

ORIGINAL



0000110374

RECEIVED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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.

2010 APR 23 P 3:40  
AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
**DOCKETED**  
APR 23 2010

DOCKETED BY [Signature]

**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  
**CORONADO'S REPLY TO STAFF'S RESPONSE TO REQUEST FOR SUMMARY ADJUDICATION REGARDING STAFF RECOMMENDATION CONCERNING DISCONNECTION FOR NON-PAYMENT**

Coronado hereby replies in support of its request for summary adjudication. In short, while Coronado agrees that this is an extraordinary procedure, Staff's response, coupled with additional testimony filed at surrebuttal, further demonstrate the merits of granting the Company's request.

Staff's first argument, that Coronado's motion is procedurally improper and not helpful, is easily dismissed. For starters, Staff is correct that a motion for summary adjudication is generally not well suited for a rate case.<sup>1</sup> Generally, however, parties do not recommend that the Commission grant relief contingent on the actions of an unaffiliated entity that is not a party to the case. That Staff seeks to link Coronado's fate to that third-party is undeniable. In its surrebuttal, Staff now wants a letter from Arizona Water declining to enter into a water services agreement with Coronado, and further, Staff wants Arizona Water to explain itself to the Commission.<sup>2</sup> It is axiomatic that a non-party

<sup>1</sup> Staff Response at 2:20-21.  
<sup>2</sup> Surrebuttal Testimony of Gary McMurry ("McMurry Sb.") at 3:21-22 and 4:6-7.

1 cannot be required to take actions in this docket, and that Coronado's ability to act and  
2 possibly comply cannot be made contingent on the acts of that same unaffiliated non-  
3 party.

4         Given the extraordinary impropriety of Staff's recommendation, an extraordinary  
5 means of addressing Staff's recommendation was needed. Surely, Staff is not contending  
6 that the Commission lacks the discretion to adjudicate this matter without hearing when  
7 no amount of evidence can correct the flawed nature of Staff's recommendation. Thus,  
8 Coronado's request is "helpful" to the Commission as its intent is to avoid spending time  
9 and money to make an evidentiary record, then brief an issue that the Commission should  
10 not grant, at best, and at worst, cannot grant. There are no issues of fact to narrow or to  
11 make a record of at trial. The prefiled testimony already reflects Coronado and Staff's  
12 agreement that some customers do not pay their bills, that disconnection is authorized by  
13 rule, and that the cost of disconnection is very high. Additionally, despite repeated  
14 attempts by Coronado to "work with Arizona Water," the evidence is undisputed that the  
15 water provider has no interest in pursuing such an agreement.<sup>3</sup> Thus, granting Coronado's  
16 request for summary adjudication will be very helpful in saving the scarce resources of the  
17 Commission by precluding the necessity for debate of an issue over which there is no  
18 material fact in dispute.

19         Staff has also failed to provide a meaningful response to Coronado's assertion that  
20 the relief Staff seeks is simply unlawful. As noted, Staff has actually made this problem  
21 worse with its suggestion that Arizona Water may be compelled to explain to the  
22 Commission why it does not want to enter into such an agreement.<sup>4</sup> Staff can take no  
23 comfort in the two prior cases cited.<sup>5</sup> In those cases, the parties voluntarily entered into

24 \_\_\_\_\_  
<sup>3</sup> Rebuttal Testimony of Jason Williamson at 2:13-16; McMurry Sb. at 3:1-4.

25 <sup>4</sup> McMurry Sb. at 3 - 4.

26 <sup>5</sup> Staff Response at 3:19-20.

1 termination agreements and then sought Commission approval. That the Commission  
2 could approve a water service termination agreement that was voluntarily entered into  
3 after following due process is not in dispute. The issue here is whether the Commission  
4 can order Coronado to pursue an agreement with another entity that is not willing to be a  
5 party to such an agreement. This is a legal issue, one that is easily avoided by summary  
6 adjudication.<sup>6</sup>

7 Lastly, Staff's effort to drag economic circumstances into the picture appears to be  
8 nothing more than a transparent effort to curry favor for the ratepayer.<sup>7</sup> The economy is  
9 not relevant; Coronado already has the right to disconnect for non-payment, a right that  
10 cannot be taken away without requiring the Company to provide free utility service.  
11 Second, while Staff is making broad assumptions about those that do not pay for service,  
12 Staff is ignoring the fact that those who do not pay for service increase the cost of service  
13 for those that pay. The relief sought by the Company would go a long way towards  
14 ameliorating the problem.<sup>8</sup> In contrast, Staff wishes to increase the cost of service by  
15 forcing Coronado to pursue something that the Company has already been told is not  
16 going to happen. Neither the Company, its ratepayers nor the Commission need to make  
17 the customers pay for the futile exercise Staff is now recommending.

18 Based on the foregoing, Coronado asks that Staff's recommendation be summarily  
19 adjudicated as lacking any issue of material fact and denied as a matter of law.  
20

---

21 <sup>6</sup> If, as Staff suggests, all Coronado has to do is ask Arizona Water about an agreement, there is simply no  
22 reason to move forward and test the legality of such an order. Again, Coronado has already done this three  
times – evidence of which has not been rebutted by Staff.

23 <sup>7</sup> Staff Resp. at 3:8-10.

24 <sup>8</sup> Staff also addresses the Company's assertion that there is the possibility of discrimination, however,  
25 Coronado is not asserting that discrimination has occurred or that such possibility provides a basis for  
summary adjudication. It is a fundamental tenet of law that an administrative agency cannot deviate from  
26 prior precedent without a reasoned explanation for the different adjudications. However, whether there is  
a basis to distinguish the circumstances in Gold Canyon Sewer's case, which sewer utility has the same  
tariff proposed by Coronado, is a question of fact first, meaning it requires an evidentiary record.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of April, 2010.

FENNEMORE CRAIG, P.C.

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

ORIGINAL and 13 copies of the foregoing  
filed this 23<sup>rd</sup> day of April, 2010 with:

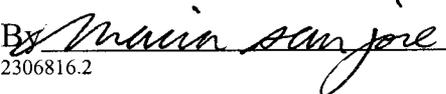
Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

COPY of the foregoing emailed/mailed  
this 23<sup>rd</sup> day of April, 2010 to:

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

COPY of the foregoing hand-delivered  
this 23<sup>rd</sup> day of April, 2010 to:

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

By  \_\_\_\_\_  
2306816.2