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

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BEFORE THE STATE OFFICE OF THE COMMISSION
OF FILING CLERK
ADMINISTRATIVE HEARINGS

**RIO CONCHO AVIATION, INC.'S
OBJECTION TO AND MOTION TO STRIKE PORTIONS OF RATEPAYER,
STEPHEN GRACE'S, DIRECT TESTIMONY**

COMES NOW, Rio Concho Aviation, Inc. ("Rio Concho") and files this Objection to and Motion to Strike Portions of Ratepayer, Stephen Grace's, Direct Testimony. 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. On August 18, 2016, Ratepayer, Stephen Grace, filed direct testimony and exhibits. SOAH Order No. 4, issued on June 21, 2016, established a deadline of August 26, 2016 for filing objections to Ratepayers direct. This response is therefore timely filed.

II.

OBJECTIONS

Rio Concho generally objects to Mr. Grace's testimony because it is full of speculation and unsupported, unsubstantiated opinions. As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge. Tex. R. Evid. 602. While we acknowledge that Mr. Grace is an accomplished and experienced pilot, he is not an expert in matters related to water utility ratemaking or even accounting. Consequently, his opinion testimony on these issues is simply speculation and prohibited from be admitted into the record under Rule 702. Rule 702 states that

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other

specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue. Tex. R. Evid. 702.

But when the main substance of the witness' testimony is not based on application of the witness' specialized knowledge, skill, experience, training, or education to his familiarity to the [subject matter], then the witness's testimony must be excluded if it goes beyond the facts into the realm of opinion. Any opinion testimony by Mr. Grace as a lay witness is limited by Rule 701, which states:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception; and

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue. Tex. R. Evid. 701.

Although a lay witnesses testimony is not required to have certainty, if the witness is simply speculating or guessing and does not establish a personal perception and knowledge upon which the testimony is based, then the testimony must be excluded. *Bigby v State*, 892 S.W.2d 864, 889 (Tex. Crim. App. 1994). Because Mr. Grace does not have any training, expertise or experience in water utility ratemaking or even in the operation of a water utility business or accounting, Mr. Grace's opinion testimony does not fit into either category and should not be allowed into the record.

A. Grace Testimony, Answer at page 3, lines 12-17.

Rio Concho objects to the referenced testimony related to statements by Mr. Brunson because it is prohibited hearsay under TEX R. CIV. EVID. 801 and 802.

B. Grace Testimony, Answer at page 4, lines 6-8.

Rio Concho objects to the response because it is simple speculation. As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge. Tex. R. Evid. 602. He does not have personal knowledge of nor is he an expert qualified to testify about the need or use of property for the water system. His opinion testimony on these

issues is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

C. Grace Testimony, Question and Answer at page 5, lines 13-18.

Rio Concho objects to the response because it is simple speculation. As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge. Tex. R. Evid. 602. He does not have personal knowledge of nor is he an expert qualified to testify about the accounting used by or expenses incurred by Rio Concho for its on-site office. His opinion testimony on these issues is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

D. Grace Testimony, Question and Answer at page 6, line 11- page 7, line 2.

Rio Concho objects to the response because it is simple speculation. As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge. Tex. R. Evid. 602. He does not have personal knowledge of nor is he an expert qualified to testify about the why Rio Concho is raising its rates. His opinion testimony on these issues is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

E. Grace Testimony, Question and Answer at page 7, lines 8-12.

Rio Concho objects to the response because it is simple speculation. As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge. Tex. R. Evid. 602. He does not have personal knowledge of nor is he an expert qualified to testify about the Rio Concho's efforts to keep its costs down. His opinion testimony on these issues is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

E. Grace Testimony, Answer at page 8, lines 8-10.

Rio Concho objects to the response because it is simple speculation. As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge.

Tex. R. Evid. 602. He does not have personal knowledge of nor is he an expert qualified to testify about the merit of Rio Concho's rate increase. His opinion testimony on this issue is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

F. Grace Testimony, Question and Answer at page 9, lines 1-22.

Rio Concho objects to the testimony on the basis of relevance. Tex. R. Evid. 401-402. "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony offered does not relate to a material fact in this matter, and should be stricken. Comparison of a Rio Concho's rates to the Silver Wings Airport rates, or any other rates, is not helpful to reaching a decision in this case about the reasonableness of Rio Concho's revenue requirement and rates.

In addition, Rio Concho objects to the answers because they are simple speculation. As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge. Tex. R. Evid. 602.


G. Grace Testimony, Questions and Answers at page 10, lines 1-21.

Rio Concho objects to the response because it is simple speculation. As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge. Tex. R. Evid. 602. He does not have personal knowledge of nor is he an expert qualified to testify about the retirement benefits or life insurance benefits. His opinion testimony on these issues is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

**IV.
PRAYER**

Rio Concho respectfully requests that the Judge sustain its objections, enter an order excluding and striking the Testimony of Stephen Grace as requested above and grant such and further relief to which it may be entitled.

Respectfully submitted,

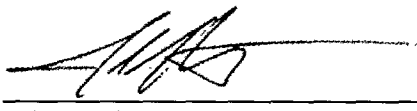
By: 
John J. Carlton

John J. Carlton
The Carlton Law Firm P.L.L.C.
2705 Bee Cave Road, Suite 200
Austin, Texas 78746
(512) 614-0901
Fax (512) 900-2855
State Bar No. 03817600

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 26th day of August, 2016.


John Carlton