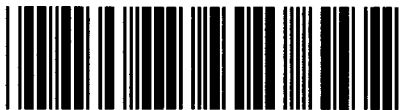


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APPLICATION OF RIO CONCHO
AVIATION, INC. FOR A
RATE/TARIFF CHANGE

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PUBLIC UTILITY COMMISSION
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OF TEXAS

**RIO CONCHO AVIATION, INC.'S
RESPONSE IN OPPOSITION TO REQUEST FOR INTERVENTION
AND IN OPPOSITION TO REQUEST TO PARTICIPATE IN PREHEARING
CONFERENCE AND REQUEST FOR REFERRAL TO MEDIATION**

COMES NOW, Rio Concho Aviation, Inc. ("Rio Concho") and files this Response in Opposition to Request for Intervention And Response in Opposition to Request to Participate in Prehearing Conference filed by Stephen Grace, Jeff Sheets and Roy Geer (collectively, "Protestants"), and Request for Referral to Mediation. Rio Concho would respectfully show the following:

I.

BACKGROUND

Rio Concho filed an application to increase its water rates with the Commission on March 22, 2016. The Commission adopted Order No. 1 and declared the application administratively complete and suspended Rio Concho's proposed rates on April 25, 2016.¹ The Commission then referred Rio Concho's application to the State Office of Administrative Hearings ("SOAH") on April 26, 2016. The SOAH Judge issued Order No. 1 on May 5, 2016, setting a telephone prehearing conference for June 17, 2016.² The next day, the SOAH Judge issued Order No. 2 finding that a telephone prehearing conference would be insufficient and setting a live prehearing conference for June 17, 2016.³ On May 11, 2016, Steven Grace, Jeff Sheets and Roy Geer (collectively, "Customers") filed a letter with the Commission requesting

¹ *Application of Rio Concho Aviation, Inc. for a Rate/Tariff Change*, Docket No. 45720, Order No. 1, issued April 25, 2016.

² Docket No. 45720, SOAH Order No. 1 Description of Case, Notice of Prehearing Conference, and General Procedural Requirements, issued May 5, 2016.

³ Docket No. 45720, SOAH Order No. 2 Description of Case, Notice of Prehearing Conference, and General Procedural Requirements, issued May 6, 2016.

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intervention in this matter, which was not served upon Rio Concho.⁴ On May 23, 2016, the Commission adopted a Preliminary Order identifying certain issues to be addressed in this docket.⁵ Rio Concho mailed notice of the prehearing conference to its customers on May 26, 2016, as required by Order No. 2, and filed the required affidavit of notice to customers on June 7, 2016.⁶ The Customers filed a request to participate in the prehearing conference via telephone on June 7, 2016, which was also not served upon Rio Concho.⁷ This response is timely filed.

II.

PREHEARING CONFERENCE SHOULD BE LIVE AND IN PERSON

Rio Concho opposes Protestants request to participate in prehearing conference by teleconference instead of appearing in person. SOAH Order No. 2 has already found that conducting a prehearing conference by telephone is insufficient.⁸ Rio Concho agrees.

As noted by the SOAH Judge, while more than 10% of Rio Concho's customers signed a form labeled "Utility Rate Increase Protest" and several customers submitted protests using the Commission prescribed form, none of the protests requested intervention or participation as a party.⁹ Because of experience in other rate cases, SOAH Order No. 2 established the requirements to intervene as a party in this docket and the Notice of Prehearing Conference included those requirements. Those requirements are that a person must either file a motion to intervene in accordance with the Commission rules or orally request intervention and party status at the preliminary hearing. Rio Concho believes that SOAH Order No. 2's decision is well founded.

⁴ Docket No. 45720, Request to Intervene, filed May 11, 2016. Rio Concho only learned of this request by reviewing the PUC Interchange record of filings in this matter.

⁵ Docket No. 45720, Preliminary Order, issued May 23, 2016.

⁶ Docket No. 45720, Affidavit of Notice, dated May 26, 2016.

⁷ Docket No. 45720, Request to Participate in Prehearing Conference, dated June 7, 2016.

⁸ Docket No. 45720, SOAH Order No. 2, page 1

⁹ Docket No. 45720, SOAH Order No. 1, page 2

And while Rio Concho appreciates Protestants' desire to avoid the time and cost of traveling to Austin for the prehearing conference (Rio Concho also desires to avoid any unnecessary costs), there are numerous reasons why requiring in person attendance at live prehearing conferences is good policy in addition to those set forth in Order No. 2.

Rio Concho believes that providing the parties with an opportunity to meet face to face to discuss the issues involved in the case by conducting a live preliminary hearing will result in reduced costs overall for the proceeding. Contested hearings in cases like this one can result in tens of thousands of dollars in rate case expenses being passed on to the customers. Given that there are fewer than 250 customers on this system, a rate case expense surcharge for reasonable rate case expenses could result in an even larger increase in costs for the customers. Rio Concho believes that every opportunity should be taken to reduce and avoid rate case expenses and save money for its customers.

Rio Concho notes that the Customers' request to intervene was not filed according to the Commission rules. Rule 22.104(b) states in part "The motion shall be served upon all parties to the proceeding and upon all persons that have pending motions to intervene."¹⁰ Customers failed to comply with this rule as ordered by the SOAH Judge by not serving the parties to the matter, more particularly Rio Concho.¹¹ Consequently, the Customers will need to appear in person to properly intervene in this matter.

Similarly, Rio Concho notes that the Customers, despite citing the rule, also failed to comply with the procedural rules regarding requests to participate in hearings via telephone. Section 155.155.405(a)(2) requires that a motion to participate in a hearing via telephone must include the following:

- (A) the reason for the request;
- (B) the telephone number at which the party or witness may be reached at the time of the proceeding;

¹⁰ 16 TAC §22.140(b)

¹¹ Rio Concho learned of this request only because Rio Concho's counsel has requested, through the PUC Interchange, to be electronically notified of all filings in this matter.

- (C) a statement that the party or witness will be the same person who will appear by telephone at the proceeding; and
- (D) a certificate of conference complying with §155.305(b)(2) of this title (relating to Motions, Generally).¹²

Customers could not include a certificate of conference because they did not conference or attempt to conference with Rio Concho regarding their request, nor did the Customers state that they would be the same persons appearing by telephone. In addition, Customers did not serve the motion upon Rio Concho as required by Commission procedural rules.¹³

III.

MEDIATION REQUEST

Should the SOAH Judge grant Customers' request for intervention and their request to participate in the prehearing conference by telephone, Rio Concho requests that the SOAH Judge refer the parties to in person mediation prior to requiring the preparation of any prefiled testimony in this matter. Allowing the parties an opportunity to resolve any issues prior to incurring the costs of preparing a full direct case will benefit Rio Concho's customers by avoiding any unnecessary expenses associated with preparing testimony and evidence in this matter.

IV.

PRAYER


Rio Concho prays that the SOAH Judge deny Customers' pending request to intervene and request to participate in the prehearing conference by telephone for the reasons stated above.

Rio Concho further prays that, should the SOAH Judge grant Customers' requests, the SOAH Judge refer the parties to in person mediation prior to requiring the preparation of any prefiled testimony in this matter.

¹² 1 TAC §155.405(a)(2)

¹³ 16 TAC §22.77(a)

Respectfully submitted,


By: 
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ATTORNEY FOR RIO CONCHO AVIATION, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 14th day of June, 2016.


John Carlton