



Control Number: 45720



Item Number: 125

Addendum StartPage: 0

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

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

COMES NOW, Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to SOAH Order No. 6. In support thereof, Staff shows the following:

**I. BACKGROUND**

On June 21, 2016, the State Office of Administrative Hearings (SOAH) issued SOAH Order No. 3, Protective Order. The Protective Order stated that it would govern the use of all information deemed confidential or highly confidential. On September 16, 2016, Rio Concho Aviation, Inc. (Rio Concho) filed a Motion to Designate Documents as Highly Sensitive Protected Material (Motion). The Motion asked the administrative law judge (ALJ) to designate its 2013 and 2014 federal tax returns as "highly sensitive protected material" pursuant to the Protective Order. On September 21, 2016, the ALJ issued SOAH Order No. 6, requiring Rio Concho to provide a detailed explanation as to why certain documents, including the tax returns, should be treated confidentially. Rio Concho filed its Response to Order No. 6 on September 30, 2016. SOAH Order No. 6 also directed Staff to file a response on or before October 6, 2016. Therefore, this pleading is timely filed.

**II. STAFF'S RESPONSE TO RIO CONCHO'S REQUEST TO DESIGNATE ITS TAX RETURNS AS HIGHLY SENSITIVE PROTECTED MATERIAL**

As an initial matter, Rio Concho claims in its Motion that it notified the parties by email on June 29, 2016 that the tax returns were highly confidential records.<sup>1</sup> The email referenced (Attachment A) stated that Rio Concho intended to ask the ALJ to allow Rio Concho not to

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<sup>1</sup> Rio Concho Aviation, Inc.'s Motion to Designate Documents as Highly Sensitive Protected Material at 2 (Sep. 16, 2016) (Motion).

disclose the tax records to intervenors by a separate motion. Such a motion was never filed. Nor has Rio Concho filed a motion to designate the tax records as “highly sensitive protected material” prior to the Motion filed on September 16, 2016. Absent a ruling by the ALJ, the mere fact that Rio Concho notified the parties by email that it considered the tax returns “highly confidential records” does not afford them such status.

In its Motion, Rio Concho argues that tax returns “should be subject to a protective order, as the information remains highly sensitive” and that “placing the tax returns in the public domain by publicly filing the entire return, or even a portion thereof, would violate the basic privacy rights of the taxpayers, and would not serve to advance the litigation.”<sup>2</sup> This argument is misplaced, as no party has requested that Rio Concho publicly file any portion of the tax returns at issue. The tax returns were filed confidentially and have been afforded all due protection under the Protective Order in place in this proceeding.

Staff does not object to the tax returns being treated as confidential, but does not agree that the tax returns should be designated as “highly sensitive protected material.” The Protective Order states:

The term ‘Highly Sensitive Protected Materials’ is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to unreasonable risk of harm.<sup>3</sup>

Rio Concho has not shown how allowing individuals who have signed a Protective Order certification in this proceeding access to such documents would expose the utility to an “unreasonable risk of harm.” In its Motion Rio Concho merely states that its federal tax returns contain business operations and financial information that are highly sensitive. In its Response to Order No. 6, Rio Concho further states that not affording these returns a higher level of protection “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.”<sup>4</sup> While the Protective Order provides that “business operations or financial information

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<sup>2</sup> *Id.* at 1.

<sup>3</sup> SOAH Order No. 3 at 3 (June 21, 2016).

<sup>4</sup> Motion at 2.

that is commercially sensitive”<sup>5</sup> are properly included in the category of highly sensitive protected materials, Rio Concho has not provided any argument to show that (1) the tax returns contain financial information that is commercially sensitive, and (2) production of the tax returns exposes Rio Concho to an unreasonable risk of harm that is not alleviated by limiting the review of the tax returns to individuals who have signed a Protective Order certification. Staff disagrees that financial information contained in a utility’s tax return, on its face, warrants a higher level of protection. It is Rio Concho’s burden to show that the financial information is commercially sensitive and would create an unreasonable risk of harm, and it has not done that in its Motion or its Response to Order No. 6.

Finally, in its response to SOAH Order No. 6, Rio Concho cites to several cases for the proposition that tax returns are discoverable only if they are relevant and the information contained in the tax returns cannot be obtained from another source.<sup>6</sup> Again, Rio Concho’s argument is misplaced. The issue is not whether the tax returns are discoverable or whether the information in the tax returns can be obtained from some other source. Rather, the issue is whether the tax returns already produced by Rio Concho in this proceeding should be afforded a higher degree of protection and classified as “highly protected.” The cases cited by Rio Concho do not discuss under what circumstances federal income taxes should be classified as “highly protected.”

### **III: STAFF’S RESPONSE TO CONFIDENTIAL REFERENCES IN TESTIMONY AND CONFIDENTIAL EXHIBITS**

Staff has no objection to Rio Concho’s request that the following references remain confidential:

Ratepayers Response to Rio Concho Aviation, Inc. Water Rate Increase Application	Page 6, Lines 17-19 Page 12, Lines 14-15, references to calculated amount of loss and profit
Exhibit RCA-3	All pages
Direct Testimony of Debi Loockerman	Page 7 (Bates 00008), Line 9, names of paid individuals Attachment DL-3, Bates Pages 000046-000076

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<sup>5</sup> SOAH Order No. 3 at 3.

<sup>6</sup> See Rio Concho Aviation, Inc.’s Response to SOAH Order No. 6 at 1-2 (Sep. 30, 2016).

Staff does not object to Bates Pages 000046-000076 of Attachment DL-3 being designated as confidential, but continues its objection to Rio Concho's tax returns being designated as highly protected sensitive material. Additionally, per agreement with Rio Concho, Staff will not redact the text of Footnote 20 on page 15 (Bates 00015) of Debi Loockerman's Direct Testimony, as the referenced page in Attachment DL-3 is confidential but the text of Footnote 20 is not.

#### **IV. CONCLUSION**

For these reasons, Staff respectfully requests that the ALJ deny Rio Concho's request to classify the tax returns as highly sensitive protected material.

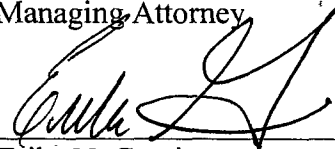
Dated: October 6, 2016

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

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Managing Attorney

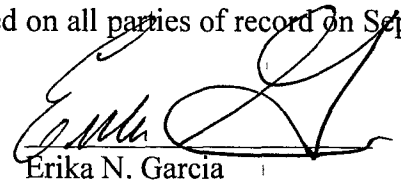


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**CERTIFICATE OF SERVICE**

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



Erika N. Garcia

**ATTACHMENT A**

**From:** John Carlton [<mailto:john@carltonlawaustin.com>]  
**Sent:** Wednesday, June 29, 2016 1:05 PM  
**To:** Stephen Grace <[stg757@hotmail.com](mailto:stg757@hotmail.com)>  
**Cc:** Amy Loera <[amy@carltonlawaustin.com](mailto:amy@carltonlawaustin.com)>; Meier, Kennedy <[Kennedy.Meier@puc.texas.gov](mailto:Kennedy.Meier@puc.texas.gov)>  
**Subject:** Discovery Documents

Mr. Grace

Here are links to the documents that Rio Concho has previously produced to the PUC Staff as confidential filings -

- [BATES RCA000001-RCA000008;](#)
- [BATES RCA000055-RCA000350;](#)
- [BATES RCA000351;](#)
- [BATES RCA000352-354; and](#)
- [BATES RCA000355-RCA000378.](#)

The links are valid for 7 days. The documents are subject to the conditions of the Protective Order (Order No. 3) issued by the Judge in Docket No. 45720 and your signed Protective Order Certification filed June 27th.

I am not providing Bates numbered pages RCA000009-RCA000054, which are the company's Federal Income Tax Returns and Highly Confidential Records that I will be asking the Judge to allow us not to disclose to the Interveners by separate motion.

Please let me know if you have any trouble accessing the documents. A couple of the files are very large.

CC: Kennedy Meier, PUC Staff Attorney

**John J. Carlton**



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