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

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

UTAH UTILITY COMMISSION
FILING CLERK

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

COMES NOW, Rio Concho Aviation, Inc. ("Rio Concho") and files this Objection to and Motion to Strike Portions of Ratepayer, Jeffrey Sheets', Direct Testimony ("Sheets 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, Jeffrey Sheets, filed direct testimony. 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.

RESPONSE

Rio Concho generally objects to Mr. Sheets' 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. Sheets 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

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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. Sheets 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. Sheets 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. Sheets' opinion testimony does not fit into either category and should not be allowed into the record.

A. Sheets Testimony, Question and Answer at page 4, lines 10-15.

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. The reasons for Mr. Sheets' involvement are irrelevant to the determination of the reasonable water rates in this case. In addition, the rates of other cities are irrelevant to the costs to operate the Rio Concho system.

Finally, Mr. Sheets' opinion at line 15 must be excluded because it does not meet the requirements for opinion testimony under either Rule 701 or Rule 702.

B. Sheets Testimony, Question and Answer at page 4, lines 6-8.

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. The reasons for Mr. Sheets not being involved in the prior rate case are irrelevant to the determination of the reasonable water rates in this case.

C. Sheets Testimony, Answer at page 5, 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.

D. Sheets Testimony, Answer at page 5, lines 19.

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.

E. Sheets Testimony, Answer at page 6, lines 1-3.

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.

F. Sheets Testimony, Answer at page 5, lines 9-11.

Rio Concho objects to the referenced testimony related to statements by Mr. Meier because it is prohibited hearsay under TEX R. CIV. EVID. 801 and 802. Rio Concho objects to the response at lines 10-11 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.

G. Sheets Testimony, Question and Answer at page 6, lines 12-23.

As discussed in the general objection section above, 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. His opinion testimony on these issues is simply speculation and prohibited from be admitted into the record under either Rule 701 or Rule 702.

H. Sheets Testimony, Question and Answer at page 7, lines 1-14.

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. His opinion testimony on these issues is simply speculation and prohibited from be admitted into the record under either Rule 701 or Rule 702.

I. Sheets Testimony, Question and Answer at page 7, lines 15-20.

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 is not an expert on the rules related to operation of water utilities. His opinion testimony on these issues is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

J. Sheets Testimony, Answer at page 8, lines 2-3.

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.

K. Sheets Testimony, Question and Answer at page 8, lines 4-10.

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 is not an expert on the rules related to operation of water utilities. His

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

L. Sheets Testimony, Answer at page 8, lines 22-23.

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 is not an expert on the rules related to operation of water utilities. His opinion testimony on these issues is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

M. Sheets Testimony, Answer at page 9, lines 5-12.

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 is not an expert on the rules related to operation of water utilities. His opinion testimony on these issues is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

N. Sheets Testimony, Answer at page 9, lines 18-19.

Rio Concho objects to the response because it is simple speculation about why Rio Concho filed its application. As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge. Tex. R. Evid. 602.

O. Sheets Testimony, Answer at page 10, lines 5-6.

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 is not an expert on the rules related to operation of water utilities. His opinion testimony on the size of the rate increase is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

P. Sheets Testimony, Answer at page 9, lines 16-21.

Rio Concho objects to the response because it is simple speculation about the alleged and presumed expense of multiple vehicles. As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge. Tex. R. Evid. 602.

Q. Sheets Testimony, Answer at page 11, lines 2-3.

Rio Concho objects to the referenced testimony related to statements by PUC Staff because it is prohibited hearsay under TEX R. CIV. EVID. 801 and 802. As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge. Tex. R. Evid. 602.

R. Sheets Testimony, Answer at page 11, lines 11-21.

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 is not an expert on the rules related to operation of water utilities or the equipment needed to conduct those operations. His opinion testimony on the the use of vehicles is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

S. Sheets Testimony, Question and Answer at page 12, lines 2-18.

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 pilots’ union recordkeeping to the requirements for a water utility in the state of Texas are not helpful to reaching a decision in this case.

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.

T. Sheets Testimony, Question and Answer at page 13, lines 3-10.

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. Comparisons of the IRS’ recordkeeping to the requirements for a water utility in the state of Texas are not helpful to reaching a decision in this case.

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.

U. Sheets Testimony, Answer at page 13, lines 16-20.

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 is not an expert on the rules related to accounting practices for water utilities. His opinion testimony on the accounting for expenses is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

V. Sheets Testimony, Answer at page 14, lines 1-6.

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 is not an expert on the rules related to accounting practices for water utilities. His opinion testimony on the accounting for expenses is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

W. Sheets Testimony, Question and Answer at page 14, line 16-page 15, line 7.

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 is not an expert on the level of benefits that is reasonable for water

utilities. His opinion testimony on these benefits is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

X. Sheets Testimony, Question and Answer at page 15, lines10-19.

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 is not an expert on the cost for meter reading that is reasonable for water utilities. His opinion testimony on these costs is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

Y. Sheets Testimony, Question and Answer at page 16, lines11-13.

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 is not an expert on the accounting practices that are reasonable for water utilities. His opinion testimony on these practices is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.


Z. Sheets Testimony, Questions and Answers at page 16, line 22 – page 17, line 14.

Rio Concho objects to the referenced testimony related to statements by Mr. Munson because it is prohibited hearsay under TEX R. CIV. EVID. 801 and 802. Rio Concho objects to the response at page 17, lines 2-10, 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.

**IV.
PRAYER**

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

Respectfully submitted,


By: 
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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