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ARIZ 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 31 2013

DOCKETED BY

DOCKET NO. SW-20445A-12-0310

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. W-03720A-12-0311

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

DOCKET NO. W-02450A-12-0312

IN THE MATTER OF THE APPLICATION OF WATER UTILITY OF GREATER TONOPAH, INC. 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

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.

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

DOCKET NO. W-20446A-12-0314

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

DOCKET NO. W-01732A-12-0315

STAFF’S REPLY BRIEF

11 **I. INTRODUCTION.**

12 Staff of the Arizona Corporation Commission (“Staff”) hereby responds to the initial briefs
13 filed by New World Properties, Inc. (“NWP”), Sierra Negra Ranch, LLC and Sierra Negra
14 Management, LLC (collectively “SNR”) and the Residential Utility Consumer Office (“RUCO”).
15 NWP and SNR are the only two parties to this case that are actively opposing the proposed
16 Settlement Agreement (“Settlement Agreement” or “Agreement”). They are both developers who
17 signed an Infrastructure Coordination and Finance Agreement (“ICFA”) with Global. They do not
18 believe that the proposed Settlement Agreement goes far enough. Yet they both acknowledge that
19 the provisions of the proposed Settlement Agreement offer them far more safeguards and protections
20 than they have now without the proposed Agreement. Some of the additional protections they seek
21 they actually already have. Others were agreed to by Global at the hearing. Beyond this, the
22 additional assurances they want the Commission to order are inappropriate for the reasons discussed
23 below.

24 RUCO, on the other hand, supports the proposed Settlement Agreement and is a signatory to
25 it. In its Closing Brief, RUCO cites to the many benefits of the proposed Agreement which resulted
26 in its supporting and signing it.¹ RUCO, however, opposes the System Improvement Benefit (“SIB”)
27 mechanism which was not part of the proposed Settlement Agreement. RUCO’s position on the SIB

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¹ RUCO Closing Brief at 3.

1 in this case “is no different than its position in the pending Arizona Water (Eastern and Northern
2 Division) cases.”² Moreover, “the reasons why RUCO opposes the SIB in this case are for the most
3 part the same as in the other cases.”³ The Commission has twice rejected RUCO’s position on the
4 SIB and should in this case as well.

5 The proposed Settlement Agreement is the result of a hard fought negotiation on the part of
6 all parties. Even those opposing the proposed Agreement were part of the negotiations and their
7 input was given serious consideration and is reflected in the Agreement in many areas. The proposed
8 Agreement resolves the contentious ICFA issue, gives Global an opportunity to move toward
9 financial stability, and carefully balances the interests of ratepayers with the interests of shareholders
10 and ICFA signatories. The proposed Agreement is in the public interest and the Commission should
11 approve it. Many of its significant terms would not be possible but for the proposed Agreement.

12 **II. DISCUSSION.**

13 **A. Response to NWP and SNR.**

14 NWP seeks the following additional requirements beyond those contained in the proposed
15 Settlement Agreement:

- 16 1) GWR [Global Water Resources] should be prohibited from applying the CPI
17 [Consumer Price Index] adjuster to funds received from NWP under its ICFA that are
18 to be applied as HUFs [Hook-Up Fees] and treated as contributions in aid of
19 construction to WUGT [Water Utility of Greater Tonopah] and HUC [Hassayampa
20 Utilities Company].⁴
- 20 2) GWR should be required to segregate all funds received under the ICFAs.⁵
- 21 3) Notwithstanding the language of Section 6.4.4 of the Settlement Agreement which
22 provides for a 70%-30% split of future payments received by GWR under the ICFAs,
23 the order should make clear that NWP, SNR and all other parties to ICFAs may fully
24 fund applicable HUFs for the utilities that will provide service to the properties
25 covered under the ICFAs.⁶
- 26 4) GWR should be required to amend its ICFAs with NWP and SNR to make clear that
27 monies allocated to WUGT and HUC as HUFs may be paid directly to WUGT and
28 HUC.⁷

25 ² RUCO Closing Brief at p. 2.

26 ³ *Id.*

27 ⁴ NWP Closing Brief at 5.

27 ⁵ *Id.*

28 ⁶ *Id.*

28 ⁷ NWP Closing Brief at 5.

- 1 5) GWR and its non-regulated affiliates must agree to submit to the jurisdiction of the
2 Commission regarding enforcement of the terms of the Settlement Agreement and the
3 order approving the Settlement Agreement, and waive the right to assert that the
4 Commission lacks jurisdiction over GWR and its non-regulated affiliates. Likewise,
5 GWR must agree that its ICFAs are subject to the Commission's jurisdiction.⁸
- 6 6) GWR should be required to provide annual reports certified by an officer of GWR and
7 its regulated subsidiaries allowing for verification of compliance with all obligations
8 imposed under the Settlement Agreement.
- 9 7) GWR should be required to phase-in the rate increase for WUGT over eight years
10 instead of the three-year phase-in required under the Settlement Agreement.

11 SNR seeks the following additional requirements above and beyond those contained in the
12 proposed Settlement Agreement:

- 13 8) The Commission should take jurisdiction over GWR and the ICFAs to ensure that all
14 investments made by developers under these ICFAs are committed to construct the
15 contracted-for regional infrastructures in order to not only protect those developers but
16 also the ratepayers for whom those infrastructures are to be built.⁹
- 17 9) The Commission should determine that the ICFAs and HUF as written will not
18 continue to put SNR and other developers that have signed ICFAs at a competitive
19 disadvantage with developers that have not signed ICFAs, thereby jeopardizing
20 development in those areas where developers that have signed ICFAs intend to build.¹⁰
- 21 10) The Commission should order GWR to modify the ICFAs to incorporate the
22 provisions ultimately approved by the Commission in the Settlement Agreement
23 related to the establishment of a HUF in order to resolve inconsistencies between the
24 ICFA and the HUF related to payment of such funds that may lead to litigation in the
25 future.¹¹
- 26 11) The Commission should review in detail and regulate the financial condition of GWR
27 so that it will be capable of fulfilling all of its obligations to the present and future
28 ratepayers under all ICFAs.¹²

29 Staff will address each of the additional conditions requested by NWP and SNR in the order
30 presented above.

31 ⁸ NWP Closing Brief at 6.
32 ⁹ SNR Closing Brief at 11.
33 ¹⁰ *Id.* at 14.
34 ¹¹ *Id.* at 18.
35 ¹² *Id.* at 20.

1 **1. NWP's request that GWR should be prohibited from applying the CPI**
2 **adjustor to funds received from NWP under its ICFA that are to be**
3 **applied as HUFs and treated as contributions in aid of construction to**
4 **WUGT [Water Utility of Greater Tonopah] and HUC [Hassayampa**
5 **Utilities Company.]**

6 NWP take issues with the Settlement Agreement because it does not revise a provision in its
7 ICFA with Global (Section 4) which adjusts the Landowner Payment per equivalent dwelling unit
8 ("EDU") upwards based upon the CPI adjustor. NWP wants the Commission to essentially rewrite
9 the ICFA so that the CPI adjustor applies to only that portion of the Landowner Payment which is not
10 allocated to payment of the HUF.

11 The ICFA is a voluntary contract between two very sophisticated entities.¹³ NWP has been
12 doing business in Arizona for 30 years and has real estate holdings in Arizona alone through the
13 various trusts that it administers in the \$150 to \$175 million range.¹⁴ NWP originated out of Hong
14 Kong and has holdings worldwide.¹⁵ NWP witness Jellies also testified that, in his business as a
15 consultant for NWP and others, he has dealt with Citizens Utilities and some of the other private
16 water companies, both small and large.¹⁶ The contracts were the product of extensive negotiations,
17 and both NWP and SNR had very experienced attorneys representing them.¹⁷

18 The proposed Settlement Agreement adds many safeguards and conditions the primary
19 purpose of which is to resolve the issues regarding ICFAs from a regulatory perspective, set just and
20 reasonable rates, and to help ensure that Global continues to provide adequate service. It is not the
21 Commission's role to renegotiate provisions of the ICFA to provide either party with more favorable
22 terms than what they had originally negotiated.

23 Moreover, as pointed out in Staff's Initial Brief, it is unlikely that the Commission could order
24 Global parent to actually amend the contracts it has entered into with the developers.¹⁸ And
25 furthermore, there is no need for such amendments, because the Commission can use its regulatory
26 authority to address any circumstances related to the ICFAs that might result in unreasonable rates.

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¹³ Staff's Initial Brief at 13.

28 ¹⁴ Tr. Vol. III at 355 (Jellies).

¹⁵ *Id.*

¹⁶ Tr. Vol. III at 355-356 (Jellies).

¹⁷ Global's Post-Hearing Brief at 19-20.

¹⁸ Staff's Initial Brief at 26.

1 NWP argues that, to the extent the ICFA monies are treated as HUFs, no CPI adjustor should
2 apply to this portion of the ICFA funds. Since developers who have not signed an ICFA will not be
3 subject to the adjustor mechanism.¹⁹ NWP argues that the CPI adjustor will create an unlevel playing
4 field for NWP and SNR as they are forced to compete with developers which do not sign ICFAs.²⁰
5 This prospect, however, may be unlikely when, as Global points out, "...in practical terms, the
6 existing groundwater in the areas is already spoken for by SNR, NWP and other similarly situated
7 ICFA holders."²¹ Global witness Walker also testified that there is not much water that is going to be
8 available in that area and to get water out to the area would be "very, very expensive."²² Global
9 witness Walker also testified that, to the extent someone did come into the area to compete with
10 them, "the ICFA holders who are in that DAWS [Designation of Assured Water Supplies] application
11 have a very, very significant competitive advantage over someone who wants to enter that sub-
12 basin."²³

13 In addition, Company witnesses Fleming and Walker both indicated that the CPI adjustor was
14 inserted in all of the ICFAs to protect Global from the risk of inflation since the development
15 timeframe in any particular case could extend for a very lengthy period of time.²⁴ In fact, both NWP
16 and SNR could not give any specific timeframes for build-out of their developments and indicated
17 that it could take considerable time and much more time than originally contemplated because of the
18 recession.²⁵

19 NWP's claims of discrimination must also fail since it has not shown (nor can it show) that
20 there are any or will be any similarly situated developers getting more favorable rates in the area
21 covered by their ICFA. However, if this ever occurs, the developers' contracts apparently contain a
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24 ¹⁹ NWP Initial Brief at 7-8.

25 ²⁰ NWP Initial Brief at 4.

26 ²¹ Global's Post-Hearing Brief at 20. This is not to say that Global would not continue to have an
obligation to serve additional developers coming into Global's certificated service area.

27 ²² Tr. Vol. IV at 643.

28 ²³ *Id.*

²⁴ Global's Post-Hearing Brief at 21.

²⁵ See, e.g., Tr. Vol. III at 356-359 (Jellies).

1 Most Favored Nations Clause which the developers can rely upon to obtain some relief at that time.²⁶

2 NWP states that Section 15 of the ICFA confers “most favored nation” status on NWP.²⁷

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

10 NWP states that the intent of this section is “to prevent other entities from receiving a better
11 deal than NWP.”²⁸ NWP is concerned, however, that the adoption of the Settlement Agreement
12 without a corresponding amendment to the CPI adjustor will “effectively eviscerate Section 15 of the
13 ICFA.”²⁹ Staff does not agree. The proposed Agreement is intended to resolve issues from a
14 regulatory perspective only. It is not intended to change or eliminate any provisions in the ICFA that
15 were agreed to by the parties. Staff does not believe it is the Commission’s role to determine the
16 applicability or legality of the ICFA provisions.

17 Paradoxically, both NWP and SNR urge the Commission to rewrite this provision of the
18 ICFA to take away the ICFA’s CPI adjustor, while at the same time expressing grave concern that
19 Global may not have sufficient funds to construct all of the regional infrastructure for which Global is
20 responsible under the proposed Agreement. For instance, NWP states:

21 While GWR will certainly receive large inflows of cash as ICFAs are performed by
22 the developers, GWR will also incur the companion liability of constructing immense
23 amounts of utility infrastructure under those ICFAs. In fact, Staff witness Armstrong
24 testified that “[t]he magnitude of Global Parent’s ultimate obligations under the
ICFAs could be measured in the billions of dollars when we include both Global
Parent’s direct obligations and the infrastructure investments that could be partially
supported through line extension agreements.

26 _____
²⁶ NWP Initial Brief at 12.

27 ²⁷ Staff believes that SNR’s ICFA contains a similar provision.

28 ²⁸ *Id.*

29 ²⁹ *Id.*

1 NWP is dependent upon GWR to provide for the construction of the regional water
2 and sewer infrastructure needed to serve the Copperleaf development, and NWP is
3 rightfully concerned that the landowner payments it provides to GWR under the
ICFA will be available to WUGT and HUC when the utility infrastructure is
needed.³⁰

4 Finally, NWP (and SNR) appear to suggest that they had no alternative but to sign the ICFA;
5 and, therefore, the Commission should revise provisions in the ICFA which they now disfavor.³¹
6 But, as noted by Staff in its Initial Brief, NWP (and SNR) actually had several options which they
7 chose not to pursue because they believed that the ICFA with Global was the best alternative at the
8 time.³²

9 In summary, Staff supports the Settlement Agreement as written. Staff does not support
10 modification of the ICFA simply to provide the developers with terms that are more favorable than
11 originally negotiated with Global. To the extent other developers come into Global's certificated
12 service area and receive service on more favorable terms, the most favored nations provision of their
13 contract may provide NWP and SNR with a remedy.

14 **2. NWP's request that GWR should be required to segregate all funds**
15 **received under ICFAs.**

16 NWP also faults the proposed Settlement Agreement because according to NWP, it fails to
17 adequately protect future monies that will be paid by developers under ICFAs which exceed the
18 amount allocated to HUFs, and which are to be used, in part, for financing of utility infrastructure and
19 transmission facilities.³³ NWP states that "...these monies need to be segregated to ensure that they
20 are available to the utilities which have the obligation to construct utility infrastructure for the
21 developers."³⁴

22 Under the proposed Agreement, approximately 70% of ICFA fees will be segregated to each
23 utility as a HUF.³⁵ Section 6.4.4 of the proposed Agreement provides in part that "...each payment
24 received under the ICFA shall be allocated on the following basis: 70% of the payment shall go

25 ³⁰ NWP Initial Brief at 14.

26 ³¹ NWP Initial Brief at 11; SNR Post-Closing Brief at 3-4.

27 ³² Staff's Initial Brief at 27.

27 ³³ NWP Initial Brief at 4.

28 ³⁴ *Id.*

³⁵ Global Post-Hearing Brief at 11; Tr. Vol. IV at 672.

1 toward payment of the HUF and the remaining payment shall be allocated to the Global Parent.”
2 Further, Section 7.3 of the proposed Agreement requires each Global utility to maintain a separate,
3 segregated bank account for all funds received under the HUF tariff. It further provides that the
4 funds may only be used by the Global water and wastewater utilities for the purposes specified in the
5 HUF tariff.

6 The other 30% of ICFA fees is governed by Section 6.4.3 which states: “[t]he Global Parent
7 portion (ICFA Fee minus HUFs) is to be used only in accordance with the terms of the applicable
8 ICFA.” Still yet another safeguard with respect to the Global Parent is Section 6.2.3 which provides:
9 “Any associated funds or infrastructure (or land associated with the infrastructure which is conveyed
10 to Global) used to provide water or wastewater service will be segregated to or owned by the Global
11 Water and Wastewater Utilities, Hassayampa, Picacho Water or Picacho Utilities.”

12 The Settlement Agreement places appropriate restrictions upon the 30% of ICFA funds that
13 Global parent is to receive. Global parent has responsibilities under the ICFA in addition to
14 construction of regional plant. It would not be appropriate for the Commission to exercise
15 jurisdiction over the parent’s use of these monies to an extent greater than proposed in the Settlement
16 Agreement, unless problems arise in the future with respect to improper use of the funds in violation
17 of the Settlement Agreement. In addition, it is not necessary from a ratemaking perspective to place
18 further restrictions on the remaining 30% of ICFA funds allocated to the parent since those funds are
19 not being utilized in the determination of rates.

20 In addition, Section 6.1.2 of the Agreement provides that “Staff and RUCO reserve the right
21 to monitor Global’s compliance with this Settlement Agreement and review all ICFA related
22 transactions in future rate applications that Global files and take appropriate steps, if necessary, to
23 ensure the continued resolution of the issues regarding ICFAs as set forth in this Agreement.”

24 Staff supports the Settlement Agreement as written and does not support additional
25 requirements to further segregate or track the portion of ICFA funds received by the parent beyond
26 the amount allocated to the HUF.

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1 While Staff believes this point was already clear in the proposed Settlement Agreement, Staff
2 does not oppose recognition of this commitment by Global at the hearing in the Commission's Order,
3 as requested by NWP.

4 **4. NWP's request that GWR should be required to amend its ICFAs with**
5 **NWP and SNR to make clear that monies allocated to WUGT and HUC as**
6 **HUFs may be paid directly to WUFT and HUC.**

7 NWP is concerned that the Settlement Agreement fails "to require Global to modify the ICFA
8 in a manner which protects its regulated utility subsidiaries and the public in the event of a default of
9 bankruptcy by Global parent."³⁷ However, NWP notes in its Initial Brief that Global resolved this
10 concern at the hearing by agreeing to allow an amendment to the ICFA providing for payments
11 directly to the utility.

12 Staff does not oppose NWP's request that the Commission's Order approving the Settlement
13 Agreement in this case adopt the requirement agreed to by Global at the hearing that Global allow
14 developers an opportunity to enter into a narrow amendment with Global which would expressly
15 allow the developer to pay any HUF proceeds directly to the utility.³⁸

16 **5. NWP's request that GWR and its non-regulated affiliates must agree to**
17 **submit to the jurisdiction of the Commission regarding enforcement of the**
18 **terms of the Settlement Agreement and the order approving the**
19 **Settlement Agreement, and waive the right to assert that the Commission**
20 **lacks jurisdiction over GWR and its non-regulated affiliates. Likewise,**
21 **GWR must agree that its ICFAs are subject to the Commission's**
22 **jurisdiction.**

23 NWP argues that the proposed Agreement "lacks any meaningful enforcement mechanisms
24 against Global and the non-regulated affiliates of Global to ensure compliance with the obligations
25 imposed under the Settlement Agreement."³⁹ NWP notes that, while GWR or Global Parent is
26 subject to significant obligations under the Agreement, "there remains a question as to whether the
27 Commission has jurisdiction over GWR and what actions the Commission could take if GWR
28 violates the Settlement Agreement."⁴⁰

26 ³⁷ NWP Initial Brief at 4.

27 ³⁸ *Id.* at 19.

28 ³⁹ *Id.* at 4.

⁴⁰ NWP Initial Brief at 20.

1 Utilities Division Director Olea noted at the hearing on this matter, that any infraction by
2 Global of the provisions of the Agreement will be met with an Order to Show Cause (“OSC”) against
3 all of the signatories to the Agreement.⁴¹ Global witness Walker also acknowledged that the
4 Commission could at any time bring an OSC proceeding to address violations of the Agreement.⁴²
5 Depending upon the nature of the infraction, the Commission could impose penalties and could also
6 pursuant to A.R.S. § 40-252 impose additional conditions or reconsider portions of the proposed
7 Agreement. The Commission could also look at the issue of treating Global Parent as a public
8 service corporation if the violations were egregious enough and this treatment was warranted by the
9 facts giving rise to the violation.

10 In its Initial Brief, NWP agrees that an OSC proceeding would be an appropriate venue to
11 address violations of the Settlement Agreement.⁴³ NWP also acknowledged that Global, in response
12 to questioning by Judge Nodes, agreed to submit an affidavit on an annual basis attesting to GWR’s
13 compliance with the Settlement Agreement. NWP found this to be an important concession on
14 Global’s part.⁴⁴ NWP also agrees with Mr. Olea and Mr. Walker that “if the Settlement Agreement is
15 violated by any Global entity, regulated or otherwise, the Commission has jurisdiction to proceed
16 with an OSC” against all of the signatories of the Agreement.⁴⁵

17 Staff does not oppose NWP’s request for the Order in this case to specifically require Global
18 to submit an annual affidavit certifying that Global and all of its affiliates are in compliance with the
19 Settlement Agreement.⁴⁶ Global agreed to this added condition at the hearing.

20 **6. NWP’s request that GWR should be required to provide annual reports**
21 **certified by an officer of GWR and its regulated subsidiaries allowing for**
22 **verification of compliance with all obligations imposed under the**
Settlement Agreement.

23 NWP is also concerned by the “lack” of reporting requirements contained in the proposed
24 Agreement.⁴⁷ Staff believes the proposed Agreement contains sufficient reporting requirements.

25 ⁴¹ Tr. Vol. IV at 699.

26 ⁴² Tr. Vol. IV at 663-664.

27 ⁴³ NWP Initial Brief at 20.

28 ⁴⁴ *Id.*

⁴⁵ *Id.* at 21.

⁴⁶ *Id.*

1 Global's CEO is required under Section 7.3 of the Agreement to sign and file an annual Affidavit that
2 Global has complied with the provisions relating to segregation of funds to the utilities. As noted
3 above, Global also agreed, in response to questioning by ALJ Nodes, to submit an annual affidavit
4 attesting to Global's compliance with all provisions of the Settlement Agreement.⁴⁸ In addition,
5 reporting under the Affiliated Interest rules will continue as well as any reporting required under the
6 Code of Conduct which is still under development.

7 Staff supports the reporting provision of the Settlement Agreement, and those agreed to by
8 Global at the hearing. Staff does not support further reporting requirements.

9 **7. NWP's request that GWR should be required to phase-in the rate increase**
10 **for WUGT over eight years instead of the three-year phase-in required**
11 **under the Settlement Agreement.**

12 NWP also argues that the phase-in of the rates for Greater Tonopah should be over eight years
13 instead of the three year phase-in required under the proposed Agreement.⁴⁹ Greater Tonopah has a
14 shorter rate phase-in period than some other divisions if its rates are ultimately determined on an
15 operating margin. Section 6.3.4.3 of the proposed Agreement provides:

16 For purposes of this case, Tonopah's rates will be set based upon a 10% operating
17 margin. In subsequent rate cases filed within the 8 year phase-in referred to in
18 Section 1.5 and 6.3.2.3 above, the rates for Tonopah will be reviewed from both a rate
19 of return and 10 percent operating margin perspective. The rates will be set based
20 upon whichever method results in the lowest rates for Tonopah customers.

21 An eight year phase-in is only done in conjunction with the de-imputation of ICFA related
22 CIAC and the inclusion of those funds in rate base to ensure rate gradualism. If rates for Greater
23 Tonopah are set on an operating margin, there is no need for an eight year phase-in as well.

24 Staff does not support an 8 year phase-in of the rates for Greater Tonopah if its rates are set on
25 an operating margin pursuant to Section 6.3.4.3 of the Proposed Agreement.
26

27 ⁴⁷ NWP Initial Brief at 20.

28 ⁴⁸ Tr. Vol. III at 517 (Walker).

⁴⁹ NWP Initial Brief at 6.

1 **8. SNR's request that the Commission should take jurisdiction over GWR**
2 **and the ICFAs to ensure that all investments made by developers under**
3 **these ICFAs are committed to construct the contracted-for regional**
4 **infrastructures in order to not only protect those developers but also the**
5 **ratepayers for whom that infrastructure is to be built.**

6 SNR asks the Commission to assert jurisdiction over Global parent or the contract to ensure
7 that adequate funds will be available to build the regional plant not covered by the HUF.⁵⁰

8 As discussed above in Subpart 2), in response to this same concern expressed by NWP, Staff
9 does not believe that any further restrictions are necessary.

10 **9. SNR's request that the Commission should determine that the ICFAs and**
11 **HUF as written will not continue to put SNR and other developers that**
12 **have signed ICFAs at a competitive disadvantage with developers that**
13 **have not signed ICFAs, thereby jeopardizing development in those areas**
14 **where developers that have signed ICFAs intend to build.**

15 As discussed above in Subpart 1), in response to this same concern expressed by NWP, Staff
16 does not believe that any further restrictions are necessary. The developers already have a remedy
17 through Section 15 of the ICFA should they ever be placed at a competitive disadvantage with
18 developers who may come into the service area and who are not subject to ICFAs. The proposed
19 Settlement Agreement does nothing to change the provisions of Section 15 of the ICFA. It is not the
20 Commission's role to interpret the ICFA and what was intended between the parties.

21 Staff does not support modification of the ICFA's CPI adjustor provision as requested by SNR.

22 **10. SNR's request that the Commission should order GWR to modify the**
23 **ICFAs to incorporate the provisions ultimately approved by the**
24 **Commission in the Settlement Agreement related to the establishment of**
25 **HUF in order to resolve inconsistencies between the ICFA and the HUF**
26 **related to payment of such funds that may lead to litigation in the future.**

27 SNR asks the Commission to order Global Parent to "modify the ICFAs to incorporate the
28 provisions ultimately approved by the Commission in the Settlement Agreement related to the
29 establishment of HUF in order to resolve inconsistencies between the ICFA and the HUF related to
30 payment of such funds that may lead to litigation in the future."⁵¹ However, as pointed out by Staff
31 in its Initial Brief, it is unlikely that the Commission could order Global parent to actually amend the

32 ⁵⁰ SNR Initial Closing Brief at 11.

33 ⁵¹ SNR Initial Brief at 18.

1 contracts it has entered into with the developers.⁵² And there is no need to modify the ICFA between
2 the developers and Global parent when the Commission has the authority through regulatory means
3 to address issues involving matters within its jurisdiction. The ICFA cannot act to prevent the
4 Commission from imposing any conditions it deems necessary in the exercise of its ratemaking
5 responsibilities, even if inconsistent with the ICFA's provisions. The Commission's broad
6 ratemaking authority allows it to put regulatory requirements in place to address any ratemaking
7 implications arising from the ICFAs provisions.

8 Moreover, Staff does not agree that the HUF requirement contained in the proposed
9 Settlement Agreement is inconsistent with the provisions of the ICFA. Simply because a portion of
10 the ICFA funds will be deemed to be payment toward the required HUF in the future, does not make
11 the proposed Settlement Agreements provisions regarding the HUF inconsistent with the provisions
12 in the ICFA governing future payments.

13 SNR also opposes the Settlement Agreement's ICFA provisions because they disregard "past
14 payments (and payments due or paid by December 31, 2012) when calculating payments to HUF."⁵³
15 SNR argues that all past payments should be allocated to the HUF as well. This simply is not
16 practical. Past ICFA monies received by Global have already been spent, presumably pursuant to the
17 terms of the ICFA. It is not necessary to require Global to come up with 70% of past monies
18 received for the purpose of funding the HUF when Global has an obligation under the proposed
19 Settlement Agreement to fully fund the HUF by specified dates.⁵⁴

20 **11. SNR's request that the Commission should review in detail and regulate**
21 **the financial condition of GWR so that it will be capable of fulfilling all of**
22 **its obligations to the present and future ratepayers under all ICFAs.**

23 SNR argues that the Commission should regulate GWR's financial transactions to protect
24 ratepayers.

25 The proposed Settlement Agreement and the Commission's Affiliated Interest rules already
26 provide the oversight that SNR seeks. Section 6.2.1 of the proposed Agreement provides for

27 ⁵² Staff's Initial Brief at 26.

28 ⁵³ *Id.* at 13.

⁵⁴ See Ex. A-17, Settlement Agreement at Section 6.4.4.

1 Commission review of any ICFA related transactions: “Staff and RUCO reserve the right to monitor
2 Global’s compliance with this Settlement Agreement and review all ICFA related transactions in
3 future rate applications that Global files, and take appropriate steps, if necessary, to ensure the
4 continued resolution of the issues regarding ICFAs as set forth in the Agreement.” In addition, under
5 the Affiliated Interest Rules, Arizona Administrative Code (A.A.C.) Section 801 *et seq.* transactions
6 between Global and its utility affiliates are also subject to review by the Commission. At the hearing,
7 SNR witness O’Reilly conceded that he was not familiar with the Commission’s rules governing
8 affiliate transactions.⁵⁵ The proposed Agreement also provides that Global will be subject to a Code
9 of Conduct that will provide for a high degree of transparency with respect to transactions between
10 the Global parent, affiliates and utilities.⁵⁶ Thus, SNR seeks protections that it already has under the
11 proposed Agreement and Commission rules.

12 The Staff supports the provisions of the Settlement Agreement relating to review and
13 oversight of financial transactions involving Global Parent and the Global utilities. Staff does not
14 believe that the modifications proposed by SNR are necessary.

15 **B. Response to RUCO.**

16 While RUCO is a signatory to the proposed Settlement Agreement and expresses its
17 continuing support for the proposed Agreement, it takes issue with the adoption of a SIB for Global’s
18 Willow Valley division.⁵⁷ The SIB was not part of the Settlement Agreement. However, Staff
19 agreed to consider the SIB for Willow Valley if Global provided the information necessary for Staff’s
20 review and information comparable to what was filed in previous Commission cases in which the
21 Commission had approved the SIB.

22 RUCO states that its position on the SIB is “no different in this case than its position in the
23 pending Arizona Water (Eastern and Northern Division) cases.”⁵⁸ RUCO also states that the reasons
24 why RUCO opposes the SIB in this case are for the most part the same as in the other cases.”⁵⁹

25
26 ⁵⁵ Tr. Vol. II at 252-253 (O’Reilly).

27 ⁵⁶ Tr. Vol. IV at 716-717 (Olea).

28 ⁵⁷ RUCO Closing Brief at 2.

⁵⁸ *Id.*

⁵⁹ RUCO Closing Brief at 2.

1 RUCO's legal arguments are the same as it has made in the earlier Arizona Water cases and,
2 in particular, the Eastern Group Case.⁶⁰ In response, Staff incorporates the legal arguments it made
3 on this subject in the Arizona Water cases as well.

4 RUCO relies upon Article XV, Section 14 of the Arizona Constitution which provides "The
5 Corporation Commission shall, to aid it in the proper discharge of its duties, ascertain the fair value
6 of the property within the State of every public service corporation doing business therein...." As the
7 Commission noted in Decision No. 73938, this language has been interpreted to require the
8 Commission to establish a utility's rates by applying a reasonable rate of return to the fair value of
9 the utility's property devoted to the public use as determined by the Commission based upon all
10 available relevant evidence at the time of the inquiry.⁶¹

11 RUCO argues that Arizona law allows the Commission to engage in ratemaking without
12 ascertaining a utility's rate base only in very limited circumstances. For instance, the Courts
13 recognize that the Commission may use an automatic adjustor mechanism implemented as part of a
14 rate case without ascertaining fair value during each step of the process. In addition, the cases permit
15 the Commission to adopt interim rates in emergency circumstances without a fair value finding.
16 *Scates v. Arizona Corp. Comm'n*, 118 Ariz. 531, 535, 578 P.2d 612, 616 (App. 1978). RUCO argues
17 that, since the SIB does not qualify as either an interim rate or an automatic adjustor mechanism, it is
18 unlawful.

19 RUCO's arguments are without merit. The Commission will be ascertaining the Company's
20 rate base in conjunction with the SIB mechanism. The SIB mechanism is subject to the same
21 conditions and requirements adopted in prior orders of the Commission. Under the applicable
22 conditions, the Company will supply the necessary information so that the Commission can make an
23 updated fair value finding at every step where a potential rate increase is proposed and implemented.

25 ⁶⁰ RUCO's Initial Brief at 5.

26 ⁶¹ *In the Matter of the Application of Arizona Water Company, an Arizona Corporation, for a*
27 *Determination of the Fair Value of its Utility Plant and Property and for Adjustments to its Rates and*
28 *Charges for Utility Service Furnished by its Eastern Group and for Certain Related Approvals,*
Docket No. W-01445A-11-0310, Decision No. 73938 at 42 (*citing Arizona Community Action infra.*
123 Ariz. 228, 230, 599 P.2d 184, 186).

1 For this reason, this case is unlike *Scates* where no fair value finding was performed.⁶² In addition,
2 the Commission has broad discretion in its choice of appropriate rate setting methodologies and is not
3 tied to a specific methodology in performing its rate setting responsibilities. The Arizona Supreme
4 Court has stated that “[t]he commission in exercising its rate-making power of necessity has a range
5 of legislative discretion and so long as that discretion is not abused, the court cannot substitute its
6 judgment as to what is fair value or a just and reasonable rate.”⁶³ In *Arizona Community Action*,⁶⁴ the
7 Arizona Supreme Court upheld the Commission’s implementation of step increases in conjunction
8 with Construction Work in Progress (“CWIP”) additions. The Court did not find fault with the
9 Commission’s attempt to avoid a constant series of extended rate hearings by allowing step increases
10 based on the updated CWIP adjustments.

11 In view of [*Arizona Public Service*], supra, we find entirely reasonable that portion of
12 the Commission’s decision allowing the inclusion of [CWIP} to go on line within two
13 years from the effective date of the Step II increase. Nor do we find fault with the
14 Commission’s attempt to comply with our indication in [*Arizona Public Service*],
15 supra, that a constant series of rate hearings are not necessary to protect the public
16 interest. The hearing culminating in the order of August 1, 1977, resulted in a
determination of fair value. The adjustments ordered by the Commission in adding
the CWIP to that determination of fair value were adequate to maintain a reasonable
compliance with the constitutional requirements if used only for a limited period of
time.⁶⁵

17 The *Arizona Community Action* case built upon the Court’s findings in *Arizona Public*
18 *Service*⁶⁶ where the Court found that the Commission could consider post test year CWIP in its fair
19 value determination:

25 ⁶² *Scates v. Arizona Corp. Comm’n*, 118 Ariz. 531, 535, 578 P.2d 612 (App. 1978).

26 ⁶³ *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 294 P.2d 378 (1956).

27 ⁶⁴ *Arizona Community Action Ass’n v. Arizona Corp. Comm’n*, 123 Ariz. 228, 230-231, 599 P.2d
184, 186-187 (1979).

28 ⁶⁵ *Id.*

⁶⁶ *Arizona Corporation Commission v. Arizona Public Service Co.*, 113 Ariz. 368, 370, 555 P.2d 326,
328 (1976).

1 A plant under construction is at least a relevant factor which the Commission may
2 consider in determining fair value. ... [I]t is obvious that the Commission in its
3 discretion can consider matters subsequent to the test year, bearing in mind that all
4 parties are entitled to a reasonable opportunity to rebut evidence presented.
5 Construction projects contracted for and commenced during the historical year may
6 certainly be considered by the Commission upon the cutoff time previously indicated.
7 We would not presume to instruct the Commission as to how it should exercise its
8 legislative functions. However, it appears to be in the public interest to have stability
9 in the rate structure within the bounds of fairness and equity rather than a constant
10 series of rate hearings.⁶⁷

11 In addition, the Court in *Scates* recognized that “[t]here may well be exceptional situations in
12 which the Commission may authorize partial rate increases without requiring entirely new
13 submissions.”⁶⁸ RUCO argues in its brief (at 9) that the Company has not demonstrated
14 extraordinary circumstances to justify the SIB.⁶⁹ However, RUCO witness Mease conceded at the
15 hearing that the types of improvements at issue in the Willow Valley division are not ordinary in
16 nature.⁷⁰

17 In Decision No. 73938, the Commission found that the SIB would operate very much like the
18 Arsenic Cost Recovery Mechanism (“ACRM”) which the Commission has used extensively in the
19 past.⁷¹ The ACRM step increase procedure was based on the approach for CWIP discussed by the
20 Arizona Supreme Court in both *Arizona Public Service* and *Arizona Community Action*.

21 As Staff pointed out at the hearing, the SIB has many protections and safeguards built in
22 including the following: 1) it was developed within the context of a full rate case; 2) it is limited to
23 replacement projects used to serve existing customers; 3) the surcharge would be capped at five
24 percent of the approved revenue requirement,⁷² subject to true-up; 4) Global will be required to file a
25 full rate case within 5 years from the date of the order; 5) each step increase can only be implemented
26 after approved by the Commission and only after a fair value finding and earnings test which
27 indicates that the Company will not be earning more than its authorized rate of return; 6) the SIB may

28 ⁶⁷ *Arizona Public Service*, 113 Ariz. at 371, 555 P.2d at 329.

⁶⁸ *Scates, supra.*, 118 Ariz. At 537, 578 P.2d at 618.

⁶⁹ RUCO Opening Brief at 9.

⁷⁰ Tr. Vol. V at 958-959 (Mease).

⁷¹ Decision No. 73938 at 50.

⁷² In its Initial Brief (p. 36) Staff inadvertently referred to five percent of the revenue requirement established in Decision No. 73736, Phase I of Docket No. W-01445A-11-0310. The cap would actually be 5% of the revenue requirement in this case.

1 be suspended by the Commission; and 7) the Company will be required to perform the same earnings
2 test approved in Decision No. 73938.⁷³

3 While the bulk of RUCO's objections to the SIB are legal in nature, RUCO also makes
4 several policy arguments. It argues that the SIB shifts risk from the Company to the ratepayer
5 without adequate financial consideration.⁷⁴ Yet, RUCO did not propose any solution to recognize the
6 shift in risk it claims has occurred.

7 RUCO is also concerned that the decrease in operating expenses associated with the SIB plant
8 will not be considered.⁷⁵ Two considerations are of note with respect to operating expenses. First,
9 operating expenses associated with SIB plant will not always be lower.⁷⁶ Second, Staff's level of
10 operating expenses (which were lower than both RUCO's and Global's) that were agreed upon for
11 this case were already reduced to reflect 10 percent water loss. In addition, Global has agreed to all
12 of the SIB conditions adopted by the Commission in the Arizona Water cases which includes an
13 earnings test.

14 RUCO also makes the unsubstantiated assertion that "[r]atepayers are likely to pay higher
15 rates over time because of the failure to consider all of the rate case elements at each SIB filing."⁷⁷
16 This statement is anecdotal in nature and is not based upon any record evidence. RUCO also states
17 that "gradualism" will come at the expense of rate stability because of the annual rate changes
18 associated with the SIB. However, the amount of the annual rate change each year is small and its
19 implementation over time will prevent rate shock at the Company's next rate case.

20 RUCO also disingenuously argues that the record evidence is insufficient to determine exactly
21 how the SIB works and whether it meets the fair value requirement.⁷⁸ The record is very clear that
22 the same requirements and conditions applicable to the SIB that were adopted by the Commission in
23

24 ⁷³ *In the Matter of the Application of Arizona Water Company, an Arizona Corporation, for a*
25 *Determination of the Fair Value of its Utility Plant and Property and for Adjustments to its Rates and*
26 *Charges for Utility Service Furnished by its Eastern Group and for Certain Related Approvals,*
Docket No. W-01445A-11-0310.

26 ⁷⁴ RUCO Closing Brief at 4.

27 ⁷⁵ *Id.*

27 ⁷⁶ *Id.*

28 ⁷⁷ *Id.* at 5.

⁷⁸ *Id.* at 10.

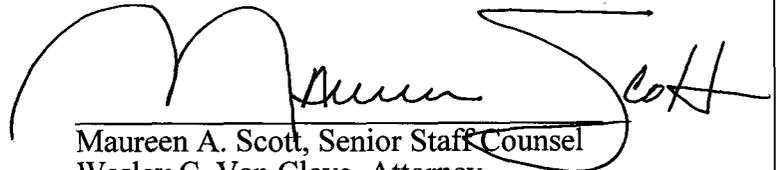
1 the Arizona Water Cases apply to the SIB in this case.⁷⁹ RUCO's arguments to the contrary
2 notwithstanding, the record contains substantial evidence regarding the SIB's operation and the fact
3 that it complies with the fair value requirement. In addition, under the SIB proposal in this case,
4 Global will file a Plan of Administration which contains all of the requirements and conditions on the
5 SIB's operation in this case.⁸⁰

6 Finally, RUCO argues that the timing of the various filings by the Company in this case did
7 not permit a thorough review by Staff.⁸¹ Importantly, Staff does not share the same sentiments.
8 RUCO's arguments are not supported by the record. Staff witness Jian Liu testified that he had been
9 working with the Company for several months before the Company filed their final schedules on
10 September 4, 2013.⁸² Mr. Liu also testified that because of various deficiencies in the Company's
11 schedules, it took a period of time for Staff to review the schedules and the Company to respond to
12 Staff's concerns with updated schedules.⁸³ Staff's review of this matter was thorough and the
13 Company responded to all of Staff's concerns prior to filing its final SIB schedules.

14 **III. CONCLUSION.**

15 Based upon the record and the arguments set forth above, and in Staff's Initial Brief, the
16 Commission should approve the proposed Settlement Agreement.

17 RESPECTFULLY SUBMITTED this 31st day of October, 2013.

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21 Maureen A. Scott, Senior Staff Counsel
22 Wesley C. Van Cleve, Attorney
23 Brian E. Smith, Attorney
24 Legal Division
25 Arizona Corporation Commission
26 1200 West Washington Street
27 Phoenix, Arizona 85007
28 (602) 542-3402

26 ⁷⁹ Tr. Vol. V at 815-816 (Fleming).

27 ⁸⁰ *Id.* at 865-866 (Walker).

28 ⁸¹ RUCO's Closing Brief at 10.

⁸² Tr. Vol. V at 907 (Liu).

⁸³ *Id.* at 908-909 (Liu).

1 Original and thirteen (13) copies of the
2 foregoing filed this 31st day of October,
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3 Docket Control
4 Arizona Corporation Commission
4 1200 West Washington Street
5 Phoenix, Arizona 85007

6 Copy of the foregoing mailed this
7 31st day of October, 2013 to:

8 Michael W. Patten
8 Timothy J. Sabo
9 ROSHKA DEWULF & PATTEN, PLC
9 One Arizona Center
10 400 East Van Buren Street, Suite 800
10 Phoenix, Arizona 85004
11 Attorneys for Global Utilities

12 Mr. Ron Fleming
12 General Manager, Arizona
13 Global Water Management
13 21410 North 19th Avenue, Suite 201
14 Phoenix, Arizona 85027

15 Daniel W. Pozefsky, Chief Counsel
15 RESIDENTIAL UTILITY CONSUMER
16 OFFICE
16 1110 West Washington Street, Suite 200
17 Phoenix, Arizona 85007

18 Jeffrey W. Crockett
18 BROWNSTEIN HYATT FARBER
19 SCHRECK, LLP
19 One East Washington Street, Suite 2400
20 Phoenix, Arizona 85004
20 Attorneys for New World Properties, Inc.

21 Garry D. Hays
21 THE LAW OFFICES OF GARRY D.
22 HAYS, PC
22 1702 East Highland Avenue, Suite 204
23 Phoenix, Arizona 85016
23 Attorneys for New World Properties, Inc.

24 Lawrence V. Robertson, Jr.
25 ATTORNEY AT LAW
25 P.O. Box 1448
26 Tubac, Arizona 85646
26 Attorney for City of Maricopa, Arizona
27
28

Denis M. Fitzgibbons
FITZGIBBONS LAW OFFICES, PLC
1115 East Cottonwood Lane, Suite 150
Casa Grande, Arizona 85122
City Attorney for the City of Maricopa

Michele Van Quathem
Sheryl A. Sweeney
RYLEY CARLOCK & APPLEWHITE
One North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4417
Attorneys for Maricopa Area Homeowners
Associations

Steven P. Tardiff
44840 West Paitilla Lane
Maricopa, Arizona 85139

Willow Valley Club Association
c/o Gary McDonald, Chairman
1240 Avalon Avenue
Havasupai City, Arizona 86404

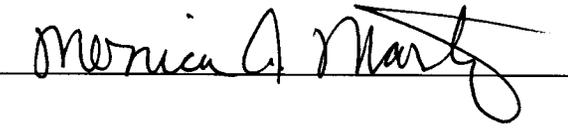
Dana L. Jennings
42842 West Morning Dove Lane
Maricopa, Arizona 85138

Andy and Marilyn Mausser
20828 North Madison Drive
Maricopa, Arizona 85138

Robert J. Metli, Esq.
MUNGER CHADWICK, PLC
2398 East Camelback Road, Suite 240
Phoenix, Arizona 85016
Attorney for Sierra Negra Ranch LLC
And Sierra Negra Management LLC

1 Barry W. Becker
2 Bryan O'Reilly
3 SNR MANAGEMENT LLC
4 50 South Jones Boulevard, Suite 101
5 Las Vegas, Nevada 89107

William P. Sullivan
CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, PLC
501 East Thomas Road
Phoenix, Arizona 85012-3205

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9
10
11
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13
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