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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
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ORIGINAL

IN THE MATTER OF THE APPLICATION OF VALENCIA WATER COMPANY—TOWN DIVISION FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA.	**DOCKET NO. W-01212A-12-0309**
IN THE MATTER OF THE APPLICATION OF GLOBAL WATER-PALO VERDE UTILITIES COMPANY FOR THE ESTABLISHMENT OF JUST AND REASONABLE RATES AND CHARGES FOR UTILITY SERVICE DESIGNED TO REALIZE A REASONABLE RATE OF RETURN ON THE FAIR VALUE OF ITS PROPERTY THROUGHOUT THE STATE OF ARIZONA.	**DOCKET NO. SW-20445A-12-0310**
IN THE MATTER OF THE APPLICATION OF WATER UTILITY OF NORTHERN SCOTTSDALE 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**
IN THE MATTER OF THE APPLICATION OF GLOBAL WATER—SANTA CRUZ WATER 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-20446A-12-0314**
IN THE MATTER OF THE APPLICATION OF WILLOW VALLEY WATER 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-01732A-12-0315**

APPLICATION FOR REHEARING OF DECISION NO. 74364

ON BEHALF OF
SIERRA NEGRA RANCH, LLC AND SIERRA NEGRA MANAGEMENT, LLC
MARCH 18, 2014

Sierra Negra Ranch ("SNR"), by and through undersigned counsel, hereby files its Application for Rehearing pursuant to A.R.S. 40-253.

I. OVERVIEW

On August 13, 2013, a proposed Settlement Agreement ("Settlement Agreement") was filed by various parties to this docket. SNR and New World Properties Inc. ("NWP") were not signatories to the Settlement Agreement. Hearings were conducted regarding the Settlement Agreement on September 5, 6, 9, and 12, 2013.

At hearing as well as in its Closing Briefs, SNR requested that the Commission, as a condition for approving the Settlement Agreement:

- Regulate the transactions of GWR, either through a detailed regulation of each of its subsidiaries so that each and every intercompany transaction related to the Infrastructure, Coordination, Finance and Option Agreement ("ICFA"), between GWR and its subsidiary utility company is reviewed in detail; including the financing associated with construction of such infrastructure, which is dependent on the balance sheets of GWR and that the traditional regulatory process relating to utility oversight is fully followed either by direct jurisdiction over GWR or through an intense review of all the transactions that GWR is involved in which, in essence, are providing utility services. (Transcript Vol. II at 233 [O'Reilly Testimony]).

- Require GWR to segregate all funds received under ICFAs, including past payments (and payments due or paid by December 31, 2012). (SNR-1 at 14). The prior payments and all payments made hereafter must be protected and segregated for use pursuant to the provisions of the applicable ICFA as provided by Section 6.4.1 of the Settlement Agreement, including funds paid under the ICFA but earmarked to secure GWR's indebtedness to Regions Bank as described herein. (A-17 at 9).

- Require that there be a tie between the HUF that is proposed in the settlement and the obligations under the ICFAs including tying future increases in HUFs to the CPI adjuster. In addition, SNR and New World Properties, Inc. ("NWP") should not have to pay a CPI adjuster on the funds that they are paying towards getting utility service (and treated as contributions in aid of construction) to Water Utility of Greater Tonopah ("WUGT") and Hassayampa Utility Company ("HUC"), when other similarly-situated developers will not have to pay similar escalators on

their hookup fees in the future.

- Notwithstanding the language of Section 6.4.4 of the Settlement Agreement which provides for a 70%-30% split of future payments to GWR under the ICFAs, require that the Commission's Final Order ("Order") make clear that NWP, SNR and all other parties to ICFAs may fully fund applicable HUFs due to the utilities that will provide service to the property covered by the ICFAs.

- Require GWR to amend its ICFA to make clear that monies allocated to WUGT and HUC as HUFs may be paid directly to WUGT and HUC.

- Require GWR and its non-regulated affiliates to 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.

- Require GWR 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. Given the complexity of GWR's corporate structure, such certification should also include Global Water Resources Corp. ("Global Water"), parent of GWR.

- Require that all monitoring of the terms and conditions of compliance to the Settlement Agreement by GWR and its affiliates be specifically spelled out in the Order to avoid any ambiguity as to how Staff and RUCO would monitor such compliance.

- Require that any Code of Conduct developed and approved by Staff and RUCO also apply to Global Water, as well as all other GWR affiliates.

- Require both GWR and the regulated utilities to guarantee that the monies paid under the ICFA are used to construct infrastructure contracted for even if the parent goes bankrupt. (SNR-1 at 16).

On January 21, 2014, Administrative Law Judge Nodes issued his Recommended Opinion and Order ("ROO"). As part of the ROO, Judge Nodes recommended that the Commission adopt the terms of the Settlement Agreement and concluded that "the terms of the [Settlement] Agreement will produce rates that are just and reasonable in the context of this case, as long as

several additional requirements are imposed as a condition of approval of the Settlement."[1]

These included:

1. Global Water will be required to permit developers that are parties to ICFAs to fully fund the applicable hook-up fees ("HUFs") out of the developer payments that are due under the ICFAs.[2]

2. Developers that are parties to ICFAs will be permitted to pay the HUF amounts directly to the applicable water or wastewater utilities, rather than to Global Parent, as is currently required under the ICFAs.[3]

3. All of the Global Water entities, including GWRI, will be required to submit annual affidavits, signed by the highest officer of each entity, attesting that each of those signatory entities was compliant with the terms of the Settlement Agreement for the prior calendar year.[4]

4. The CPI adjuster included in the ICFAs will be tied to the HUF fees that were agreed to in the Settlement.[5]

GWR had no objection to the implementation of Condition Nos. 1-3. In recommending Condition No. 4 above, Judge Nodes determined that:

> *[I]n order to level the playing field between competing landowners/developers, the CPI adjuster will not be applied to funds received from developers for HUFs. This condition is necessary to alleviate the discriminatory impact that would occur between developers that have signed ICFAs and those future developers that would be required to pay only the then-applicable HUF fees without a CPI adjuster."*[6]

In analyzing why Condition No. 4 was necessary to alleviate the discriminatory impact that would occur by approving the Settlement Agreement without it, Judge Nodes reasoned that:

> *By eliminating the CPI from the HUF portion of the fees, current and future landowners/developers will be treated on an equal basis because all developers would be required to pay whatever HUF charge is in effect at the time of*

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[1] ROO at 29, lines 21-23 (emphasis added).
[2] ROO at 29, lines 24-26.
[3] ROO at 30, lines 1-3.
[4] ROO at 30, lines 6-9.
[5] ROO at 30, lines 13-14.
[6] ROO at 30, lines 16-18.

development, which would reflect the Commission's determination of the appropriate landowner contribution at any given time. The HUFs set forth in the Settlement Agreement would effectively represent a baseline for developer contributions, applicable to developers with ICFAs and non-ICFA developers alike. Any future increases in HUFs approved by the Commission would be applicable to all landowners as well, thereby diminishing the competitive advantage that a non-ICF A developer may have without the requirement of a CPI adjuster.[7]

Judge Nodes, an attorney, imposed Condition No. 4 based upon the following legal analysis:

Pursuant to Article 15 § 12 of the Arizona Constitution, rates that are approved by the Commission must be just and reasonable and "no discrimination in charges, service, or facilities shall be made between persons or places for rendering a like and contemporaneous service ... " In addition, A.R.S § 40-334 provides that a public service corporation "shall not, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage." Global Parent's decision to enter into ICFAs without Commission approval, with the promise of, among other things, the provision of utility infrastructure and service by its subsidiaries, necessitates that it be precluded from imposing discriminatory rates, charges or services on customers as well as landowners/developers.[8]

Judge Nodes correctly concluded that elimination of the CPI adjuster on ICFA funds that are re-characterized as HUFs under the Settlement Agreement would be "*necessary to alleviate the discriminatory impact that would otherwise occur between developers that are subject to ICFAs and those developers that would be required to pay only the applicable HUF fees, without a CPI adjuster.*[9]

At the Open Meeting on February 6, 2014, the Commission voted 5-0 to amend the ROO and eliminate Condition No. 4. On February 26, 2014, the Commission issued Decision No. 74364 which eliminated Condition No. 4 as part of the approval of the Settlement Agreement.

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[7] ROO at 31, lines 1-9.
[8] ROO at 30, lines 18-27.
[9] ROO at 30, lines 16-18.

II. BACKGROUND

SNR owns approximately 2700 acres of entitled land in Maricopa County currently known as Silver Water Ranch and Silver Springs Ranch developments. ("SNR Developments"). (SNR-1 at 7). SNR is an owner of zoned residential property and the SNR Developments are located in the water CC&N of Water Utility of Greater Tonopah ("WUGT"). (*Id.*). In order to obtain utility service, SNR was told that its only realistic option for them to obtain utility services was to enter into an Infrastructure, Coordination, Finance and Option Agreement[10] ("ICFA") with the parent of WUGT, Global Water Resources, L.L.C. ("GWR").[11] At the time the ICFA was entered into with GWR, Maricopa County mandated Regional Infrastructure to support zoning. (*Id.*). Neither SNR nor NWP was ever offered a conventional Main Extension Agreement or Master Utility Agreement by GWR to provide utility services to their properties. (Transcript Vol. II at 314 [Jellies Testimony]). In fact, both SNR and NWP were specifically told that they must enter into an ICFA because of the financing need for GWR to acquire Western Maricopa Combine Inc., ("WMC") an Arizona corporation and the holding company for five regulated water utilities including WUGT and Hassayampa Utility Company ("HUC"). (Transcript Vol. II at 314 [Jellies Testimony]).

Although GWR has entered into 172 ICFAs[12] throughout Arizona, GWR did not seek any approval by the Commission.[13] The only purpose of the ICFA was to facilitate and arrange the provision of a regional solution for water, wastewater and reclaimed water services or to provide "Utility Services" to developers. (SNR-1 at 5). ICFAs were structured to take responsibility for water planning away from developers/homebuilders; (S-2 at 4). There is a blurred line between GWR and the regulated GWR utilities under the provisions/obligations associated with these

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[10] See, Infrastructure, Coordination, Finance and Option Agreement entered into between Global Water Resources, LLC, and Sierra Negra Ranch, LLC, dated July 10, 2006, SNR-1, Exhibit 2.

[11] Global Water Resources L.L.C. was subsequently reorganized along with Global Water Management, L.L.C. to form Global Water Resources, Inc. (SNR-4 at 5).

[12] Hearing Transcript Vol. I at p. 86, lines 9-11.

[13] Hearing Transcript Vol. I at 151-153.

ICFA agreements and GWR caused this blurring by including deliverables traditionally provided by regulated utilities in the list of obligations GWR undertook under the ICFA as Coordinator. (S-2 at 17). Many of the ICFA agreement-related activities assumed by the GWR as the Coordinator would traditionally be the responsibility of the underlying regulated utility. (S-2 at 18). Developers were not given any other choice but to enter into the ICFA. In addition, GWR acted at all times as the regulated utility with the monopoly by demanding payments under the ICFAs for the provision of utility services. (SNR-1 at 15).

III. DECISION N0. 74364 CREATES A COMPETITIVE DISADVANTAGE FOR SNR THEREBY CREATING DISCRIMINATORY RATES THAT ARE NOT JUST AND REASONABLE.

a. The Commission is Prohibited from Enacting Discriminatory Rates and Charges.

Article 15, § 12 of the Arizona Constitution states:

"All charges made for service rendered, or to be rendered, by public service corporations within this State shall be just and reasonable, and no discrimination in charges, service, or facilities shall be made between persons or places for rendering a like and contemporaneous service ... "

In addition, A.R.S. §40-334A states:

"A public service corporation shall not, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage."

A.R.S. §40-334B states:

"No public service corporation shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either between localities or between classes of service."

A.R.S. §40-361A states:

"Charges demanded or received by a public service corporation for any commodity or service shall be just and reasonable. Every unjust or unreasonable charge demanded or received is prohibited and unlawful."

The Arizona Constitution forbids discrimination by public utilities in rates, service, or facilities. *Marco Crane & Rigging v. Arizona Corp. Comm'n*, 155 Ariz. 292, 297, 746 P.2d 33, 38 (App. 1987) (*Citing* Ariz. Const. Art. 15, § 12; and A.R.S. §40-334). A public service corporation must treat all similarly situated customers alike. It cannot extend a privilege to one and refuse the same privilege to another. (*Id.*, citing *People ex rel. Western Union Telegraph Co. v. Public Service Commission*, 230 N.Y. 95, 129 N.E. 220 (1920)).

The *Marco Crane* court cited the case *Town of Wickenburg v. Sabin*, 68 Ariz. 75, 200 P.2d 342 (1948), in which that court stated:

> "A public service corporation is impressed with the obligation of furnishing its service to each patron at the same price it makes to every other patron for the same or substantially the same or similar service. It 'must be equal in its dealings with all.' It 'must treat the members of the general public alike.' . . . There must be equality of rights to all and special privileges to none." (At 77, 200 P.2d at 343, citing McQuillin Municipal Corporations, 2d Ed. Vol. 4, Section 1829.)

(*Id.* at 297-298, 746 P.2d 38-39).

Therefore, it would be discriminatory and therefore unlawful if the Commission were to put SNR (and other developers that have entered into ICFAs) at a competitive disadvantage by approving the Settlement Agreement without Condition No. 4.

b. Establishment of a HUF as Approved by Decision No. 74364 Creates a Competitive Disadvantage for Developers that have Entered into ICFA's Thereby Resulting in Discriminatory Rates that are not Just and Reasonable.

Section 6.4.1 of the Settlement Agreement fundamentally changes the treatment of the Landowner Fees received by GWR under the ICFAs that are currently in effect. Pursuant to Section 7.1 of the Settlement Agreement, HUFs of $1,750 will be established for each of WUGT and HUC, the utilities that will serve SNR's development. Section 7.2 of the Settlement Agreement further states that the HUFs will be in the form of Staff's standard HUF tariff. There is no provision in any of the HUF tariffs attached to the Settlement Agreement for a CPI adjustor on the HUFs. Global witness Fleming testified that he is not aware of any HUF approved by the

Commission in Arizona which includes a CPI adjustor.[14] Likewise, Pat Quinn, the Executive Director of RUCO, testified that "the way hookup fees are set up, I don't know if there would ever be a CPI adjustor on that."[15] Similarly, Utilities Division Director Steve Olea also testified that he is not aware of any HUF with a CPI adjustor.[16] Notwithstanding, Mr. Fleming acknowledged that the CPI adjustor in the ICFA "pertains to the HUF ... component as well."[17]

By establishing a HUF as approved in the Settlement Agreement, the Commission inadvertently created another class of developer that may subsequently have a competitive advantage over SNR and NWP. (Transcript Vol. II at 288 [Jellies Testimony]). Builders or developers constructing homes within the same service area as SNR that have not entered identical ICFAs with GWR would clearly have a cost advantage. (SNR-1 at 15). This price disparity is compounded by the added CPI adjuster that is assessed on the HUF. (SNR-1 at 15). There is no CPI currently attached to HUFs. (Transcript Vol. VI at 727 [Olea Testimony]).

Because Section 6.2.1 of the Settlement Agreement prohibits Global and any of its affiliates from entering into any more ICFAs, backbone utility infrastructure will now be funded exclusively through HUFs. By recommending a HUF in this case, Staff has attempted to provide the Commission with a mechanism to regulate a portion of GWR's ICFA payments. The problem is that by only regulating a portion, a cost discrepancy for plant will occur which results in a preference or cost advantage to some developers and not others, thereby constituting the establishment of discriminatory rates.

c. SNR did not Enter into ICFA Voluntarily.

GWR argues that "it is not discrimination to hold sophisticated developers to contracts they knowingly signed with Global Parent and that SNR and NWP received great benefits from

[14] Hearing Transcript Vol. I at p. 118, lines 18-21.
[15] Hearing Transcript Vol. I at p. 204, lines 19-21.
[16] Hearing Transcript Vol. IV at p. 727, lines 9-11.
[17] Hearing Transcript Vol. I at p. 100, lines 22-24.

ICFAs that will not be available to developers who only pay the HUF's" (See Global's Exceptions at 2.)

First, this contention that the developers "knowingly signed" ICFAs ignores the evidence at hearing that showed that the only realistic option for SNR and NWP to obtain utility services was to enter into an ICFA and as a result, had no other choice. The record supports the following:

- At the time the ICFA was entered into with GWR, Maricopa County mandated Regional Infrastructure to support zoning. (SNR-1 at 7).
- SNR and New World Properties, Inc. ("NWP") were specifically told by Maricopa County Planning and Zoning authorities that developers needed to provide a regional and consolidated approach to water and wastewater utilities to their properties or such developments would not be approved. (Transcript Vol. II at 295 [Jellies Testimony]).
- In order to proceed with entitlements, Maricopa County demanded a regional solution and mandated that SNR have a water provider and an approved 208 Permit. (SNR-1 at 7).
- The only option presented to SNR (and NWP) was either to become a utility themselves or sign an ICFA with GWR. (*Id.*).
- GWR represented to SNR that the ICFA was part of a regional water and wastewater infrastructure development plan supported by the Arizona Corporation Commission ("Commission"). (*Id.*).
- Neither SNR nor NWP was ever offered a conventional Main Extension Agreement or Master Utility Agreement by GWR to provide utility services to their properties. (Transcript Vol. II at 314 [Jellies Testimony]).
- GWR directed SNR and NWP that they must enter into an ICFA because of the financing need for GWR to acquire Western Maricopa Combine Inc., ("WMC") an Arizona corporation and the holding company for five regulated water utilities including WUGT and Hassayampa Utility Company ("HUC"). (Transcript Vol. II at 314 [Jellies Testimony]).

In addition, SNR and NWP refuted at hearing, GWR's argument that SNR and NWP: (1) could have worked with the prior owners of WMC; (2) worked with Balterra Sewer Corp; or (3) could have formed their own utility. Evidence at hearing was as follows:

- Although SNR and NWP did meet with the prior owners of WMC, WMC did not meet and push towards consolidation and regionalized infrastructure that the Commission and the County was looking for; WMC did not have any desire to do regional planning; the WMC service territory

did not incorporate all of the lands owned by SNR and NWP and a piecemeal approach to utility service would have been necessary. (Transcript Vol. II at 295 [Jellies Testimony]).

- Because SNR's and NWP's properties are bifurcated by Interstate 10, using Balterra as a wastewater provider would have resulted in a situation where SNR and NWP had one wastewater provider servicing the north properties and one wastewater provider servicing the south properties; neither SNR nor NWP believed that Balterra met the regionalization standard that was required to be pursued by the County; and at the time SNR and NWP was considering this option, Balterra's CC&N application and 208 permit application were pending (GWR filed a competing 208 application which SNR and NWP supported due to the regional nature of GWR). (Transcript Vol. II at 296-297 [Jellies Testimony]).
- Although forming their own utility company was also considered, SNR and NWP were told unequivocally by the Commission that they were not necessarily looking to have small water companies formed. (Transcript Vol. II at 297 [Jellies Testimony]). The Commission was looking to consolidate water companies. (*Id.*). Given WMC had portions of SNR's and NWP's properties within its CC&N, this option was not seriously pursued. (*Id.*).

d. Inflationary Risks do not Justify CPI Adjuster.

SNR disputes GWR's contention that "*the CPI provision serves to protect GWR from this inflation risk.*" (GWR's Post Hearing Brief at 21). According to Global witness Ron Fleming, the CPI adjuster is included in ICFAs "to cover the future … inflationary effects of changes in costs." (Transcript Vol. I at 94 [Fleming Testimony]). However, the very same argument would also apply to HUFs, which similarly place a utility at risk of "inflationary effects of changes in costs." Global witness Paul Walker acknowledged as much—and implicitly, the obvious inequity of applying a CPI adjuster to Landowner Fees re-characterized as HUFs under the Settlement Agreement—in the following exchange with Judge Nodes:

> Q. *I guess the question is why, if you have now agreed to a particular level of HUF fees and you don't know when those are ever going to be collected either, I mean it might be 20 years before you have somebody, and maybe that's an exaggeration, but some number of years, but why shouldn't that be the baseline for everyone that then, if, you know, in 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 adjuster so that developers are left basically on an equal footing?

A. *I think I understand exactly your point. And I completely expect that in the next rate case Staff and RUCO are going to want to do exactly that to our hookup fee.*

Q. *Exactly what? To increase it?*

A. *Adjust, increase it. And I think, if I was Staff or RUCO, the first thing I would do is say what has the CPI been. So I don't want to get into litigating the next case.*

(Transcript Vol. IV at 646-647). This testimony identifies the inequity and discrimination that will exist between developers with ICFAs on the one hand and developers without ICFAs on the other if the Commission fails to order a modification of the CPI adjuster in the ICFAs as a condition of approving the Settlement Agreement.

IV. CASE LAW DOES NOT PROHIBIT COMMISSION FROM ORDERING MODIFICATION OF ICFAs.

GWR argues that the Commission cannot change or modify a contract that was voluntarily entered into between two private parties. (See Global Exceptions at 8, *citing*, *General Cable Corp. v. Citizens Utilities Co.*, 27 Ariz.App. 381, 555 P.2d 350 (1976)). GWR's reliance on the *General Cable Corp.* case is misplaced. First, SNR and NWP have asserted throughout this proceeding that if they wanted utility service, they had no choice but to enter into the ICFA (*See,* SNR Reply Brief Section II.C.). The record supports SNR and NWP's contention that the ICFAs were not entered into voluntarily. Next, the *General Cable Corp.* case has no applicability to the facts of this case. In *General Cable Corp.,* the Court determined that the charges under contract at issue in that case "including the minimum charges," were not, "as a matter of law, unjust, unreasonable or discriminatory." *General Cable Corp.*, 27 Ariz.App. at 384, 555 P.2d at 353. As discussed above, SNR and NWP have asserted that the ICFA and Settlement Agreement create a competitive disadvantage for SNR and NWP (See SNR Reply Brief Section II D.) and that the

resulting charges to both SNR and NWP are "unreasonable," "unjust" and "discriminatory." (*See,* SNR Reply Brief Section III.D). As such, the Commission has the authority, as a condition of approving the Settlement Agreement, to require GWR to modify the ICFA to address SNR's and NWP's concerns. (*See*, SNR Reply Brief Section II.A.).

Next, GWR argues that the proposed CPI condition would "impair the obligation of a contract," violating the contract clause of the Arizona Constitution (Article 2, Section 25). (*See* Global Exceptions at 8.). GWR also cites Staff's Closing Brief of Staff to support the contention that the Commission "cannot change or modify a contract that was voluntarily entered into between two private parties." (See Staff's Initial Brief at 26, *citing*, *Application of Trico Electric. Co-Op.,* 92 Ariz. 373, 387, 377 P.2d 309 (1962)). As in the *General Cable Corp.* case, the Court was not dealing with a contract that was not voluntarily entered into or produced rates and charges that were "unreasonable," "unjust" and "discriminatory." By GWR intervening in this rate case, GWR has consented to Commission jurisdiction. (SNR-1 at 12). In addition, "Global has never contended that ICFAs are non-jurisdictional." (SNR-1 at 13). In any event, the Commission has the authority, as a condition of approving the Settlement Agreement, to require GWR to modify the ICFA to tie the CPI adjuster to the HUF fees agreed to in the Settlement Agreement in order to level the playing field between competing landowners/developers and to alleviate the discriminatory impact that would occur between developers that have signed ICFAs and those future developers that would be required to pay only the then-applicable HUF fees without a CPI adjuster.

V. <u>CONCLUSION</u>.

For all the foregoing reasons, SNR respectfully requests that the Commission reconsider Decision No. 74364 and reinstitute Condition No. 4 as part of the approval of the Settlement Agreement.

RESPECTFULLY SUBMITTED this 18th day of March, 2014.

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