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APPLICATION OF RIO CONCHO
AVIATION, INC. FOR A
RATE/TARIFF CHANGE §
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BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

**COMMISSION STAFF'S RESPONSE TO RIO CONCHO AVIATION, INC.'S MOTION
TO WITHDRAW APPLICATION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Commission Staff's Response to Rio Concho Aviation, Inc.'s Motion to Withdraw Application. In support thereof, Staff shows the following:

I. BACKGROUND

On April 13, 2017, Rio Concho Aviation, Inc. (Rio Concho) filed a Motion to Withdraw Application (Motion).¹ Pursuant to 16 Tex. Admin. Code § 22.78(a) (TAC), responses or replies to any motion or other pleading shall be filed within five working days after the date on which the motion or other pleading was received by the responding party. Staff received Rio Concho's Motion on April 13, 2017; therefore, this response is timely filed by April 20, 2017.

II. STAFF'S RESPONSE TO MOTION TO WITHDRAW

Staff opposes Rio Concho's Motion, and recommends that good cause does not exist to support withdrawal of Rio Concho's application for a rate increase. Pursuant to 16 TAC § 22.181, a party that initiated a proceeding may withdraw its application without prejudice at any time before that party has presented its direct case.² However, once a Proposal for Decision (PFD) has been issued, a request to withdraw an application may be granted only upon a finding of good cause by the Commission.³

¹ Rio Concho Aviation, Inc.'s Motion to Withdraw Application (Apr. 13, 2017).

² 16 TAC § 22.181(g)(1).

³ 16 TAC § 22.181(g)(3).

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Rio Concho's current rates were set pursuant to an agreement between Rio Concho, Staff, and Steve Grace, and accepted by the Commission on December 18, 2015.⁴ Rio Concho would have been, and still is, eligible to receive a rate increase authorized for Class C water utilities. On March 22, 2016, Rio Concho opted to file a subsequent Class B application requesting an increase to its revenue requirement. As part of the contested case process, the Ratepayers⁵ and Staff recommended that the rates for Rio Concho should not be increased, but instead, should be decreased. After a full evidentiary review, the State Office of Administrative Hearings (SOAH) Administrative Law Judges (ALJs) agreed that the current rates for Rio Concho should be decreased. Rio Concho should not be permitted to withdraw its case in order to avoid the setting of just and reasonable rates. If Rio Concho disagrees regarding the appropriate level of just and reasonable rates, Rio Concho may make such arguments by filing exceptions to the PFD, which it has already filed.

Rio Concho asserts that the affidavit of Barbie Brunson, the utility's owner/operator, establishes good cause to withdraw its application.⁶ Ms. Brunson's affidavit requests that the application be withdrawn and provides a list of supporting reasons. However, these reasons, whether considered individually or collectively, do not provide compelling grounds for the Commission to find good cause to allow the withdrawal of this application. Many of Rio Concho's arguments could have been raised as exceptions to the findings of the PFD. If the Commission disagrees with the PFD on the reasonableness of operating expenses or the authorized return, the Commission may adjust the revenue requirement. Other arguments raised by Rio Concho are outside the scope of evidence, should not be considered in this case, and may be properly brought or remedied, if appropriate, in a Class C application, a Class B application, a capital improvement surcharge, or through other authorized forms of rate change requests for similarly situated utilities.

First, Ms. Brunson states that Staff's recommendations and the PFD will "effectively run our water utility out of business" and that in her opinion, ". . . past indications show that most small water utilities faced with this situation, usually end up selling to large publicly traded water

⁴ Staff Ex. 11 (*Application of Rio Concho Aviation, Inc. for a Rate/Tariff Change*, Docket No. 43728, Final Order).

⁵ Steve Grace and Jeff Sheets.

⁶ Rio Concho's Motion at 1; *See* Rio Concho's Motion, Exhibit A: Affidavit of Barbie Brunson in Support of Motion to Withdraw Application.

corporations that are located usually out of state.”⁷ Both Staff’s recommendations, and the recommendations contained in the PFD, are guided by the Commission’s rules and the Texas Water Code. These rules and statutes require that the Commission preserve the financial integrity of the utility by setting overall revenues that will permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses.⁸ As has been shown through the course of this contested matter, Rio Concho’s expenditures exceed its reasonable and necessary operating expenses. While the PFD proposes a reduction in Rio Concho’s overall revenues, if the Commission were to adopt those recommendations, Rio Concho would still be able to recover those expenses deemed reasonable and necessary for a water utility of its type, and have the opportunity to earn a reasonable return over and above those expenses. Any arguments that the financial integrity of the utility is threatened because the utility is not able to make unreasonable expenditures are unpersuasive.

Ms. Brunson next refers to a maintenance expense that occurred “this week.”⁹ The fact that Rio Concho incurred an unforeseen expense to replace 30-year old galvanized pipe after a PFD was issued in its rate case does not change the test year evidence that was presented in the record, which closed on January 25, 2017. While Staff recognizes that Rio Concho is using this example to bolster its claim that it is in financial peril, it is not appropriate to consider this recent expense as a basis for the Commission to find good cause to allow withdrawal of a fully litigated rate case. Instead, the proper remedy is to file another base rate case, if one is warranted, or one of the other rate adjusting mechanisms permitted by the Texas Water Code and the Commission’s rules for similarly situated utilities.¹⁰

Ms. Brunson also states in her affidavit that the recommendation in the PFD to exclude expenses for two cell phones is “ridiculous.”¹¹ Rio Concho’s disagreement with a finding in the PFD would have been properly addressed in exceptions and replies to exceptions, and does not

⁷ *Id.* at 1.

⁸ Tex. Water Code § 13.183(a); 16 TAC § 24.32(a).

⁹ Rio Concho’s Motion, Exhibit A at 1.

¹⁰ Capital improvements surcharge pursuant to 16 TAC § 24.22(f); debt repayments surcharge pursuant to 16 TAC § 24.22(g); or Class C price index adjustment pursuant to TWC § 13.1872 and 16 TAC § 24.36 (see Class C Water Sewer Utility Rate Adjustment Form).

¹¹ Rio Concho’s Motion, Exhibit A at 2.

provide good cause to withdraw an application. Ms. Brunson also takes issue with the PFD's recommendation to disallow the rent expense associated with the airport office.¹² Again, a disagreement with a finding in the PFD is properly addressed through exceptions.

Finally, Ms. Brunson states that it appears the Commission rules do not address small water utility operations, and that “[u]ltimately 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.”¹³ Ms. Brunson also states that the PFD would prohibit Rio Concho from conducting adequate water utility operations and service to customers.¹⁴ Rio Concho mistakenly equates the disallowance of unnecessary or inflated expenses from its revenue requirement as a broad requirement that a small water utility subsidize its own costs. It is true that if Rio Concho continues to maintain expense items that are ultimately found unreasonable or unnecessary by the Commission, those costs will be the financial responsibility of the utility or the Brunsons. However, this is appropriate, as ratepayers should only be charged with paying for expenses that are reasonable and necessary to the provision of water service. Again, the SOAH ALJs' recommendations were calculated to allow Rio Concho an overall revenue that would permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful to providing service to the public over and above its reasonable and necessary operating expenses. This recommendation would not require Rio Concho to “subsidize the cost of the system” in any way.

As the applicant in this case, Rio Concho bears the burden of proof to show that its proposed increase is just and reasonable. Rio Concho had the opportunity to meet its burden through direct and rebuttal testimony, responses to discovery, and at a hearing on the merits. After presiding over the hearing on the merits and reviewing the evidence in the record, the SOAH ALJs found that Rio Concho not only did not support its proposed rate increase, but also failed to support its present rates. The fact that Rio Concho failed to prove up its requested increase and is now facing a potential decrease due to the disallowance of unnecessary and inflated expenses, does not provide the utility with good cause to withdraw its application. In fact, it would set a problematic precedent for a utility to be allowed to withdraw and circumvent

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

the Commission's jurisdiction, simply to avoid a potential reduction to its revenue requirement. The present matter has been ongoing for over a year, has been fully litigated and briefed, and represents a significant investment of time by all parties involved. It is also set to be considered by the Commission in a little over two weeks. Rio Concho has not shown good cause and should not be permitted to withdraw its case at this late stage, and deny the Commission the ability to make a final decision regarding the just and reasonable rates for this utility.

III. CONCLUSION

For the above stated reasons, Staff respectfully requests that the Commission deny Rio Concho's Motion.

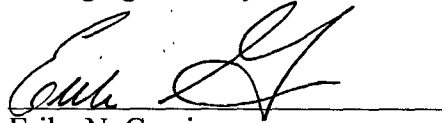
Dated: April 19, 2017

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on April 19, 2017, in accordance with 16 TAC § 22.74.


Erika N. Garcia