



Control Number: 45720



Item Number: 107

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

**RECEIVED**

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

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**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

2016 SEP 23 PM 2:16  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**COMMISSION STAFF'S RESPONSE TO RIO CONCHO AVIATION, INC.'S  
OBJECTIONS TO AND MOTION TO STRIKE PORTIONS OF COMMISSION STAFF,  
ELISABETH ENGLISH'S, DIRECT TESTIMONY**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files these Commission's Staff's Response to Rio Concho Aviation, Inc.'s Objections to and Motion to Strike Portions of Commission Staff, Elisabeth English's, Direct Testimony. In support thereof, Staff shows the following:

**I. BACKGROUND**

On March 22, 2016, Rio Concho Aviation, Inc. (Rio Concho) filed an application for a rate/tariff change under water certificate of convenience and necessity (CCN) No. 12835 in Tarrant County, Texas. On June 21, 2016, the administrative law judge (ALJ) entered Order No. 4, which set a deadline of September 16, 2016 to object to Staff's testimony. On September 16, 2016, Rio Concho filed its Objections to and Motion to Strike Portions of Commission Staff, Elisabeth English's Direct Testimony. SOAH Order No. 4 also set a deadline of September 23, 2016 for Staff to respond to objections to Staff's direct testimony. Therefore, this response is timely filed.

**II. OVERVIEW**

The Commission employs staff to review rate applications for compliance with the Texas Water Code (TWC), the Commission's rules, and Commission precedent. Expertise in the requirements of compliance with these statutes and rules does not require a specific type of training, or a requisite number of years of professional experience.

Texas Rule of Evidence 702 does not restrict expert testimony to those with specific formal training, but rather allows a person to testify as an expert witness so long as: 1) the person

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is qualified by knowledge, skill, experience, training or education; 2) the proposed testimony provides scientific, technical, or other specialized knowledge; and 3) the testimony will assist the trier of fact to determine a fact in issue.<sup>1</sup> Finally, agency's rulings in admitting expert testimony are within its broad discretion and will not be disturbed on appeal.<sup>2</sup>

Staff witness Elisabeth English has been actively analyzing water rate/tariff change applications over the last approximately two years and is qualified to render the conclusions she reached in this case. Commission proceedings are replete with Staff expert testimony in evidence from Commission employees with competency comparable to Ms. English.

### III. EXPERT TESTIMONY

Rio Concho objects to Ms. English as an expert because she “. . . has no training, expertise, or experience in engineering matters or determining the value or projected life of components in a water system. . .”<sup>3</sup> However, Ms. English has been in training under other Commission Staff since she started with the Commission in December 2014, and has received specific training on water engineering matters and determining the value or projected life of components in a water system from the Staff of the Water Utilities Division of the Commission. Additionally, Ms. English has filed testimony on depreciation and rate design in a water rate appeal case.<sup>4</sup> As an Engineering Specialist in the Water Utilities Division, Ms. English's job responsibilities include reviewing water rate/tariff change applications for compliance with the TWC and Commission rules. Ms. English has knowledge, skill, and experience gained from her training and actual involvement in water rate change applications while employed by the Commission. Texas Rule of Evidence 702 provides the admission of expert testimony is allowed if the witness is qualified as an expert by knowledge, skill, experience, training, or education.

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<sup>1</sup> Tex. R. Evid. 702.

<sup>2</sup> *Austin Chevrolet, Inc. v. Motor Vehicle Bd.*, 212 S.W.3d 425, 432 (Tex. App – Austin 2006, pet. denied).

<sup>3</sup> Rio Concho Aviation, Inc's Objections to and Motion to Strike Portions of Commission Staff, Elisabeth English's, Direct Testimony (Sep. 16, 2016) (Motion to Strike English Testimony) at 2.

<sup>4</sup> *Ratepayers' Appeal of the Decision by Trophy Club Municipal Utility District No. 1 to Change Rates*, PUC Docket No. 45231, SOAH Docket No. 473-16-1836.WS (Oct. 9, 2015).

Staff submits that Ms. English, through her job training and experience while employed by the Commission, is qualified by knowledge, skill, experience, *and* training.

Rio Concho identifies portions of Ms. English's testimony to which it specifically objects, but relies upon its general objection for each section. Staff will respond to the identified testimony in a similar format.

**A. English Prefiled, page 4, lines 22 through page 5, line 1.**

Ms. English testified as to her recommendations on depreciation and rate design. Ms. English has expertise, through her training, knowledge, skill, and experience to make recommendations regarding Rio Concho's application under the Commission's requirements. Rio Concho's objection to this testimony should be overruled.

**B. English Prefiled, page 5, lines 11-13 and Attachment EE-2.**

Ms. English developed a depreciation schedule, Attachment EE-2. Her training, knowledge, skill, and experience qualify her to review the documents in the case and develop this schedule. Rio Concho's objection to this testimony should be overruled.

**C. English Prefiled, page 5, lines 14-16.**

Ms. English testified as to her analysis of the annual usage provided by Rio Concho, the rate structure proposed in its application, and her design of a rate to recover the revenue requirement recommended by Staff witness Debi Loockerman. Ms. English's training, knowledge, skill, and experience qualify her to review the documents in this case and make this determination. Rio Concho's objection to this testimony should be overruled.

**D. English Prefiled, page 6, line 17 through page 7, line 19.**

Ms. English testified as to what a depreciation schedule is, why depreciation is calculated when setting utility rates, and what assets should be included on a depreciation schedule. Ms. English's training, knowledge, skill, and experience qualify her to state what a depreciation schedule is and why depreciation is calculated when setting utility rates. Ms. English's training and knowledge as to the Commission's rules qualify her to testify as to what assets should be included on a depreciation schedule pursuant to 16 Tex. Admin. Code § 24.31(b)(1)(B) (TAC). Rio Concho's objection to this testimony should be overruled.

**E. English Prefiled, page 8, line 3 through page 9, line 7.**

Ms. English testified as to the rate design she recommends for Rio Concho. Ms. English's training, knowledge, skill, and experience qualify her to review the documents in this case and Ms. Loockerman's testimony regarding cost of service, and make a determination as to the appropriate rates required to achieve that revenue requirement. Rio Concho's objection to this testimony should be overruled.

**F. English Prefiled, page 9, line 9 through page 10, line 5.**

Ms. English testified as to which assets are used and useful for providing water utility service in this case. Ms. English's training, knowledge, skill, and experience qualify her to review the documents in this case and make that determination. Rio Concho's objection to this testimony should be overruled.

**G. English Prefiled, page 10, line 6 through page 11, line 3.**

Ms. English testified as to why a particular asset, the Audi vehicle, is not included in her depreciation schedule. Ms. English's training, knowledge, skill, and experience qualify her to make a determination as to which assets are properly included in a depreciation schedule pursuant to 16 TAC § 24.31(b)(1)(B) and Commission practice. Rio Concho's objection to this testimony should be overruled.

**H. English Prefiled, page 11, lines 4-15.**

Ms. English testified as to why the TV and office equipment are not included in her depreciation schedule. Ms. English's training, knowledge, skill, and experience qualify her to make a determination as to which assets are properly included in a depreciation schedule pursuant to 16 TAC § 24.31(b)(1)(B) and Commission practice. Rio Concho's objection to this testimony should be overruled.

**I. English Prefiled, page 11, line 16-17.**

Ms. English testified as to whether Rio Concho's application supports its proposed rates. Ms. English's training, knowledge, skill, and experience qualify her to review the documents filed in this case and make that determination. Rio Concho's objection to this testimony should be overruled.

**J. English Prefiled, page 11, lines 18-21.**

Ms. English testified as to her recommended rates, after considering Rio Concho's application, Intervenor testimony, the applicable law, the Commission's rules, and the Commission's practice. Her testimony on recommended rates was based upon her training, knowledge, skill, and experience. Ms. English is qualified to provide this expert testimony, which will aid the trier of fact. Rio Concho's objection to this testimony should be overruled.

**K. English Prefiled, page 12, line 2 through page 13, line 10.**

Ms. English testified as to the revenue requirement that she used in her review of Rio Concho's proposed rates, how she calculated the total revenue that would be generated by her proposed volumetric rates, base rates, and gallonage charges, and how those rates compares to those proposed by Rio Concho. Ms. English considered Rio Concho's application, Intervenor testimony, the applicable law, the Commission's rules and the Commission's practice, and provided a recommendation based on her training, knowledge, skill, and experience. Ms. English is qualified to provide this expert testimony, which will aid the trier of fact. Rio Concho's objection to this testimony should be overruled.

#### **IV. CONCLUSION**

Numerous other Engineering Specialists in the Water Utilities Division with similar qualifications to Ms. English have filed testimony in each and every one of the water rate change applications filed at the Commission annually. To entertain Rio Concho's objections would effectively add restrictions on Staff testimony that do not exist in the Commission's rules, and would deprive finders of fact in this case of Staff's analysis of Rio Concho's application. Staff is the only party to this case that represents the public interest and its voice should not be silenced. Staff's testimony serves a valuable role in evaluating this water rate application in the context of intervenor concerns and the public interest generally. Each of the above sections of testimony to which Rio Concho objected is within the scope of Ms. English's job requirements and expertise. The testimony will assist the trier of fact, first the ALJ and then the Commissioners themselves, in setting rates that are just and reasonable. Rio Concho will have an opportunity to question and

challenge Ms. English at a hearing on the merits in this docket. For the above stated reasons, Staff respectfully requests that the ALJ deny Rio Concho's objections to the Direct Testimony of Elisabeth English.

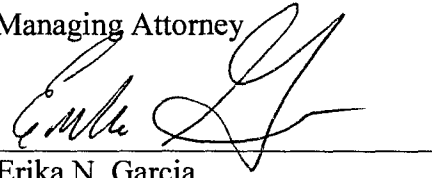
Date: September 23, 2016

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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Managing Attorney

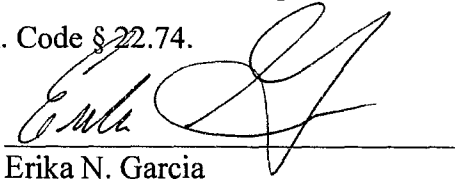


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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on September 23, 2016, in accordance with 16 Tex. Admin. Code § 22.74.



Erika N. Garcia