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Arizona Corporation Commission

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

AZ CORP COMMISSION  
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION  
OF CORONADO UTILITIES, INC. FOR A  
DETERMINATION OF THE FAIR VALUE  
OF ITS UTILITY PLANT AND PROPERTY  
AND FOR INCREASES IN ITS RATES  
AND CHARGES FOR UTILITY SERVICE  
BASED THEREON.

DOCKET NO: SW-04305A-09-0291

**REQUEST FOR SUMMARY  
ADJUDICATION REGARDING  
STAFF RECOMMENDATION  
CONCERNING DISCONNECTION  
FOR NON-PAYMENT**

In its application, Coronado sought to modify its tariff to require persons disconnected for non-payment to pay the costs of disconnection and reconnection before being allowed to reestablish service.<sup>1</sup> Staff opposes authorization for Coronado to recover these costs.<sup>2</sup> Instead, Staff recommends that the Commission "order" Coronado to "work with . . . Arizona Water Company to develop a water termination agreement."<sup>3</sup> Coronado respectfully suggests that such relief should be denied as a matter of law.

**MEMORANDUM OF POINTS AND AUTHORITIES**

It is axiomatic that Coronado has a right to be paid by each of its customers for the service that customer receives. Coronado's right to disconnect for non-payment is codified in the Commission's rules.<sup>4</sup> That Coronado has a right to recover operating

<sup>1</sup> Direct Testimony of Jason Williamson at 10 – 11.

<sup>2</sup> Direct Testimony of Gary T. McMurry ("McMurry Dt.") at 16.

<sup>3</sup> McMurry Dt. at 16:15-18.

<sup>4</sup> A.A.C. R14-2-609.

1 expenses is also well-established under Arizona and federal law.<sup>5</sup> Because the Company  
2 can only terminate service through physical disconnection, the costs of such disconnection  
3 are part of the cost of service. However, such costs are directly traceable to specific  
4 customers and, therefore, should be recovered from the cost causers to the greatest extent  
5 possible. Similar tariff language has already been approved by this Commission,<sup>6</sup> casting  
6 a discriminatory shadow over Staff's recommendation.

7 Staff's recommendation that Coronado be ordered to pursue a water termination  
8 agreement also raises questions of fundamental due process. Ordering Coronado to seek  
9 such an agreement requires at least two additional steps that cannot be resolved in the  
10 present case and which are entirely outside Coronado's control. First, Coronado must try  
11 to reach an agreement with an unaffiliated third-party that is not involved in these  
12 proceedings and under no obligation to cooperate. Second, that third-party must institute  
13 a proceeding to apply for a waiver. Arizona Water's customers would clearly be entitled  
14 to object, since arbitrary utility terminations can create constitutional due process issues.<sup>7</sup>  
15 The possibility of a contested proceeding, the cost of which would likely not be recovered,  
16 helps explain the absence of any evidence that Arizona Water Company is willing to  
17 cooperate.<sup>8</sup>

18 Even if such an agreement could be reached with Arizona Water, the entire concept  
19 of threatening to disconnect other classes of service is in conflict with basic principles of  
20

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21 <sup>5</sup> *E.g., Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 578 P.2d 612 (App. 1978); *Bluefield Waterworks &*  
22 *Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923).

23 <sup>6</sup> See Gold Canyon Sewer Company's approved tariff, taken from the Utility Tariffs section of the  
24 Commission's website, attached hereto as **Exhibit 1**.

25 <sup>7</sup> *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 10-11 (1978).

26 <sup>8</sup> Actually, the evidence will reflect that Arizona Water Company is unwilling to enter into a water  
termination agreement with Coronado. Rebuttal Testimony of Jason Williamson at 2. Undersigned  
counsel has also spoken to Arizona Water's representatives and can confirm that the utility is not  
interested in a water service termination agreement with Coronado. Staff counsel in this docket can also  
confirm her unsuccessful efforts to bring Arizona Water to the table to discuss Staff's recommendation.

1 public utility regulation. Commission Regulation R14-2-410 (Termination of service)  
2 prohibits a water company from terminating service for “[n]onpayment of a bill related to  
3 another class of service.”<sup>9</sup> The Commission’s rule is derived from longstanding and  
4 generally recognized principles – a public service company ordinarily “cannot refuse to  
5 render the service that it is authorized by its charter to furnish because of some collateral  
6 matter not related to that service.”<sup>10</sup> Staff has not adequately explained why the existing  
7 Commission rule is wrong, or why the Commission should depart so significantly from its  
8 own rules in this case.

9 The Commission has apparently granted waivers of R14-2-410 in the past, but in  
10 both cases cited by Staff the purpose of the waiver was to assist a municipality in  
11 managing its sewer system.<sup>11</sup> In the case of a municipal sewer system, if voters decide  
12 they do not like the way disconnections were handled, they have a direct method of  
13 addressing the issue at the ballot box. Moreover, in at least one of the cases, the water  
14 company was already handling the municipality’s billing and collections so it made sense  
15 to manage potential disconnections through a unified process. See Decision No. 68917,  
16 Attachment A at 1. The same considerations are not present here.

### 17 RELIEF REQUESTED

18 Staff does not suggest that Coronado has done anything wrong, and it hasn’t.  
19 Rather, Staff has simply attempted to dodge the issue presented by the Company by  
20 offering a hollow remedy in conflict with law. But Staff’s remedy offers nothing more for  
21 Coronado than non-compliance unless a disinterested third-party takes steps in the future

22 <sup>9</sup> Notably, A.A.C. R14-2-609 contains the same language. See also *Ariz. Water Co. v. Ariz. Corp.*  
23 *Comm’n*, 217 Ariz. 652, 661, ¶ 30 n.10, 177 P.3d 1224, 1233 n.10 (App. 2008) (noting R14-2-410 and the  
lack of stated exceptions).

24 <sup>10</sup> Am. Jur. 2d, Public Utilities § 22 (2001); see also *Miller v. Roswell Gas & Electric Co.*, 166 P. 1177,  
1177-78 (N.M. 1917); *Garner v. City of Aurora*, 30 N.W.2d 917, 920 (Neb. 1948); *Josephson v. Mountain*  
25 *Bell*, 576 P.2d 850, 852 (Utah 1978).

26 <sup>11</sup> See *McMurry Dt. at 16* (citing *Arizona-American Water Company*, Decision No. 66998 (May 24, 2004)  
and *Arizona-American Water Company*, Decision No. 68917 (August 29, 2006)).

1 that are prohibited by rule and inconsistent with its own interests and those of its  
2 ratepayers. There are no material issues of fact presented, and no amount of evidence can  
3 cure the legal problems attendant to Staff's recommendation. Accordingly, Coronado  
4 asks that Staff's recommendation be summarily denied as a matter of law.

5 RESPECTFULLY SUBMITTED this 22nd day of March, 2010.

6 FENNEMORE CRAIG, P.C.

7  
8 By \_\_\_\_\_

Jay L. Shapiro  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012  
Attorneys for Coronado Utilities, Inc.

11  
12 ORIGINAL and 13 copies of the foregoing  
13 filed this 22nd day of March, 2010 with:

14 Docket Control  
15 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

16 COPY of the foregoing emailed/mailed  
17 this 22nd day of March, 2010 to:

18 Jane L. Rodda  
19 Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
400 West Congress  
20 Tucson, Arizona 85710-1347

21 COPY of the foregoing hand-delivered  
22 this 22nd day of March, 2010 to:

23 Ayesha Vohra, Esq.  
Legal Division  
Arizona Corporation Commission  
24 1200 W. Washington  
Phoenix, Arizona 85007-2927

25 By \_\_\_\_\_

26 2295242.1

**Coronado Utilities, Inc.**  
**Docket No. SW-04305A-09-0291**

**REQUEST FOR SUMMARY ADJUDICATION  
REGARDING STAFF RECOMMENDATION  
CONCERNING DISCONNECTION FOR NON-PAYMENT**

**March 22, 2010**

**Exhibit 1**

ORIGINAL

**GOLD CANYON SEWER COMPANY  
NEW RATES**

On January 13, 2006, Gold Canyon Sewer Company ("GCSC") filed an application for a rate increase with the Arizona Corporation Commission ("Commission"). GCSC requested the increase to cover increased costs in provision of service and in the addition/replacement of its wastewater infrastructure. The proposed rates were thoroughly audited by Commission Staff, and a public comment session and evidentiary hearings were held. After considering all the evidence presented, the Commission issued Decision No. 69664 ("Order") on June 28, 2007, authorizing a 73% rate increase effective on July 1, 2007. In its Order the Commission approved the following rates and charges:

<u>SEWER</u>	<u>SERVICE CHARGES</u>
Monthly service charges:	Establishment..... \$25.00
Residential Service - Per Month..... \$60.55	Establishment (After Hours).....\$50.00
Residential Service -- (Less than 700 Square Ft).... \$33.03	Re-establishment (Within 12 Months)..... (b)
Residential Units (Home Owners Association)..... \$55.05	Re-establishment (After Hours) (b).....\$40.00
Commercial - Per gallon per day..... \$0.30276	Re-connection (Delinquent).....(c)
Effluent Sales -- Per 1,000 gallons..... \$0.786	Re-connection (Delinquent and After Hrs) (c).....\$30.00
	Minimum Deposit (Residential).....(a)
	Minimum Deposit (Non-Residential).....(a)
	Deposit Interest.....6.00%
	NSF Check Charge.....\$10.00
	Deferred Payment Finance Charge Per Month.....1.50%
	Late Payment Charge.....1.50%
	Main Extension Tariff.....Cost
	(a) Per A.A.C. R14-2-603B; Residential -- two times average bill, Non-Residential - two and one-half times average bill
	(b) Minimum charge times number of full months disconnected.
	(c) Actual cost of physical disconnection and reconnection (if same customer) and there shall be no charge if there is no physical work performed.
<b><u>HOOK -UP FEE FOR NEW SERVICE</u></b>	
4 Inch Service Line..... \$900.00	
6 Inch Service Line..... \$2,025.00	
8 Inch Service Line..... \$3,600.00	
Larger than 8 Inch Service Line..... \$5,625.00	

**Billing Adjustments:**

Total monthly sewer and miscellaneous charges are subject to adjustment for all federal, state, and local government taxes, levies, and any assessments that may be imposed by federal or state regulatory agencies on sewer gross revenues.

**Effective Date:**

These rates and charges are effective July 1, 2007

ADMINISTRATIVELY  
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