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

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BEFORE THE STATE OFFICE

OF PUBLIC UTILITY COMMISSION
FILING CLERK

ADMINISTRATIVE HEARINGS

**RIO CONCHO AVIATION, INC.'S OBJECTION TO AND MOTION TO STRIKE
PORTIONS OF RATEPAYERS RESPONSE TO RIO CONCHO AVIATION, INC.
WATER RATE INCREASE APPLICATION**

COMES NOW, Rio Concho Aviation, Inc. ("Rio Concho") and files this Objection to and Motion to Strike the Exhibit or Statement titled "Ratepayers Response to Rio Concho Aviation, Inc. Water Rate Increase Application" ("Response"). 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, Ratepayers filed the Response. 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 the Response because it is full of speculation and unsupported, unsubstantiated opinions. There is no witness offered to support the testimony and statements contained within the Response. As a result, it is simply hearsay testimony under Rule 801 and 892 of the Texas Rules of Evidence and must be excluded.

Even if the Response can be attributed to a single witness, it remains flawed. If the testimony is by one of the identified fact witnesses, the testifying witness must only testify to factual matters on which the witness has personal knowledge. Tex. R. Evid. 602. While we acknowledge that these witnesses may be accomplished and experienced pilots, they are not experts in matters related to water utility ratemaking or even accounting. Consequently, the opinion testimony within the Response 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 in the Response from 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 none of the possible witnesses for the Reponse have any training, expertise or experience in water utility ratemaking or even in the operation of a water utility business or accounting, the opinion testimony does not fit into either category and should not be allowed into the record.

A. The Response, page 3, lines 2-15.

Rio Concho objects to the statement 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 history of Rio Concho's filings are irrelevant to this case.

B. The Response, page 6, lines 6-14.

Rio Concho objects to the statement 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 relationship of Rio Concho's request

rate increase to the Consumer Price Increase or the rates at other water systems is irrelevant to this case.

C. The Response, page 7, lines 5-8.

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 is not an expert on the rules related to operation of water utilities or the basis for an increase in rates. This opinion testimony on the reason for the increase in rates is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

D. The Response, page 9, line 9 – page 10, line 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 is not an expert on the rules related to operation of water utilities or the basis for an increase in rates. This opinion testimony on the possible violation of rules is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

E. The Response, page 10, lines 7-20.

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

F. The Response, page 11, lines 9-14.

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

G. The Response, page 12, lines 3-15.

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. This opinion testimony on the use of the office is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

H. The Response, page 13, lines 9-10.

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. This opinion testimony on the appropriateness of Ms. Brunson's salary is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

I. The Response, page 13, lines 12-22.

Rio Concho objects to the statement 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 relationship of Ms. Brunson's salary to the Saginaw employees' salaries is irrelevant to this case.

J. The Response, page 14, lines 11-14.

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. This opinion testimony on the trend in health insurance and level of benefit is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

K. The Response, page 15, lines 5-15.

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. This opinion testimony on the trend in retirement benefits and level of benefit is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

L. The Response, page 15, line 18- page 16, 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. This opinion testimony on the trend in retirement benefits and level of benefit is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

M. The Response, page 16, lines 14-15.

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. This opinion testimony on the treatment of capital costs is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

N. The Response, page 17, line 6- page 18, line 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. This opinion testimony on the treatment of the cost for paving, office equipment and expenses is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

O. The Response, page 18, line 19- page 19, line 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. This opinion testimony on the treatment of the cost for the local office is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

P. The Response, page 20, line 1 – page 22, line 5.

Rio Concho objects to the statement 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 treatment of costs under IRS regulations is irrelevant to this case. In addition, 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. This opinion testimony on the IRS regulations is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

Q. The Response, page 22, line 21 - page 23, line 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. This opinion testimony on the treatment of the appropriateness of expenses for water utility operation is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

R. The Response, page 24, lines 8-11.

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. This opinion testimony on the treatment of the appropriateness of expenses for water utility operation is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

S. The Response, page 24, lines 19-21.

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. This opinion testimony on the treatment of the appropriateness of expenses for water utility operation is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

T. The Response, page 25, lines 9-12.

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. This opinion testimony on the treatment of the appropriateness of expenses for water utility operation is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

U. The Response, page 25, lines 14-17.

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. This opinion testimony on the treatment of the appropriateness of expenses for water utility operation is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

V. The Response, page 26, lines 6-9.

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. This opinion testimony on the treatment of the vehicle expense is simply

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

W. The Response, page 27, lines 1-11.

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. This opinion testimony on the treatment of the use of the property by the utility is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

X. The Response, page 27, lines 13-20.

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. This opinion testimony on the treatment of the use of the property by the utility is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

Y. The Response, page 28, lines 16-17.

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. This opinion testimony on the need for the service is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

Z. The Response, page 30, lines 11-15.

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. This opinion testimony on the accuracy of the utility's financial information is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

AA. The Response, page 31, lines 7 and 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. This opinion testimony on the appropriateness of an expense is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

BB. The Response, page 32, lines 4-7.

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. This opinion testimony on the classification of an expense is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

CC. The Response, page 32, lines 11 and 13-19.

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. This opinion testimony on the appropriateness of an expense is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

DD. The Response, page 33, lines 11-15.

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. This opinion testimony on the appropriateness of an expense is simply speculation and prohibited from being admitted into the record under either Rule 701 or Rule 702.

EE. The Response, page 36, Attachment 1.

Rio Concho objects to the document 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 document offered does not relate to a material fact in this matter, and should be stricken. The rates of other utilities are irrelevant to this case.

FF. The Response, page 37, Attachment 2.

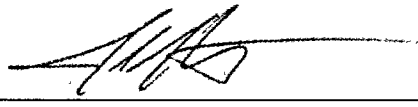
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material fact in this matter, and should be stricken. The pay of a Saginaw maintenance worker is irrelevant to this case.

**IV.
PRAYER**

Rio Concho respectfully requests that the Judge sustain its objections, enter an order excluding and striking the portions of the Ratepayers Response to Rio Concho Aviation, Inc. Water Rate Increase Application as requested above and grant such and further relief to which it may be entitled.

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 26th day of August, 2016.


John Carlton