



Control Number: 45720



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RECEIVED

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

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PUBLIC UTILITY COMMISSION

2016 APR 14
PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

**COMMISSION STAFF'S RECOMMENDATION ON ADMINISTRATIVE
COMPLETENESS AND SUSPENSION OF RATES AND REQUEST FOR REFERRAL
TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Commission Staff's Recommendation on Administrative Completeness and Suspension of Rates and Request for Referral to the State Office of Administrative Hearings in response to Order No. 1 and would show 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 pursuant to Tex. Water Code Ann. § 13.1872(c)(2) (TWC), TWC § 13.1871, and 16 Tex. Admin. Code § 24.22 (TAC).¹ The proposed increase has an effective date of April 26, 2016.

On March 23, 2016, Order No. 1 was issued, establishing a deadline of April 21, 2016 for Staff to file comments on the administrative completeness of the application and notice. This pleading is therefore timely filed.

II. RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS

Staff has reviewed the application and, as detailed in the attached memorandum from Debi Loockerman and Sean Scaff of the Commission's Water Utility Regulation Division, recommends that the application and notice be found administratively complete.

¹ Rio Concho's application indicates that it serves fewer than 500 connections. It is therefore a Class C water utility under TWC § 13.002(4-c). TWC § 13.1872(c)(2) provides that a Class C utility shall follow the procedures of TWC § 13.1871 for any rate change other than the price index rate adjustment provided for in TWC § 13.1872. Rio Concho is not applying for a price index rate adjustment, and has therefore filed its application pursuant to TWC § 13.1871.

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III. RECOMMENDATION ON SUSPENSION OF RATES

Under 16 TAC § 24.26(a)(2), the Commission may, after written notice to the utility, suspend the effective date of a rate change for up to 265 days from the date the proposed rates would otherwise be effective for an application filed pursuant to TWC § 13.1871. Under 16 TAC § 24.21(i), the effective date of a proposed rate increase for an application filed under TWC § 13.1871 is the proposed date on the notice to customers and the Commission, unless suspended by the Commission.

As detailed in the attached memorandum, Staff's initial review of the application has resulted in concerns regarding affiliated transactions and the reasonableness and necessity of some cost of service expenses. In addition, a large number of protests have already been filed in this docket, and Rio Concho's most recent rate change application resulted in a settlement agreement that was approved December 18, 2015.² For these reasons, along with the fact that 16 TAC § 24.29(b) provides Rio Concho an opportunity to request interim rates if needed, Staff recommends that the effective date of Rio Concho's rate increase be suspended pursuant to 16 TAC § 24.26(a)(2). Rio Concho's notice lists an effective date of April 26, 2016 for the proposed rate increase. January 16, 2017 is 265 days from April 26, 2016. Staff therefore recommends that Rio Concho's proposed rates be suspended until the earlier of January 16, 2017 or the issuance of an order setting interim or final rates.

IV. REQUEST FOR REFERRAL TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

Under TWC § 13.1871 and 16 TAC § 24.28(c)(2), the Commission shall set an application filed under TWC § 13.1871 for hearing if it receives protests from the lesser of 1,000 or ten percent of the affected ratepayers before the 91st day after the effective date of the rate change. The effective date of Rio Concho's rate change is April 26, 2016, and 90 days after that date is July 25, 2016. Staff has already received over 40 protests in this case, and Rio Concho serves 240 active connections.³ Staff has reviewed the protests and determined that greater than ten percent of Rio Concho's ratepayers affected by the proposed rate increase have timely filed protests. Staff

² See *Application of Rio Concho Aviation, Inc. for a Water or Wastewater Rate/Tariff Change*, Docket No. 43728, Order (Dec. 18, 2015).

³ See *Application* at 8 (March 22, 2016).

therefore requests that the Commission refer the matter to the State Office of Administrative Hearings (SOAH) for an evidentiary hearing pursuant to 16 TAC § 24.28(c)(2).

Alternatively, the Commission may set the matter for hearing on its own motion under 16 TAC § 24.28(c)(1) at any time before 120 days after the effective date of the rate change. As noted above, the effective date of the rate change is April 26, 2016 unless suspended by the Commission. The deadline to refer to SOAH has not passed, and Staff requests that the matter be referred to SOAH for an evidentiary hearing on the Commission's own motion in the public interest. Accordingly, Staff proposes no procedural schedule at this time.

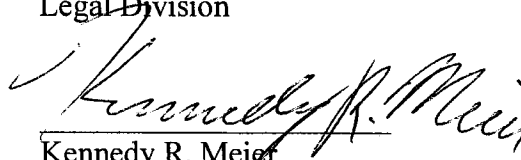
V. CONCLUSION

For the reasons detailed above, Staff recommends that the application be found administratively complete. Staff also recommends that the effective date of Rio Concho's proposed rate increase be suspended until the earlier of January 16, 2017 or the issuance of an order setting interim or final rates. In addition, Staff recommends that the matter be referred to SOAH for an evidentiary hearing, and respectfully requests that an order be issued consistent with the above recommendations.

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Katherine Lengieza Gross
Managing Attorney
Legal Division

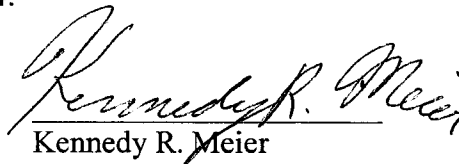


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DOCKET NO. 45720

CERTIFICATE OF SERVICE

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



Kennedy R. Meier

Public Utility Commission of Texas

Interoffice Memorandum

TO: Kennedy Meier, Attorney
Legal Division

THRU: Tammy Benter, Director
Lisa Fuentes, Team Lead
Water Utility Regulation

FROM: Debi Loockerman, Rates Manager
Sean Scaff, Engineering Specialist
Water Utility Regulation

DATE: April 18, 2016

SUBJECT: **Docket No. 45720**, *Application of Rio Concho Aviation, Inc. for Rate/Tariff Change*

On March 22, 2016, Rio Concho Aviation, Inc. (Rio Concho or Applicant), Certificate of Convenience and Necessity (CCN) No. 12835, filed an application with the Public Utility Commission of Texas (Commission) for a water rate/tariff change in Tarrant County, Texas. An administrative review of the application is now being made pursuant to Tex. Water Code Ann. § 13.1871 (TWC) and 16 Tex. Admin. Code §§ 24.21 through 24.26 (TAC).

Pursuant to TWC §§ 13.002(4-c) and 13.1872(c)(2), Rio Concho is a Class C water utility complying with the procedures to change rates described by TWC § 13.1871, which allows the Applicant to request a larger increase through the Class B rate/tariff change process. Rio Concho currently provides retail water utility service with one public water system to approximately 243 connections.

The notices provided to all affected customers appear to be accurate and the proposed effective date is April 26, 2016. Rio Concho's most recent rate increase was approved on December 18, 2015, using a test year ending December 31, 2013. The previously approved rate includes a base rate of \$31.00 with a gallonage charge of \$5.50 per 1,000 gallons, including a pass-through fee. The rate was the result of a stipulated settlement which included no refund for charges above the settled rate during the pendency of the rate case, and no recovery by surcharge of rate case expenses.¹ Staff's initial review of the application for Docket 45720 has resulted in a number of questions with regard to affiliated transactions and the reasonableness and necessity of some cost

¹ Docket 43728 determined a stipulated rate based on an application by Rio Concho which included rate case expense of \$1,433.39 in the cost of service. The final order, Finding of Fact number 29, states, "Rio Concho shall not seek to recover rate case expenses incurred....in excess of \$1,433.39 listed in Table VI.A. of the application."

of service expenses. Furthermore, a sufficient number of protests have been filed in Docket 45720 to request a referral to the State Office of Administrative Hearings. Because of the questions regarding the application filing, the recently approved rate increase, and the contested nature of the case, staff believes it is in the public interest to suspend the effective date of April 26, 2016.

Therefore, staff recommends that the commission:

1. Deem the rate/tariff change application sufficient for filing; and
2. Suspend the effective date of the proposed rate until the earliest of the following: January 16, 2017 (265 days from the proposed effective date); until the final order is issued for this application; or until an interim rate order is issued.