



Control Number: 45720



Item Number: 160

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P.U.C. Docket No. 45720

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SOAH DOCKET No. 473-16-3831.WS

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

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**RATEPAYERS RESPONSE TO RIO CONCHO MOTION TO WITHDRAW APPLICATION
SUBMITTED BY
STEVE GRACE & JEFF SHEETS**

**ON BEHALF OF RATEPAYERS OF
RIO CONCHO AVIATION, INC**

BACKGROUND

On April 13, 2017, Rio Concho Aviation, Inc (RCA) filed a motion with the Commission to withdraw their water rate increase application pursuant to Section 22.181(g)(3). Rio Concho's water customers were first notified of the intended water rate increase in March 2016, thirteen months ago, and the Commission has already scheduled an Open Meeting on the merits of the rate application on May 4, 2017.

RATEPAYERS RESPONSE TO MOTION TO WITHDRAW

The Ratepayers will address each of the nine bullet points listed in Rio Concho Aviation's (RCA's) motion to withdraw by quoting RCA's points followed by our response. Our conclusion will follow.

RCA's bullet point #1: "The Commission Staff's recommendations and the Proposal for Decision issued by the Administrative Law Judges will effectively run our water utility out of business."

Ratepayers response: The Commission Staff's recommendations will NOT run the water utility out of business as this topic was discussed with the Staff's experts during the Dec 5-6 PUC hearing. Specifically,

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the Ratepayers asked PUC Staff member Debi Loockerman whether the figures generated by the PUC Staff would ensure the financial integrity of the Rio Concho utility. Ms Loockerman assured the court that the Staff's job was to ensure the financial integrity of the Rio Concho water utility just as they do with all utilities.¹

The Ratepayers cannot address whether the ALJ's recommendations would ensure the financial integrity of the utility as we have never had the opportunity to address that question to the ALJ's, nor did we expect to have that opportunity. That question is best left to the Commission.

The Ratepayers would point out that in the ALJ's Proposal for Decision, the ALJ's used the terminology "failed to prove", "were not proven", "are not persuaded that Rio Concho's evidence is sufficient", and "did not prove" in five separate instances in discussing Rio Concho's application.²

RCA's bullet point #2: "It is my opinion that past indications show that most small water utilities faced with this situation, usually end up selling to large publicly traded water corporations that are located usually out of state."

Ratepayers response: Opinion is just that...opinion. The Ratepayers fail to understand how this statement has anything to do with this rate case or RCA's motion to withdraw their rate increase application.

RCA's bullet point #3: "The Proposal for Decision issued by the Administrative Law Judges will decrease RCA's current monthly water income over \$1600, or nearly \$20,000 per year. The previous settlement with PUC attorney Jessica Morgan, staff and Steve Grace already lowered RCA's monthly income by \$1000. We were instructed to come back and file again in January 2016."

Ratepayers response: In the prior rate case referenced above, Mr Grace agreed to a rate proposal compromise but that proposal was modified by the PUC Staff which lowered the agreed-to rate even further. However, two points need to be made: 1) the settled rates were an increase to then current water rates, meaning Rio Concho enjoyed an increased revenue stream, and 2) at no time did the PUC Staff or Ratepayers have an opportunity to review Rio Concho's income, expenses, or books. As a result, neither the PUC Staff nor Ratepayers had any knowledge of appropriate vs inappropriate expenses or double expenses that Rio Concho expensed. It was only through the current rate increase that PUC Staff and Ratepayers gained this knowledge.

RCA's bullet point #4: "RCA already has had to pull the well pump and motor this week at an original cost of \$4304, that it does not have, but to due unforeseen deterioration of the galvanized pipe of thirty years, all eighteen and a half sticks of pipe had to be replaced also. This

¹ Direct Testimony of Debi Loockerman, Dec 5-6 hearing; PUC Staff's Reply Brief, p 6

² ALJ's Proposal for Decision p 14, p 30, p 35, p 78, p 80,

will be an additional cost to the water utility from the previous quote that we have not yet received, plus an additional day of labor involved to replace it.”

Ratepayers response: The Ratepayers are aware that a pump and numerous lengths of galvanized pipe were replaced on 10-11 April 2017. Since the test year for this rate case was 2015, we are left wondering how this 2017 expense is relevant to the current rate case.

The Ratepayers note that Rio Concho's Depreciation schedule³ in their original 2016 application shows a well pump (Greater than 5 hp) installed in 1985 with a 10 year service life, but still in use after 31 years. The Ratepayers would argue that Rio Concho has known for 21 years that this well pump could fail at any time as it was past its service life. Rio Concho has already accounted for its replacement via their depreciation schedule.

Further, in Rio Concho's prior Rate Application⁴ request of 2014, using 2013 as their test year, Rio Concho wrote the following in the Remarks Section 4 of Expenses: “We will need to pull well pump this summer 2014 and replace estimated cost between \$8000-10,000.” The pump wasn't replaced in 2014 as Rio Concho claimed needed to be accomplished in their preceding rate application. How many times does Rio Concho intend to use pump replacement as a means to gain a rate increase, when it wasn't accomplished in 2014?

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RCA's bullet point #5: “The recommendation in the Proposal for Decision to exclude the cell phone use to conduct RCA business is ridiculous. The method of communication and the phone numbers given are cellular and no other land line charges were requested. Only one cell phone was included in the rate case application, Barbie's, although both Kevin and Barbie's cell phone numbers are posted at the well and at the well house operations. The water office does not have a land line nor does the corporate office at West Hill Drive.”

Ratepayers response: To avoid being repetitious, we encourage the Commission to re-read the Ratepayers Response to Rio Concho Exceptions to PFD⁵. Due to Rio Concho's poor accounting, the Ratepayers and the ALJ's were forced to conclude that all cell phone charges were being expensed to the water company, even though Rio Concho operates two other companies at the airport. Bills supplied by Rio Concho were incomplete, but do show two phone numbers billed in Mar and Apr of the test year. We also note the exorbitant monthly charge for the cell phone and conclude the entire year, not just Mar and Apr, included two cell phones. Considering that AT&T's Unlimited Choice cell phone plan includes unlimited minutes and unlimited messages for one cell phone at a cost of \$65/mo, the Ratepayers are baffled by this large Rio Concho expense.

RCA's bullet point #6: “RCA acquired and remodeled office space in 2014 and spent approximately \$14,000 to adhere to the PUC rule which cannot be recaptured or capitalized

³ Application of Rio Concho Aviation, Inc for a Rate/Tariff Change p 32

⁴ Application of Rio Concho Aviation, Inc for a Rate/Tariff Change p 30 (PUC Docket 43728-2)

⁵ Ratepayers Response to Rio Concho Exceptions to PFD, p 8-9

because RCA does not own the property. The property owner would have rather not given up hangar space especially if they knew the water utility would not be able to utilize this. I do not understand why the PUC can require an office and not allow it as an expense. If RCA is forced to sell the utility to a large water corporation, I believe it will be no different than the Texas Toll road fiasco, whereby private land was taken by eminent domain and turned over to for-profit foreign entities for private toll roads. I believe that situation is no different than the water industry...the result is, in fact, giving away Texas water and the ability for Texans to control their own assets.”

Ratepayers response: Rio Concho testified that their corporate office has been in their home for 20 years. They also testified that their former airport office was closed in 2010 and not re-opened (inside their hangar) until 2014.⁶ Rio Concho refuses to apply for a waiver for Statute 24.81 Subchapter E (d) Local Office. Had they requested and been granted this waiver, they would not have been required to have a local office to which they now claim it cost them \$14,000 to build. And while its true, that Rio Concho does not own the hangar property in which the office is located, they neglect to point out to the Commission that the owners of Rio Concho water company also own the property, own the leasing company, and own the hangar which contains the water office. All of it is owned by the Brunsons.

Rio Concho is leasing a 210 sq ft office plus space for a golf cart and a work bench for a grand total of approximately 282 sq ft. Rio Concho then inflated the leased space to 900 sq ft total to justify its \$500 monthly rent in comparison to rental spaces in the surrounding community on a cost per sq ft basis.⁷ The ALJ’s “were not persuaded that Rio Concho’s evidence was sufficient to meet the higher degree of scrutiny required by the statute.”⁸

Bottom line: Nothing required Rio Concho to build an airport office. Rio Concho could have applied for a waiver to the local office requirement, merely costing them a postage stamp.

Rio Concho’s reference to the Texas Toll Roads has no relevance since the PUC Commission has no jurisdiction over the Texas Toll Roads.

RCA’s bullet point #7: “The Commission Staff’s recommendations and the Proposal for Decision issued by the Administrative Law Judges will jeopardize RCA’s ability to provide safe quality drinking water to our customers for lack of funds. The ALJ’s proposal would prohibit RCA from conducting adequate water utility operations and service to our customers.”

Ratepayers Response: As pointed out earlier in this reply in the Ratepayers response to Bullet point #1, the Staff does consider the financial integrity of the utility when they propose rates as they did in the Staff’s Initial Brief and Reply brief.

⁶ Prefiled Direct Testimony & Exhibits of Barbie Brunson p 22

⁷ Ratepayers Initial Brief p 10-11

⁸ Proposal for Decision p 35-36

What Rio Concho fails to comprehend, is that they cannot continue to expense items that no other Class C utilities expense. It's simply not justified. In addition, the Staff, along with the Ratepayers, disallowed numerous other expenses including depreciation expenses. Once those items were removed, Rio Concho does have the ability to be profitable, as determined by the PUC Staff under the Staff's financial integrity criteria.

RCA's bullet point #8: "As a citizen of Texas having intimate knowledge of the workings of a small water system, it appears the Commission rules do not address the small water utility operations. Ultimately in the short term, as long as the small water utility is able to subsidize the cost of the system, this appears to be the only way they will remain in business. I say this because an extraordinary expense requires a rate case to recoup the loss and we have learned how that works. Without the Commission addressing the unique needs of the small water utility, small systems will ultimately be inadequately operated, put into receivership and/or sold to large water corporations. I don't see how this benefits small business in Texas, nor prove to be beneficial to our water customers who will ultimately end up paying a much higher water bill from the larger corporate water utility if sold. It appears the Commission rules are designed to benefit large water utilities."

Ratepayers response: The Commission does address smaller utilities as they have procedures for Class B and Class C utilities. In addition, the PUC Staff reviews every Class C rate case application as testified by the Staff.⁹ For Class C utilities, including Rio Concho, the Commission provides an apparent 3 page Class C rate increase application which requires minimal information from the utility. The hiring of an expensive attorney certainly is not required. It appears to the Ratepayers that the Commission does address the small water utilities adequately.

If Rio Concho is subsidizing the cost of their system, that is simply more proof that Rio Concho's expenses do not match other Class C water utilities and that Rio Concho is not competitive. If Rio Concho were to implement the Staff's recommendations, it would almost guarantee Rio Concho's financial integrity. The Ratepayers would like to think that the ALJ's PFD includes that same criteria, but we do not have that information.

Rio Concho alleges that their water customers will pay much higher water bills if the utility is sold to a larger corporate water utility and they've previously compared themselves to Aqua America. The Ratepayers have twice provided the mathematical calculations to compare Rio Concho's requested rates vs Aqua America. The average Rio Concho customer using 1600 gallons of water would have a LOWER water bill at Aqua America than Rio Concho.¹⁰ Put another way, if Rio Concho is granted their requested water rates, their water customers will be paying a higher water bill as Rio Concho's water rates would exceed Aqua America's rates for the average Rio Concho customer. Rio Concho's statement is false.

⁹ Testimony of Debi Loockerman Dec 5-6 hearing

¹⁰ Ratepayers Reply Brief p 17-18 ; Ratepayers Response to Exceptions to PFD p 14

The Ratepayers have modified their previously supplied table¹¹ to include Aqua America water rates for various water usage and is shown below.

	Rio Concho requested rates revised		Aqua America current rates in vicinity		PUC Staff recommended rates		ALJ's recommended rates	
Hypothetical User of	Base Rate	39.75	Base Rate	45.06	Base Rate	33.69	Base Rate	23.13
	Gallonage	7.05	Gallonage	2.85	Gallonage	3.20	Gallonage	5.28
500 Gal		\$43.28		\$46.49		\$35.29		\$25.77
1,000 Gal		\$46.80		\$47.91		\$36.89		\$28.41
1620 Gal	avg user	\$51.17		\$49.62		\$38.87		\$31.68
2,000 Gal		\$53.85		\$50.76		\$40.09		\$33.69
3,000 Gal		\$60.90		\$53.61		\$43.29		\$38.97
5,000 Gal		\$75.00		\$59.31		\$49.69		\$49.53
10,000 Gal		\$110.25		\$73.56		\$65.69		\$75.93

Finally, the Ratepayers created the follow table to also estimate the annual water revenue produced by the four entities above, based on proposed or current rates if implemented at Hicks airport. This is a basic table with average water customers and gallons of water sold taken from Rio Concho's Rate Application.¹² We certainly acknowledge the ALJ's and Staff's much more detailed analysis, but we wanted to provide a side-by-side basic snapshot for the Commission.

	Rio Concho current rates		Rio Concho requested rates revised		Aqua America current rates in vicinity		PUC Staff recommended rates		ALJ's recommended rates	
Test Year	Base Rate	31.00	Base Rate	39.75	Base Rate	45.06	Base Rate	33.69	Base Rate	23.13
2015	Gallonage	5.50	Gallonage	7.05	Gallonage	2.85	Gallonage	3.20	Gallonage	5.28
243	90,396		115,911		131,395		98,240		67,447	
4662.4	25,643		32,870		13,288		14,920		24,617	
	116,039		148,781		144,683		113,160		92,065	
	Annual Revenue from Water →									

243 is the Average number of Water Customers in test year 2015.

4662.4 is the Annual number of water gallons billed x 1000 in test year 2015

¹¹ Ratepayers Response to Exceptions to PFD, p 13

¹² Application of Rio Concho Aviation for a Rate/Tariff Change p 8 & 11

The Ratepayers conclude that Rio Concho's requested rates would provide MORE revenue than Aqua America's projected revenue, even though Aqua America's base rate is higher than Rio Concho. This is as result of Aqua America's much lower gallonage charge.

RCA's bullet point #9: "We request approval to withdraw our application to save our business and prevent further financial loss."

Ratepayers response:

- 1) If Rio Concho maintains current rates of \$31/base rate and 5.50/1000 gallons of water, their annual revenue would exceed both the ALJ's and the Staff's recommended rates as calculated above.
- 2) Subtracting the estimated revenue as calculated in our examples, the Staff's revenue is \$2809 lower than Rio Concho's estimated revenue and the ALJ's revenue is \$23,974 lower than Rio Concho's estimated revenue. (Again, we're using basic water revenue calculations for comparison purposes and not including other revenue sources.) That revenue, whether \$2809 or \$23,974, is water customer money, that if the withdrawal is granted, would be retained by Rio Concho for excess expenses as delineated by the Staff and ALJ's documents. Over the next three years, that revenue difference could range from \$8,427 to \$71,922 or more.
- 3) The Staff and the ALJ's have reduced Rio Concho's requested rates due to Rio Concho exceeding the normally accepted expenses in comparison to other Class C utilities; commuting mileage expensed in violation of IRS regulations, affiliated transactions, mileage expenses in excess of those necessary, along with a host of other reasons, best explained in the ALJ's & Staff's summaries.
- 4) The Ratepayers feel it would be wrong to allow Rio Concho to withdraw their application since the Ratepayers, Staff, and ALJ's clearly have shown that Rio Concho's claimed expenses exceed the norm. By attempting to withdraw their application, Rio Concho would be allowed to maintain its higher expenses and revenue until its next rate application, whenever that occurs.
- 5) The Ratepayers speculate that if we owned the water system, and in a similar situation as Rio Concho, if the application withdrawal was granted, we would immediately apply for the Class C rate increase during the next 3 years. This would allow a 1.57% increase each year for three years without having to prove any expenses to the PUC Staff. That would allow one additional Class C rate increase before having to endure the entire rate application microscope. That would allow us to maintain the unjustified higher water rates, increase our revenue by 1.57% each year for three years, and continue to pay for improper water company expenses. We can also speculate that if this motion is granted, Rio Concho would attempt to include its legal bills in 2016 or 2017 operating expenses in an effort to have the water customers pay for their attorney as threatened by Kevin Brunson.¹³ This would be an unjust burden on the water customers.

¹³ Prefiled testimony of Jeffrey Sheets p 16; Prefiled Testimony of Stephen Grace p 3; Ratepayers Initial Brief, p 17; Ratepayers Reply Brief p 17

- 6) While the Ratepayers cannot estimate the number of hours that the Staff worked on this rate application nor the ALJ's efforts, we can conclude that the hours spent were not insignificant and thus not an inexpensive undertaking.
- 7) The Ratepayers can estimate the number of hours they spent reading, researching, documenting and writing their responses. It was easily into the hundreds of hours. Although our expense wasn't \$108,000 in legal fees as borne by Rio Concho, we did incur significant costs in paper, toner, copying charges, and FedEx charges to ship our documents to Austin. We also had gas, hotel, and food expenses for our trips to Austin.
- 8) If the Ratepayers were allowed to speculate, we believe the ALJ's sent a clear message to Rio Concho: Rio Concho's accounting and documentation are sub-standard; Rio Concho did not prove their expenses; and Rio Concho's claimed expenses were in excess of other Class C utilities. Rio Concho has yet to grasp that message.
- 9) The Ratepayers estimate thousands of reasons why Rio Concho's motion should be denied.
 - a) A thousand man-hours of research and work involved in this case to date.
 - b) Thousands of dollars in potentially reduced water rates for the water customers.
 - c) One hundred thousand dollars plus in legal fees to their attorney which Rio Concho still hopes to pass along to the water customers.
 - d) Don't all these thousands of reasons outweigh Rio Concho's meager 9 bullet points?

Ratepayers Conclusion:

The Ratepayers have no desire for Rio Concho to become insolvent. Nor do we desire the water company to be sold. Neither prospect is of benefit to Rio Concho nor its water customers. Our desire is to simply have Rio Concho's expenses align with other Class C water companies in Texas. We simply want fairness for all parties involved.

For all of the above reasons, if the Commission grants Rio Concho's motion to withdraw their application, it would be huge Christmas gift to Rio Concho at the expense of the efforts and interests of the Ratepayers, PUC Staff, and ALJ's. The Ratepayers strongly encourage the Commission to deny Rio Concho's motion.