



0000092014

ORIGINAL

RECEIVED

1 FENNEMORE CRAIG, P.C.
 A Professional Corporation
 2 Jay L. Shapiro (No. 014650)
 Patrick J. Black (No. 017141)
 3 3003 N. Central Ave., Suite 2600
 Phoenix, Arizona 85012
 4 Telephone (602) 916-5000
 Attorneys for Coronado Utilities, Inc.

2008 DEC 18 P 4:49
 AZ CORP COMMISSION
 DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

DEC 18 2008

| | |
|-------------|--|
| DOCKETED BY | |
|-------------|--|

BEFORE THE ARIZONA CORPORATION COMMISSION

8 IN THE MATTER OF THE
 APPLICATION OF CORONADO
 9 UTILITIES, INC. FOR A CERTIFICATE
 OF CONVENIENCE AND NECESSITY
 10 TO PROVIDE WASTEWATER SERVICE
 IN PINAL COUNTY, ARIZONA.

DOCKET NO: SW-04305A-05-0086

12 IN THE MATTER OF THE
 APPLICATION OF CORONADO
 13 UTILITIES, INC., AN ARIZONA
 CORPORATION, FOR AUTHORITY TO
 14 ISSUE SHORT AND LONG-TERM
 DEBT INSTRUMENTS IN
 15 CONNECTION WITH FINANCING
 THE ACQUISITION OF THE
 16 WASTEWATER UTILITY PLANT OF
 BHP COPPER, INC. AND
 17 CONSTRUCTING IMPROVEMENTS
 THERETO.

DOCKET NO. SW-04305A-05-0087

(Consolidated)

RESPONSE TO QUESTIONS

19 Coronado Utilities, Inc. ("Coronado" or "Company") hereby files its responses to
20 the questions posed in the Procedural Order in this docket dated November 19, 2008.

21 **1. Does the Commission have jurisdiction to make a determination that**
22 **BHP Copper either is, or was, a public service corporation?**

23 **Company Response.** Respectfully, this issue is not Coronado's issue. It is an
24 issue between the Commission and a third-party over the extent of the Commission's
25 lawful authority. Coronado does not presently have a position to offer on this legal issue.

1 Nor does it wish to incur the costs of research and analysis to develop a proper legal
2 opinion on whether a third-party can or should be adjudicated a public service corporation
3 by the Commission. This issue should not impact the Company's rights in any manner.

4 **2. What actions does the Commission need to take to make such a**
5 **determination? For instance, does the Commission need to make BHP Copper a**
6 **party to the proceeding? And if yes, how should the Commission proceed?**

7 **Company Response.** Similar to the Company's first response, this issue is
8 not Coronado's issue. Again, it is an issue between the Commission and a third-party, and
9 the Company does not wish to incur the costs to develop an opinion on an issue that
10 should not impact its rights in any manner. Indeed, if the Commission does proceed to
11 adjudicate whether BHP is a public service corporation, the Commission should not
12 require the Company to participate in such proceedings. Furthermore, the Commission
13 should make every possible effort to ensure that the rights of Coronado and its
14 shareholders are not negatively impacted.

15 **3. How could or would a determination that BHP Copper is, or was, a**
16 **public service corporation affect Coronado's current rates?**

17 **Company's Response.** Coronado does not believe that such a determination
18 could impact its current rates. Under Arizona law, the Company's rates are to be based on
19 recovery of reasonable operating expenses plus a fair rate of return on rate base. *See*
20 *Scates v. Arizona Corp. Comm'n*, 118 Ariz. 531, 578 P.2d 612 (App. 1978). Whether
21 BHP is or is not a public service corporation is not material to that analysis.

22 **4. Can the Commission require Coronado to modify its capital structure**
23 **to mitigate rates? If not, why not? If yes, what actions or determinations are**
24 **required to make such modification?**

25 **Company Response.** No, if the action by the Commission results in rates that
26 do not allow Coronado to recover its reasonable and prudent operating expenses and earn

1 a fair rate of return on property devoted to public service, the Company does not believe it
2 would be proper. Modifying the capital structure simply to reduce the Company's
3 revenue requirement would most likely deny the Company an adequate opportunity to
4 earn its authorized return on rate base. Moreover, such a determination cannot be made
5 without a thorough analysis of the Company's finances, i.e., a rate case. Piecemeal
6 ratemaking should be avoided, and use of the capital structure approved by this
7 Commission does not present a basis for interim rate reductions.

8 **5. How would a different capital structure be likely to affect rates?**

9 **Company Response.** The Company's capital structure, approved in Decision
10 No. 68608, is more than 70% debt. Increasing the equity would likely result in an
11 increase in rates because, all things being equal, equity earns a higher return than debt.
12 Increasing the debt could have the effect of reducing the cost of capital, and result in
13 lower rates, but the Company is already highly-leveraged. More debt would increase
14 Coronado's financial risk.

15 Practically speaking, additional debt or equity financing is not realistic at this time.
16 The Company is not earning a return on its investment and, in the rate case it has been
17 ordered to file in Spring 2009, will be seeking rate increases as necessary to provide it an
18 opportunity to earn a return on its rate base. This makes capital attraction unlikely. There
19 are also certain restrictions associated with the Company's bonds, and the bondholders are
20 unlikely to agree to any action that increases their risk, not to mention the financing costs
21 could be much higher today than in 2006.

22 **6. Given the Company's current capital structure, would it be in the**
23 **public interest to utilize a different capital structure? If so, how could the Company**
24 **achieve a different capital structure?**

25 **Company Response.** Far too much emphasis is being placed on the
26 Company's capital structure. Given the prevailing economy and tightened credit markets,

1 the Company's acquisition of low-cost public financing for the new treatment facility was
2 clearly in the public interest. However, requiring additional debt would place the
3 Company's financial risk at an ever higher level than it already faces with a 70% debt
4 capital structure. Nor could the Company likely acquire debt on reasonable terms given
5 its current financial picture and the continued risk posed by the regulatory process. For
6 the same reason, ordering an infusion of paid in capital, assuming it was lawful to do so, is
7 not practical. Again, equity is more expensive than debt, and ordering investment into a
8 Company that is already a bad investment is not in the public interest.

9 **7. Will any change in rates require a finding of fair value? If not, why**
10 **not? If yes, what type of evidence or proceeding is required to make such finding?**

11 **Company's Response.** As mentioned above, Coronado believes that any
12 modification to its revenue requirement, especially a rate reduction, requires the type of
13 analysis conducted in a rate case. There are serious dangers inherent in piecemeal
14 ratemaking. Additionally, while there are exceptions for interim rate relief-when the
15 Commission delays approving new rates, or in the event of an emergency, Coronado is not
16 aware of any emergency being raised in this case. For its part, Coronado is still in the
17 process of determining whether its current financial condition warrants seeking interim
18 rate increases pending the outcome of the rate case it was ordered to file in the Spring
19 2009.

20 **8. Are there any other ways to achieve the Commission's stated goals of**
21 **mitigating rates?**

22 **Company Response.** Coronado respectfully suggests that the goal of
23 mitigating its rates is not realistic. The Company is operating a brand new wastewater
24 treatment facility serving a very small and isolated customer base. There is no realistic
25 possibility of growth in the CCN in the near future. Meanwhile, the Company is
26 operating on expense levels that are 5 or more years out of date. It also has an

1 extraordinary level of non-payment and little practical means of collecting these past due
2 amounts. It may not be politically palatable, but this Company is likely going to require
3 rate increases, not decreases, in order to continue operating with an adequate opportunity
4 to earn a fair return on its rate base.

5 **9. Any other issues the parties believe need to be addressed.**

6 **Company Response.** The reasons for this current proceeding, a resurrection
7 of a CCN and financing application, appear to have less to do with Coronado than with a
8 question of the Commission's authority over BHP Copper and the manner in which it
9 might have been or might now be regulated as a public service corporation. These
10 questions do not require Coronado's participation, and Coronado should not be obligated
11 to incur the burden and expense of participating in a proceeding to adjudicate issues
12 between this Commission and BHP.

13 With respect to Coronado's rates, while Coronado does not believe rate reductions
14 are realistic under the circumstances, any and all rate issues should be decided in the rate
15 case the Company has already been ordered to file in Spring 2009. Absent an emergency,
16 a rate case is the proper forum to address the Company's rates and any issues that could
17 raise or reduce its revenue requirement. And given the Company's current financial
18 position, including its debt service obligations, any action that lowers the Company's
19 revenue requirement could have severe consequences for Coronado and its ratepayers.

20 RESPECTFULLY SUBMITTED this 18th day of December, 2008.

21 FENNEMORE CRAIG, P.C.

22
23 By 

24 Jay L. Shapiro
25 Patrick J. Black
26 Attorneys for Coronado Utilities, Inc.

1 ORIGINAL and 15 copies of the foregoing
2 filed this 18th day of December, 2008 with:

3 Arizona Corporation Commission
4 Docket Control
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 COPY of the foregoing mailed and emailed
8 this 18th day of December, 2008 to:

9 Jane L. Rodda
10 Administrative Law Judge
11 Arizona Corporation Commission
12 400 W. Congress
13 Tucson, AZ 85701

14 COPY of the foregoing hand-delivered
15 this 18th day of December, 2008 to:

16 Kevin Torrey
17 Legal Division
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, Arizona 85007

21 Ernest Johnson, Director
22 Utilities Division
23 Arizona Corporation Commission
24 1200 West Washington
25 Phoenix, Arizona 85007

26 COPY of the foregoing mailed
this 18th day of December, 2008 to:

Kim Eggleston
Park Management & Investments
7373 N Scottsdale Road, Suite A-280
Scottsdale, AZ 85253

Gayle Carnes, Editor
San Manuel Miner
P.O. Box 60
San Manuel, AZ 85631

Betty Thomas
Chairman, San Manuel Library
108 Fifth Avenue
San Manuel, AZ 85631

1 Linda Broughton, General Manager
2 BHP Copper
3 760 E. Pusch View Lane
4 Suite 100
5 Tucson, AZ 85737-9245

6

7 By *Maria San Jose*
8 2135820.2

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30