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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO: SW-04305A-05-0086

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

DOCKET NO. SW-04305A-05-0087

(Consolidated)

RESPONSE TO STAFF'S PROCEDURAL  
COMMENTS AND  
RECOMMENDATIONS

19 Coronado Utilities, Inc. ("Coronado" or the "Company") responds to Staff's  
20 Procedural Comments and Recommendations filed on January 12, 2009. Coronado's  
21 position on the issue is already set forth in its comments filed on December 18, 2008.  
22 With respect to Coronado's rates and charges, Staff agrees that any changes to the rates  
23 must be based on an evidentiary record and allow the Company to earn a reasonable  
24 return on its rate base. Staff Comments at 3. Staff and the Company also agree that the  
25 forthcoming rate case Coronado was ordered to file may be the best place to address  
26 issues related to the Company's rates and charges. *Id.* Staff recognizes that "careful"

1 analysis is required to ensure the Company's financial integrity now, and in the future. *Id.*  
2 at 4.

3 Coronado also offers the following general comments in response to Staff's filing  
4 in this docket.

5 First, that BHP is a shareholder in Coronado is not a basis for the Commission to  
6 take action. Staff Comments at 6. To begin with, it should be recalled that BHP's stock  
7 ownership was the only available answer to Staff's recommendation and the  
8 Commission's requirement of additional equity in the initial capital structure. This was in  
9 addition to BHP's direct subsidization of the rates in Phase Two. Yet to date, BHP, like  
10 the other shareholders, has not received any return on its investment. As a legal matter,  
11 the Commission regulates the utility, not its shareholder, and the agency is not supposed  
12 to intervene in the Company's internal affairs. Arizona law is clear that "it is not the  
13 purpose of regulatory bodies to manage the affairs of the corporation." *Southern Pacific*  
14 *Co. v. Arizona Corporation Comm'n*, 98 Ariz. 339, 343, 404 P.2d 692, 694 (1965).  
15 "Nowhere in the Constitution or in the statutes is the [C]ommission given jurisdiction,  
16 directly or by implication, to control the internal affairs of corporations. . ." *Corporation*  
17 *Comm'n v. Consolidated Stage Co.*, 63 Ariz. 257, 261, 161 P.2d 110, 112 (1945). "[T]he  
18 day-to-day operation and running of public service corporations are matters of  
19 management prerogative, and are beyond the power of the Commission to control--at least  
20 directly." Ariz. Op. Att'y Gen. No. I79-099 (April 9, 1979). "The [C]ommission has the  
21 power to supervise and regulate public utilities as it finds them. It has nothing to do with  
22 creating or bringing them into existence." *Williams v. Pipe Trades Industry Program of*  
23 *Arizona*, 100 Ariz. 14, 18, 409 P.2d 720, 723 (1966). Staff's suggestion that the  
24 Commission can take action with respect to BHP will continue to be in dispute, but it  
25 should be resolved that such action cannot arise as a result of BHP's stock ownership.

26

1           Second, Staff suggests that the Commission might reevaluate the conditions placed  
2 on BHP's transfer of facilities. Staff Comments at 6. The Commission was not asked to  
3 approve any asset transfer by BHP, and it didn't. As a practical matter, Coronado simply  
4 continued to operate the original treatment facility only until such time as the new plant  
5 was operational, and as required by ADEQ, the old facility has been completely removed  
6 from service. The only original assets left are the collection mains and two lift stations,  
7 and the Company surely needs to retain those without condition if it is to render sewer  
8 utility service.

9           Third, Staff raises the specter of one or more means of adjudicating or regulating  
10 BHP, including proceedings that could result in sanctions against the mining company.  
11 See Staff Comments at 6-7. If the Commission chooses to conduct such proceedings  
12 regarding BHP, it should ensure that Coronado is not dragged through the process. Staff  
13 cautions against the likelihood of protracted litigation. *Id.* at 6. Coronado repeats its plea  
14 that it not be forced to incur the costs of protracted litigation over BHP's rights, status and  
15 possible punishments for past crimes against the State.

16           Fourth, Staff's comments and recommendations regarding Coronado's rates are  
17 largely idealistic and impractical; it must be remembered that Coronado already borrowed  
18 the millions of dollars it was authorized to borrow, and built the new plant it is using  
19 today to serve its customers. The Company already has substantial low cost debt in place,  
20 and given its precarious financial condition, it is not likely to attract additional capital,  
21 debt or equity at this time. Thus, Staff's suggestions regarding using different capital  
22 structures to adjust rates appear to be more of an academic exercise than a realistic means  
23 of mitigating rate increases. In fact, even assuming debt could be obtained to pay down  
24 equity, returning to the capital structure originally proposed by Coronado, 13% equity and  
25 87% debt, the impact on rates would be no more than a few dollars a month. In short,  
26 Coronado remains concerned that customers are looking for relief that is not realistically

1 available without compromising Coronado's opportunity to recover its operating expenses  
2 and earn a return on its investment.

3 Fifth, and finally, Coronado renews its concern over this proceeding. At a  
4 minimum, any consideration of adjustments to the Company's rates and charges should be  
5 restricted to the rate application it has been ordered to follow on or before July 1, 2009.  
6 Respectfully, only in this manner can the Commission ensure that piecemeal ratemaking  
7 does not deny Coronado a return on its plant devoted to public service.

8 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of January, 2009.

9 FENNEMORE CRAIG, P.C.

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By   
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ORIGINAL and 15 copies of the foregoing  
filed this 16<sup>th</sup> day of January, 2009 with:

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COPY of the foregoing mailed and emailed  
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