearing Reply Brief ("Reply Brief") in the Instant Proceeding.

5 I.

6 INTRODUCTION

7 In its Post-Hearing Initial Brief ("Initial Brief") which was filed with the Commission's  
8 Docket Control on October 18, 2013, the City discussed at length the manner in which the  
9 August 13, 2013 Settlement Agreement which is currently pending before the Commission  
10 satisfactorily addressed pre-settlement concerns of the City with respect to various issues raised  
11 by or related to the Instant Proceeding. In addition, in its Initial Brief the City also discussed in  
12 detail the manner in which the City believes the provisions of the Settlement Agreement result in  
13 benefits to (i) the City and ratepayers within the service areas of Santa Cruz Water Company  
14 ("Santa Cruz") and Palo Verde Utilities Company ("Palo Verde"),<sup>1</sup> (ii) Global Parent<sup>2</sup> and (iii)  
15 the various utility affiliates of Global Parent, including Santa Cruz and Palo Verde.

16 As noted by the Global Utilities in their October 18, 2013 Post-Hearing Brief at page 1,  
17 lines 4 – 6, the aforesaid Settlement Agreement was signed by seventeen (17) parties consisting  
18 of the following: (i) the Global Applicants and the Global Intervenors ("Global Utilities"); (ii)  
19 the Commission Staff; (iii) the Residential Utility Consumers Office ("RUCO"); (iv) thirteen  
20 (13) HOAs within the municipal boundaries of the City; and (v) the City itself. In that regard,  
21 none of the other aforesaid signatories to the Settlement Agreement made statements in their  
22 respective Post-Hearing Initial Briefs which conflict with the City's (i) interpretation of various  
23 provisions of the Settlement Agreement or (ii) discussion of various benefits which would result  
24 from the Commission's approval of the Settlement Agreement as currently written.

25 \_\_\_\_\_

26 <sup>1</sup> As noted at Footnote 1 in the City's Initial Brief, ratepayers within the Santa Cruz and Palo Verde services areas  
27 are also members of the various homeowner associations comprised of the Maricopa Area Homeowners  
Associations ("HOAs") who are signatories to the Settlement Agreement.

28 <sup>2</sup> As used herein, "Global Parent" refers to Global Water Resources, Inc. a Delaware corporation, and not Global  
Water Resources, Corp., a Canadian corporation.



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- 1 • GWR should be required to amend its ICFAs with NWP and SNR to  
2 make clear that monies allocated to WUGT and HUC as HUFs may be  
3 paid directly to WUGT and HUC.
- 4 • GWR and its non-regulated affiliates must agree to submit to the  
5 jurisdiction of the Commission regarding enforcement of the terms of  
6 the Settlement Agreement and the order approving the Settlement  
7 Agreement, and waive the right to assert that the Commission lacks  
8 jurisdiction over GWR and its non-regulated affiliates. Likewise,  
9 GWR must agree that its ICFAs are subject to the Commission's  
10 jurisdiction.
- 11 • GWR should be required to provide annual reports certified by an  
12 officer of GWR and its regulated subsidiaries allowing for verification  
13 of compliance with all obligations imposed under the Settlement  
14 Agreement.
- 15 • GWR should be required to phase-in the rate increase for WUGT over  
16 eight years instead of the three-year phase-in required under the  
17 Settlement Agreement." [NWP Initial Closing at page 5, line 13 –  
18 page 6, line 9] [emphasis added]

\* \* \*

15 "CONCLUSION.

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

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

- 1 • GWR and its non-regulated affiliates must agree to submit to the  
2 jurisdiction of the Commission regarding enforcement of the terms of  
3 the Settlement Agreement and the order approving the Settlement  
4 Agreement, and waive the right to assert that the Commission lacks  
5 jurisdiction over GWR and its non-regulated affiliates. GWR must  
6 agree to the ICFAs being under the jurisdiction of the Commission.
- 7 • GWR should be required to provide annual reports certified by an  
8 officer of GWR regarding compliance with the settlement agreement.
- 9 • GWR should be required to phase-in the rate increase for WUGT over  
10 eight years instead of the three-year phase-in required under the  
11 Settlement Agreement.” [NWP Initial Closing Brief at page 22, lines 1  
12 – 21.5] [emphasis added]

13 In connection with the foregoing, with the exception of the third bullet point and the seventh  
14 bullet point set forth in each of the above quoted excerpts from NWP’s Initial Closing Brief, it  
15 would appear that NWP’s expressed prayer(s) for relief do(es) not require that the Commission  
16 either disapprove of or modify any of the provisions of the Settlement Agreement now before it.  
17 Rather, it would appear that with those two (2) exceptions NWP is requesting that its other  
18 prayer(s) for relief be in the form of conditions to the Commission’s approval of the Settlement  
19 Agreement, which prayer(s) include(s) the therein described assertion of Commission  
20 jurisdiction over Global Parent and ICFAs and modification of ICFAs, but do not require  
21 modification of the Settlement Agreement itself.

22 With respect to the aforementioned third bullet point, it would further appear that if a  
23 modification of Section 6.4.4 of the Settlement Agreement is required in order to accommodate  
24 NWP’s prayer for relief in that regard, the signatory parties directly affected would be Global  
25 Parent and the Global Utilities. Accordingly, the City will defer to those parties and their  
26 forthcoming respective Reply Brief(s) to indicate whether or not they believe that such a  
27 modification of Section 6.4.4 as requested by NWP would constitute a “material change” within  
28 the contemplation and meaning of Section 10.5 of the Settlement Agreement. The City believes  
it would be presumptuous for it to express a conclusion in that regard upon their behalf.

With respect to the aforesaid seventh bullet point, NWP’s request for relief is misplaced

1 and should be rejected by the Commission. In support of such request for relief, NWP makes the  
2 following arguments in its Initial Closing Brief:

3 "Even though WUGT would phase in the rates over three years under the  
4 Settlement Agreement, this will still have a direct, dramatic and immediate effect  
5 on ratepayers. Rates for the utilities which serve the Town of Maricopa are phased  
6 in over eight years. There is no good reason why the rates of WUGT should not  
7 be phased in over a similar time period which would help address the rate shock  
8 which rate payers will undoubtedly experience." [NWP Initial Closing Brief at  
9 page 5, lines 7.5 - 12]

10 \* \* \*

11 "Even though WUGT would phase in the higher rates over three years, this will  
12 still have a direct, dramatic and immediate effect on ratepayers. The ratepayers in  
13 the Town of Maricopa are seeing smaller rate increases (by percentage) yet the  
14 increase are being phased in over eight years under the Settlement Agreement.  
15 There is no good reason why the rates of WUGT should not be phased in over a  
16 similar time period." [NWP Initial Closing Brief at page 21, lines 18 - 23]

17 In making the above line(s) of argument in support of its request for relief in this regard,  
18 NWP conveniently overlooks the fact that the three-year and eight-year phase-in periods therein  
19 referenced relate to two (2) separate aspects or components of the overall increase in rates for  
20 various utility affiliates of Global Parent which are the subject of the Settlement Agreement.  
21 More specifically, the three-year phase-in applies to that portion of the rate increase occasioned  
22 by recognition of operating expenses for the test period proposed by the Commission Staff and  
23 accepted by the signatories to the Settlement Agreement.<sup>3</sup> In that regard, it is applicable to all of  
24 the Global utility affiliates (except Water Utility of Northern Scottsdale) who are Applicants in  
25 the Instant Proceeding, which includes the Santa Cruz and Palo Verde systems as well as the  
26 WUGT system. Whereas, the eight-year phase-in period is applicable to that portion of the  
27 overall rate increase that relates to the de-imputation of CIAC;<sup>4</sup> and, within the context of the  
28 Instant Proceeding, the only rate impact which occurs at this time is experienced on the Santa

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<sup>3</sup> See Section 1.5 (Fourth Bullet Point) of Settlement Agreement, and rate schedules for the Global Utilities set forth at Attachment "A" to Settlement Agreement.

<sup>4</sup> See Sections 6.3.2, 6.3.2.1, 6.3.2.2 and 6.3.2.3 of the Settlement Agreement.

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1 Cruz and Palo Verde systems.<sup>5</sup> There is no rate impact on the WUGT system within the context  
2 of the Instant Proceeding as a result of the de-imputation of CIAC as to that system.<sup>6</sup> Rather, the  
3 prospect of such an impact is deferred to a future rate case, if then.<sup>7</sup> It is for this important  
4 distinction in circumstances that the eight-year phase-in of rates for Santa Cruz and Palo Verde  
5 provided for in Section 6.3.2 of the Settlement Agreement is appropriate, and why NWP's  
6 request for a similar eight-year phase-in period for WUGT's rate increase is not well-founded.

7 **B. SNR's Briefing Position and Prayer(s) for Relief.**

8 The essence of SNR's briefing position and requested prayer(s) for relief appear to be set  
9 forth at the following portions of its Initial Closing Brief:

10 "SNR's Requests  
11 SNR requests that the Commission:

- 12 1. Take jurisdiction over GWR and the ICFAs to ensure that all investments made  
13 by developers under these ICFAs are committed to construct the contracted-for  
14 regional infrastructures in order to not only protect those developers but also the  
15 ratepayers for whom that infrastructure is to be built.
- 16 2. To determine that the ICFAs and HUF as written will not continue to put SNR  
17 and other developers that have signed ICFAs at a competitive disadvantage with  
18 developers that have not signed ICFAs, thereby jeopardizing development in  
19 those areas where developers that have signed ICFAs intend to build.
- 20 3. Order GWR to modify the ICFAs to incorporate the provisions ultimately  
21 approved by the Commission in the Settlement Agreement related to the  
22 establishment of HUF in order to resolve inconsistencies between the ICFA and  
23 the HUF related to payment of such funds that may lead to litigation in the future.
- 24 4. Review in detail and regulate the financial condition of GWR so that it will be  
25 capable of fulfilling all of its obligations to the present and future ratepayers  
26 under all ICFAs. (SNR-1 at 5-6)." [SNR's Initial Closing Brief page 10, line 21 –  
27 page 11, line 11] [emphasis added]

23 \* \* \*

24 "III.  
25 CONCLUSION

26 \_\_\_\_\_  
27 <sup>5</sup> See Sections 6.3.2 and 6.3.2.3 of the Settlement Agreement.  
28 <sup>6</sup> See Sections 6.3.4 and 6.3.4.2 of the Settlement Agreement.  
<sup>7</sup> See Section 6.3.4.3 of the Settlement Agreement.

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1 SNR respectfully requests that the Commission: (1) Assert jurisdiction over GWR  
2 and the ICFAs to protect the ratepayers; (2) to ensure the ICFAs and the HUF will  
3 not put developers at a competitive disadvantage; (3) ensure GWR modifies the  
4 ICFAs to incorporate the provisions of HUF; and (4) review in detail and regulate  
5 the financial condition of GWR so that it will be capable of fulfilling its  
6 obligations under all ICFAs.” [SNR’s Initial Closing Brief page 22, lines 21 - 26]  
7 [emphasis added]

8 With the exception of one nuance which appears within the body of its Initial Closing  
9 Brief, and which will be addressed below, it would appear that none of SNR’s express request(s)  
10 for relief require a modification of the provisions of the Settlement Agreement itself. Rather, it  
11 would appear that SNR is seeking (i) Commission assertion of jurisdiction and provision of  
12 oversight and specific direction with respect to Global Parent and any other non-utility Global  
13 Parent affiliates, and (ii) modification of ICFAs in order to conform with various provisions of  
14 the Settlement Agreement, in order to achieve SNR’s objectives. While SNR does not  
15 characterize Commission granting of its request(s) for relief as “conditions to approval” of the  
16 Settlement Agreement, it would appear that its collective prayer(s) for relief is(are) equivalent to  
17 the same.

18 The aforementioned nuance in SNR’s Initial Closing Brief is to be found at page 13, lines  
19 3 – 12 where SNR asks the Commission in effect to modify Section 6.3.6 of the Settlement  
20 Agreement, so as to provide that previously paid ICFA fees not utilized for purposes of  
21 satisfying HUF obligations shall be used precisely for that purpose, rather than being available to  
22 Global Parent for satisfaction of other obligations it may have under ICFAs and/or other uses. It  
23 would appear that a granting of this request could be a “material change” from the perspective of  
24 Global Parent. In such event, such a change would also be of concern to the City since it could  
25 (i) adversely impact that stabilization of Global Parent’s financial condition which is among the  
26 objectives of the Settlement Agreement and (ii) potentially jeopardize the viability of the  
27 Settlement Agreement itself.

### 28 III.

### CONCLUSION

As previously noted, of the nineteen (19) parties who participated in the settlement

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1 discussions,<sup>8</sup> seventeen (17) have signed the resulting Settlement Agreement. Each of those  
2 parties, in turn, individually or collectively filed an Initial Brief discussing, inter alia, (i) why  
3 it(they) believe(s) the Settlement Agreement is in the public interest and (ii) the benefits to be  
4 realized thereunder in the event of Commission approval of the same.

5 In addition, and as discussed in Section II above, with the exception of NWP's request(s)  
6 for relief as to Sections 6.3.2 and 6.4.4 of the Settlement Agreement and SNR's "nuanced"  
7 request as to Section 6.3.6, it appears that NWP's and SNR's express request(s) for relief could  
8 be independently accommodated without a need to modify or add to the language of the  
9 Settlement Agreement itself. In that regard, and with respect to the request(s) for (i)  
10 Commission assertion of jurisdiction over Global Parent (and all of its non-utility affiliates) and  
11 ICFAs, and (ii) modification of ICFAs, City will defer to Global Parent as to whether such action  
12 by the Commission would constitute a "material change" to the Settlement Agreement itself  
13 within the contemplation and meaning of Section 10.5 of the Settlement Agreement.

14 Finally, in connection with Commission consideration of NWP's and SNR's request(s)  
15 for relief, City makes the following additional observations. First, the two (2) non-signatory  
16 parties, NWP and SNR, are experienced real estate developers, who appear to have had access to  
17 competent legal and financial counsel well versed in utility issues and Commission practice at  
18 the time that they entered into their respective ICFAs. Thus, for example, they fully understood  
19 the nature and purpose of a CPI index provision. That they have since become dissatisfied with  
20 certain provisions of those agreements in the light of subsequent events and unrealized  
21 expectations, not attributable to any interim action(s) by the Commission, should not be a  
22 predicate for their request(s) that the Commission now assert jurisdiction over and modify those  
23 ICFAs.

24 Second, there is conflicting evidence in the record as to whether NWP and SNR would in  
25 fact be at a competitive disadvantage vis-à-vis developers who have not signed ICFAs. As  
26 Global Parent witness Paul Walker testified, by reason of their ICFAs and inclusion of their  
27

28 <sup>8</sup> While there were several additional individual intervenors in the Instant Proceeding, they did not participate in the

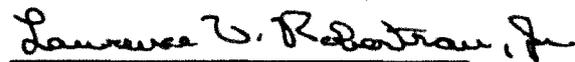
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1 acreage within the Arizona Department of Water Resources' determination as to the existence of  
2 groundwater resources in their respective geographic areas, NWP and SNR will have access to  
3 groundwater for future development, which developers with acreage in the same area, but who  
4 do not have an ICFA with Global Parent, may not. Thus, it may be NWP and SNR who would  
5 have the actual competitive advantage.<sup>9</sup> Third, with respect to NWP's and SNR's request that  
6 the Commission assert jurisdiction over Global Parent (and its non-utility affiliates) in order to  
7 ensure compliance with the Settlement Agreement itself, it would appear that Global Parent (and  
8 its non-utility affiliates) have every reason to comply as a practical matter. That is because  
9 Global Parent would appear to be primarily (if not completely) dependent upon the operations of  
10 the Global Utilities for an ongoing reliable source of revenue; and, in turn, the Global Utilities  
11 are subject to day-to-day regulation by the Commission. Thus, if the Commission determines to  
12 not assert jurisdiction over Global Parent (and its non-utility affiliates), in reality it still possesses  
13 substantial ability to influence their behavior through its regulation of the Global Utilities.

14 Accordingly, for all of the reasons discussed above in this Reply Brief, City urges the  
15 Commission to approve the Settlement Agreement without "material change" as to any of the  
16 signatories and their respective interests thereunder.

17  
18 Dated this 31<sup>st</sup> day of October 2013.

19 Respectfully submitted,

20 

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22 Of Counsel to Munger Chadwick, PLC  
23 Attorney for City of Maricopa

24 and

25 Denis Fitzgibbons  
26 City Attorney for  
27 City of Maricopa, Arizona

28 settlement discussions or subsequent evidentiary hearings, nor did they file Initial Briefs.

<sup>9</sup> See Tr. 644, lines 7 -15. Also, see Exhibit A-20 (Fleming Rebuttal Testimony) at pages 5 - 6.

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