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RECEIVED

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

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BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

**RIO CONCHO AVIATION, INC.'S  
MOTION TO EXTEND EFFECTIVE DATE  
AND ESTABLISH "RELATE BACK" DATE**

COMES NOW, Rio Concho Aviation, Inc. ("Rio Concho") and files this Motion to Extend Effective Date and Establish Relate Back Date, and in support, Rio Concho would respectfully show the following:

As a result of unforeseen personal health issues for Rio Concho's attorney that resulted in hospitalization three days before the scheduled hearing on the merits, the hearing in this case was postponed from its original setting on October 10-11, 2016, until December 5-6, 2016 by State Office of Administrative Hearings ("SOAH") Order No. 9.

After the issuance of SOAH Order No. 9, the Commission Staff contacted the undersigned counsel for Rio Concho and requested that Rio Concho agree to voluntarily waive its statutory rights under Texas Water Code §13.1871, which provides that the Commission's authority to suspend a proposed rate increase is limited to 265 days from the proposed effective date. While Rio Concho's counsel agreed to consider the request, there was no agreement to waive Rio Concho's statutory rights.

When Rio Concho's counsel advised the Commission Staff that Rio Concho was not inclined to waive its statutory rights by extending the effective date, Commission Staff's counsel and Rio Concho's counsel engaged in discussions regarding how the case might be resolved without the delay prejudicing any party. When those discussions were not successful, Commission Staff's counsel stated that the Commission would take a "hard line" on the matter and recommend denial of Rio Concho's rate application, implying that such a denial would occur if the case and briefing were forced to proceed either beyond the suspension deadline or on a compressed schedule.

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Despite the fact that the Commission Staff has already recommended a “denial” of Rio Concho’s application through its prefiled testimony, which recommends a reduction in Rio Concho’s current rates, Rio Concho felt the Commission Staff’s threat of denial of its application to be inappropriate and rising near to the level of harassment and bullying. Rio Concho has always worked in good faith with the staff of the Texas regulatory agencies, even settling its only prior rate case. But given Commission Staff’s position, both in testimony and in its threats, and Rio Concho being forced to spend approximately \$84,000 to process its application and prepare for a hearing (consisting of 260 hours of attorney and legal assistant time, 26 hours of rate of return expert time, nearly 100 hours of accounting consultant time, and countless hours of personal time) in an effort to obtain a \$36,000 increase in its revenue requirement for a 240 customer water system, Rio Concho chose not to file a motion to extend its effective date at that time.

Commission Staff subsequently filed a request for a prehearing conference to discuss the suspension date with the SOAH Administrative Law Judge (“ALJ”). After participating in that conference and hearing the comments from the ALJ, Rio Concho is concerned that the outcome of the case is a foregone conclusion.

Rio Concho acknowledges that it is unlikely that this case will be resolved by final order of the Commission prior to the current rate suspension deadline of January 16, 2017, if an adequate briefing and argument schedule is maintained. Rio Concho wants to allow sufficient time for a full and fair evaluation of the testimony and evidence by the ALJ, and provide complete briefing for the benefit of the Commission. Under the circumstances, Rio Concho reluctantly files this request to extend its proposed effective date to August 23, 2016, conditioned upon establishing a “relate back” date of April 26, 2016, that is binding on all parties and Rio Concho’s customers for purposes of determining refunds or surcharges. The request will preserve the parties’ positions as if the delay in the original hearing date had not occurred.

Rio Concho hereby requests that the Administrative Law Judge issue an order extending the effective date of the proposed rates to August 23, 2016, which extends the 265-day rate suspension date to May 16, 2017, and establish an agreed “relate back” date of April 25, 2016, for purposes of determining refunds or surcharges depending upon the outcome of the case.

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 2<sup>nd</sup> day of December, 2016.



John Carlton