



Control Number: 45720



Item Number: 103

Addendum StartPage: 0

RECEIVED

APPLICATION OF RIO CONCHO
AVIATION, INC. FOR A
RATE/TARIFF CHANGE

§
§
§

BEFORE THE STATE OFFICE
OF
PUBLIC UTILITY COMMISSION
ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S MOTION TO COMPEL RESPONSE TO COMMISSION
STAFF'S FOURTH REQUEST FOR INFORMATION**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Motion to Compel Response in response to Rio Concho Aviation, Inc.'s (Rio Concho) Objections to Commission Staff's Fourth Request for Information and would show the following:

I. BACKGROUND

Under 16 Tex. Admin. Code § 22.144(e) (TAC), a party seeking discovery shall file a motion to compel no later than five working days after receipt of objections. Staff received Rio Concho's objections on September 14, 2016. Five working days after September 14 is September 21, 2016. This motion is therefore timely filed.

II. DISCUSSION

Staff requests that Rio Concho be compelled to respond to Staff 4-9 and Staff 4-10. In its objections, Rio Concho claims that the information sought in Staff 4-9 and Staff 4-10 is irrelevant because it seeks information regarding expenses incurred prior to the test year. Staff contends that the information sought is relevant, and that Rio Concho's concerns go to the weight of the information, not the relevance.

Under Rule 401 of the Texas Rules of Evidence, evidence is relevant if it a) "has any tendency to make a fact more or less probable than it would be without the evidence" and b) "the fact is of consequence in determining the action."¹ The discovery sought by Staff meets both prongs of the test. Specifically, Staff seeks information regarding certain expenses for three years prior to the test year and reasons for changes in those expenses. Historical trends in expenses,

¹ Tex. R. Civ. Evid. 401.

along with explanations for those trends, tend to make it more or less probable that expenses incurred in the test year are reasonable. For example, a sudden increase in expenses in the test year compared to the preceding years might tend to make it less probable that the expenses incurred in the test year are reasonable. An explanation of the reasons for that sudden increase might tend to make it more probable that the expenses incurred in the test year are reasonable. As another example, if the historical data shows a trend of expenses consistently increasing at a steady rate from year to year, and the expenses in the test year continue that trend, that might tend to make it more probable that the expenses incurred in the test year are reasonable. An unexplained deviation from that trend in the test year might tend to make it less probable that the test year expenses are reasonable. The reasonableness of Rio Concho's expenses, in turn, is included in the list of issues contained in the Commission's preliminary order in this case,² and is therefore of consequence in determining this action.

The information sought by Staff therefore tends to make the reasonableness of Rio Concho's test year expenses more or less probable. The reasonableness of those expenses is of consequence in determining this action. The information sought by Staff therefore satisfies both prongs of the relevancy test established in Rule 401 of the Texas Rules of Evidence, and Rio Concho's objections should be overruled.

III. CONCLUSION

For the reasons discussed above, Staff respectfully requests that Staff's Motion to Compel Response to Commission Staff's Fourth Request for Information be granted. Specifically, Staff moves that Rio Concho be compelled to respond to Staff 4-9 and Staff 4-10 because the information sought is relevant under Rule 401 of the Texas Rules of Evidence.

² See, e.g. Preliminary Order at 3-6 (May 23, 2016) (Issue Nos. 5, 20, 21, 22, 23, 26, 28, & 29).

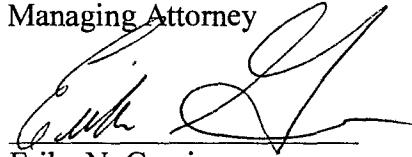
Dated: September 21, 2016

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney



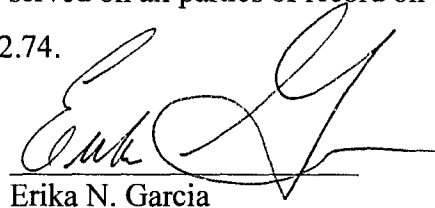
Erika N. Garcia
State Bar No. 24092077
Vera Dygert
State Bar No. 24094634

1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7265
(512) 936-7268 (facsimile)

**SOAH DOCKET NO. 473-16-3831.WS
PUC DOCKET NO. 45720**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 21st of September, 2016 in accordance with 16 TAC § 22.74.


Erika N. Garcia