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SOAH DOCKET NO. 473-16-3831.WS
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APPLICATION OF RIO CONCHO
AVIATION, INC. FOR A
RATE/TARIFF CHANGE

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BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK

OF

ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S OBJECTION TO AND MOTION TO STRIKE A PORTION
OF APPLICANT'S DIRECT TESTIMONY**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Commission Staff's Objection to and Motion to Strike a Portion of Applicant's Direct Testimony. Staff objects to and requests that a portion of Rio Concho Aviation, Inc.'s (Rio Concho or Applicant) direct testimony be stricken on the grounds that such portion is not relevant. In support of its Objection and Motion to Strike, Staff would show the following:

I. BACKGROUND

On March 22, 2016, Rio Concho filed an application for a rate/tariff change under water Certificate of Convenience and Necessity (CCN) No. 12835 in Tarrant County, Texas pursuant to Tex. Water Code Ann. § 13.1872(c)(2) (TWC), TWC § 13.1871, and 16 Tex. Admin. Code § 24.22 (TAC). On August 5, 2016, Applicant filed the direct testimony of Barbie Brunson.

SOAH Order No. 4, issued June 21, 2016, established a deadline of August 12, 2016 for filing objections to Applicant's direct testimony. This Objection and Motion to Strike is therefore timely filed.

II. STANDARD OF REVIEW

The standard for evaluating objections and motions to strike evidence and exhibits is found in 16 TAC § 22.221(a), which provides the following:

The Texas Rules of Civil Evidence as applied in nonjury civil cases in the courts of Texas shall be followed in contested cases. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of Civil Evidence, evidence

not admissible under those rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

Under rule 401 of the Texas Rules of Evidence, evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence in determining the action.”¹ This ensures that parties are able “to obtain the fullest knowledge of the facts and issues prior to trial.”² “To determine relevancy, the court must look at the purpose for offering the evidence. There must be some logical connection either directly or by inference between the fact offered and the fact to be proved.”³

III. OBJECTION

Staff objects to the following portion of the Direct Testimony and Exhibits of Barbie Brunson (Brunson Direct) on the grounds that it is irrelevant and moves that it be stricken:

- Brunson Direct page 26, lines 6-8: “moreover, the allocation was presented during the last rate case where it was discussed, debated, and agreed by PUC staff Docket Number 43728 to be 60%.”

The portion of Brunson Direct that Staff objects to references a prior rate proceeding that resulted in a stipulation and settlement agreement that was approved by the Commission.⁴ Ms. Brunson offers the testimony in support of the assertion that it is reasonable to allocate 60% of the costs of a particular vehicle to the utility.⁵ The final order entered in the case Ms. Brunson references explicitly provides that it “does not indicate the Commission's endorsement of any principle or methodology that may underlie the Stipulation” and “shall not be regarded as a precedent as to the appropriateness of any principle or methodology underlying the Stipulation.”⁶ In addition, neither the final order

¹ Tex. R. Civ. Evid. 401(a) & (b).

² *Axelson, Inc. v. McIlhenny*, 798 S.W.2d 550, 553 (Tex. 1990).

³ *Rhey v. Redic*, 408 S.W.3d 440, 460 (Tex. App.-El Paso 2013, no pet.).

⁴ *Application of Rio Concho Aviation, Inc. for a Water or Wastewater Rate/Tariff Change*, Docket No. 43728 (Dec. 18, 2015).

⁵ Prefiled Direct Testimony and Exhibits of Barbie Brunson, Rio Concho Aviation, Inc. Ex. RCA-1 at 26:4-10.

⁶ Docket No. 43728, Order, Ordering Paragraph 7.

entered in that case nor the Stipulation and Settlement Agreement filed by the parties addresses allocation of vehicle costs.⁷ Docket 43728 also addressed a different test year (2013)⁸ than the present proceeding, which uses a test year of 2015.⁹ Discussion from that docket therefore necessarily would have focused on the utility's operations and expense structure for 2013, and therefore would not be relevant to the present proceeding, which is necessarily based on the utility's operations and expense structure for 2015. Therefore, neither the final order, nor the Stipulation and Settlement Agreement, nor the content of any settlement discussions that occurred during the negotiation of the Stipulation and Settlement Agreement in Docket No. 43728 are relevant to the question of the allocation of vehicle expenses in the current proceeding, as these items have no tendency to make the reasonableness of Applicant's allocation of vehicle expenses more or less likely.

IV. CONCLUSION

For the reasons discussed above, Staff objects to the portion of Brunson Direct identified above and moves that it be stricken because it is irrelevant.

⁷ See generally Docket No. 43728, Joint Motion to Admit Evidence and Remand (Oct. 21, 2015); Docket No. 43728, Order.

⁸ Docket No. 43728, Application at 12 (Oct. 30, 2014).

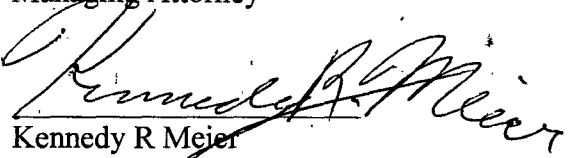
⁹ Application at 3 (Mar. 22, 2016).

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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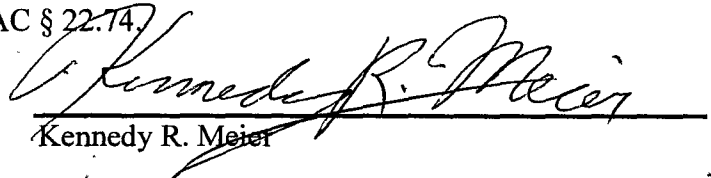


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 12th of August, 2016 in accordance with 16 TAC § 22.74.


Kennedy R. Meier