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OPEN MEETING AGENDA ITEM

Arizona Corporation Commission

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- 1 **COMMISSIONERS**
- 2 SUSAN BITTER SMITH, Chairman
- 3 BOB STUMP
- 4 BOB BURNS
- 5 DOUG LITTLE
- 6 TOM FORESE

BEFORE THE ARIZONA CORPORATION COMMISSION

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

Docket No. W-01212A-12-0309

11 IN THE MATTER OF THE APPLICATION OF
 12 GLOBAL WATER – PALO VERDE UTILITIES
 13 COMPANY FOR THE ESTABLISHMENT OF JUST AND
 14 REASONABLE RATES AND CHARGES FOR UTILITY
 15 SERVICE DESIGNED TO REALIZE A REASONABLE
 16 RATE OF RETURN ON THE FAIR VALUE OF ITS
 17 PROPERTY THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. SW-20445A-12-0310

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

Docket Nos. W-03720A-12-0311

18 IN THE MATTER OF THE APPLICATION OF
 19 WATER UTILITY OF GREATER TONOPAH FOR
 20 THE ESTABLISHMENT OF JUST AND REASONABLE
 21 RATES AND CHARGES FOR UTILITY SERVICE
 22 DESIGNED TO REALIZE A REASONABLE RATE OF
 23 RETURN ON THE FAIR VALUE OF ITS PROPERTY
 24 THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. W-02450A-12-0312

22 IN THE MATTER OF THE APPLICATION OF
 23 VALENCIA WATER COMPANY – GREATER
 24 BUCKEYE DIVISION FOR THE ESTABLISHMENT OF
 25 JUST AND REASONABLE RATES AND CHARGES FOR
 26 UTILITY SERVICE DESIGNED TO REALIZE A
 27 REASONABLE RATE OF RETURN ON THE FAIR
 VALUE OF ITS PROPERTY THROUGHOUT THE
 STATE OF ARIZONA

DOCKET NO. W-02451A-12-0313

**WILLOW VALLEY'S RESPONSE
IN OPPOSITION TO PROPOSED STAY
OF SIB MECHANISM**

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

DOCKET NO. W-20446A-12-0314

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

DOCKET NO. W-01732A-12-0315

**WILLOW VALLEY'S RESPONSE
IN OPPOSITION TO PROPOSED STAY
OF SIB MECHANISM**

10 Willow Valley Water Co., Inc., (“Willow Valley”) Global Water – Palo Verde Utilities
11 Company, Global Water – Santa Cruz Water Company, Water Utility of Greater Tonopah, Inc.,
12 and Water Utility of Northern Scottsdale (collectively the “Global Utilities”) respond in opposition
13 to the proposed order for the stay of the System Improvement Benefit (“SIB”) mechanism docketed
14 by Commission Staff on September 17, 2015. The Commission approved a SIB mechanism for
15 Willow Valley in Decision No. 74364 (February 26, 2014)¹

16 The proposed order should be rejected for three reasons. First, the proposed order fails to
17 recognize the unique facts that led to Willow Valley’s SIB mechanism. Second, a stay is
18 premature because the court ruling is not final. Third, even if the Court ruling was final, it would
19 not apply to Willow Valley because RUCO never appealed Willow Valley’s SIB mechanism.

20 The proposed order contains no discussion or analysis specific to Willow Valley. Willow
21 Valley’s SIB Mechanism is supported by a particularly strong factual record that includes factors
22 not present in other cases. Indeed, even RUCO’s witness, Mr. Mease, conceded that customers
23 benefit from the SIB, including through reduced line breaks and improved water quality.²

24 Global acquired the Willow Valley system in 2006. The system was in a very poor
25 condition when it was acquired. Particularly alarming was the complete failure to chlorinate the
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¹ See Decision No. 74364 at pages 45 to 58.

² Tr. at 962:21 to 963:13 and 973:6-15.

1 water, despite a history of coliform issues.³ Chlorinating the water serves to “disinfect the water,
2 to ensure that it is safe for human consumption.”⁴ Global responded by immediately chlorinating
3 the water.⁵ Global then invested approximately \$3.2 million into the Willow Valley system.⁶ The
4 Willow Valley investments focused on urgently needed treatment upgrades rather than the pipeline
5 distribution system.

6 Willow Valley’s pipeline distribution system is in poor repair and requires complete
7 replacement in many places.⁷ Some of the pipes are 40 or 50 years old and had suffered the effects
8 of significant mineral buildup prior to Global building the new treatment facilities.⁸ Some pipes
9 are structurally fragile and often break, and when that occurs, they are difficult to repair due to their
10 condition and their location in customer backyards.⁹

11 In approving Willow Valley’s SIB, the Commission pointed to this substantial need to
12 replace the distribution system:

13 ... the system is in need of substantial improvements. Implementation of the SIB
14 mechanism gives recognition to the fact that Global Water acquired the troubled
15 Willow Valley only within the last decade, significant improvements have already
16 been made to the system, and allowing more gradual increases for the additional
17 capital investment needed for Willow Valley will help mitigate the rate shock
18 concerns.... We also believe adoption of the SIB in this case for Willow Valley is
19 consistent with the Commission’s policy goal of encouraging acquisitions of
20 smaller, troubled water companies by more stable water providers.¹⁰

18 This strong factual record may explain RUCO’s decision not to appeal Willow Valley’s SIB. The
19 factual record demonstrating Willow Valley’s need for the SIB mechanism was not considered by
20 the Court of Appeals because Willow Valley was not part of the appeal.

21 In addition, Staff’s recommendation to stay the SIB is premature. The *Residential Utility*
22 *Consumer Office v. Arizona Corporation Commission* case is not yet final. While an opinion has

23 ³ Ex. A-10 (Fleming Direct) at 4:17-23.

24 ⁴ Tr. 782:10-11.

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

26 ⁶ Tr. at 789:21 to 790:4 (\$3.2 million).

27 ⁷ Tr. at 790:7-21.

⁸ *Id.*

⁹ Tr. at 829:24 to 830:17 (Fleming).

¹⁰ Decision 74364 at pages 57 to 58.

1 been issued, the Court of Appeals mandate has not been issued. Under Rule 24(a) of the Arizona
2 Rules of Civil Appellate Procedure (“ARCAP”), the mandate is the final order of the Court:
3 “The mandate is the final order of the appellate court, which may command another appellate
4 court, superior court or agency to take further proceedings or to enter a certain disposition of a
5 case. An appellate court retains jurisdiction of an appeal until it issues the mandate.” The appellate
6 mandate will not be issued until the Commission’s forthcoming petition for review is resolved.
7 ARCAP 24(b). The situation here can be analogized to a Commission Recommended Opinion and
8 Order that has not yet been adopted, signed and filed, or to a Superior Court minute entry entered
9 before final judgment in a civil case. In short, the Court’s opinion is not final. Thus, there is no
10 need to issue a stay at this time.

11 Further, even if the Arizona Supreme Court denies review and the Court of Appeals issues a
12 mandate in *Residential Utility Consumer Office v. Arizona Corporation Commission*, the final
13 resolution of that appeal would have no effect on this case. The Commission’s decision in this
14 docket was never appealed by RUCO or any other party. As such, it remains a final, binding order.
15 A.R.S. §§ 40-253; 40-254(F); 40-254.01(F).

16 The Commission specifically adopted a legal conclusion that the “SIB mechanism is
17 compliant with the Commission’s constitutional requirements, as well as the case law interpreting
18 the Commission’s authority and discretion in setting rates. The Commission has the constitutional
19 ratemaking authority to approve adjustment mechanisms in a general rate case” and that “[t]he SIB
20 mechanism incorporated therein, with the modifications discussed above, satisfies the fair value
21 concerns addressed by various court decisions.”¹¹ These rulings were not appealed, and are now
22 final. They cannot be challenged by RUCO or any other party.

23 In addition, the Commission’s finding—that Willow Valley’s SIB is legal—is now the “law
24 of the case”. The “law of the case” doctrine generally prevents “reconsidering issues of law
25 previously decided.” *State v. Harrod*, 218 Ariz. 268, 274 n.4, 183 P.3d 519, 525 (2008); *see also A*
26 *Tumbling-T Ranches v. Flood Control Dist. of Maricopa County*, 222 Ariz. 515, 531, 217 P.3d

27 _____
¹¹ Decision No. 74364 at page 65, line 28 to page 66, line 5.

1 1220, 1236 (App. 2009)(explaining that the “law of the case” doctrine applies even if appellate
2 court would now reach different result, noting the need for finality in decisions.)

3 Lastly, it would be unfair to stay Willow Valley’s SIB. Willow Valley has not had an
4 opportunity to defend its SIB mechanism in court. RUCO’s decision to not appeal must have a
5 consequence.

6 In summary, this case involves different and compelling facts that were not before the
7 Court of Appeals. The Court’s ruling is not final. But the Commission’s decision in this docket is
8 final, and any final court ruling will not apply to this docket. Accordingly, the Commission should
9 not adopt the Commission Staff’s proposed order. There is no need to enter any order, so Willow
10 Valley is not proposing alternative language for an order.

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RESPECTFULLY SUBMITTED this 28th day of September, 2015.

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