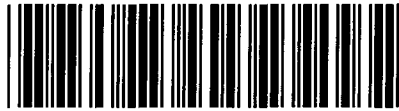




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Item Number: 119

Addendum StartPage: 0

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SOAH DOCKET NO. 473-16-3831.WS

APPLICATION OF RIO CONCHO AVIATION, INC. FOR A RATE/TARIFF CHANGE	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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RIO CONCHO AVIATION, INC.'S RESPONSE TO SOAH ORDER NO. 6

In SOAH Order No. 6, the Administrative Law Judge ("ALJ") ordered Rio Concho Aviation, Inc. ("Rio Concho") to provide a detailed explanation as to why each and every reference in the testimonies filed as confidential by Intervenors and Staff of the Public Utility Commission and in Exhibit RCA-3, including the utility's income tax returns, should be treated as confidential material. Rio Concho files its Response to SOAH Order No. 6 and in support respectfully shows the following:

I.

PROTECTED STATUS OF FEDERAL TAX RETURNS

For over fifty years, the law in Texas has been that tax returns are afforded certain protection in the discovery process because the "protection of privacy is of fundamental – indeed, of constitutional – importance." *Maresca v. Marks*, 362 S.W.2d. 299, 301 (Tex. 1962). Indeed, the Texas Supreme Court has expressed its "reluctance to allow uncontrolled and unnecessary discovery of federal income tax returns." *Sears, Roebuck & Co. v. Ramirez*, 824 S.W.2d 558, 559 (Tex. 1992). While it is true that there is not a specific case that addresses the disclosure of the tax returns of a small utility, the Court has afforded this tax return protection to individuals and also to corporations. *Id.*

Tax returns are discoverable only to the extent they are relevant and the information contained in the returns cannot be discovered in any other less invasive way, i.e. through financial statements, audits or depositions, for instance. *Maresca*, 362 S.W.2d at 300; *see also Wal-Mart Stores, Inc. v. Alexander*, 868 S.W.2d 322, 331 (Tex. 1993) (concurring op.). If the requested financial information has been produced through another source, the trial court abuses its discretion in compelling the disclosure of tax returns. *Sears*, 824 S.W.2d at 559. The party

seeking the tax returns has the burden to prove that “the information sought through the returns cannot be obtained from some other source.” *El Centro Del Barrio v. Barlow*, 894 S.W.2d 775, 780 (Tex. App. – San Antonio 1994, no writ) and *Chamberlain v. Cherry*, 818 S.W.2d 201, 206-207 (Tex. App. – Amarillo 1991, orig. proceeding).

Nonetheless, Rio Concho produced these documents as requested by the Commission Staff prior to issuance of the protective order in SOAH Order No. 3 in an effort to cooperate and assist Commission Staff in their review of Rio Concho’s application. However, Rio Concho’s tax returns are entitled to status as Highly Sensitive Protected Material under the Protective Order based upon the law established by the Supreme Court of Texas. Not designating the tax returns as such may result in disclosure of this highly confidential and protected information to individuals who may take advantage of obtaining that information in the non-regulated business world. In addition, including the tax returns in the record of this case exposes Rio Concho to the same risk without due cause. As requested below, the tax returns should also remain confidential and be designated as Highly Sensitive Protected Material if they are admitted into the record at all.

II. CONFIDENTIAL REFERENCES IN TESTIMONY AND CONFIDENTIAL EXHIBITS

A. Testimony and Exhibits of Elisabeth English

Rio Concho has no objection to the currently redacted portions of the direct testimony of Staff witness Elisabeth English being un-redacted and classified as non-confidential.

B. Testimony and Exhibits of Debi Loockerman

Except as specifically noted below, Rio Concho has no objection to the currently redacted portions of the direct testimony of Staff witness Debi Loockerman being un-redacted and classified as non-confidential.

Page 7 (Bates 00008), Line 9, Names of paid individuals	Rio Concho requests that these names remain confidential. Removing the confidential designation would expose compensation information for these individuals without their consent.
Page 15 (Bates 00015), Footnote 20 (referencing attachment DL-3, Bates 67)	Rio Concho requests that its tax returns remain confidential. Rio Concho is a private company, and its financial information, including its tax returns (Bates 000046-000051 and 000053-000076)(also marked as Bates RCA00009-RCA000029 and RCA000031-RCA000054), is not publicly available. As discussed above, the Texas Courts have consistently held that federal tax returns are not subject to disclosure. Removing the confidential designation from this information would unnecessarily expose Rio Concho's business to individuals beyond the regulatory community. Rio Concho requests that this private financial business records remain confidential. Please note that Rio Concho does not object to removing the confidential designation from Bates page 000052 (RCA000030).

C. Ratepayers Response to Rio Concho Aviation, Inc. Water Rate Increase Application

Except as specifically noted below, Rio Concho has no objection to the currently redacted portions of the Ratepayers Response to Rio Concho Aviation, Inc. Water Rate Increase Application being un-redacted and classified as non-confidential.

Page 6, Lines 17-19	Rio Concho requests that these lines remain confidential. Rio Concho is a private company, and its financial information, including its profit & loss statements, is not
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	publicly available. Removing the confidential designation from this information would unnecessarily expose Rio Concho's business to individuals beyond the regulatory community. Rio Concho requests that this private financial business information remain confidential.
Page 12, Lines 14 and 15, references to calculated amount of loss and profit	Rio Concho requests that these amounts remain confidential. Rio Concho is a private company, and its financial information, including its profit & loss statements, is not publicly available. Removing the confidential designation from this information would unnecessarily expose Rio Concho's business to individuals beyond the regulatory community. Rio Concho requests that this information remain confidential.


D. Exhibit RCA-3

All Pages	Rio Concho requests that these amounts remain confidential. Rio Concho is a private company, and its financial information, including its profit & loss statements, is not publicly available. Removing the confidential designation from this information would unnecessarily expose Rio Concho's business to individuals beyond the regulatory community. Rio Concho requests that this information remain confidential.
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E. Attachment DL-3, Bates 000046-000076

All Pages	<p>Rio Concho requests that its tax returns remain confidential, and further requests that they be designated as “Highly Sensitive Protected Material.” Rio Concho is a private company, and its financial information, including its tax returns (Bates 000046-000076)(also marked as Bates RCA00009-RCA000054), is not publicly available. As discussed above, the Texas Courts have consistently held that federal tax returns are not subject to disclosure if the information within them is available from other sources. Rio Concho has made that information available through production of its financial statements as confidential materials, opening its entire financial picture to both the Commission Staff and the Intervenors. Removing the confidential designation from tax returns, and failing to designate them as Highly Sensitive Protected Material would unnecessarily expose Rio Concho’s private business to individuals beyond the regulatory community. Rio Concho requests that its tax returns remain confidential and be designated as Highly Sensitive Protected Material. Please note that Rio Concho does not object to removing the confidential designation from Bates page 000052 (RCA000030).</p>
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Respectfully submitted,


By: 
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ATTORNEY FOR RIO CONCHO AVIATION, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 30th day of September, 2016.


John Carlton