

Control Number: 45720



Item Number: 152

Addendum StartPage: 0



# State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

March 23, 2017

RECEIVED  
2017 MAR 23 PM 3:58  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**TO: Stephen Journeay, Director**  
**Commission Advising and Docket Management**  
**William B. Travis State Office Building**  
**1701 N. Congress, 7th Floor**  
**Austin, Texas 78701**

**Courier Pick-up**

**RE: SOAH Docket No. 473-16-3831.WS**  
**PUC Docket No. 45720**

***Application of Rio Concho Aviation, Inc. for a Rate/Tariff Change***

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. The deadline in this case is May 16, 2017. Please notify Administrative Law Judge Steven D. Arnold and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,

A handwritten signature in black ink, appearing to read "Lilo D. Pomerleau".

Lilo D. Pomerleau  
Administrative Law Judge

Enclosure

xc: All Parties of Record

300 W. 15<sup>th</sup> Street, Suite 504, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025  
512.475.4993 (Main) 512.475.3445 (Docketing) 512.475.4994 (Fax)  
[www.soah.texas.gov](http://www.soah.texas.gov)

152



**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>§ § § § §</b>	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
--	----------------------------------	---

**TABLE OF CONTENTS**

<b>I. INTRODUCTION.....</b>	<b>..... 1</b>
<b>II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY .....</b>	<b>..... 2</b>
<b>A. Jurisdiction and Notice.....</b>	<b>..... 2</b>
<b>B. Procedural History .....</b>	<b>..... 2</b>
<b>III. BACKGROUND.....</b>	<b>..... 4</b>
<b>IV. REVENUE REQUIREMENT.....</b>	<b>..... 6</b>
<b>A. Operations and Maintenance Expenses.....</b>	<b>..... 6</b>
1. Ms. Brunson's Salary.....	..... 8
2. Contract Labor.....	..... 9
a. Payments to Mr. Brunson .....	..... 10
b. Meter Reading Expense.....	..... 13
c. Payments to Mr. Manus .....	..... 16
d. Undetermined Expenses .....	..... 18
e. Total Recommended Disallowance.....	..... 19
3. Transportation Expense .....	..... 19
<b>B. Administrative and General Expenses.....</b>	<b>..... 24</b>
1. Employee Benefits .....	..... 24
a. Evidence.....	..... 24
b. Argument.....	..... 27
c. ALJs' Recommendation .....	..... 28
2. Office Rent Expenses .....	..... 30
a. Evidence.....	..... 30
b. Argument.....	..... 33



c.	ALJs' Recommendation .....	35
3.	Professional Services Expense .....	37
4.	Insurance .....	37
5.	Office Supplies and Expenses .....	39
6.	Miscellaneous Expenses.....	40
a.	Clothing.....	40
b.	Retail Memberships .....	41
c.	Travel Expenses .....	42
d.	Cell Phone Expenses .....	43
e.	Audi Connect Expenses .....	43
C.	Affiliate Transactions .....	44
D.	Depreciation .....	44
1.	Audi Q5.....	45
2.	Paving.....	47
3.	Television and Related Items .....	48
4.	Office Equipment .....	50
E.	Taxes .....	51
1.	Federal Income Tax .....	51
2.	Other Taxes and Assessments.....	51
F.	Return on Invested Capital.....	52
V.	RATE OF RETURN .....	54
A.	Return on Equity .....	54
B.	Cost of Debt.....	58
C.	Capital Structure .....	59
D.	Overall Rate of Return.....	60
VI.	RATE DESIGN.....	60
VII.	RATE CASE EXPENSES .....	63
A.	Just, Reasonable, and Necessary Rate Case Expenses .....	63



1.	Mr. Manus' Invoices .....	64
2.	The John Carlton Law Firm Invoices .....	66
3.	ValueScope Invoices.....	68
4.	Rio Concho's Hearing-Related Expenses .....	69
B.	Surcharge.....	73
C.	Rate Case Expenses Summary .....	74
VIII.	CONCLUSION.....	74
IX.	FINDINGS OF FACT .....	75
X.	CONCLUSIONS OF LAW .....	80
XI.	ORDERING PARAGRAPHS .....	81



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

<b>APPLICATION OF RIO CONCHO</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>AVIATION, INC. FOR A</b>	<b>§</b>	
<b>RATE/TARIFF CHANGE</b>	<b>§</b>	<b>OF</b>
	<b>§</b>	
	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

On March 22, 2016, Rio Concho Aviation, Inc. (Rio Concho) filed an application for a rate/tariff change under Certificate of Convenience and Necessity No. 12835 in Tarrant County. Pursuant to Texas Water Code (Code) § 13.002(4-c), Rio Concho is a Class C water utility; however, it is filing a Class B application as allowed under Code § 13.1872(c)(2). Over 10% of Rio Concho's affected ratepayers filed a petition to appeal the rate change proposed by the utility.

A small group of ratepayers requested and were granted intervention (Ratepayers). Ratepayers participated extensively in challenging Rio Concho's rates by attending the Austin prehearing conference, filing testimony, responding to discovery and motions, conducting cross-examination, and submitting briefs. Ratepayers and the Staff of the Public Utility Commission of Texas (Commission) recommend decreases in Rio Concho's requested revenue requirement.

Rio Concho's test year revenue requirement (cost of service) was \$116,037, and the water utility requested an additional amount of \$35,060, resulting in a requested revenue requirement of \$148,761, with a base-rate deficiency of \$35,736. Based on the evidence and applicable statutes and Commission rules, Administrative Law Judges (ALJs) Lilo D. Pomerleau and Steven D. Arnold recommend a cost of service of \$93,546 less other revenues of \$2,336, resulting in a revenue requirement of \$91,210. The ALJs' recommended cost of service includes a return of \$4,884 and a total invested capital of \$72,242. Schedules reflecting the ALJs' recommendations are attached to this Proposal for Decision as Attachment A. The ALJs'



recommended disallowances result in a decrease from the rates established by the Commission in Rio Concho's previous rate case, Docket No. 43728, which ultimately settled.<sup>1</sup>

## II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

### A. Jurisdiction and Notice

The Commission has jurisdiction in this matter pursuant to Code §§ 13.041, 13.043(b), 13.181-.185, 13.181, 13.181, 13.1871, and 13.1872 and 16 Texas Administrative Code chapter 24, subchapter B. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters in this case relating to the conduct of the hearing and issuance of a proposal for decision, if needed, pursuant to Texas Government Code § 2003.049.<sup>2</sup>

Jurisdiction and notice are not contested. These issues are addressed in the findings of fact and conclusions of law without further discussion.

### B. Procedural History

In late 2014, Rio Concho filed a rate change application, Docket No. 43728, and the Commission approved agreed rates for Rio Concho's water system in December of 2015. On March 22, 2016, approximately three months later, Rio Concho filed this rate case.<sup>2</sup> On April 25, 2016, a Commission ALJ found the application sufficient and suspended the rate change effective date for 265 days from Rio Concho's proposed effective date of April 26, 2016, until January 16, 2017. On April 26, 2016, the Commission referred this matter to SOAH, requesting the assignment of a SOAH ALJ.

---

<sup>1</sup> *Application of Rio Concho Aviation, Inc. for a Rate/Tariff Change*, Docket No. 43728, Order (Dec. 18, 2015).

<sup>2</sup> Staff calculates that Rio Concho is requesting an additional 23.66% increase in rates. Staff initial brief at 2.



The following are parties in this case:

<b>Party</b>	<b>Representatives</b>
Rio Concho	John J. Carlton
Commission Staff	Stephen Mack, Erika N. Garcia, Matthew Arth
Ratepayers	Steve Grace, Jeff Sheets, Roy R. Geer, and Mike Olson <sup>3</sup>

The hearing was initially set for October 10, 2016. On the last working day before the hearing, Mr. Carlton's wife contacted Staff attorney Ms. Garcia because Mr. Carlton, Rio Concho's representative, was hospitalized. Staff filed a motion for continuance that day, which was granted by ALJ Pomerleau. The order did not condition the granting of the motion for continuance on the utility extending the effective date. On October 13, 2016, after conferring with the parties concerning new hearing dates, Staff proposed alternate hearing dates agreed to by all parties: November 14-18, December 5-9, and December 12-16, 2016; with a request for the earliest setting if possible. ALJ Pomerleau issued Order No. 9 setting the hearing for December 5, 2016.

On November 29, 2016, Staff filed an update to its motion for continuance, indicating that Rio Concho would not voluntarily extend the effective date. Staff explained that, on November 16, 2016, Staff suggested to Rio Concho that January 16, 2017, could be established as a "relate back date for any later approved rate change," and Staff requested that Mr. Carlton draft and circulate to the parties a motion to extend the effective date approximately 90 days to allow time for the Commission to make a determination in this matter. On November 28, 2016, Staff contacted Rio Concho and was advised that the utility would not extend the effective date. ALJ Pomerleau convened a prehearing conference on December 1, 2016; Rio Concho did not agree to extend its effective date.

On December 2, 2016, Rio Concho filed a motion to extend the effective date and establish a "relate back" date of April 26, 2016. The motion indicated that Rio Concho reluctantly agreed to extend the effective date of the proposed rates to August 23, 2016, which

---

<sup>3</sup> Ratepayers Mr. Geer and Mr. Olson did not participate at the hearing.



extends the 265-day rate suspension period to May 16, 2017. Immediately before the hearing on the merits convened on December 5, 2016, ALJs Arnold and Pomerleau convened a prehearing conference to address Rio Concho's motion. After a discussion, Rio Concho agreed to modify its motion to establish a relate-back date of January 16, 2017. Thus, effective January 16, 2017, Rio Concho's current rates became interim rates subject to refund or surcharge consistent with the final decision in this case. Order No. 11 issued on December 19, 2016, confirmed that agreement. The jurisdictional deadline in this case is now May 16, 2017.

### III. BACKGROUND

Rio Concho is a privately-owned retail public utility that provides water service to customers located in the Hicks Airfield Fixed Based Operations (Airfield) in Tarrant County, Texas. Barbie Brunson, Rio Concho shareholder and Vice President, testified that she and her husband, Kevin Brunson, Rio Concho President, formed Rio Concho in July 1995, when they purchased the Airfield, fuel farm, water system, and additional hangar lots. The Brunsons, through Rio Concho, provide water service to Airfield hangar and hangar homes and the Brunsons lease tie-down space for aircraft, lease a restaurant building, and sell aviation fuel through automated 24-hour self-serve pumps.<sup>4</sup> According to Ms. Brunson, the other businesses are separate enterprises with separate funds.<sup>5</sup>

The test year is January 1 to December 31, 2015. During the test year, there were 240 active retail water connections.<sup>6</sup> The utility states in its original application that the water system's customer base and usage remain unchanged.<sup>7</sup>

---

<sup>4</sup> Rio Concho Ex. 1 (B. Brunson direct) at 3-4.

<sup>5</sup> Rio Concho Ex. 1 (B. Brunson direct) at 5-7, 9.

<sup>6</sup> Although Rio Concho lists 240 connections in its application, at the hearing Ms. Brunson testified there were 243 connections. Tr. at 67. Unless an exact number is necessary to the discussion, the ALJs will use the number listed in the application.

<sup>7</sup> Rio Concho Ex. 2 (Application) at 50.



Rio Concho's current and proposed rates are found below:

Monthly Minimum Charge by Meter Size		
Size in inches	Previous rate	Proposed rate
5/8	\$31.00	\$39.75

Charges Per 1,000 Gallons		
Size in inches	Previous rate	Proposed rate
5/8 x 3/4	\$5.50	\$7.67

In a proceeding involving a proposed change of rates, Rio Concho bears the burden of proving that its proposed changes are just and reasonable.<sup>8</sup>

The Commission issued a Preliminary Order in this case on May 23, 2016. The Proposal for Decision addresses these issues except for the following, which were not relevant or applicable:

- Issue No. 4 (the only revisions to Rio Concho's tariffs relate to the rates);
- Issue No. 10 (funds used during construction);
- Issue No. 12 (construction work in progress);
- Issue No. 15 (property acquired from an affiliate or developer);
- Issue No. 16 (property acquired from an affiliate);
- Issue No. 17 (developer contributions);
- Issue No. 22 (advertising expenses, donations, etc.);
- Issue No. 24 (self-insurance);
- Issue No. 27 (tax savings);
- Issue No. 30 (detailed tax accounting);
- Issue No. 31 (regulatory assets in rate base);
- Issue No. 32 (sewer);
- Issue Nos. 33 and 24 (rate class allocation); and
- Issue No. 36 (cities' rate case expenses).

---

<sup>8</sup> Code § 13.184(c).



#### IV. REVENUE REQUIREMENT

Staff witness Debi Loockerman defined revenue requirement as the annual total of dollars required to provide retail water service for a year. Revenue requirement consists of operation and maintenance expenses, administrative and general expenses, depreciation, taxes, and a return on invested capital. In Texas, the revenue requirement is determined by developing a cost of service based on a historical test year.<sup>9</sup> Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses, as adjusted for known and measurable changes, may be considered.<sup>10</sup> Ms. Loockerman noted that "known and measurable" means verifiable on the record as to the amount and certainty of effectuation: reasonably certain to occur within 12 months of the end of the test year.<sup>11</sup>

##### A. Operations and Maintenance Expenses

Operations and maintenance expenses are expenses incurred in furnishing normal utility service and in maintaining plant used and useful to the utility when providing such service.<sup>12</sup>

Ms. Brunson testified that she spends more than 170 hours per month, between eight and nine hours per day, on water system issues. She manages and operates all aspects of the water utility, including the purchase of capital equipment and supplies; maintaining equipment; reading water meters; installing meters and backflows; performing disconnects and reconnects and quality assurance (which includes collection of water samples); completing regulatory reports; billing; customer service; water system repairs; and hiring necessary outside contractors.<sup>13</sup>

---

<sup>9</sup> Staff Ex. 3A (Loockerman direct) at 5; 16 Tex. Admin. Code §§ 24.31(a), 24.3(71).

<sup>10</sup> 16 Tex. Admin. Code § 24.31(b).

<sup>11</sup> 16 Tex. Admin. Code § 24.3(33).

<sup>12</sup> 16 Tex. Admin. Code § 24.31(b).

<sup>13</sup> Rio Concho Ex. 1 (B. Brunson direct) at 3.



Specifically, Ms. Brunson testified that she kept a log of her daily activity and verified that she performs the following tasks:

- Weekly: tests and records the chlorine residual value, tests chlorine levels, and records master meter readings.
- Monthly: flushes water lines, reads meters, collects samples for testing, performs accounting duties, calculates water loss percentage, and records well flow.
- Quarterly: completes reports for various state and federal agencies.
- Biannually: completes a Northern Trinity Groundwater Conservation District report.
- Yearly: completes reports for the Commission, performs year-end accounting, and shops for the best electricity rates.<sup>14</sup>

Ms. Brunson is a Class D Water System Operator and has 21 years of experience managing and operating the utility.<sup>15</sup>

While Ms. Brunson testified that she mostly operates the water system, it is also maintained by her family and a limited number of contractors. According to Ms. Brunson, her husband is:

[K]nowledgeable on all aspects of the water system . . . regulatory and technology trends and local suppliers. He provides strategic direction of all aspects of the system to ensure its long term viability and the most effective methods to deliver our water service. He is on call and available 24-hours daily for . . . emergencies . . . and he attends water conferences for continuing education. Most recently, he provided an assessment of peak period demand usage in response to customer complaints of reduced water pressure during high demand periods.<sup>16</sup>

Rio Concho also contracts with Randy Manus, a water utility consultant and former water system operator. Mr. Manus does not currently hold any water or sewer licenses. He assists Ms. Brunson with regulatory reporting and compliance and some routine maintenance requirements. Rio Concho paid Mr. Manus \$100 each month to review the utility's financial

---

<sup>14</sup> Rio Concho Ex. 1 (B. Brunson direct) at 11.

<sup>15</sup> Rio Concho Ex. 1 (B. Brunson direct) at 3-4, 9.

<sup>16</sup> Rio Concho Ex. 1 (B. Brunson direct) at 8-9.



records. Ms. Brunson also has an outside accounting firm prepare the Brunson companies' taxes.<sup>17</sup> Rio Concho pays the Brunsons' children and their friends to read the utility's water meters.<sup>18</sup>

### **1. Ms. Brunson's Salary**

Staff witness Ms. Loockerman testified that in 2015 Ms. Brunson was paid a salary of \$41,568 per year plus benefits. Ratepayers witness Jeffrey Sheets testified that Ms. Brunson had a weekly salary of \$726.13 during the 2013 test year in Rio Concho's previous rate case, Docket No. 43728. But he calculated that in test year 2015, her salary increased by 6% to a weekly salary of \$769.78. Mr. Sheets suggested that an increase of 2.9 to 3.0% from 2013 is more reasonable. He also noted that the City of Saginaw, Texas, has a water and wastewater position in its public works department with salary ranging from \$26,353 to \$39,530, with a requirement of obtaining a "D" water license within one year of employment. Mr. Sheets believes that Ms. Brunson, with her 21 years of experience should receive a salary similar to the city's maximum salary, yet her wages are \$2,038 more, even though there are no wastewater duties involved. Mr. Sheets admitted that Ms. Brunson's duties of invoicing and billing are likely not included in the City of Saginaw's position.<sup>19</sup>

Although Mr. Sheets raised concerns about the amount of Ms. Brunson's salary increase from the last rate case, Ratepayers do not suggest a reduction and defer to Staff's position on this issue. Staff does not recommend a decrease to Ms. Brunson's salary.

The ALJs find that Ms. Brunson's salary is on the high side but within the range of reasonableness given her years of experience and taking into account recommended reductions (discussed below) to contract labor expenses, including meter reading. The ALJs note that

---

<sup>17</sup> Rio Concho Ex. 1 (B. Brunson direct) at 9, 12.

<sup>18</sup> Staff Ex. 15B.

<sup>19</sup> Ratepayers Ex. 19 (Ratepayers response) at 13.



Ms. Brunson justifies her high salary based on her experience and multiple duties and her testimony that she works more than eight or nine hours a day on water system-related issues.<sup>20</sup>

## 2. Contract Labor

Rio Concho requested the following in contract labor expenses for test year 2015.<sup>21</sup> Contested issues are discussed below.

Expense	Amount	Contested
Leak detection	\$4,000	No
Officer compensation (Mr. Brunson)	\$14,435	Yes
Meter reading costs	\$2,130	Yes
Consultant fees (Mr. Manus)	\$2,880	Yes
Plumber	\$490	No
Contractor	\$50	No
Backhoe service	\$1,900	No
Undetermined	\$1,102	Yes
<b>Total</b>	<b>\$26,987</b>	

Additionally, Rio Concho requested \$1,470 in known and measurable changes to meter reading contract work, a total of \$28,457 in contract labor expenses.<sup>22</sup> The application does not provide an explanation or a calculation of the known and measurable changes, except to note "Increase in cost to read meters."<sup>23</sup> Although Rio Concho requested a total of \$28,457 in its application for contract labor, at the hearing, it could account for only \$26,987.<sup>24</sup> Staff

<sup>20</sup> Rio Concho Ex. 1 (B. Brunson direct) at 9-10.

<sup>21</sup> Rio Concho Ex. 2 (Application) at 6. There is some discrepancy in the amount requested for meter reading (\$3,600) versus the expense actually incurred during the 2015 test year (\$2,130).

<sup>22</sup> Rio Concho Ex. 2 (Application) at 17.

<sup>23</sup> Rio Concho Ex. 2 (Application) at 49.

<sup>24</sup> Rio Concho witness Mr. Manus testified that he could only account for certain contract labor fees. Tr. at 483.



recommends a reduction of \$12,752 in contract labor expenses, including the undetermined amount. Ratepayers also recommend reductions, contending that Rio Concho's contract work expenses increased by \$14,400 from 2013 to test year 2015.<sup>25</sup>

**a. Payments to Mr. Brunson**

As noted above, although Rio Concho seeks to recover \$41,568 in test year expenses for Ms. Brunson's salary, plus expenses for employee benefits, Rio Concho is also seeking \$14,435 in revenue requirement expenses for payments to Mr. Brunson.<sup>26</sup> As stated previously, Ms. Brunson testified that her husband provides strategic oversight and is on-call for emergency situations.<sup>27</sup> However, Ms. Brunson also testified that because Mr. Brunson does not hold a Class D water license, "he is usually directed under my supervision."<sup>28</sup>

Mr. Brunson testified that he provides a monthly review of the water system performance, including reviewing water loss, consumption, billing, expenses, and new connections. He has also been involved in oversight of this rate case application. Specifically, Mr. Brunson testified that he: (1) initiated a pressure study; (2) initiated a survey of water system customers; (3) conducted a study and consulted with pump and distribution line experts regarding implementation of higher cut-in pressure; (4) executed a higher cut-in pressure and monitored variations during additional water demand; (5) communicated to customers during a high demand period; (6) approved and supervised construction of the on-site office in the hangar; (7) made several trips to the utility to inspect the system for storm damage; (8) investigated a

---

<sup>25</sup> Ratepayers conclude the increase is attributable to Mr. Brunson's salary. Ratepayers initial brief at 6.

<sup>26</sup> Initially, Mr. Manus and Ms. Brunson testified that Mr. Brunson was paid \$1,200 per month for duties related to being Chief Executive Officer (performing strategic planning) and after-hours activity or emergency responses. Tr. at 41, 43. However, this amounts to \$14,400, not \$14,435. Mr. Manus later clarified that, although Mr. Brunson was paid \$16,835 in the test year, \$2,400 of that amount was for services Mr. Brunson provided in the previous year, but the utility did not have the funds available to pay him. Rio Concho seeks to include expenses totaling \$14,435. Tr. at 101-102.

<sup>27</sup> Rio Concho Ex. 1 (B. Brunson direct) at 8-9; Tr. at 201-202.

<sup>28</sup> Tr. at 62-63.



purchase of a backup generator; (9) researched the feasibility of implementing an automated air system for the pressure tank; and (10) responded to major weather events on 15 occasions.<sup>29</sup>

Staff witness Ms. Loockerman suggests that the appropriate amount for Mr. Brunson's services is \$3,600 annually, a reduction of \$10,835 in contract labor expense.<sup>30</sup> Ms. Loockerman testified that a utility with one well site and 240 connections does not need a manager and an executive president to provide adequate service. In her opinion, in the open market, Rio Concho would not survive competition if it paid a salary for both positions, even with a part-time executive. She testified that having both positions is not reasonable and necessary to provide utility service. She noted that rate regulation is intended to provide a force similar to competition in the "monopolistic situation in which Rio Concho operates."<sup>31</sup> Ms. Loockerman suggested that a more reasonable amount for Mr. Brunson's labor was \$3,600 because Ms. Brunson, who receives a full-time salary, can perform all the functions. As to the backup function when Ms. Brunson is unavailable, Mr. Brunson only provided backup service once during the test year, thus, an expense of \$3,600 (or \$300 per month) is reasonable as there may be years when no such activity is needed and years when more than one incident occurs. Ms. Loockerman concluded that Ms. Brunson's salary plus a backup allowance of \$300 per month for emergency repairs is reasonable, necessary, and sufficient.<sup>32</sup>

Ms. Loockerman noted that Ms. Brunson received a quote on August 24, 2015, from Butch Hardie of Texas Rain Management to perform routine inspections of Rio Concho plant, wells, connections, and conduct routine maintenance; supervise disconnects, connections, and reconnections; read meters and record readings for regulatory reporting; perform routing tests and deliver them to a lab; maintain paperwork required by the utility and regulatory agencies; and monitor chlorine levels. A year's service provided by Mr. Hardie, including meter reading,

---

<sup>29</sup> Rio Concho Ex. 7 (K. Brunson direct) at 3-5.

<sup>30</sup> Ms. Loockerman recommends a full-disallowance of contract labor expenses for Mr. Brunson's services. Tr. at 267-268.

<sup>31</sup> Staff Ex. 3A (Loockerman direct) at 10.

<sup>32</sup> Staff Ex. 3A (Loockerman direct) at 8-9.



would cost \$40,824. Ms. Loockerman admitted that there are other office responsibilities for the utility that would be required under such a contract, but the majority of the duties would be completed by Mr. Hardie. Yet, Rio Concho requests a salary and amounts for contract services that greatly exceed the outside bid. Moreover, Ms. Loockerman noted that Mr. Brunson is not a certified operator and any after-hours event affecting operations would need to be supervised by Ms. Brunson or another supervised operator.<sup>33</sup>

Ratepayers object to expenses related to Mr. Brunson's services. Mr. Sheets pointed out that Mr. Brunson is supposed to be available at all times for emergency repairs, yet Mr. Manus responded to the one emergency repair needed during the test year on November 6, 2015.<sup>34</sup> At the hearing, Ms. Brunson confirmed that Mr. Manus is available to perform after-hours or emergency duties. Mr. Manus lives approximately the same distance from Rio Concho as the Brunsons and charges \$30 per hour.<sup>35</sup> Ratepayers suggest that they are paying double for Mr. Brunson's services.

The ALJs concur with Staff and Ratepayers that the full amount of salary or payments to Mr. Brunson is unreasonable and unnecessary. Ms. Loockerman testified persuasively that a utility the size of Rio Concho cannot justify payments to a person who provides general oversight, initiates studies, and performs tasks associated with the duties for which Ms. Brunson receives a salary. Instead, a more reasonable and, arguably, a more generous approach is to designate a certain amount for back up or emergency services to be provided by an appropriate provider of such services. Moreover, Mr. Brunson does not hold a Class C license and must be supervised to perform certain utility tasks, a condition that can lead to double billing. Accordingly, the ALJs recommend a reduction to contract expenses by \$10,835. The ALJs recommend that Rio Concho be allowed to recover \$300 per month for payments to a backup or emergency person, which would include Mr. Brunson.

---

<sup>33</sup> Staff Ex. 3A (Loockerman direct) at 10, 37.

<sup>34</sup> Ratepayers Ex. 19 (Ratepayers response) at 24-25.

<sup>35</sup> Tr. at 47.



**b. Meter Reading Expense**

Rio Concho is seeking an increase in its actual expenses for meter reading. Rio Concho's payments for meter reading varied from month to month in test year 2015, from zero in May to a high of \$275, with an average of \$177.50 per month.<sup>36</sup> As noted above, Rio Concho requested a known and measurable change of \$1,470 in contract labor expense but, initially, could not explain the amount except that it was for a "[d]ifference of \$1,470 for increase in cost for meter reading in test year. Meter reading pay went from \$125 per month to \$300 per month."<sup>37</sup> However, Rio Concho had indicated that meter reading costs—payments to the Brunsons' two children and two of their friends—totaled \$2,945 for monthly meter reading, "disconnect/reconnect water service," and "flush lines."<sup>38</sup> Mr. Manus subsequently clarified that Rio Concho only incurred test year expenses of \$2,130 to read the meters and the numbers provided to Staff previously were in error.<sup>39</sup>

Although Ms. Brunson included reading water meters in a list of duties she performs on behalf of Rio Concho and testified that she performs "the entire realm of operating the water system just shy of backhoe operation," Ms. Brunson also testified that she is not compensated for reading water meters.<sup>40</sup> She clarified that she is there to assist and support the hired meter readers—she provides oversight by reviewing the numbers, transferring them to a spreadsheet, and investigating excessive amounts.<sup>41</sup> Ms. Brunson confirmed that, in fair weather, it takes about four hours to read the meters. However, if the weather is inclement or if there is mud, it can take longer.<sup>42</sup> Ratepayer Mr. Sheets asked Ms. Brunson if she could confirm that, based on the test year payments, she was paying teenagers approximately \$25 per hour to read the meters,

---

<sup>36</sup> Staff Ex. 17 (RFI response) at 83.

<sup>37</sup> Staff Ex. 3A (Loockerman direct) at 11, 32.

<sup>38</sup> Staff Ex. 15 at 265.

<sup>39</sup> Tr. at 478-479.

<sup>40</sup> Tr. at 40.

<sup>41</sup> Tr. at 64-65.

<sup>42</sup> Tr. at 144-145.



assuming the meter reading took four hours. But Ms. Brunson responded that she had not computed an hourly wage for meter reading, rather she looked at it as a fee for completing the task.<sup>43</sup> As noted previously, Ms. Brunson contacted Mr. Hardie, at Texas Rain Management, to get a quote for the cost of meter reading and determined that it would cost \$850 per month. Because this amount is well over the \$300 per month Rio Concho charges for the service, Ms. Brunson testified that \$300 per month is reasonable.<sup>44</sup>

Ratepayers take issue with Rio Concho charging \$300 per month for work that could be and has been performed by Ms. Brunson, rather than family members and friends. Mr. Sheets pointed out that Ms. Brunson testified that she reads water meters, performs invoicing and billing, padlocks meters, and other duties, yet she hires her children and their friends to do these jobs and pays them. Mr. Sheets objected, stating that the job is expensed twice to the water customers.<sup>45</sup> Moreover, he noted that meter reading costs were \$2,000 in 2013 and actual costs in 2015 were \$2,130. He questioned the amount of the increase.<sup>46</sup>

Staff recommends a disallowance of \$815 in contract labor related to Rio Concho's meter reading costs. Staff suggests that the meter reading contract costs were \$2,945 for the 2015 test year<sup>47</sup> and using that amount, the known and measurable change for meter reading is \$655. Staff recommends a disallowance of \$815 because Rio Concho did not provide updated information in response to a discovery request.<sup>48</sup>

The ALJs concur with Ratepayers that Rio Concho failed to prove that meter reading is a reasonable expense. Ms. Brunson testified that her duties included meter reading services, which

---

<sup>43</sup> Tr. at 143-145. Mr. Sheets noted that Rio Concho's actual meter reading expenses in 2015 were approximately \$177.50 per month. Staff Ex. 17 (RFI response) at 83. Divided by 4, Rio Concho is paying approximately \$25 per hour for meter reading.

<sup>44</sup> Rio Concho Ex. 1 (B. Brunson direct) at 19.

<sup>45</sup> Ratepayers Ex. 19 (Ratepayers response) at 24.

<sup>46</sup> Ratepayers Ex. 19 (Ratepayers response) at 24.

<sup>47</sup> Staff Ex. 3A (Loockerman direct) at 11.

<sup>48</sup> Tr. at 476.



she stated she performs on a monthly basis.<sup>49</sup> Although she testified that she pays her children and their friends to read the meters, she noted that she carefully supervises them and has to take additional action if she observes unusual usage (suggesting a leak) or other problems. Yet Rio Concho proposes charging \$300 per month, or \$75 per hour on a fair weather day, for meter reading. The ALJs find that Ms. Brunson's duties include meter reading services and her conflicting testimony failed to support payments to her children and their friends.

Moreover, there is persuasive evidence that meter reading services are reasonably compensated within Ms. Brunson's salary. In August of 2015, Mr. Hardie quoted a meter reading cost of \$3.50 per meter (approximately \$850 per month), but he also provided quotes for all other utility services (except for bookkeeping) for a total monthly cost (including meter reading) of \$3,402 (approximately \$40,824) per year. Ms. Brunson was paid \$41,568 in test year 2015. Yet Rio Concho seeks to pay the Brunsons' children and their friends (arguably an affiliated transaction) an additional yearly amount of \$3,600 for meter reading services, even though Ms. Brunson testified she personally oversees such services. It is important to keep in mind that Ms. Brunson periodically requires assistance from Mr. Manus to conduct some routine maintenance and from Mr. Brunson for occasional emergency services (although there was only one emergency event during the test year).<sup>50</sup> Taking into account payments to Mr. Manus (\$2,880 for consulting) and Mr. Brunson (\$3,600 for emergency services), then adding meter reading expenses of \$3,600 to Ms. Brunson's generous salary, the ALJs find that Rio Concho's expenses are unreasonable for a utility the size of Rio Concho. The ALJs conclude that additional expenses for meter reading are unreasonable and recommend a reduction to contract work expense of \$3,600. This amount includes a disallowance of \$1,470, the known and measurable expenses in contract labor that Rio Concho attributed to an increase in meter reading costs.

---

<sup>49</sup> Rio Concho Ex. 1 (B. Brunson direct at 11).

<sup>50</sup> Tr. at 65-67, 110.



**c. Payments to Mr. Manus**

Mr. Manus stated that he has worked for Rio Concho since the mid-1990s and currently consults on “numerous issues from equipment and compliance to reporting. Most recently [he] was asked to consult on the current rate case and application preparation.”<sup>51</sup>

Ratepayers took issue with Mr. Manus’ consulting fees, pointing out that, of the \$2,880 paid to Mr. Manus in 2015, approximately \$1,155 was for actual water maintenance and \$1,275 was for office work.<sup>52</sup> Ms. Brunson confirmed that she pays Mr. Manus \$100 per month for review of Rio Concho’s financial records. Yet she testified that she manages and records water expenses and revenues very carefully, keeping receipts for all purchases, and obtaining assistance routinely from the Texas Rural Water Association professionals.<sup>53</sup>

It should be noted that Mr. Sheets took issue with the record-keeping and quality of Rio Concho’s overall application. Mr. Sheets, formerly with the United States Air Force and a retired commercial airline pilot, testified that he served on the Allied Pilots Association Board of Directors for two terms. One of his duties was to audit board members’ and committee members’ expenses and committee budgets and expenses. He stated that he has conducted hundreds of union audits. Union members were required to prove all expenses with receipts or, if necessary, credit card statements or cancelled checks. In no case would a Quickbooks entry be sufficient documentation. Mr. Sheets graded Rio Concho’s bookkeeping with the letter “D.” He found numerous receipts were missing and only a Quickbooks register offered to back up the claim. He found one receipt was filed twice, even though the date was missing.<sup>54</sup> According to Mr. Sheets, Rio Concho submitted only 87% of its receipts for bleach and 68% of its fuel

---

<sup>51</sup> Rio Concho Ex. 4 at 4-5.

<sup>52</sup> Staff Ex. 15A (RFI responses) at 278. It is difficult to confirm Ratepayers’ estimates from the RFI responses, but the ALJs concur that some payments to Mr. Manus were for “water records.” See Staff Ex. 15A at 278.

<sup>53</sup> Rio Concho Ex. 1 (B. Brunson direct) at 13.

<sup>54</sup> The remaining document had a time stamp and a bar code of the transaction that matched the duplicated receipt. Ratepayers Ex. 17 (Sheets direct) at 12.



receipts.<sup>55</sup> Mr. Sheets objected to \$1,275 in bookkeeping expenses because Ms. Brunson testified that she has 21 years of experience in water utility services. He suggested that payments to Mr. Manus for office work are another example of double expenses.<sup>56</sup>

At the hearing, Mr. Manus clarified that he was Rio Concho's outside utility consultant and, in 2016, he went over Ms. Brunson's test year entries and receipts to get the big picture and see if her totals were reasonable and customary. He also evaluated Rio Concho's "financials to fill out the – cleaning up information to fill out the application that was submitted."<sup>57</sup>

The ALJs concur with Ratepayers that the evidence supporting the rate application was unorganized, confusing, and not well supported.<sup>58</sup> Neither Mr. Manus nor Ms. Brunson filed rebuttal testimony addressing Mr. Sheets' challenge to Mr. Manus' bookkeeping services as a double expense, given Ms. Brunson's expertise in providing water utility service. Ms. Brunson was the Rio Concho witness who affirmed that the costs in the application accurately reflected the actual costs incurred by Rio Concho.<sup>59</sup> She also testified that she spends between eight and nine hours a day performing utility work, including record keeping and accounting work. Further, she testified that she reconciles accounting on a monthly basis, completes compliance reporting quarterly, and Commission reporting and end-of-year accounting annually.<sup>60</sup>

The ALJs conclude that there is insufficient evidence for the ALJs to determine whether Mr. Manus' fees for office work are necessary or reasonable ongoing expenses that should be included in the cost of service. There is no evidence concerning the number of hours Mr. Manus spent in 2015 performing monthly office work or oversight. Moreover, while Mr. Manus

---

<sup>55</sup> Ratepayers Ex. 17 (Sheets direct) at 12-13.

<sup>56</sup> Ratepayers Ex. 19 (Ratepayers response) at 25.

<sup>57</sup> Tr. at 121.

<sup>58</sup> See Rio Concho Ex. 4 (Manus direct) at 6. Among other discrepancies, property and liability insurance, property taxes, and an airport assessment were improperly calculated.

<sup>59</sup> Rio Concho Ex. 1 (B. Brunson direct) at 16. However, when pressed for details, Ms. Brunson deferred to Mr. Manus. Tr. at 123.

<sup>60</sup> Rio Concho Ex. 1 (B. Brunson direct) at 4, 10-11.



testified that he provides consulting services for compliance and reporting work, it is unclear whether the \$100 in monthly fees were related to rate case preparation and, therefore, are not recurring expenses. Most of the checks were for “water records” and only one was for “PUC water rec.”<sup>61</sup> The checks to Mr. Manus for “water records” range from \$405 to \$60, and most of the checks were dated in July and August 2015. But there was no explanation of the type of work performed or the reasons for the varying amounts, which do not appear to be regular monthly fees for office work. Rio Concho indicated there is a monthly or hourly rate charge of \$30 per hour for consulting, but the ALJs were unable to confirm that Mr. Manus was paid an hourly fee of \$30 to perform accounting oversight.<sup>62</sup> Moreover, Ms. Manus testified at hearing that the bulk of his work appeared to be related to preparing for the rate case, which is not a yearly service. Accordingly, the ALJs concur with Ratepayers that Rio Concho has failed to meet its burden of proving that \$100 per month for review of Rio Concho’s financial records is reasonable given Ms. Brunson’s testimony that she is a full-time expert; the failure to show how, when, or why the expenses for office work were incurred; and the likelihood that the accounting oversight was in preparation for this rate case and should have been recorded as rate case expenses. Accordingly, the ALJs recommend a disallowance of \$1,200 to contract labor expense.

**d. Undetermined Expenses**

Staff recommends a reduction of \$1,102 in contract labor because Rio Concho was unable to provide documentation. Rio Concho provided a list of contract laborers and employees as well as charges for contract services, but the amounts provided differ from the total found in the application. Mr. Manus could not provide evidence or explanation for the difference of \$1,102 in contract labor expenses, stating that he did not have the documentation.<sup>63</sup> Rio Concho does not address this amount or Staff’s proposed reduction in its briefs.

---

<sup>61</sup> Staff Ex. 15A at 278.

<sup>62</sup> See Staff Ex. 15A (RFI response) at 265. There was testimony that he was paid \$30 per hour to perform repairs. Tr. at 44-47.

<sup>63</sup> Tr. at 482-485.



The ALJs concur with Staff that Rio Concho has not provided documentation or explanation for \$1,102 in contract labor expenses and this amount should be disallowed.

**e. Total Recommended Disallowance**

The ALJs recommend a total disallowance of \$16,737 to Rio Concho's contract labor expense.

**3. Transportation Expense**

The Brunsons purchased a slightly used Audi Q5 SUV to replace a 2004 Excursion and placed the Audi in service on January 1 of test year 2015.<sup>64</sup> Rio Concho witness Mr. Manus calculated mileage from the Brunson home office to the Airfield office using Google maps, as well as mileage calculations, using different routes, to the bank, laboratory, and post office. It is important to note that Mr. Manus calculated all routes to and from the home office, not from the Airfield office, to the bank, laboratory, etc. According to Mr. Manus, the minimum vehicle usage required to operate the system for the test year was 19,627.6 miles. He then subtracted that mileage from the Audi SUV (which had 1,629 miles on it as of January 1, 2015) and determined that the proper mileage to be allocated to the utility was 62.61%. Mr. Manus stated that his calculations do not take into account errands that are not part of the "daily recurring routine" such as parts or supplies; additional trips to the bank, lab, or post office; or night and weekend calls.<sup>65</sup>

Rio Concho's application indicated test year transportation expenses totaling \$3,282.21 and requested an additional \$688.01 in known and measurable changes. Thus, Rio Concho is seeking \$3,971.22 for gasoline, repairs, and other operating expenses for the SUV, which it claims is 60% of the vehicle's total expenses. The application does not provide an explanation

---

<sup>64</sup> Rio Concho Ex. 4 (Manus direct) at 15; Tr. at 444. The Excursion takes diesel fuel. Tr. at 444.

<sup>65</sup> Rio Concho Ex. 4 (Manus direct) at 15.



or a calculation of the known and measurable changes. In “Notes to Accompany Rate Case for Test Year 2015,” the application indicates under a subheading:

Sch II-9 Transportation: All expenses related to the main vehicle used in the business, (2015 Audi), are charged at 60% for the water system and 40% other, as attested in an affidavit dated July 27, 2016 and filed with Docket 43728.<sup>66</sup>

As noted above, Rio Concho’s transportation expense includes reimbursement for mileage and automobile expense associated with travel in the Audi between the main office and the Airfield office. It also appears that Rio Concho submitted receipts for gas purchases for other vehicles, such as a Ford dually truck, if it was necessary to haul something larger than the Audi could accommodate.<sup>67</sup>

Ms. Loockerman testified that only one office is necessary; thus, she concluded that the miles travelled from the Brunson home to the Airfield are commuter miles.<sup>68</sup> She testified that businesses do not generally pay the commuting miles of their employees, and the IRS does not allow commuting miles to be included as a business expense.<sup>69</sup> Therefore, Ms. Loockerman recommends a reduction in transportation expense of \$1,108 based on Mr. Manus’ calculations, although she adjusted the distance to the bank and post office to a location from the Airfield not the home office. She calculated that the Audi was used for utility business approximately 5,301 miles out of 33,351 miles driven or 15.9% of the total miles. Because the vehicle was used less than 50% for business, she found that the IRS mileage rate—which includes depreciation, insurance, repairs, tires, maintenance, gas, and oil—is appropriate to estimate expenses rather using actual expenses.<sup>70</sup>

---

<sup>66</sup> Rio Concho Ex. 2 (Application) at 49, 18.

<sup>67</sup> Staff Ex. 3 (Loockerman direct) at 12; Tr. at 447-448.

<sup>68</sup> This issue is also discussed below in Section IV.B.2 of the Proposal for Decision.

<sup>69</sup> Staff Ex. 3 (Loockerman direct) at 12-13.

<sup>70</sup> Staff Ex. 3 (Loockerman direct) at 13.



Ratepayer Mr. Sheets testified that Rio Concho purchased a golf cart to read meters, look for water leaks, and perform other Airfield tasks. He questioned the excessive use of the Audi SUV for conducting utility business because Ms. Brunson testified that she drops off water samples for testing once a month plus two annual tests for the Lower Colorado River Authority, a total of 14 trips in a year. As to chlorine purchases from Walmart, he asserts that Rio Concho could purchase chlorine from KDS Water Services, which it did toward the end of 2015, and the chlorine was cheaper and delivered for free. He further questioned the need to go to the bank twice a week, when once a week would likely suffice. He also submitted evidence that there is a bank only 6.9 miles from the Airfield office.<sup>71</sup>

Rio Concho, in answer to Staff's discovery response, indicated that the Walmart used for supplies was located 36.5 miles from the Airfield office. However, at the hearing, Ms. Brunson did not contest that some purchases of chlorine were from a Walmart 2.9 miles to the north of the Airfield and a Walmart in Saginaw, which is 4.8 miles away.<sup>72</sup> Similarly, there is a bank only 4.8 miles from the Airfield.<sup>73</sup>

Mr. Sheets also testified that Rio Concho provided 64 fuel receipts for 94 fuel expenses listed in a Quickbooks register. He questioned the adequacy of the documentation for all transportation expenses not supported by receipts. Moreover, he noted that some receipts were for regular unleaded gas, but Ms. Brunson drives a 2002 Audi and the 2015 Audi Q5 SUV, which use premium unleaded gas. He also noted that on some days, there were two and even three receipts for gas and other days which had receipts for a large amount of gas—more than an Audi Q5 can hold. Mr. Sheets wondered if all the fuel purchases were legitimate for the

---

<sup>71</sup> Ratepayers Ex. 17 (Sheets direct) at 11.

<sup>72</sup> Tr. at 169-170; Ratepayers Exs. 10 and 11 (Google maps).

<sup>73</sup> Tr. at 171; Ratepayers Ex. 10. The bank is a BBVA Compass bank, which is the same bank (different branch) used by Staff and Mr. Manus in their calculations. *Compare* Staff Ex. 3A (Loockerman direct) at 41; Rio Concho Ex. 4 (Manus direct) at 14 to Ratepayers Ex. 9 (Google map).



Rio Concho business, particularly on the days when the amount of gas exceeded the Audi Q5's capacity or on days when there were multiple purchases.<sup>74</sup>

Ms. Brunson explained that some days she has to do a lot of driving and may have put in gas twice in a day. As to a day where she had three gas purchases, she guessed that she may have been in a hurry and then refilled when she had more time. As to the fact that a purchase was for 29 gallons, more than her Audi SUV could hold, Ms. Brunson thought it may have been when she was using the 1999 Ford dually truck, which uses diesel fuel. She admitted that a receipt for regular gas may have been for her daughter's Jetta, which Ms. Brunson has had to use a couple of times.<sup>75</sup>

Ms. Brunson could not account for the missing receipts for fuel purchases during the hearing, and Rio Concho did not provide a rebuttal to the concerns raised by Mr. Sheets. Ratepayers suggest that they are left with the conclusion that Rio Concho is refueling multiple family vehicles rather than the Audi Q5 Rio Concho seeks to expense to the utility. Ratepayers also suggest that the mileage Rio Concho submitted to Staff was misleading. For instance, Rio Concho provided mileage from the Airfield office to the Walmart near their home, but Ratepayers argue that there are two other Walmart stores within 5 miles of the Airfield office and the utility used both of them to purchase supplies in 2015. Similarly, Ratepayers suggest that there is a post office in Saginaw, Texas, which is closer to the Airfield office than the home office. An inference may be made that Staff's calculation that the vehicle is used approximately 15% may be overstated.

The ALJs agree with Staff that Rio Concho should not be reimbursed for travel expenses from the Brunsons' home office to the Airfield office. Such expenses are not necessary for the provision of service. Moreover, Ratepayers raised un rebutted concerns with Rio Concho's receipts that the utility submitted in support of fuel expenses. Thus, Staff's suggestion to use the

---

<sup>74</sup> Ratepayer Ex. 19 (Ratepayers response) at 28-30; Ex. 13 (spread sheet of gas purchases).

<sup>75</sup> Tr. at 179-182.



IRS rate for 2016 alleviates concerns with missing receipts and questionable receipts for cars not normally used by the utility or large purchases in one day. The ALJs find the usage of the IRS rate to be much more reasonable, particularly given the concerns with Rio Concho's receipts.

Ratepayers also submitted convincing evidence that Ms. Loockerman's calculations failed to take into account a bank branch and post office located much closer to the Airfield.<sup>76</sup> Thus, the ALJs find that Ms. Loockerman's recommended adjustment should be lowered to take into account the closer locations of the bank and post office, as well as the unsupported known and measurable changes. Accordingly, based on the ALJs' calculations, Ms. Loockerman's recommendation as to the proper mileage should be adjusted downward from \$2,863 to \$1,239.<sup>77</sup> The ALJs further find, because there is no justification in the application, or record evidence, for the \$688 in known and measurable changes, Rio Concho's requested transportation expense should be further reduced. Ms. Loockerman's calculations and the ALJs' calculations and recommendations are found below:

<b>Staff Recommended Transportation Expenses</b>		
	Miles	Dollars
Mileage only allowed		
Route 1-3 times/week	0	
Route 2-2 times/week, 33 miles x 52 (bank)	3,432	
Route 3 (no change)	134.4	
Route 4-2 times/month x 12 times 37.7 (post office)	904.8	
Route 5 (no change)	415	
Route 6 (no change)	415	
Total @ .54/mile (IRS rate for 2016)	5,301.2	<b>\$2,863</b>
Requested auto		<b><u>\$(3,971)</u></b>
Recommended reduction		<b>\$1,108</b>

<sup>76</sup> The ALJs do not find that trips to Walmart were included in Ms. Loockerman's and Mr. Manus' calculations.

<sup>77</sup> Staff initial brief at 8.



ALJs' Recommended Transportation Expenses		
	Miles	Dollars
Mileage only allowed		
Route 1-3 times/week	0	
Route 2-2 times/week, 9.6 miles x 52 (bank round trip)	998.4	
Route 3 (no change)	134.4	
Route 4-2 times/month x 12 times 13.8 (post office round trip)	331.2	
Route 5 (no change)	415	
Route 6 (no change)	415	
Total @ .54/mile (IRS rate for 2016)	2,294	\$1,239
Known and measurable		\$668
Requested auto		<u>\$(3,971)</u>
Recommended reduction		<u>\$2,064</u>

**B. Administrative and General Expenses**

**1. Employee Benefits**

**a. Evidence**

In its application, Rio Concho listed \$6,360 for current pension and benefits, with an increase of \$7,428 in known and measurable changes for a total requested amount of \$13,788.<sup>78</sup> Staff objects to including retirement benefits for Ms. Brunson and a key employee life insurance policy covering Ms. Brunson.<sup>79</sup> Ratepayers concur with Staff and also object to Ms. Brunson's health insurance benefits.

Rio Concho witness Mr. Manus testified that a utility's decision to seek recovery of employee benefits is subjective but he found Rio Concho's employee benefits were reasonable taking in to account how many years Ms. Brunson has been employed, her education level, her position in the company, and, if she were to be replaced, the benefits that would be offered to her

<sup>78</sup> Rio Concho Ex. 2 (Application) at 49, 6.

<sup>79</sup> Tr. at 75 (the combined monthly cost of the retirement and life insurance policy is \$500); Tr. at 447.



replacement. He acknowledged that small water systems tend to provide fewer employee benefits than larger systems. However, he concluded that Rio Concho's proposed rates, which include employee benefits, would be lower for 60% of Rio Concho's ratepayers than the rates for nearby systems owned by Aqua Texas.<sup>80</sup> Mr. Manus also indicated that the Commission's application form has a field for health insurance; therefore, if a water utility is applying for a rate application, health insurance must be included for a reason.<sup>81</sup>

According to Ms. Brunson, Rio Concho is asking for a low level of retirement contribution that will provide her with \$1,200 per month at age 70. She testified that her work for Rio Concho "takes virtually all of my available time and a reasonable retirement benefit is commonly accepted and expected in the U.S."<sup>82</sup> Ms. Brunson clarified that she is doing the job of five or six different people and striving to provide the highest level of water quality; thus she should receive the same benefits of other water utility providers that provide the same service. She also is seeking health benefits because other utilities, such as Texas Northern Trinity Groundwater and the Texas Water Development Board, provide such for their employees.<sup>83</sup> When pressed to explain how a utility of 240 connections can support full employee benefits as compared to a municipal or large utility such as Aqua Texas, Ms. Brunson reiterated that she is providing safe drinking water to Rio Concho's customers, is responsible for the same regulations, provides emergency response, and does so on a full-time basis. She admitted that she had not received employee benefits until 2015.<sup>84</sup>

The life insurance policy covering Ms. Brunson is for \$150,000. According to Mr. Brunson, this will provide insurance to allow Rio Concho to replace Ms. Brunson, a key employee, if there is a sudden and unfortunate loss. Mr. Brunson indicated that, with the amount

---

<sup>80</sup> Rio Concho Ex. 4 (Manus direct) at 16.

<sup>81</sup> Tr. at 221.

<sup>82</sup> Rio Concho Ex. 1 (B. Brunson) direct at 19; Tr. at 124-125.

<sup>83</sup> Rio Concho Ex. 1 (B. Brunson) direct at 18; Tr. at 73-74, 125.

<sup>84</sup> Tr. at 125-127.



of work Ms. Brunson performs, it would be difficult to find a person to serve as a replacement over an extended period of time.<sup>85</sup> When the rate case was filed, Mr. Brunson was the policy's beneficiary. However, the beneficiary was changed to Rio Concho, effective August 16, 2016.<sup>86</sup> Ratepayer Mr. Grace testified that the life insurance policy may not be a term policy because it has a cash value upon maturity.<sup>87</sup>

Staff witness Ms. Loockerman recommended a reduction of \$1,334 for annual life insurance and \$4,666 for retirement expense.<sup>88</sup> She testified that the requested employee benefits are excessive for one employee and a 240-connection system. Moreover, she explained that very few Class C water utilities, if any, have requested life insurance or retirement benefits and that the owner of a small business such as Rio Concho would generally pay for retirement out of the profits of the utility. Concerning the life insurance expenses, Ms. Loockerman testified that life insurance is not necessary for the provision of water service, although it is a benefit to the owners of the utility. Thus, the cost should be borne by the owners.<sup>89</sup>

There is little information in the record concerning Ms. Brunson's health insurance. Rio Concho indicated that test year amounts for employee pensions and benefits totaled \$6,360, and it requested an additional \$7,428 for known and measurable changes. The explanation for the known and measurable change was "an increase in health insurance and the start of life insurance and an annuity."<sup>90</sup> No calculation or supporting evidence was provided. As discussed above, Ms. Loockerman recommended a decrease of \$1,334 for annual life insurance and \$4,666 for retirement expenses, leaving \$1,434 for a known and measurable increase in health insurance. Adding that increase to Rio Concho's test year health insurance costs of \$6,360 results in a

---

<sup>85</sup> Tr. at 456-457.

<sup>86</sup> Staff Ex. 12 (confidential RFI response) at 2; Tr. 442-443.

<sup>87</sup> Ratepayers Ex. 20 (Grace direct) at 10.

<sup>88</sup> Staff Ex. 3A (Loockerman direct) at 14-15.

<sup>89</sup> Staff Ex. 3A (Loockerman direct) at 15.

<sup>90</sup> Rio Concho Ex. 2 (Application) at 49, 6.



yearly health insurance cost of \$7,788 or \$649 per month for Ms. Brunson's health insurance, for which Rio Concho seeks full recovery.

Ratepayer Mr. Sheets observed that Rio Concho is a two-person corporation and, within that corporation, is a small, not large, water company. According to Mr. Sheets, the "economies of scale simply do not support the extensive benefits that Rio Concho wants to claim and expense to their water customers."<sup>91</sup> Moreover, he noted that most employees of large companies only contribute to their employees' health insurance and retirement and do not pay for life insurance. Similarly, Ratepayer Mr. Grace believes that everyone should have health insurance, but he does not agree that a small water company with one employee should be offered free health insurance to be paid by water customers.<sup>92</sup>

**b. Argument**

Rio Concho contends that the expense for a key employee life insurance policy is reasonable and necessary because the \$150,000 will help defray the transition costs of replacing Ms. Brunson, who has been the utility operator for over 20 years. As to Ms. Brunson's retirement benefits, Rio Concho contends these are reasonable and not excessive considering her long-time commitments to the utility. Rio Concho did not address Rio Concho's request for Ms. Brunson's health insurance in its briefs.

Staff argues that Rio Concho's requested expenses for life insurance and retirement benefits are not reasonable and necessary for a water utility the size of Rio Concho. Staff notes that Rio Concho is not similar to a state agency (the Texas Water Development Board), a groundwater district, or a utility that is large enough to acquire small water utilities (Aqua Texas). Concerning the life insurance policy, Staff points out that Rio Concho could simply hire another manager/operator and Rio Concho does not need a \$150,000 benefit, which

---

<sup>91</sup> Ratepayers Ex. 17 (Sheets direct) at 15.

<sup>92</sup> Ratepayers Ex. 16 (Sheets direct) at 14-15, Ex. 20 (Grace direct) at 8.



is equal to 3.6 times Ms. Brunson's annual salary. Moreover, the policy beneficiary was changed to Rio Concho on August 16, 2016, by a quick call to the insurance broker. Staff contends there is no guarantee that the policy would not be changed in the future. Staff states it is not arguing that Ms. Brunson should not have retirement benefits or life insurance, only that the ratepayers should not pay for them.

Ratepayers agree with Staff that if Rio Concho's current operator needs to be replaced, Rio Concho would simply advertise for a new one. They contend that a life insurance policy benefits the owners, not the ratepayers. Moreover, Ratepayers point out that the type of life insurance has not been verified—it could be term or whole life, with a future cash value—even though Rio Concho had the opportunity to address this issue in its rebuttal testimony, but it failed to do so. Concerning Ms. Brunson's health insurance, Ratepayers note that health insurance premiums first appeared as a Rio Concho expense in test year 2015, which they believe is another attempt to inflate Rio Concho's test year expenses.

**c. ALJs' Recommendation**

The ALJs concur with Ratepayers and Staff that the utility's request for employee benefits is unreasonable. At the outset, the ALJs note that Ms. Brunson has been the operator of this small utility for over 20 years and has never sought recovery of health insurance, life insurance, or retirement benefits. Focusing on retirement benefits for Ms. Brunson, Ms. Loockerman testified persuasively that Rio Concho is a Class C utility with only 240 connections, and the owners of a small business such as Rio Concho would generally pay for retirement out of the utility's profits. Rio Concho's own witness, Mr. Manus, also testified that small water systems tend to provide fewer employee benefits. His suggestion that Ms. Brunson should be rewarded for her years of experience and position in the company was unpersuasive.<sup>93</sup> Although Ms. Brunson believes she is entitled to retirement benefits, she was comparing

---

<sup>93</sup> Staff noted that Mr. Manus' testimony on this issue should be given little weight because Mr. Manus testified that he has no knowledge or expertise concerning retirement benefits. Tr. at 102-103.



Rio Concho to a state agency, a semi-governmental entity, and a large water utility. These entities are not comparable to Rio Concho. Moreover, a large utility such as Aqua Texas would have many more connections and ratepayers to absorb the high cost.

Concerning the proposed life insurance policy for Ms. Brunson, the ALJs found persuasive both Ms. Loockerman's testimony and the Ratepayers' argument: life insurance for Ms. Brunson does not benefit the customers. As Staff noted, Rio Concho does not need a \$150,000 benefit, equal to 3.6 times Ms. Brunson's annual salary. Rio Concho provided evidence—Mr. Hardie's estimate for services—that a water utility operator can be found for approximately the same salary as Ms. Brunson is earning, without benefits. The ALJs find that Rio Concho failed to meet its burden of proof that its proposed life insurance expense is necessary to the provision of water service.

The ALJs acknowledge that Staff did not recommend a reduction for Ms. Brunson's health insurance costs even though Ms. Loockerman testified that there is a distinction between employee benefits, including health insurance, for a large utility such as Aqua Texas versus a system with only 240 connections.<sup>94</sup> However, Ratepayers presented some testimony and argument on the issue, and Rio Concho did not rebut Ratepayers or present sufficient persuasive evidence that full health insurance benefits and the proposed increase to known and measurable changes for health insurance were necessary or reasonable costs, particularly for a utility the size of Rio Concho. There is no verifiable record of the known and measurable increase to health insurance, and the health insurance coverage and the amount of deductions are unknown. Although the ALJs acknowledge that Mr. Sheets and Mr. Grace, like Mr. Manus, are not experts on utility benefits, there was some evidence (including Ms. Loockerman's testimony concerning general employee benefits) that smaller utilities, like many small businesses, do not typically provide employee benefits and that the amount of insurance was not reasonable for a utility with only 240 connections. Indeed, Ms. Brunson did not ask for nor receive benefits during the many years that she has operated Rio Concho. Thus, this is the first opportunity for challenges to, and

---

<sup>94</sup> Tr. at 279-284.



Commission review of, this expense, but there is no information in the record about Ms. Brunson's health insurance. Ms. Brunson is the utility's only full-time employee and a strong argument can be made that some or all health insurance benefits should be provided to her and included as a utility expense. But without any information such as costs, type of coverage, or even the costs of Ms. Brunson's previous coverage as compared to current coverage, the ALJs cannot make a finding that the requested health insurance benefits are reasonable. The ALJs conclude that Rio Concho did not meet its burden of proving that its medical insurance benefits of \$649 per month are reasonable.

Rio Concho's proposed employee benefits—health insurance, life insurance, and retirement—were not proven to be necessary or reasonable expenses for a utility with approximately 240 connections. Therefore, the ALJs recommend reducing employee benefit expenses by \$13,788.

## **2. Office Rent Expenses**

### **a. Evidence**

Rio Concho indicated in its application that it maintains two offices: a main or corporate office, which is located at the Brunson home, and the Rio Concho office located at the Airfield.<sup>95</sup> Ms. Brunson testified that the Airfield office was constructed in the summer of 2014 and opened immediately after. The office is located within the Brunsons' hanger. Rio Concho rents the Airfield office space from an affiliated entity, Barbie Land Development, for \$500 per month, including utilities, and requests recovery of \$6,000 for office rentals.<sup>96</sup> According to Ms. Brunson, comparable office space close by the Airfield is \$800 without utilities. She verified the reasonableness of this cost by shopping "the lease rates for the market with the help

---

<sup>95</sup> Rio Concho Ex: 4 (Manus direct) at 14, Ex. 1 (B. Brunson direct) at 22. The Airfield office is located at 419 Aviator Drive, Fort Worth, Texas. Staff Ex. 3A (Loockerman direct) at 12.

<sup>96</sup> Rio Concho Ex. 1 (B. Brunson) direct at 22; Ex. 2 (Application) at 22.



of a licensed realtor.”<sup>97</sup> Although Ms. Brunson indicated that she begins her day at the home office, she clarified that she could perform all utility work functions at the Airfield office.<sup>98</sup>

Staff witness Ms. Loockerman testified that the home office, which is located more than 34 miles from Rio Concho’s facilities, is not reasonable or necessary to the provision of water service. Specifically, she recommends that only one office be included in the cost of service—the Airfield office—because it is ideal for customer service and for the operation and maintenance of the plant providing water service. Moreover, locating the office at the Airfield complies with the Commission’s rule at 16 Texas Administrative Code § 24.81(d), which requires a utility to have an office in the county or within 20 miles of where it provides utility service. Ms. Loockerman suggested that the home office is used for the convenience of the owners, not the utility’s customers, and is not necessary to the provision of service because all office functions could be completed at the Airfield office. In her opinion, a second office drives up the travel costs and is unnecessary. She stated that she has never reviewed or known of a stand-alone utility system with fewer than 500 connections that was allowed to expense more than one office in its cost of service.<sup>99</sup>

Ratepayer Mr. Sheets first became a customer of Rio Concho in June or July of 2014.<sup>100</sup> He testified that he briefly noticed Rio Concho building an office sometime in 2014. However, he was unaware that Rio Concho had opened an office at the Airfield, could not recall any notice of an Airfield office, and has never seen the Airfield office open. There are no posted business hours, and he first became aware that a drop box for utility payments was in place in June 2015. He also indicated that the office is inside a metal building and oppressive heat builds up inside. On a summer day, if it is 98 degrees outside, the inside of a hangar might be 113 to 188 degrees. He suggested that the window air conditioner does not use outside air for cool intake air, so it

---

<sup>97</sup> Rio Concho Ex. 1 (B. Brunson) direct at 23; Tr. at 72.

<sup>98</sup> Tr. at 72.

<sup>99</sup> Staff Ex. 3 (Loockerman direct) at 11-13; Rio Concho Ex. 1 (B. Brunson direct) at 22.

<sup>100</sup> Mr. Sheets’ first bill was dated July 31, 2014. Ratepayers Ex. 17 (Sheets direct) at 5.



cannot be very efficient.<sup>101</sup> Mr. Sheets studied the receipts provided by Rio Concho for expenses: there are receipts from North Remodeling dated July 3, 2015 titled “trim, moulding, door, drywall, and paint touch up.”<sup>102</sup> He is confident that the Airfield office was not used until mid-July 2015 at the earliest, after the air conditioner was installed. He also noted that Ms. Brunson expensed a desk and chair in September 2015 for \$335.47.<sup>103</sup>

Mr. Sheets believes that the goal of an unprofitable utility is to increase expenses in the test year to show a loss and receive a rate increase. He questions Rio Concho’s office at the hangar, which he believes “appears” to comply with 16 Texas Administrative Code § 24.81, but he suggests that a home office provides the Brunsons with IRS benefits.<sup>104</sup> Mr. Sheets also guesses that the requirement to have an office within 20 miles of the utility allows Rio Concho to expense the lease payments to the water ratepayers and increases the revenue for their affiliate leasing company, Barbie Land Development.<sup>105</sup>

Ratepayer Mr. Grace also could not recall receiving any notice of Rio Concho opening an office at the Airfield. Until electronic billing started in 2015, he had no idea there was an Airfield office because all bill payments were sent to the home office address. He noticed that Rio Concho installed a drop box in June 2016: on June 22, 2016, he observed a paper notice that was so new that it had not been rained upon. Mr. Grace believes that an expense of \$6,000 per year for an office space inside the Brunsons’ hangar is “an accounting scheme which allows the Brunsons to pay themselves while at the same time running up their ‘expenses’ to Rio Concho Water. I will also submit that there is no appreciable water company business or work performed in the hangar. I have never seen the hangar open.”<sup>106</sup>

---

<sup>101</sup> Ratepayers Ex. 17 (Sheets direct) at 6; Ex. 19 (Ratepayers’ response) at 11.

<sup>102</sup> Ratepayers Ex. 19 (Ratepayers’ response) at 11.

<sup>103</sup> Ratepayers Ex. 19 (Ratepayers’ response) at 12.

<sup>104</sup> Ratepayers Ex. 17 (Sheets direct) at 6.

<sup>105</sup> Ratepayers Ex. 17 (Sheets direct) at 7.

<sup>106</sup> Ratepayers Ex. 20 at 5.



Mr. Manus testified that Rio Concho, after determining it was not compliant with the Commission's rule to have an office within 20 miles, searched for a suitable office space but could not find such. Thus, the Brunsons modified their hangar for the benefit of the utility. He references comparable listings for available rentals from a licensed realtor, which found the closest property (which was inferior for the required use) was \$800 per month. Because the requested rent of \$500 per month is less and because the office space would not be available for lease to another party, he believes the higher degree of scrutiny of reasonableness and necessity for an affiliated transaction has been met.<sup>107</sup> Ms. Brunson also testified that Barbie Land Development is charging below market rates for its lease to Rio Concho. She indicated that "[i]n the open market, the local office rent would be at least \$812 per month, not including electricity" and the office would be farther from the Airfield.<sup>108</sup>

In support of the testimony of Mr. Manus and Ms. Brunson, Rio Concho provided a copy of an MLS listing and a possible email from Sandra Gandy, dated May 14, 2016 (two years after the office was built). The listing itself is not dated and the search parameters are not indicated. Ms. Gandy may be the licensed realtor Ms. Brunson referenced, but she did not testify. The listing prices range from a high of \$1,850 to \$500 (in fact, there are two listings for \$500). Of the 22 listings, 10 are below \$800, 6 are exactly \$800, and 6 are above \$800.<sup>109</sup>

**b. Argument**

Staff does not recommend a reduction to office expenses. Staff witness Ms. Loockerman noted that Rio Concho provided comparative information for the office rent that substantiates the amounts charged by the Brunsons to their affiliate are reasonable.<sup>110</sup>

---

<sup>107</sup> Rio Concho Ex. 4 (Manus direct) at 17.

<sup>108</sup> Rio Concho Ex. 6 (B. Brunson rebuttal) at 8. Ms. Brunson provided no evidence in her rebuttal testimony to support her statements.

<sup>109</sup> Rio Concho Ex. 10; Tr. at 212-213.

<sup>110</sup> Staff Ex. 3A (Loockerman direct) at 12.



Ratepayers are concerned that Rio Concho violated 16 Texas Administrative Code § 24.81, which requires a utility to have an office in the county or within 20 miles of its service area. Ratepayers contend that: (1) Rio Concho's home office is not within Tarrant County, where utility service is provided; (2) the home office is more than 20 miles from any residential customer; (3) Rio Concho was providing service from their home office without a waiver; (4) Rio Concho claims to have an Airfield office but no notice was provided of such to the customers; and (5) Rio Concho failed to promptly comply with the portion of the rule requiring customer notification of a location within 20 miles of its service where applications for service can be submitted and payments can be made to prevent disconnection of service or restore service.

Ratepayers also point out that the use of an office in a hangar owned by the Brunsons raises the concern of affiliate transactions. Ratepayers question the size of the office and its use. They contend the \$6,000 rent payments are simply a \$6,000 bonus payment to the Brunsons. Ratepayers note that Rio Concho could request a waiver of the rule requiring the utility to have an office within 20 miles of the facilities. They believe there is no incentive to do so because Rio Concho is able to expense \$6,000 a year for rent and expense the Audi vehicle with the IRS.

Rio Concho argues that \$500 per month in rent from Barbie Land Development is reasonable based on the survey of office spaces in the area, which shows less suitable offices, farther away from the water system, available for \$800 per month. Thus, Rio Concho is "saving at least \$300 per month, and \$3,600 each year, below the market rate for office space by renting from its affiliate."<sup>111</sup>

---

<sup>111</sup> Rio Concho reply brief at 7.



**c. ALJs' Recommendation**

At the outset, the ALJs acknowledge Ratepayers' concerns about Rio Concho's rule violations; however, this issue was not included as a Preliminary Order issue and was not adequately addressed in this rate case.

Although Ms. Brunson testified that she works at both offices, working from her home appears to be a convenience rather than a necessity. In fact, Ms. Brunson testified that she could perform all work functions at the Airfield office. And Rio Concho notes it is not seeking reimbursement of home office expenses; however, as noted above, it is seeking transportation expenses arising from travel from the home office to the Airfield office. As the ALJs noted previously, two offices are not required for the provision of water service for a utility the size of Rio Concho. Therefore, transportation expenses arising from travel from the home office should not be included as an expense.

Concerning the expenses associated with the Airfield office, the ALJs recognize that unless Rio Concho requests and receives an exemption, it is required by Commission rule to maintain an office within 20 miles of the Airfield. Pursuant to that requirement, the Brunsons built a small office within their hangar. The pertinent issue, however, concerns the Airfield office rent expenses requested by Rio Concho. Under Code § 13.185(e), Rio Concho must prove that any payment by a utility to an affiliated interest is reasonable and necessary. A finding under this rule must be supported by "specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates, *or to unaffiliated persons or corporations.*"<sup>112</sup>

The ALJs are not persuaded that Rio Concho's evidence is sufficient to meet the higher degree of scrutiny required by the statute. Staff suggests that "[p]resumably, Barbie Land

---

<sup>112</sup> Code § 13.185(e) (emphasis added).



Développement could rent the on-site office to an unaffiliated entity for approximately [\$500].<sup>113</sup> Staff then concludes that, because Rio Concho is seeking only \$500 per month, the rent meets the reasonable and necessary test required in the statute. Rio Concho also suggests that Rio Concho's "below market rental rate" is reasonable and satisfies the affiliated transaction requirements.<sup>114</sup> The ALJs disagree. The scant evidence in support of a finding that the rent is no higher for this office than it would be to an unaffiliated person or corporation is an undated MLS listing, attached to a dated email, with no indicated search parameters<sup>115</sup> and the testimony of Ms. Brunson and Mr. Manus that Ms. Brunson consulted with a licensed realtor. There is no testimony or affidavit from a realtor or any independent third party. Even if Ms. Brunson is accurate in her testimony that office rent of \$800, without utilities, is reasonable, *there is no support for the reduction of \$300 per month from the \$800 rent to account for the affiliate transaction.* The reduction could as easily have been \$400, resulting in a monthly rent of \$400 and yearly expense of \$4,800, not \$6,000, for Rio Concho ratepayers. Moreover, a greater reduction may be more reasonable given that the office is located *within an airport hangar.* Staff's and Rio Concho's argument, and Rio Concho's evidence, rests on presumptions: there is no persuasive evidence for Rio Concho's determination that the Airfield office could be rented by an unaffiliated entity for \$500 per month. Because the office is within a hangar, it is not like any other unit shown on the MLS listing proffered by Rio Concho. There was no evidence comparing the size and amenities (which includes utilities) of the Airfield office and the amenities of any of the listings. It is possible, and likely, that the Airfield office is worth less to an unaffiliated entity than the lowest rental price listed on the MLS listing, which was \$500. The lack of persuasive and convincing evidence to support an affiliate transaction cannot be allowed under Code § 13.185(e).<sup>116</sup> Accordingly, the ALJs recommend a reduction to office expense of \$6,000.

---

<sup>113</sup> Staff initial brief at 11.

<sup>114</sup> Rio Concho initial brief at 12.

<sup>115</sup> Rio Concho calls the MLS listing a "survey of office spaces." Rio Concho initial brief at 12.

<sup>116</sup> The ALJs would further note that Ratepayers testified that Barbie Land Development was receiving a windfall by charging Rio Concho \$500 a month for rent yet Rio Concho proffered no evidence in rebuttal to Ratepayers.



### **3. Professional Services Expense**

Rio Concho incurred \$475 in professional services expense plus a known and measurable change of \$1,200 for regulatory compliance.<sup>117</sup> Staff witness Ms. Loockerman testified that Rio Concho's professional service expenses should be reduced by \$163, which is one-half of the cost of the preparation of its tax return because the return includes expenses for Rio Concho's tie-down leases, restaurant lease, and fuel operations.<sup>118</sup> Rio Concho concurs with this adjustment. Accordingly, the ALJs agree that \$163 should be removed from expenses, resulting in a professional service expense of \$1,512.

### **4. Insurance**

Rio Concho requested expenses for property and liability insurance totaling \$2,546. The property and liability coverage is an airport liability policy because the property and water system is located on an airport. Rio Concho witness Mr. Manus testified that the water system sits on two parcels of land. One parcel contains the well, and taxes and assessments are allocated 100% to the utility. The other, larger parcel contains land used by the Brunsons in other businesses. Rio Concho estimates that approximately 25% of the larger parcel is used for the water system and 25% of costs are allocated for that parcel of land.<sup>119</sup>

The total property insurance premium is \$3,014, with \$1,044 allocated to Rio Concho. Ms. Brunson testified that the allocation of the property insurance premium approximates the square footage of the properties (both parcels) used by each of the Brunsons' businesses.<sup>120</sup> Mr. Manus concurred with Ms. Brunson.<sup>121</sup>

---

<sup>117</sup> Rio Concho Ex. 2 (Application) at 24.

<sup>118</sup> Staff Ex. 3 (Loockerman direct) at 15.

<sup>119</sup> Rio Concho Ex. 4 (Manus direct) at 20.

<sup>120</sup> Rio Concho Ex. 1 (B. Brunson direct) at 26-27.

<sup>121</sup> Rio Concho Ex. 4 (Manus direct) at 21.



The total liability insurance premium is \$2,695, with \$912.47 allocated to Rio Concho. Mr. Manus testified that Rio Concho historically allocated one-third of the liability policy premiums to the utility.<sup>122</sup>

Staff witness Ms. Loockerman included an adjustment of \$589 to insurance expense in a table in her written testimony<sup>123</sup> but did not testify as to why Staff recommended an adjustment.

Ratepayer Mr. Sheets testified that Ms. Brunson's allocation for the insurance was faulty. He calculated that Rio Concho's allocation of the property insurance was 34.66%, not a one-third allocation. He also noted that the total cost of the liability premium, based on receipts, was \$2,435 not \$2,695. He was unable to verify whether interest was charged due to monthly payments because that detail was missing from the data supplied to Staff during discovery.<sup>124</sup> Mr. Sheets also attached a map to his testimony showing the location of the water facilities, which appears to be a very small portion of the larger parcel.<sup>125</sup>

Rio Concho did not rebut Mr. Sheets' calculations or his testimony that the actual cost of the liability premium was \$2,435. No party addressed this issue in briefs, although Staff indicated in a proposed finding of fact that "[b]ecause of a miscalculation that includes more than the property and liability insurance premium amounts, this expense should be adjusted to \$1,957."<sup>126</sup>

Once Ratepayers testified that there may have been an error or miscalculation, it falls to the utility to prove that the expenses are accurate. Accordingly, for the liability insurance premium, the ALJs find it is reasonable to use Mr. Sheets' total liability premium cost based on

---

<sup>122</sup> Rio Concho Ex. 4 (Manus direct) at 10.

<sup>123</sup> Staff Ex. 3A (Loockerman direct) at 7.

<sup>124</sup> Ratepayers Ex. 17 (Sheets direct) at 16.

<sup>125</sup> See Ratepayers Ex. 19 (Ratepayers response) Appendix 3. In questions posed to Ms. Brunson, Mr. Sheets suggested that the property was only 5.4% of the total mixed-use parcel. Tr. at 160.

<sup>126</sup> Staff reply brief, Att. A at 3.



his testimony that the actual cost indicated on Rio Concho's receipt was \$2,435. Applying a one-third allocation as indicated in Mr. Manus' testimony, the ALJs calculate that Rio Concho's expense for liability insurance is \$812, a decrease of \$100 to this expense.

Concerning the cost for property insurance, there is scant evidence proving that a 25% allocation for the larger parcel of land that contains other Brunson properties is reasonable. At the hearing, Ms. Brunson testified that there are "distribution lanes" that run on the property which are not shown on the map attached to Mr. Sheets' testimony.<sup>127</sup> Ms. Brunson testified generally that the allocation approximates the square footage of the property and it appears this is the same methodology used in previous rate cases. The ALJs note there is no evidence to verify Rio Concho's calculation for the property insurance cost of 100% for the well site plus 25% for the larger parcel. However, given Rio Concho's broad testimony that the allocation was done based on square footage and some indication in the record that there are pipes throughout the larger, mixed-use parcel, the ALJs do not recommend a change in the amount for the property insurance premium expense of \$1,045.

## **5. Office Supplies and Expenses**

Rio Concho's application lists \$7,462 in office supplies and expenses. After looking at Rio Concho's supporting documentation, Ratepayers contested a number of expenses. For instance, on August 23, 2015, Rio Concho has a Target receipt for filler paper, notebooks, pen, pencil, and binders totaling \$25.47. Mr. Sheets testified that this purchase seems to be back-to-school supplies for a teenager, not water company expenses. He also contests a receipt, dated April 14, 2015, for \$19.97 from Office Depot for water, coffee, candies, and nuts.<sup>128</sup>

Rio Concho did not address the Ratepayers' concerns in testimony or briefs. The ALJs agree with Ratepayers that a Target receipt for filler paper, etc. in August and food supplies do

---

<sup>127</sup> Tr. at 161.

<sup>128</sup> Ratepayers Ex. 19 (Ratepayers' response) at 31.



not appear to be necessary for the provision of utility service. Accordingly, the ALJs recommend a disallowance of \$45 in office supply expenses.

**6. Miscellaneous Expenses**

**a. Clothing**

Rio Concho requested \$600, or \$50 per month, to recover the expenses associated with clothing used when Ms. Brunson is in the field, digging trenches, replacing water lines, and performing other repairs. Ms. Brunson testified that operators such as she are exposed to harsh chemicals, mud, and environments that damage clothing.<sup>129</sup> At the hearing, Ms. Brunson clarified that most of the expenses are for the replacement, not cleaning, of clothes. She indicated that she was not sure how she had booked incurred clothing expenses, but thought she had submitted some receipts.<sup>130</sup>

Staff recommends a denial of this expense. Ms. Loockerman testified that it is not necessary to the provision of utility service.<sup>131</sup> Ratepayers also recommend a denial, noting that trench digging, replacement of water lines or meters, and other repairs are conducted by contract labor (for example, a plumber was billed several times during the test year for repairs). Because it is unlikely that Ms. Brunson actually digs trenches, Ratepayers argue that paying \$600 for cleaning and clothing replacement is not reasonable or necessary.

The ALJs concur with Staff and Ratepayers that a \$50 per month clothing expense is unreasonable and not necessary for the provision of water service. There was no evidence that Ms. Brunson wears a uniform that would require specialized cleaning, that Ms. Brunson regularly or even occasionally performs tasks that would result in destruction of clothing beyond

---

<sup>129</sup> Rio Concho Ex. 6 (B. Brunson rebuttal) at 9.

<sup>130</sup> Tr. at 442, 444.

<sup>131</sup> Staff Ex. 3A (Loockerman direct) at 15.



the wear and tear that other operators experience. There was no demonstration that a clothing allowance is a standard expense of other utilities with similar operators. The ALJs recommend a disallowance of \$600 in clothing expenses.

**b. Retail Memberships**

Rio Concho included the costs of a Sam's Club membership of \$34.50 and Costco membership of \$55.<sup>132</sup> Ms. Loockerman testified that it is reasonable for a utility to have a membership to one such store, but it is duplicative and unnecessary expense to maintain two memberships to stores that sell similar products. She recommended a disallowance of \$34.50.<sup>133</sup> At the hearing, Ms. Brunson disputed that both stores offer the same types of products. She testified that Sam's Club is geared more toward business while Costco contains items that are more personal, which is why she uses both of them.<sup>134</sup>

Ratepayer witness Mr. Sheets examined the receipts Rio Concho provided to support its expenses. He testified that he did not see any Sam's Club receipts or Quickbook entries for supplies from Sam's Club. He found one Costco purchase for \$41.38 with no description of the item and no receipt and one Costco gas purchase. Mr. Sheets contested the need for Costco and Sam's Club memberships to be expensed to water customers.<sup>135</sup>

Staff points out that Ms. Brunson's own testimony does not justify two memberships, particularly since Rio Concho is a business and should not have personal shopping needs. Rio Concho does not address this issue in briefing.

---

<sup>132</sup> Staff Ex. 3 (Loockerman direct), Att. DL-3 at Bates 79; Tr. at 81.

<sup>133</sup> Staff Ex. 3 (Loockerman direct) at 15.

<sup>134</sup> Tr. at 81.

<sup>135</sup> Ratepayers Ex. 19 (Ratepayers response) at 31.



The ALJs find insufficient evidence to support a finding that either the Costco or Sam's Club membership is reasonable or necessary for the provision of utility service. Rio Concho did not address the lack of receipts for purchases from Sam's Club or the lack of sufficient documentation for the store receipt from Costco. Moreover, as noted by Staff, Ms. Brunson's testimony that Costco offers more for personal shopping supports a finding that a Costco membership is not necessary to the provision of utility service. Accordingly, the ALJs disallow both membership costs, a disallowance of \$90 to miscellaneous expenses:

**c. Travel Expenses**

The Brunsons and one of their children traveled to Austin in August 2015 for a water utility conference. While they did not pay for the conference themselves, they seek recovery of expenses for a hotel room for two nights, valet parking, meals, and room service. Staff witness Ms. Loockerman recommended a disallowance of \$366 for meals that she determined were unrelated to travel and a disallowance of \$35 for valet parking because it is not reasonable and necessary for the provision of water service.<sup>136</sup>

Ratepayers also recommended disallowances connected with the conference but provided a more legible account of the specific charges Rio Concho submitted for reimbursement.<sup>137</sup> In addition to the bills for room service (two of which had no individual receipt), there was another bill at the hotel restaurant that had no receipt. The Ratepayers' total recommended disallowance for food and beverage expenses for the conference meals (\$392) was slightly higher than Ms. Loockerman's recommended disallowance (\$366).

While Ms. Brunson's food purchases are arguably allowable, the ALJs find that food purchases for Mr. Brunson and a child are not necessary for the provision of utility service. All room service charges and valet parking are not reasonable charges. Ratepayers' evidence was

---

<sup>136</sup> Staff Ex. 3A (Loockerman direct) at 15.

<sup>137</sup> Ratepayers Ex. 12.



verified, in part, by Staff's but was more comprehensive and the ALJs find it is the proper amount. Therefore, the ALJs disallow \$392 for meals and \$35 for valet service, for a total disallowance of \$427.

**d. Cell Phone Expenses**

Ratepayer Mr. Sheets testified that Rio Concho is claiming \$1,987 for two cell phone numbers. Specifically, he noted bills totaling \$297.17 in January 2015, four months of bills for \$153, and six months of bills for approximately \$142, which no documentation of what the charges are for. Mr. Sheets questioned why two cell phones are expensed to Rio Concho when there is only employee, Ms. Brunson. He also questioned why, if there are other businesses owned by the Brunsons, the cell phone bill is not divided.<sup>138</sup>

Rio Concho did not address this issue in testimony or in briefs. There is no showing that two cell phones are needed for Rio Concho, whether the telephones are used solely by Ms. Brunson for Rio Concho business, or whether costs should be allocated if the phone is also used for personal use and for other businesses. Because Rio Concho bears the burden of proof, the ALJs disallow \$1,987 from administrative and general expenses.

**e. Audi Connect Expenses**

Mr. Sheets testified that Rio Concho included expenses of \$180 for Audi Connect, an "infotainment" system associated with the Audi that provides information about traffic, weather, directions, etc.<sup>139</sup> He suggested this expense has nothing to do with the provision of water service. Rio Concho did not address this issue in testimony or in briefs. The ALJs concur with Ratepayers that \$180 should be deducted from administrative and general expenses.

---

<sup>138</sup> Ratepayers Ex. 19 (Ratepayers response) at 28.

<sup>139</sup> Ratepayers Ex. 19 (Ratepayers response) at 28.



**C. Affiliate Transactions**

Rio Concho's only affiliate transaction is the rent payments that it makes to Barbie Land Development for office space at the airfield, which the ALJs disallowed for reasons discussed above in Section IV.B.2.

**D. Depreciation**

Staff witness Elisabeth English explained that calculation of annual depreciation, as a factor in revenue requirement, allows the utility to recover its capital investment during the useful life of an asset. Assets must be "used and useful" or in service and used to provide customers utility service during the test year. Depreciation is included in rates to reimburse the owner for the investment in utility plant. She stated that this also allows the utility to generate funds, via the rates charged, to maintain and potentially replace assets used to provide water service.<sup>140</sup>

To determine the proper amount of depreciation, the original cost of the property or plant, used and useful for the provision of water service, must be determined. Staff and Ratepayers recommend that certain items be disallowed from utility plant because they are not used and useful for water service. Staff notes that the Commission's ratemaking power includes the discretion to disallow improper expenses.<sup>141</sup>

Rio Concho's application lists a beginning gross plant balance (from the previous rate case) of \$170,318. The table below is taken from the application.<sup>142</sup>

---

<sup>140</sup> Staff Ex. 1 (English direct) at 7; 16 Tex. Admin. Code § 24.31(b)(1)(B).

<sup>141</sup> *Suburban Util. Corp. v. Pub. Util. Comm'n of Texas*, 652 S.W.2d 358, 362 (Tex. 1983).

<sup>142</sup> Rio Concho Ex. 2 (Application) at 33.



<b>Beginning Gross Plant</b>	<b>\$170,318</b>
2013	\$9,825
2014	\$3,253
2015	\$27,186
<b>Total balance</b>	<b>\$210,581</b>

**1. Audi Q5**

The bulk of Rio Concho's increase in plant for test year 2015 is related to the Audi Q5 SUV. The original cost for the Audi attributable to the utility is \$24,600, with a five-year service life accumulating \$4,920 depreciation value per year. The initial purchase price for the Audi was \$40,499 and the monthly payments are \$745.18. The vehicle was purchased in Ms. Brunson's name because Rio Concho could not get a loan without Ms. Brunson's guarantee (the utility did not make enough profit). It does not have a company logo; Ms. Brunson indicated that everyone knows it is her vehicle and placing a logo on the vehicle would increase costs. When she bought the Audi it already had been driven 1,629 miles, which meant that "someone else has already taken the depreciation on it. So I'm trying to save, again, the water utility money."<sup>143</sup> Because Rio Concho estimates that the vehicle is only used for water service slightly more than 60% of the time, Rio Concho is allocating 60% of the monthly payment or \$447 to the utility.<sup>144</sup>

According to Ms. Brunson, the Audi Q5 is used for transporting materials and supplies, banking, general maintenance, attending water conferences and continuing education programs, taking water samples for testing, and attending Commission hearings. Ms. Brunson testified that, most of the time, the small SUV meets all the needs of the utility. Occasionally a pickup truck or a trailer is useful, but Ms. Brunson noted that the utility does not own a truck or trailer. However, the utility uses Mr. Brunson's truck and trailer, which Ms. Brunson testified is "part of Kevin's contract for after-hours and emergency calls" and then stated that he "provides the use

---

<sup>143</sup> Tr. at 69-70.

<sup>144</sup> Rio Concho Ex. 2 (Application), Att. 3, Ex. 1 (B. Brunson direct) at 25.



of large trucks and trailers and other equipment such as skid steers and sweepers at no charge to the water system.”<sup>145</sup> Rio Concho also has a golf cart (acquired in September 2014), which is used for light repairs and maintenance and meter reading. Ms. Brunson testified that Rio Concho no longer uses the 1995 manual-transmission truck, which has over 230,000 miles on it, or the 2004 Ford Excursion, because it was becoming too costly to operate. She indicated that the Audi has required little in repair and maintenance costs since its acquisition and is essential for conducting the utility’s business.<sup>146</sup> However, at the hearing, she thought that a submitted receipt for a utility fuel expense may have been attributed to the dually.<sup>147</sup>

Staff witness Ms. English excluded the Audi from depreciation because it was used primarily to commute from home to the Airfield office. Moreover, the system is located adjacent to the water office, on approximately 77 acres. Rio Concho has 240 service connections, so she found that the golf cart and older truck are sufficient to read meters and check the facilities. Ms. English noted that the cost of fuel to complete utility activities outside the Rio Concho distribution area is included in the cost of service.<sup>148</sup>

Ratepayer Mr. Sheets objected to the purchase of the Audi as a utility vehicle because the water meters and facilities are contained within the Airfield boundaries and the utility’s golf cart can easily be used for most routine duties. He suggested that other errands outside the Airfield can be consolidated and some errands, like the purchase of chlorine, can be eliminated with free delivery.<sup>149</sup>

Staff recommends disallowing the inclusion of the Audi in the cost of service for several reasons:

---

<sup>145</sup> Rio Concho Ex. 1 (B. Brunson direct) at 23.

<sup>146</sup> Rio Concho Ex. 1 (B. Brunson direct) at 23-24

<sup>147</sup> Tr. at 180-181 (Q: Sheets: How about July 23rd . . . ? A: Brunson: That’s probably when I had to use the dually. . . . It’s a Ford dually pickup truck that uses diesel.);

<sup>148</sup> Staff Ex. 1 at (English direct) at 10.

<sup>149</sup> Ratepayer Ex. 17 (Sheets direct) at 11.



- The golf cart and truck owned by Rio Concho are sufficient to service the utility's compact service area. For instances when large haulage might be required and no contractor's vehicle is available, the truck should be sufficient. Acquiring a third vehicle, and a luxury vehicle at that, is not reasonable for the provision of service at a utility of this size.
- The Audi is primarily used for commuting from the Brunsons' home, which does not relate to the provision of water service. Furthermore, utility-related activities that Ms. Brunson claims to perform with the Audi, such as banking, attending training conferences and Commission hearings, and dropping off water samples at the public health department, may all be compensated for by Staff's proposed mileage costs being included in Rio Concho's cost of service.
- Third, the Audi's true use is as a luxury model, personal vehicle, not as a capital asset of Rio Concho. This is evidenced by the fact that Ms. Brunson purchased it in her name rather than under Rio Concho's name.

Rio Concho argues that the Audi is necessary for the operation of the water system and only 60% of the vehicle's net asset value is allocated to the utility.

The ALJs agree with Staff and Ratepayers that the evidence shows that the Audi Q5 is Ms. Brunson's personal vehicle, which is used primarily for commuting. Because the utility is located on a compact airfield, the newly-purchased golf cart is adequate for most hands-on work such as meter reading. Additionally, the ALJs have recommended recovery of mileage costs in the utility's cost of service. Accordingly, \$24,600 should be removed from depreciation.<sup>150</sup>

## **2. Paving**

Ratepayer Mr. Grace testified that there are almost yearly paving projects around the Airfield. He indicated he has worked with the Hicks Airport Pilots Association paving committee in the past and is aware of most paving issues and projects. According to Mr. Grace, the only paving performed anywhere near the water utility property was a resurfacing and

---

<sup>150</sup> Ms. Brunson testified that Rio Concho is allocating 60% of the monthly payment or \$447 to the utility. The ALJs believe Rio Concho is only seeking recovery of the Audi through plant and depreciation. If this is incorrect, and Rio Concho has the Audi's monthly payments in cost of service, these payments should also be disallowed.



painting project around the fuel pumps and helicopter landing area. He noted that the \$6,000 expense for paving in 2013 was not for water system use, nor was it included in Rio Concho's last rate case in 2014. He stated it should not be included in this case.<sup>151</sup> Ratepayer Mr. Sheets confirmed that, in 2013, the area around the fuel pumps, a separate business owned by the Brunsons, was paved. He testified that this cost should be assigned to the Brunsons' fuel company, not Rio Concho.<sup>152</sup>

Although Ratepayers prefiled testimony which raised the issue of questionable paving costs as noted above, Rio Concho did not file any rebuttal testimony on this issue and stated in its initial briefs that there were "no other challenges to the proper inclusion of Rio Concho water system assets or the depreciation of those assets as shown in the Application."<sup>153</sup> Rio Concho then argued that the \$6,000 in paving costs were for areas "over the utility's water lines," and cited to a Staff exhibit listing "\$6,011.12," with a date of April 2013, in a depreciation schedule.<sup>154</sup>

The ALJs find that the evidence and argument to support paving costs is insufficient to rebut the testimony of witnesses who have first-hand knowledge of the Airfield and who testified under oath that the paving in 2013 was in an area around Airfield fuel pumps. Accordingly, \$6,011 should be removed from depreciation expense.

### **3. Television and Related Items**

Rio Concho also included a television, wall mount, antenna, video player, and a single DVD in its proposed depreciation schedule at an original cost of \$678.<sup>155</sup> Both Staff and

---

<sup>151</sup> Ratepayers Ex. 20 (Grace direct) at 4.

<sup>152</sup> Ratepayers Ex. 19 (Ratepayers response) at 17.

<sup>153</sup> Rio Concho initial brief at 14.

<sup>154</sup> Rio Concho reply brief at 7-8; Staff Ex. 13 (RFI response) at 927.

<sup>155</sup> The one DVD included as an expense was a comedy film, "Dumb and Dumber." Tr. at 115-116.



Ratepayers recommend disallowing these items because they are not necessary for the purpose of providing retail water service. Ms. Brunson testified that the television and DVD player are located in the Airfield office and are used by Rio Concho to monitor weather and watch training videos.<sup>156</sup> However, Rio Concho has a laptop computer that is capable of monitoring weather and playing DVDs to watch training videos. Ms. Brunson even affirmed that she always keeps the laptop with her.<sup>157</sup> Staff witness Ms. English recommended that the television and related items be removed from depreciation because they do not serve a purpose for providing water service.<sup>158</sup>

Staff argues the laptop can be used to watch training videos and monitor the weather; therefore, having a TV is redundant cost. Staff also alleges that the television is likely being used primarily for personal entertainment and is therefore unnecessary. Ratepayers concur and note that they objected to the purchase of the television and related items in mid-August 2016—Rio Concho had “ample time to correct their depreciation schedule but made no attempt to do so.”<sup>159</sup>

Rio Concho argues that Ms. Brunson testified that she uses the television to monitor the weather and review training in her office.

The ALJs find sufficient persuasive evidence to find that a television, wall mount, antenna, video player, and a DVD are not necessary to the provision of service given the ability of Ms. Brunson to use the utility’s laptop computer, which is included in the cost of service. Thus, these items should be removed from utility plant and the depreciation schedule should be reduced by \$678.

---

<sup>156</sup> Rio Concho Ex. 6 (B. Brunson rebuttal) at 4.

<sup>157</sup> Tr. at 82, 209.

<sup>158</sup> Staff Ex. 1 at (English direct) at 11.

<sup>159</sup> Ratepayer initial brief at 14.



#### 4. Office Equipment

Rio Concho included as office equipment a side board (\$487) and lamps (\$213),<sup>160</sup> which Mr. Sheets testified were purchased for the Rio Concho home office in 2013 (the Airfield office was not used until 2014). Mr. Sheets also objected to office chairs (\$475), purchased in October 2014 before the Airfield office was opened. Mr. Sheets testified that the furniture used in the home office is not necessary for the provision of water service.<sup>161</sup> Rio Concho also included a desk and chair expense (\$335); Mr. Sheets did not object to this expense in his testimony (nor did he object to the office software (\$1,494) and computer (\$757)), but Ratepayers argue in briefs that they object to the desk and chair purchased in 2015, because they are furnishing too many offices.

Staff witness Ms. English initially objected to including \$700 for a lamp and sideboard, but withdrew her objection at the hearing, stating that “[e]ven though it is an excessive cost, [Staff is] going to go ahead and allow that in the depreciation schedule.”<sup>162</sup> She did not object to the other furniture based on the assumption that Ms. Brunson was using them at the Airfield and not at the home office. Ms. Brunson testified that she uses the lamp as an additional light source within the office and uses the sideboard, which is a bookshelf, to hold books and other utility-related materials. Ms. Brunson did not address any objections raised by Mr. Sheets.<sup>163</sup>

The ALJs are not persuaded that chairs purchased for a home office in 2014 (\$475) and a sideboard and lamp purchased in 2013 (\$701)—even if used in the Airfield office—are reasonable expenses for a small utility. Concerning the \$475 chairs, although Ratepayers objected to these in their testimony, Ms. Brunson did not testify that she uses these chairs at the

---

<sup>160</sup> It is unclear if this is one lamp or two. The Application refers to “lamps” but Ms. Brunson only indicated that she uses one lamp in the Airfield office. See Rio Concho Ex. 2 (Application), Att. 3; Ex. 6 (B. Brunson rebuttal) at 4.

<sup>161</sup> Ratepayers Ex. 19 (Ratepayers response) at 18-19.

<sup>162</sup> Tr. at 330-331.

<sup>163</sup> Rio Concho Ex. 6 (B. Brunson rebuttal) at 4.



Airfield office. The ALJs find that the chairs are not used for the provision of water service. But the ALJs find that a desk and chair purchased in 2015, although also not inexpensive (\$335), are more reasonable and arguably used and useful for an office required by the Commission's rules. Ms. Brunson did testify that she uses the lamp and sideboard at the Airfield office. However, even though Ms. English did not recommend disallowance for these two items, she found that the costs for these two items were excessive. The ALJs agree and find the \$699 cost of a lamp and sideboard used as a bookshelf is not reasonable and should be disallowed. Accordingly, the ALJs would reduce depreciation expense by \$1,174.

## **E. Taxes**

### **1. Federal Income Tax**

Rio Concho is organized as a Subchapter C corporation for tax purposes. While Rio Concho does file a return that incorporates its other business activities related to the sale of aircraft fuel, leasing of aircraft tie-down spaces, and leasing a restaurant building, the federal income taxes associated with the utility are calculated independently of those other operations as shown in the application and revised calculations.<sup>164</sup> Its taxes for purposes of setting rates are calculated on a normalized basis and based on the return approved by the Commission. Employing the methodology used by Staff witness Ms. Loockerman in her testimony,<sup>165</sup> which Rio Concho does not dispute, results in a federal income tax component of \$737.

### **2. Other Taxes and Assessments**

Rio Concho's application lists \$4,693 in assessments and taxes. As noted above, Rio Concho witness Mr. Manus testified that the water system sits on two parcels of land: the well parcel and a larger, mixed-use parcel. On the larger parcel, Rio Concho estimates that

---

<sup>164</sup> Rio Concho initial brief at 14.

<sup>165</sup> Staff Ex. 3A (Loockerman direct) at 30.



approximately 25% of the land is used for the water system and 25% of costs are allocated for that parcel of land.<sup>166</sup> Taxes are paid to the county and to the school district. The Hicks Airport Pilots Association (HAPA), through deed restrictions, requires an assessment to be paid by property owners of all properties, including the water system property, and the assessment is charged by the square foot, with a current rate of \$0.081 per square foot.<sup>167</sup>

Ratepayer Mr. Sheets questioned the amount of county taxes assessed to Rio Concho. He also questions the 25% allocation on the mixed-use parcel because he calculated that the square footage actually used by the utility is much lower.<sup>168</sup> Rio Concho argues it provided sufficient evidence to support the amount of taxes and assessments. Staff recommends no reduction to taxes.

While the Ratepayers proffered some evidence that the allocation to Rio Concho on the larger parcel may be excessive, the ALJs find sufficient evidence that, with the underground lines, a 25% allocation is reasonable. The ALJs therefore do not recommend a reduction to expenses associated with county taxes or the HAPA assessment.

#### **F. Return on Invested Capital**

Ms. Loockerman testified that invested capital or rate base is the prudent investment of utility owners. The components of invested capital include the utility plant used and useful, less accumulated depreciation, reasonable working capital allowance (also called cash working capital), reasonable payments, and verifiable post-test year adjustments. The return on invested capital is the appropriate rate of return times the rate base.<sup>169</sup>

---

<sup>166</sup> Rio Concho Ex. 4 (Manus direct) at 20.

<sup>167</sup> Rio Concho Ex. 1 (B. Brunson direct) at 27-28.

<sup>168</sup> Ratepayers Ex. 19 (Ratepayers response) at 27.

<sup>169</sup> Staff Ex. 3A (Loockerman direct) at 16.



Ms. Loockerman testified that cash working capital is added to or subtracted from rate base to reflect the potential of paying bills before or after the revenues are collected that match the monthly period (in this case) in which the bills are paid. Stated differently, it accounts for the amount of time it takes to turn receivables and current liabilities into cash. The longer the cycle, the longer a business is tying up capital without earning a return on it. Ms. Loockerman testified that, for Rio Concho, a simple ratio of one-eighth of operations and maintenance should be used.<sup>170</sup> Mr. Manus also indicated that this percentage is found in the Commission's rules.<sup>171</sup>

Staff recommends an invested capital base of \$79,240, which includes the components shown in the following table

<b>Adjustments to Invested Capital</b>			
	Rio Concho Requested <sup>172</sup>	Staff Adjustments	Staff Recommended
Plant in Service—Original Cost	\$210,582	\$(29,828)	\$180,754
Accumulated Depreciation	\$(124,343)	\$10,538	\$(113,805)
Cash Working Capital	\$15,834	\$(3,176)	\$12,291
Invested Capital	<b>\$101,623</b>	<b>\$(22,466)</b>	<b>\$79,157</b>

While Rio Concho contests Staff's adjustments to plant in service and accumulated depreciation, the utility did not contest Ms. Loockerman's means of calculating cash working capital, which the ALJs adopt. Below are the ALJs' adjustments to invested capital:

<b>Adjustments to Invested Capital</b>			
	Rio Concho Requested	ALJs Adjustments	ALJs Recommended
Plant in Service—Original Cost	\$210,582	(32,465)	\$178,117

<sup>170</sup> Larger electric utilities often include a lead-lag study. Staff Ex. 3A (Loockerman direct) at 18.

<sup>171</sup> Tr. at 172. See 16 Tex. Admin. Code § 24.31(c)(2)(C)(iii)(II).

<sup>172</sup> This table uses Rio Concho's current requested numbers as shown in Staff Ex. 13 at RCA 000920.



Adjustments to Invested Capital			
	Rio Concho Requested	ALJs Adjustments	ALJs Recommended
Accumulated Depreciation	\$(124,343)	(\$8,581)	(\$115,762)
Cash Working Capital	\$15,834	(\$5,497)	\$9,887
Invested Capital	<b>101,623</b>	<b>(\$29,381)</b>	<b>\$72,242</b>

## V. RATE OF RETURN

### A. Return on Equity

The Code prohibits the Commission from prescribing any rate that will yield more than a fair return on invested capital used and useful in rendering service to the public.<sup>173</sup> The United States Supreme Court has set forth a minimum constitutional standard governing equity returns for utility investors:

From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having comparable risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.<sup>174</sup>

---

<sup>173</sup> Code § 13.184.

<sup>174</sup> *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 288 (1944); *see also Bluefield Waterworks & Improvement Co. v. Public Serv. Comm'n of W. Va.*, 262 U.S. 679, 692-93, 43 S. Ct. 675, 679 (1923) ("A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.").



Thus, a utility must have a reasonable opportunity to earn a return that is: (1) commensurate with returns on equity investments in enterprises having comparable risks; (2) sufficient to ensure the financial soundness of the utility's operations; and (3) adequate to attract capital at reasonable rates, thereby enabling it to provide safe, reliable service. The allowed return on equity should enable the utility to finance capital expenditures at reasonable rates and to maintain its financial flexibility during the period in which the rates are expected to remain in effect.

In an effort to achieve a balance between the goal of reducing costs of regulatory proceedings and establishing a constitutionally permissible return on equity, the Commission drafted the following instructions for Class B/C Water Utility Rate Filing Packages:

A utility may use either of two methods for determining the [return on equity] percentage that it will request in its rate application:

- The first method is to start with the interest rate corresponding to the most recent Moody's Baa bond rating for public utilities (this information is posted on the PUC website). Add a 6% risk premium if the utility is a Class B Utility and a 7% risk premium if the utility is a Class C utility. If the Moody's rate is greater than 6%, the maximum [return on equity] that a Class B Utility may request without written testimony is 12%, and the maximum ROE that a Class C Utility may request without written testimony is 13%. This method will be presumed reasonable if no other party provides opposing testimony. However, if parties to the case do not reach a settlement agreement, there is no presumed reasonable [rate of return]. Additionally, in specific cases, unusual or extraordinary circumstances may cause the PUC staff to recommend a lower or higher [return on equity].
- The second method that a utility may use as the basis for its [return on equity] request is the submission of written testimony and other credible evidence that develops and supports the reasonableness and necessity of the requested [return on equity]. In some cases, the utility's requested [return on equity] (as well as its requested overall rate of return on invested capital) may be considered as part of a hearing in which an administrative law judge will evaluate the testimony and other evidence presented by the utility as well as that of other interested parties and write a recommendation to the PUC.<sup>175</sup>

---

<sup>175</sup> Rio Concho Ex. 13 (Public Utility Commission of Texas Class B Investor-Owned Utilities Water and/or Sewer



Rio Concho filed its application in this proceeding using the first method described above, which resulted in a return on equity of 12.49%.<sup>176</sup>

The only challenge to Rio Concho's proposed return on equity was that lodged by Staff witness Andrew Novak. Mr. Novak employed a discounted cash flow (DCF) analysis, which is a widely-recognized method of calculating the return on equity for a company. The DCF analysis employed a spot dividend yield, a 52-week dividend yield, and earnings growth forecasts. The data for the components of the DCF analysis were taken from a group of water utilities, or proxy group, which act as a standard for setting a utility's overall rate of return. Mr. Novak's analysis employs the standard discrete DCF model as portrayed in the following formula:

$$k = \frac{D_1}{P_0} + g$$

Where k is the cost of equity; D<sub>1</sub> is the dividend expected during the year; P<sub>0</sub> is the current price of the stock; and g is the expected growth rate of dividends.<sup>177</sup>

Mr. Novak explained that a proxy group is typically used since data exclusively from one company may be less reliable than data derived from a group of similar companies. The lower reliability occurs because the data for one company may be subject to events which can cause short-term anomalies in the marketplace. A proxy group also provides the subject utility with the opportunity to earn a return equal to that of similar risk enterprises.<sup>178</sup>

In this case, Mr. Novak used a proxy group consisting of the following water utilities: American States Water Company, American Water Works, Aqua America, California Water Service Group, Connecticut Water Service, Middlesex Water, SJW Corporation, and

---

Instructions for Rate/Tariff Change Application 2015 at 9-10 (Application Instructions)).

<sup>176</sup> Rio Concho Ex. 4 (Manus direct) at 22-23.

<sup>177</sup> Staff Ex. 2 (Novak direct) at 6.

<sup>178</sup> Staff Ex. 2 (Novak direct) at 7.



York Water. Collectively, these utilities make up the Value Line Investment Survey water proxy group. Mr. Novak noted that even though the scale of operations between Rio Concho and those utilities included in the proxy group differs, the business model of any water utility remains the same. In addition, due to the fact the water utilities in the proxy group are subject to regulatory oversight, like Rio Concho, the return those utilities earn is dependent on the ratemaking process and not upon the size of a utility.<sup>179</sup>

Employing the DCF analysis, Mr. Novak determined that the appropriate return on equity for Rio Concho would be 8.48%.<sup>180</sup>

In rebuttal, Rio Concho offered the testimony of Gregory E. Scheig. Mr. Scheig is a well-qualified financial analyst who participates in all phases of business valuation projects in the following areas: fair market valuations for tax matters, fair value calculations for financial reporting, and litigation/regulatory testimony.<sup>181</sup> Mr. Scheig testified that he is capable of providing testimony as to a return on equity computed using traditional constitutional, statutory, and economic standards.<sup>182</sup> In this case, however, Mr. Scheig offered no testimony regarding the appropriate return on equity for Rio Concho but, rather, limited his testimony to the effect adopting Mr. Novak's return on equity would have on the value of Rio Concho.<sup>183</sup>

Mr. Scheig testified that applying Mr. Novak's recommended return on equity to Rio Concho would lower the value of Rio Concho by approximately 29.3%.<sup>184</sup> The problem with Mr. Scheig's testimony, however, is that the issue to be decided is not the value of the entity but rather the appropriate return on equity to be awarded. Mr. Scheig's testimony does not address this crucial point. The ALJs are left with only two reliable estimates of the cost of equity

---

<sup>179</sup> Staff Ex. 2 (Novak direct) at 7.

<sup>180</sup> Staff Ex. 2 (Novak direct) at 6.

<sup>181</sup> Rio Concho Ex. 9 (Scheig rebuttal) at 3.

<sup>182</sup> Tr. at 414-415.

<sup>183</sup> Rio Concho Ex. 9 (Scheig Rebuttal) at 32-33, Sch. B.1 to B.2; Tr. at 414-425.

<sup>184</sup> Rio Concho Ex. 9 (Scheig Rebuttal) at 17-20.



for Rio Concho: the 12.49% derived from the formula in the Commission's instructions and the 8.48% return on equity derived from Mr. Novak's DCF analysis. The Commission's rate filing package instructions expressly disclaim any presumptive effect of the return on equity derived from the formula included in the instructions but do not disclaim all effects of the return on equity derived from that formula. In the ALJs mind, it establishes an upper limit on the permissible return on equity. Otherwise, utilities that proceed through the ratemaking experience with no challenge to their return on equity (and, thus, are granted the return on equity derived from the instruction formula) would not meet the Code's mandate that rates not yield more than a fair return on invested capital used and useful in rendering service to the public. But that upper boundary provides only slim assurance if challenged by an analysis based on economic fundamentals such as those underlying the DCF analysis. The DCF analysis is used in virtually all utility ratemaking proceedings to determine the appropriate return on equity and its validity is generally unquestioned. Mr. Novak presented his DCF analysis and there were no challenges to the result. The ALJs find that the appropriate return on equity for Rio Concho is the return on equity determined by Mr. Novak, 8.48%.

## **B. Cost of Debt**

Rio Concho has no debt. Yet, in its initial filing, it claimed a cost of debt of 3.9%, which Mr. Manus testified was the actual interest rate on a single item of debt.<sup>185</sup> At hearing, it became clear that this debt was a loan for the Audi Q5 acquired by Ms. Brunson, which was taken in the name of Ms. Brunson because Rio Concho could not obtain the loan.<sup>186</sup> In rebuttal and at hearing, Ms. Brunson testified that she could secure a loan from her bank in Rio Concho's name for an amount up to \$15,000 at a rate of 8.4%, but only if she personally guaranteed the loan.<sup>187</sup>

---

<sup>185</sup> Rio Concho Ex. 4 (Manus direct) at 23.

<sup>186</sup> Tr. at 68-69.

<sup>187</sup> Tr. at 440.



Mr. Novak recommended a hypothetical market-based cost of debt of 5.03%, which is based on the average rate for Baa utility bonds for every month for the test year used for this application.<sup>188</sup>

In the end, there is very little evidence on this point. On the one hand, Rio Concho's evidence points to either a cost of debt for someone other than Rio Concho (Ms. Brunson, personally) or to an unsecured debt cost for the utility. Rio Concho did not provide any evidence of the cost of secured debt for the utility. Staff's evidence is similarly weak, but does have the advantage of representing the average cost for debt to reasonably secure utilities during the test year. Both sides ask the ALJs to choose a hypothetical debt cost. The debt cost advocated by Staff appears more reasonable to the ALJs and thus 5.03% should be the cost of debt employed in this situation.

### **C. Capital Structure**

Rio Concho proposes to use what it termed its "actual" debt-to-equity ratio, which is approximately 80% equity and 20% debt.<sup>189</sup> As noted previously, however, its "actual" ratio is merely hypothetical in that Rio Concho has no debt. Staff proposes use of a hypothetical debt-to-equity ratio as well, but argues for a 50-50 ratio based on the optimal capital structure as reported by Value Line Investment Survey water proxy group.<sup>190</sup>

The ALJs must be guided by what is reasonable and appropriate in the circumstances. An equity-heavy capital structure, such as that suggested by Rio Concho, is an extremely expensive proposition, as equity is generally far more expensive than debt.<sup>191</sup> The Commission

---

<sup>188</sup> Staff Ex. 2 (Novak direct) at 5-6.

<sup>189</sup> Rio Concho Ex. 2 (Application) at 30.

<sup>190</sup> Staff Ex. 2 (Novak direct) at 5, 7.

<sup>191</sup> Tr. at 397.



has warned against equity-heavy capital structures in past rate cases.<sup>192</sup> Based on the fact that the equity-heavy capital structure proposed by Rio Concho would result in an inordinately higher cost of capital and the fact that the more balanced capital structure recommended by Staff is in line with those reported by the Value Line Investment Survey water proxy group, the ALJs recommend Rio Concho use a hypothetical capital structure of 50% debt and 50% equity.

#### **D. Overall Rate of Return**

The overall rate of return is a product of the capital structure, ROE, and cost of debt. Based on the discussions set forth above, the ALJs recommend that the Commission adopt the following overall rate of return for Rio Concho:

<b>Component</b>	<b>Cost</b>	<b>Weighting</b>	<b>Weighted Cost</b>
<b>Debt</b>	5.03	50%	2.52%
<b>Equity</b>	8.48	50%	4.24%
<b>Overall</b>			6.76%

### **VI. RATE DESIGN**

In assessing the appropriate rate design for a utility, the Commission must ensure that every utility's rate is just and reasonable.<sup>193</sup> Rates must not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers.<sup>194</sup> Rio Concho has only a single customer class, so rate design in this case primarily involves rate allocation decisions between fixed and variable components. The average Rio Concho customer in test year 2015 only used approximately 53 gallons of water per

---

<sup>192</sup> See *Application of Nitsch and Son*, Docket No. 3314, 6 P.U.C. Bull. 287 (Nov. 18, 1980) ("A 100% equity capital structure is an expensive luxury for consumers and a utility should attempt to achieve a more normal capital structure.").

<sup>193</sup> Code § 13.182(a).

<sup>194</sup> Code § 13.182(b).



day (or approximately 1,600 gallons per month), which is significantly lower than the average residential water customer's use of 93 gallons per day (or approximately 2,800 gallons per month).<sup>195</sup>

Rio Concho proposes increasing its retail water rates by raising the fixed base rate from \$31.00 to \$39.75 per month per connection<sup>196</sup> and the volumetric rate per 1,000 gallons from \$5.50 to \$7.05.<sup>197</sup> Rio Concho's proposed rate design will keep the base rate below \$40 per customer in order to avoid having customers who use little water from disconnecting because of a high base rate.<sup>198</sup>

Staff recommends that the base rate be set at \$33.69 and the volumetric rate at \$3.20 based on its assessment of the revenue requirement.<sup>199</sup> Staff witness Ms. English explained that a successful rate design will allow a predictable revenue based on cost of service. To best achieve a predictable revenue and ultimately provide an equitable bill for customers, those elements of Rio Concho's cost of service that are directly related to its water demand should be recovered through the variable component of the rate design, the volumetric rate per thousand gallons. The remaining elements of cost of service should then be recovered through the fixed base rate. Because a customer's bill is tied to the volume of his or her demand, this method of allocation ensures appropriate conservation and also minimizes the risk of unintended subsidies to other customers.<sup>200</sup>

---

<sup>195</sup> Staff Ex. 1 (English direct) at 8.

<sup>196</sup> Rio Concho Ex. 2 (Application) at 48. Rio Concho's base rate does not include any volume of water with that fixed rate.

<sup>197</sup> Rio Concho Ex. 4 (Manus direct) at 7 (adjusted Rio Concho's requested volumetric rate from \$7.67 per 1,000 gallons to \$7.19), and Staff Ex. 13 (Response to Staff 4-5(f)) (further adjusted the requested volumetric rate from \$7.19 per 1,000 gallons to \$7.05).

<sup>198</sup> Tr. at 517.

<sup>199</sup> Staff Ex. 1 (English direct) at 11-12.

<sup>200</sup> Staff Ex. 1 (English direct) at 9.



Rio Concho witness Mr. Manus indicated that Rio Concho's proposed rate design uses a lower non-volumetric base rate and a higher volumetric usage rate to promote water conservation. He testified that, although Ms. English proposes a more typical rate design, Staff's rate design fails to take into account Rio Concho's average daily use, which is barely half of typical users. That is because Rio Concho serves a small airport and the majority of utility customers are not living at the Airfield. Rio Concho shifts some fixed costs to the variable portion of the rate design but still yields a split of 21% variable and 79% fixed, which Mr. Manus found to be appropriate for Rio Concho and for water conservation. He believes that Ms. English's rate design methodology weighs too heavily on variable costs and provides less incentive for water conservation.<sup>201</sup>

Staff points out that Rio Concho did not detail how Mr. Manus' adjustment is quantified.<sup>202</sup> Staff notes that, to the extent that conservation was the reason for the variance between Rio Concho's volumetric rate and Staff's, it is not a sufficient reason to meet Rio Concho's burden to show that its proposed rate design is just and reasonable. Staff argues that its proposed base rate and gallonage rate are more equitable because they strictly allocate variable costs of service to the volumetric rate and fixed costs of service to the base rate.<sup>203</sup>

The ALJs have recommended significant reductions to Rio Concho's expenses and, therefore, do not find a persuasive reason to adopt Rio Concho's proposed rate design, which seems targeted to keeping the base rate below \$40 to avoid rate shock. Although Mr. Manus emphasized that his proposed rate design promoted water conservation, he did not explain why water conservation, particularly given the low usage, was so important that a modified rate design methodology should be used in this case. The ALJs find that Staff's proposed standard rate design methodology is more reasonable and should be applied.

---

<sup>201</sup> Rio Concho Ex. 4 (Manus direct) at 25, Ex. 8 (Manus rebuttal) at 9.

<sup>202</sup> Rio Concho Ex. 6 (B. Brunson rebuttal) at 6.

<sup>203</sup> Staff Ex. 1 (English direct) at 12.



Using Staff's proposed rate design, rates reflecting the ALJs' adjustments are as follows:

Monthly Minimum Charge by Meter Size	
Size in inches	Charge
5/8	\$23.13

Charges Per 1,000 Gallons	
Size in inches	Charge
5/8 x 3/4	\$5.28

## VII. RATE CASE EXPENSES

The Commission's rules provide that a utility may recover just, reasonable, necessary rate case expenses, including attorney fees, incurred as a result of filing an application for a rate change pursuant to Texas Water Code § 13.1871. Such expenses must be in the public interest. If, after a contested case hearing, the increase in revenues generated by the Commission-determined rates is less than 51% of the utility's request, a utility may not recover any rate case expenses.<sup>204</sup>

Rio Concho is seeking \$108,156 in rate case expenses.<sup>205</sup>

### A. Just, Reasonable, and Necessary Rate Case Expenses

Ratepayers argue that Rio Concho has failed to prove its requested rate case expenses were reasonable, but Ratepayers do not make specific recommendations concerning the amount of rate case expenses. Staff recommends specific adjustments to Rio Concho's rate case expenses as shown in the following table and discussed in detail below:

<sup>204</sup> 16 Tex. Admin. Code § 24.33(b). Also, unamortized rate case expenses may not be a component of invested capital for calculation of rate-of-return purposes. 16 Tex. Admin. Code § 24.33(d).

<sup>205</sup> Rio Concho submitted a summary of rate case expenses totaling \$106,565 (Rio Concho Ex. 18, admitted into evidence after the hearing) but Staff suggests that this amount does not reflect some prior requested expenses totaling \$1,591. See Rio Concho Ex. 18 and Staff Ex. 6A.



Staff Adjustments to Rate Case Expenses			
Name of Consultant	Rio Concho Requested	Staff Adjustments	Staff Recommended
Randal Manus	\$6,286.70	(\$3,990)	\$2,296.70
The Carlton Law Firm	\$88,916.52	(\$5,577.50)	\$83,339.02
ValueScope	\$10,005.67	(\$10,005.67)	\$0
Barbie Brunson	\$1,355.74	(\$368.07)	\$987.67
Other Expenses	\$1,590.90	(\$586.80)	\$1,004.10
<b>TOTAL</b>	<b>\$108,155.53</b>	<b>(\$20,528.04)</b>	<b>\$87,627.49</b>

**1. Mr. Manus' Invoices**

Most of Mr. Manus' invoices are dated, provide the amount of time spent and rate (\$30 per hour), and have a generic description of "Rate Case 2015."<sup>206</sup> Staff contends that the generic description does not provide sufficient detail (such as the task performed) for the Commission to determine the reasonableness of the expense. If Mr. Manus provided any sort of description, such as "pre hearing," "mediation," or "2nd RFI," Staff does not oppose the reasonableness of Mr. Manus' invoices. At the hearing, Mr. Manus could not provide any detail as to what task he performed when generically listing "Rate Case 2015." For example, on January 19, 2016, for 6.5 hours or on January 28, 2016, for 5.5 hours, Mr. Manus thought his tasks may have been research, development of a program to calculate certain items, or making an Excel spreadsheet.<sup>207</sup> He also could not provide more detail concerning a more recent invoice dated September 7, 2016, although he stated that the work billed "most likely had to do with my testimony."<sup>208</sup> According to Staff, a reasonableness determination includes an analysis of whether the tasks performed were reasonable, whether the amount of time spent on each task was reasonable, and whether the work being performed was duplicative. Without any of these details, Staff indicates there is inadequate information to determine whether the services

<sup>206</sup> See Staff Ex. 6A (RFI response) at 860-861.

<sup>207</sup> Tr. at 105-107.

<sup>208</sup> Tr. at 107.



Mr. Manus provided were reasonable. Moreover, Staff contends that Rio Concho had the opportunity to clarify this information through redirect or rebuttal, but never did so.

Rio Concho argues that, except for the incorrect invoice titled “Chlorine Pump Serviced,”<sup>209</sup> which the utility agrees is not a rate case expense, Mr. Manus’ invoices should be fully allowed because he testified that he prepared the rate application and related documents. His total billings were for \$6,257 or approximately 200 hours of work.

The ALJs note that Staff did not recommend any specific disallowances in their direct case, thus the argument that Rio Concho should have put forth rebuttal testimony is not persuasive. But the question remains: did Rio Concho submit enough information to meet its burden of proof? It is not possible to determine how long Mr. Manus spent performing a certain task for “Rate Case 2015.” The ALJs do not expect Mr. Manus to be able to testify exactly what he was doing on June 7, 2016, but Mr. Manus billed 7.5 hours to “Rate Case 2015” and also billed an hour for a chlorine pump. Thus, he worked over 8 hours that day and scant information is provided as to what he worked on for the rate case and, if more than one task, how long he worked on each task. The ALJs are inclined to agree that more information is necessary to allow the Commission to make a reasonableness determination. A comparison of Mr. Manus’ invoices to Rio Concho’s attorney’s invoices is illustrative: in contrast to Mr. Manus, Mr. Carlton provides details of specific tasks (although not necessarily how much time he spent on each). Moreover, Staff is not recommending a disallowance of any of Mr. Manus’ invoices on which he listed what he was working on. The ALJs had the same concerns with Mr. Manus’ expenses when he assisted Ms. Brunson: there simply was insufficient evidence to find that the expenses were reasonable. Accordingly, the ALJs remove \$3,990 to account for overly generic rate case expense invoices provided by Mr. Manus.

---

<sup>209</sup> Staff Ex. 6A (RFI response) at 866.



## 2. The John Carlton Law Firm Invoices

Staff argues that Rio Concho's refusal to voluntarily extend its effective date—after its counsel's health issues prevented a timely hearing on the merits—caused a significant amount of additional and unnecessary work for all parties involved. Staff notes that Rio Concho maintained its refusal even after Staff offered a relate-back date that would preserve the utility's ability to collect a higher rate from customers as of January 16, 2017, should that be the result of this proceeding, thereby removing any possible prejudice from an extension. Ultimately, after multiple conferences between counsel, filings from Staff and Rio Concho, and two prehearing conferences, Rio Concho reversed its position and agreed to the extension that was originally discussed. Staff takes the view that Rio Concho's position was unreasonable, and any rate case expenses that were incurred as a result of defending this position are not necessary, reasonable, or in the public interest. Staff included a chart with the following expenses associated with this issue.<sup>210</sup> The ALJs' recommended adjustments, if any, are also found in the table below:

<b>Carlton Law Firm Invoices Relating to Effective Date Issue</b>				
<b>Date</b>	<b>Description Provided</b>	<b>Time Billed</b>	<b>Amount Billed</b>	<b>ALJs adjustments</b>
11/07/16	Work regarding supplemental discovery responses; Teleconference with E. Garcia regarding suspension period.	0.5	\$162.50	No adjustment
11/08/16	Teleconference with E. Garcia regarding rate suspension; draft correspondence to B. Brunson regarding same.	0.6	\$195.00	No adjustment
11/14/16	Receive and review correspondence from K. Brunson regarding PUC rate suspension; draft response; Receive and review reply.	0.4	\$130.00	No adjustment
11/15/16	Work regarding rate suspension issues; Teleconference with S. Mack regarding suspension issues and potential agreement; draft correspondent to K. Brunson and B. Brunson regarding same.	0.7	\$227.50	\$227.50
11/16/16	Teleconference with E. Garcia regarding possible agreed motion regarding suspension of rates and relation back date for rates.	0.4	\$130.00	\$130.00
11/28/16	Review discovery responses; review PUC staff testimony regarding contested issues; Teleconference with E. Garcia.	2.1	\$682.50	\$162.50

<sup>210</sup> Staff's chart, and the one found here, lists all expenses related to the effective date issue in bold.



<b>Carlton Law Firm Invoices Relating to Effective Date Issue</b>				
<b>Date</b>	<b>Description Provided</b>	<b>Time Billed</b>	<b>Amount Billed</b>	<b>ALJs adjustments</b>
11/29/16	Teleconference with E. Garcia's office; Receive and review correspondence from E. Garcia regarding prehearing conference request; draft correspondence to B. Brunson regarding same; work regarding cross examination.	2.5	\$812.50	\$325.00
11/30/16	Receive Staff's Supplement to Request to Postpone Hearing on the Merits; receive SOAH Order No. 10 Notice of Prehearing Conference; calendar date and time. (Amy Leora)	0.3	\$52.50	\$52.50
12/01/16	Prepare for prehearing conference; participate in prehearing conference; Teleconference with K. Brunson and B. Brunson; continue hearing preparation.	2.8	\$910.00	\$162.50
12/02/16	Teleconference with K. Brunson regarding testimony; prepare for cross-examination of witnesses; draft motion to extend effective date; draft correspondence to B. Brunson and K. Brunson regarding same; Teleconference with B. Brunson and R. Manus; Teleconference with G. Scheig; Teleconference with E. Garcia regarding motion and court reporter.	6.5	\$2,112.50	\$325.00
12/05/16	Attend Hearing on the Merits	0.5 <sup>211</sup>	\$162.50 <sup>212</sup>	\$162.50
	<b>TOTAL</b>		<b>\$5,577.50</b>	<b>\$1,547.50</b>

Rio Concho argues that Mr. Carlton's full rate case expenses should be allowed because the utility was simply asserting its rights in the face of unforeseen circumstances. Moreover, Rio Concho argues that all the time spent before November 28, 2016, related to preparation of a draft motion that was filed. Rio Concho estimates that, for entries after that date, only minimal portions of those time entries were related to the effective date concern.

Rio Concho requested a delay in the hearing to account for an unexpected illness and then took the position that the effective date should not be extended. While Staff has a convincing argument that some expenses associated with the delay are unreasonable and should

<sup>211</sup> A prehearing conference was held immediately before the hearing on the merits on December 5, 2016, to discuss the effective date issue. The prehearing conference began at 8:59 a.m. (Tr. at 3). A break was taken from 9:15 a.m. to 9:21 a.m. for Rio Concho to consult with counsel (Tr. at 14), then the discussion regarding the effective date was resumed and concluded. Based on these times indicated in the transcript, Staff estimated half an hour was spent on this issue.

<sup>212</sup> Counsel for Rio Concho's invoices show an hourly rate of \$325.00. Half an hour at that rate is \$162.50.



be disallowed, the ALJs are concerned that Staff's suggested cuts to eliminate Rio Concho's initial evaluation of the issue and any time entries that included work not related to the effective date issue are overbroad. Additionally, the ALJs find that Mr. Carlton's billing for drafting a motion was reasonable. Based on Mr. Carlton's billings, the ALJs believe one-half hour is an appropriate estimated minimum time spent on review or participating in a teleconference. Using a block of one-half hour for each task is more realistic than reducing hours likely billed for hearing preparation. Accordingly, the ALJs would recommend a reduction of \$1,547.50 to rate case expenses for time spent on establishing an effective date.

### **3. ValueScope Invoices**

ValueScope billed Rio Concho \$12,702.50 in professional fees. Fees associated with the market research and report totaled \$7,132.50 but ValueScope adjusted the expense downward due to a fee cap of \$5,000.<sup>213</sup> Rio Concho is seeking \$10,006 in rate case expenses related to ValueScope services.<sup>214</sup>

Staff contends that the expenses incurred in hiring ValueScope are not reasonable, necessary, or in the public interest. Mr. Scheig was not hired in this matter as a rate of return expert, and the scope of his testimony did not include a recommendation on an appropriate rate of return for Rio Concho.<sup>215</sup> Instead, in addition to Mr. Manus' rate of return rebuttal testimony, Mr. Scheig was hired to provide a valuation of Rio Concho, applying both Rio Concho's requested rate of return and Staff witness Mr. Novak's recommended rate of return.<sup>216</sup> According to Staff, Rio Concho may hire experts as it sees fit to support its rate application; however, the associated expenses are only recoverable from its water customers if they are reasonable or necessary. Because the Commission does not use utility valuations in setting rates,

---

<sup>213</sup> Rio Concho Ex. 18 at 31.

<sup>214</sup> See Rio Concho initial brief at 21, Staff initial brief at 23.

<sup>215</sup> Rio Concho Ex. 9 (Scheig rebuttal) at 4 ("Although I have not been asked to develop a recommended rate of return in this proceeding . . .").

<sup>216</sup> See Rio Concho Ex. 8 at 3-6.



the cost of hiring Mr. Scheig and ValueScope to provide that analysis was not reasonable or necessary, and should not be recovered from customers, argues Staff.

Rio Concho disagrees with Staff's recommendation, arguing that Mr. Scheig's fees and expenses were solely related to responding to Mr. Novak's deviation from the application instructions and to Mr. Novak's testimony and working papers, preparing rebuttal testimony, and participating at the hearing. Rio Concho indicated that Mr. Scheig's testimony explained that Mr. Novak's analysis was flawed and Rio Concho's witness identified a risk premium on the rate of return calculations that resulted in a return on equity that tracked the Commission's instructions in its rate filing package.

The ALJs concur with Staff on this issue. The legal standard for return on equity is clear and the rebuttal testimony was unrelated to the legal standard. Rio Concho engaged an expert to provide testimony that has never been used by the Commission to set a rate of return: a determination of the effect that Staff's proposed ROE would have on the value of the utility. Such testimony does not meet the test of reasonableness and is not in the public interest. The ALJs recommend that \$10,006 be disallowed.

#### **4. Rio Concho's Hearing-Related Expenses**

Staff takes issue with several expenses Rio Concho submitted for expenses associated with the hearing.

Post-hearing, Rio Concho submitted \$1,355.74 in expenses for December 4-6, 2016, including expenses for hotel, parking, and restaurant charges.<sup>217</sup> Staff contends that certain receipts show only the total amount of the check and do not provide an itemized list of the food and drinks purchased: Outback Steakhouse for \$49.61, Pappadeaux for \$122.79, Mimi's Café for \$50.68, and Pappasito's for \$92.99. Staff argues that a total bill does not provide Staff

---

<sup>217</sup> Rio Concho Ex. 18 at 1.



adequate information to determine how many meals were purchased, the cost of those meals, or whether any alcohol was purchased. Additionally, Rio Concho submitted a receipt for \$52.00 that has no information about where the charge was incurred (only a handwritten note indicating "Water hearing- Greg, John, Kevin, Randy, Barbie"). The description on each item on the receipt simply reads "DEPT02".<sup>218</sup> Because Staff cannot evaluate the reasonableness of these restaurant expenses, Staff recommends expenses of \$368 be disallowed.

Pursuant to discovery before the hearing, Rio Concho provided Staff with the following expenses:

Rate Case Expenses Provided Before the Hearing				
Expense Description	Page of Staff Ex. 6A	Rio Concho Requested	Staff Adjustments	Staff Recommended
Shipping Receipt/UPS Store	RCA000853	\$28.06	(\$0)	\$28.06
Copies, Stamps/UPS Store	RCA000854	\$191.76	(\$0)	\$191.76
Shipping Receipt/UPS Store	RCA000855	\$80.29	(\$0)	\$80.29
Shipping Receipt/UPS Store	RCA000858	\$30.99	(\$0)	\$30.99
Shipping Receipt/USPS	RCA000859	\$22.95	(\$0)	\$22.95
Shipping Receipt/UPS Store	RCA000862	\$17.66	(\$0)	\$17.66
Shipping Receipt/UPS Store	RCA000863	\$204.19	(\$0)	\$204.19
Shipping and Copies/UPS Store	RCA000864	\$18.39	(\$0)	\$18.39
Fax and Copies/UPS Store	RCA000864	\$39.89	(\$0)	\$39.89
Shipping receipt/UPS Store	RCA000865	\$75.55	(\$0)	\$75.55
Notary, Scan, Email/UPS Store	RCA000867	\$8.79	(\$0)	\$8.79
Checks payable to A and C for record copy of PUC rate case	RCA000868	\$40.00	(\$40.00)	\$0
Illegible receipt	RCA000869	\$19.86	(\$19.86)	\$0
Parking Receipt	RCA000869	\$15.00	(\$0)	\$15.00
Handwritten notation- Check #1094	RCA000869	\$36.00	(\$0)	\$36.00
Chuy's Receipt	RCA000872	\$60.50	(\$60.50)	\$0
Chuy's Receipt	RCA000872	\$10.05	(\$2.49)	\$7.56
Natty Flat Smokehouse	RCA000872	\$28.06	(\$28.06)	\$0
Expedia Hotel Booking	RCA000873	\$287.72	(\$287.72)	\$0
Cefco #74 Fuel Receipt	RCA000874	\$27.62	(\$0)	\$27.62
Cefco #74 Food Receipt	RCA000874	\$13.73	(\$0)	\$13.73
Trudy's Receipt	RCA000874	\$58.34	(\$58.34)	\$0
Carillon Restaurant Receipt	RCA000874	\$64.83	(\$64.83)	\$0

<sup>218</sup> Rio Concho Ex. 18, second to last page.



Rate Case Expenses Provided Before the Hearing				
Expense Description	Page of Staff Ex. 6A	Rio Concho Requested	Staff Adjustments	Staff Recommended
Notary/UPS Store	RCA000876	\$6.00	(\$0)	\$6.00
County Clerk Receipt- CCRs and Bylaws	RCA000877	\$133.16	(\$0)	\$133.16
Scan, Email/UPS Store	RCA000879	\$6.50	(\$0)	\$6.50
Parking Ticket	RCA000882	\$25.00	(\$25.00)	\$0
Toll Bill	RCA000883	\$17.12	(\$0)	\$17.12
Notary/UPS Store	RCA000884	\$6.00	(\$0)	\$6.00
Scan/UPS Store	RCA000884	\$11.86	(\$0)	\$11.86
Toll Bill	RCA000886	\$5.03	(\$0)	\$5.03
<b>TOTAL</b>		<b>\$1,590.90</b>	<b>\$586.80</b>	<b>\$1,004.10</b>

Staff proffered the following argument for the Staff recommended disallowances shown above:

- A handwritten note indicating that “Check 1086” was made out to “A” (a Brunsons’ child) for \$20, and “Check 1087” to “C” (a friend of the Brunsons’ child) for \$20, then below is written “Record Copy of PUC [...] Rate Case.” There is no explanation provided for why Rio Concho wrote two checks to meter readers and requested the amount as rate case expenses. Staff cannot determine whether those expenses were necessary or reasonable.<sup>219</sup>
- The receipt is completely illegible, and all that can be made out is the handwritten amount of \$19.86. Staff cannot determine whether the expense was necessary or reasonable.<sup>220</sup>
- Restaurant receipts show only the total amount of the check and do not provide an itemized list of the food and drinks purchased: Chuy’s for \$60.50, Natty Flat Smokehouse for \$28.06, Trudy’s for \$58.34, and the Carillon Restaurant for \$64.83. The total amount of the check does not provide Staff adequate information to determine how many meals were purchased, the cost of those meals, and whether any alcohol was purchased. Additionally, Ms. Brunson testified that A and C were present at the meals at Chuy’s and Natty Flat Smokehouse.<sup>221</sup> When asked why A and C traveled to Austin, Ms. Brunson testified that it was because they were associated with the utility through their role

<sup>219</sup> Staff Ex. 6A (RFI response) at 868.

<sup>220</sup> Staff Ex. 6A (RFI response) at 869.

<sup>221</sup> Tr. at 85-87.



as meter readers and wanted to “be a part of it”.<sup>222</sup> Staff notes these young adults are not necessary parties and the cost of their meals as observers is not a reasonable or necessary rate case expense. Without detailed receipts, it is not possible to exclude only the food and drink ordered by A and C, except for the receipt for “Queso” and “Beverage,” where Ms. Brunson testified the “Beverage” was C’s Dr. Pepper.<sup>223</sup>

- The requested hotel charge of \$287.72<sup>224</sup> is supported only by an Expedia booking confirmation page, not an actual receipt from the hotel. Staff contends that a booking confirmation does not give the name or the location of the hotel and does not prove that the reservation was actually used, and not later cancelled or modified. During the hearing on the merits, Ms. Brunson testified that she stayed at this hotel while in Austin for a settlement conference in this matter.<sup>225</sup> However, she was unable to recall the name of the hotel.<sup>226</sup> Without a receipt showing the bare minimum hotel information, such as the name and location, Staff is unable to confirm that this expense was even incurred. Staff suggests that Rio Concho had the opportunity to clarify this information on rebuttal and did not do so.
- The cost of a \$25 parking ticket.<sup>227</sup> Ms. Brunson testified the parking fine was an appropriate rate case expense because she received the ticket while parked and attending a settlement conference related to this case.<sup>228</sup> Staff contends that a fine incurred for a violation of the law is not a reasonable or necessary rate case expense.

Staff’s argument that the above expenses cannot be determined to be reasonable is persuasive. Illegible receipts, receipts for which the purchased item(s) cannot be determined, receipts that include meals for any person other than a testifying witness or Ms. Brunson, and a parking ticket do not constitute reasonable rate case expenses. The ALJs recommend that Staff’s disallowances of \$955 be adopted.<sup>229</sup>

---

<sup>222</sup> Tr. at 84.

<sup>223</sup> Tr. at 87.

<sup>224</sup> Staff Ex. 6A (RFI response) at 873.

<sup>225</sup> Tr. at 85.

<sup>226</sup> Tr. at 85.

<sup>227</sup> Staff Ex. 6A at 882.

<sup>228</sup> Tr. at 84-85

<sup>229</sup> \$368 + \$587 = \$955.



**B. Surcharge**

Staff witness Ms. Loockerman testified that if Rio Concho is eligible to recover rate case expenses, those reasonable and necessary expenses should be recovered from the customers through a per-connection surcharge over two years.<sup>230</sup> Staff now argues that a longer time period is necessary because of the substantial increase in rate case expenses from those incurred in September 2016 when Staff filed testimony. Staff included a table in its brief illustrating the monthly surcharge that would be imposed on each Rio Concho customer over two years, three years, and five years in order to collect rate case expenses both at Rio Concho's requested amount and Staff's recommended amount:

Monthly Surcharge Amount to Collect Rate Case Expenses					
	Total Rate Case Expense	Connection Count	Surcharge for 24 months	Surcharge for 36 months	Surcharge for 60 months
<b>Rio Concho's Requested</b>	\$108,155.53	243	\$18.55	\$12.36	\$7.42
<b>Staff's Recommended</b>	\$87,627.49	243	\$15.02	\$10.02	\$6.01

Because imposing the surcharge over two years to collect Rio Concho's requested rate case expenses would result in an additional \$18.55 being added to each customer's monthly bill, and to recover Staff's recommended expenses would be an addition \$15.02 per month, Staff is concerned that this amount, and even the surcharge amount if collected over three years, would place an undue burden on Rio Concho's customers. Therefore, Staff recommends—if Rio Concho is able to recover its reasonable and necessary rate case expenses—that it be accomplished through a five-year surcharge to ensure that the recovery is not unduly burdensome on the ratepayers.

---

<sup>230</sup> Staff Ex. 3A at 21.



Rio Concho argues that its rate case expenses are reasonable because the Commission's rate change process is onerous and requires huge investments of time and expenses. Thus, if Rio Concho's application is adopted, a monthly surcharge of \$18.50 per customer for two years is appropriate. Rio Concho contends that it should not be penalized by amortizing the recovery of rate case expenses over a five-year period, suggesting that a five-year period will effectively force Rio Concho to self-finance the rate case. The utility points out that two years is the standard period for amortization of rate case expenses and two years is long enough.

The ALJs again concur with Staff that, if rate case expenses are allowed, the surcharge be extended over greater time period than two years. A large amount of rate case expenses spread to only 240 water customers should be ameliorated. If the 51% threshold is met, the ALJs recommend amortizing rate case expenses over a five-year period.

### **C. Rate Case Expenses Summary**

If Rio Concho ultimately proves a revenue requirement that meets the 51% threshold for recovery of rate case expenses, the ALJs found that the following rate case expenses were unreasonable and/or unnecessary and should be disallowed: (1) \$3,990 (Mr. Manus' invoices); (2) \$1,548 (Carlton Firm invoices related to effective date issue); (3) \$10,006 (ValueScope); and (4) \$955 (miscellaneous unproven hearing-related expenses): \$16,499. These disallowances result in a total of \$91,657 reasonable rate case expenses. If rate case expenses are recovered, they should be recovered over a five-year period.

## **VIII. CONCLUSION**

Ratepayer Mr. Grace noted in his testimony that Rio Concho is a monopoly: it can raise rates because there is no competition for water service at the Airfield. He stated that the "only impediment to raising rates is the PUC. . . . If Rio Concho were to continue to raise the price of



aviation fuel, pilots would go elsewhere for their fuel. Pilots have a choice. . . . [Ratepayers] don't have that same option with our airport water."<sup>231</sup>

The Commission is tasked with regulating a public utility's rates because there is no competition. In setting Rio Concho's rates, the Commission must fix Rio Concho's overall revenues at a level that will allow Rio Concho a reasonable opportunity to earn a reasonable return on its invested capital and preserve the financial integrity of the utility.<sup>232</sup> But the utility bears the burden of proving that its invested capital is used and useful in rendering service and that its expenses are reasonable and necessary. In this case, there were instances where the utility did not meet its burden of proof by either failing to respond to evidence or proffering insufficient information. The utility also submitted expenses or placed items in utility plant that were not reasonable or necessary for providing service. The ALJs request that the Commission adopt the findings of fact and conclusions of law set out below based on the Proposal for Decision.

## IX. FINDINGS OF FACT

### **General and Procedural Findings**

1. Rio Concho Aviation, Inc. (Rio Concho) is a Class C water utility that provides water service to 243 connections at Hicks Airfield Fixed Based Operations (Airfield) in Fort Worth, Tarrant County, Texas.
2. Rio Concho has two owners and shareholders, Keven and Barbie Brunson.
3. Rio Concho holds Water Certificate of Convenience and Necessity No. 12835.
4. On March 22, 2016, Rio Concho filed a Class B rate/tariff change application with the Public Utility Commission of Texas (Commission).
5. The application uses a test year of January 1, 2015, through December 31, 2015.

---

<sup>231</sup> Ratepayers Ex. 20 (Grace direct) at 6-7.

<sup>232</sup> Code § 13.001.



6. Rio Concho mailed notice of the proposed rate change to all of its customers on or about March 19, 2016.
7. Between March 28 and April 13, 2016, over 40 Rio Concho customers filed protests of the proposed rate change.
8. The application was found to be administratively complete on April 25, 2016.
9. On April 25, 2016, the Commission referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing.
10. On May 23, 2016, the Commission issued its Preliminary Order identifying 39 issues to be addressed in this proceeding.
11. On June 17, 2016, Administrative Law Judge (ALJ) Lilo D. Pomerleau convened a prehearing conference in Austin, Texas. The following appeared and were admitted as the parties in this case: Rio Concho; Stephen Grace, Jeff Sheets, Roy R. Geer, and Mike Olson (Ratepayers); and Commission Staff.
12. The hearing on the merits convened on December 5, 2016, and concluded the next day.
13. Rio Concho requested an extension of its effective date to August 23, 2016, which extends the 265-day extension period to May 16, 2017, and a request to relate back rates to April 26, 2016. The parties subsequently agreed to a modification of the relate-back date of January 16, 2017. On January 16, 2017, Rio Concho's current rates become interim rates subject to refund or surcharge.
14. On December 19, 2016, the ALJs granted Rio Concho's request for an extension of its effective date and a relate-back date of January 16, 2017, and established a jurisdictional deadline of May 16, 2017.
15. The parties filed initial briefs on January 11, 2017, and reply briefs on January 25, 2017, which is when the record closed.



**Revenue Requirement**

16. The following expenses are reasonable and necessary to provide service to the ratepayers:

Category	Amount
Power expense	\$3,048
Other volume related expense	\$1,620
<b>Total volume related expense</b>	<b>\$4,668</b>
Employee labor	\$41,568
Materials	\$3,515
Contract work	\$11,720
Transportation expense	\$1,907
Employee pensions and benefits	\$0
Office rentals	\$0
Office supplies and expenses	\$7,417
Professional services	\$1,512
Insurance	\$2,446
Regulatory expense	\$595
Miscellaneous expense	\$3,747
<b>Total non-volume related expenses</b>	<b>\$74,427</b>
<b>Total operating expenses</b>	<b>\$79,095</b>

17. Rio Concho's requested expenses of \$3,048 in power expense production and other volume related expenses of \$1,620 are reasonable and necessary and should be included in rates.
18. Rio Concho's requested expenses for Ms. Brunson's salary of \$41,568 is reasonable and necessary and should be included in rates.
19. Rio Concho's requested expense of \$3,515 in materials is reasonable and necessary and should be included in rates.
20. Rio Concho's requested expenses of \$28,456 for contract labor should be adjusted by \$16,737 to reflect unreasonably high compensation to Mr. Brunson, double charges for meter reading costs, unproven expenses charged by Randal Manus, and expenses that lacked documentation or explanation.
21. Rio Concho's requested transportation expenses included commuting costs, which are unreasonable and unnecessary. Transportation expenses based on reasonable mileage of \$1,907 are reasonable and necessary and should be included in rates.



22. Rio Concho's requested employee benefit expenses of \$14,788 are unreasonable and unnecessary for the provision of water service for a utility with approximately 240 connections and for an owner-operated utility.
23. Rio Concho's requested expenses of \$7,462 for office supplies and expenses should be reduced by \$45 because expenses for August 2015 school supplies and food supplies are not reasonable or necessary.
24. Rio Concho's requested professional services expense of \$1,675, should be adjusted to \$1,512, as agreed to by Rio Concho, to account for shared costs of tax return preparation with other businesses owned by the Brunsons.
25. Rio Concho's requested reasonable and necessary insurance expenses of \$2,526 should be reduced to account for the actual cost of the liability premium.
26. Rio Concho's requested regulatory expense of \$595 is reasonable and necessary.
27. Rio Concho's requested miscellaneous expenses of \$7,031 should be reduced by \$3,284 because a clothing allowance, retail membership costs, travel expenses (which include meals for personnel other than Ms. Brunson, valet parking, and room service), and cell phone expense for two cell phones without documentation, and an expense related to a vehicle entertainment system were not proven to be reasonable and necessary expenses.

**Affiliated Transactions**

28. Rio Concho requested recovery of \$6,000 for office rentals for leasing at a cost of \$500 per month from Barbie Land Development, an affiliate of Rio Concho, an office within a hangar located at the Airfield.
29. Rio Concho's \$500 per month rental payment for its office space is an affiliated transaction, for which Rio Concho failed to prove that the price paid by Rio Concho is no higher than prices charged by others in the area to unaffiliated persons or corporations.

**Depreciation Expense**

30. The golf cart and 1995 Ford dually truck are used and useful to Rio Concho for the provision of water service.
31. The Audi Q5 SUV is a personal vehicle and not reasonable or necessary for the provision of water service.
32. Paving costs of \$6,000 are not necessary for the provision of water service.
33. A television, wall mount, antenna, video player, DVD, office chairs, lamp, and sideboard are not reasonable or necessary for the provision of water service and should be excluded.



**Taxes Other than Federal Income Taxes**

34. Rio Concho's reasonable and necessary annual property and other non-income taxes total \$4,693.

**Federal Income Taxes**

35. Rio Concho's reasonable and necessary annual federal income taxes total \$723.

**Other Revenues**

36. Rio Concho's annual other revenues total \$2,336.

**Rate Base**

37. Rio Concho's invested capital or rate base is:

Item	Amount
Plant in service—original cost	\$178,117
Accumulated depreciation	(\$115,762)
<b>Net book value</b>	<b>\$62,355</b>
Working cash allowance	\$9,887
<b>Total rate base (total invested capital)</b>	<b>\$72,242</b>

**Rate of Return**

38. A reasonable return on equity for Rio Concho, based on a discounted cash flow analysis and consistent with Rio Concho's business and regulatory risk, is 8.48%.
39. Rio Concho has no debt. It is reasonable to assign a return on debt of 5.03%, based on the average rate for Baa utility bonds for every month of the 2015 test year.
40. It is reasonable to assign Rio Concho a capital structure of 50% debt and 50% equity, which is similar to the structure reported by the Value Line Investment Survey water proxy group.
41. Rio Concho's overall rate of return should be set as follows:

Component	Cost	Weighting	Weighted Cost
Debt	5.03%	50%	2.52%
Equity	8.48%	50%	4.24%
Overall			6.76%



**Rate Design**

42. The following rate structure will recover Rio Concho's revenue requirement.

**Monthly Minimum Charge by Meter Size**

Size in inches	Charge
5/8	\$23.13

**Charges Per 1,000 Gallons**

Size in inches	Charge
5/8 x 3/4	\$5.28

**Rate Case Expenses**

43. Through December 6, 2016, Rio Concho incurred rate case expenses in the amount of \$107,569 as follows:

Person/Firm	Amount
Randal Manus	\$6,287
ValueScope, Inc.	\$10,006
The Carlton Law Firm	\$88,917
Barbie Brunson	\$1,356
Expenses	\$1,004
<b>Total</b>	<b>\$107,569</b>

44. Rate case expenses in this case are not a normal, recurring expense of Rio Concho's operations.
45. Because Rio Concho did not prove an increase in revenues is necessary, it is not entitled to reimbursement of rate case expenses.

**X. CONCLUSIONS OF LAW**

1. Rio Concho is a retail public utility as defined in Texas Water Code § 13.002(19) and a utility as defined by Texas Water Code § 13.002(23).
2. The Commission has jurisdiction over Rio Concho's application for a rate increase pursuant to Texas Water Code §§ 13.041, 13.043(b), 13.181-.185, 13.181, 13.1871, and 13.1872 and 16 Texas Administrative Code chapter 24, subchapter B.
3. All required notices of the application and the contested case hearing were given as required by law. Tex. Water Code § 13.187; Tex. Gov't Code §§ 2001.051, .052.



4. The ALJs conducted a contested case hearing and proposed a decision on the application under the authority of chapter 2003 of the Texas Government Code and chapter 13 of the Texas Water Code.
5. Rio Concho bears the burden of proof that its proposed rates are just and reasonable. Tex. Water Code § 13.184(c).
6. In compliance with Texas Water Code § 13.183, and based on the findings of fact and conclusions of law, Rio Concho's overall revenues approved in this case permit Rio Concho a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public over and above its reasonable and necessary operating expenses.
7. Based on the findings of fact and conclusions of law, a rate of return of 6.76% will permit Rio Concho a reasonable opportunity to earn a reasonable return on its invested capital. Tex. Water Code § 13.184.
8. Consistent with Texas Water Code § 13.185, the rates approved in this case are based on original cost, less depreciation, of property used and useful to Rio Concho's provision of service.
9. Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense may not be allowed either as capital cost or as expense except to the extent that the regulatory authority finds that payment to be reasonable and necessary. A finding of reasonableness and necessity must include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations. Tex. Water Code § 13.185(e).
10. The rates approved in this case are just and reasonable, comply with the ratemaking provisions in Texas Water Code chapter 13, and are not unreasonably discriminatory, preferential, or prejudicial.
11. Rio Concho may not recover any rate case expenses because, after a contested case hearing, the evidence does not support an increase in Rio Concho's annual revenues. 16 Tex. Admin. Code § 24.33.

## **XI. ORDERING PARAGRAPHS**

1. Rio Concho's application for a rate increase is denied.

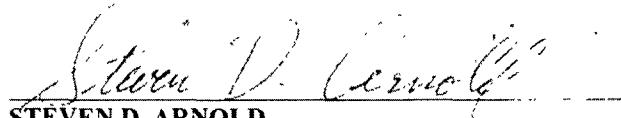


2. The Commission is setting just and reasonable rates consistent with the findings of fact and conclusions of law.
3. Within 10 days of the issuance of this Order, Rio Concho shall file with the Commission's Docket Clerk a copy of its tariff with the approved rates.
4. Rio Concho shall refund the amount by which the current rates exceeded rates approved by this Order for the time period between January 16, 2017, and the date the rates approved in this Order become effective. The refund shall be made over the same time period in which the rates have been charged. Refunds related to Rio Concho's application in this docket shall be implemented in Docket No. \_\_\_\_\_, *Compliance Docket Related to Refunds in Docket No. 45720*.
5. All other motions, requests of entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

**SIGNED March 23, 2017.**



\_\_\_\_\_  
**LILO D. POMERLEAU**  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



\_\_\_\_\_  
**STEVEN D. ARNOLD**  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS