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Item Number: 81

Addendum StartPage: 0

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

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS
UTILITY COMMISSION
FILING CLERK

**JEFFREY SHEETS' RESPONSE TO RIO CONCHO'S OBJECTION TO AND
MOTION TO STRIKE PORTIONS OF JEFFREY SHEETS', DIRECT TESTIMONY**

I.

GENERAL RESPONSE

(Bolded lines are from Rio Concho's objections.)

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 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.

81

I, Jeffrey Sheets, object to the Rio Concho's request to strike numerous passages of my testimony and submit the following from the Texas Rules of Evidence (effective June 14, 2016):

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Rule 701. Opinion Testimony by Lay Witnesses

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.

Rule 702. Testimony by Expert Witnesses

This rule is irrelevant as I do not hold myself out as an expert witness. Although I have 3 years of experience doing auditor work, I have had no formal training on the topic, and do not possess an accounting degree. Rule 702 deals with Expert Witnesses, which I do not claim.

I object to Rio Concho's request to strike my testimony in all or in part for the following reasons:

- 1) My testimony is relevant in that it has a tendency to make a fact more or less probable than it would without the evidence. In this case, more probable.
- 2) Knowledge of Rio Concho water company financials was gained through Confidentiality agreements administered by the PUC and requested by the PUC Staff. Thus, I gained that personal knowledge of the matter as required by Rule 602 in the course of this rate case. It was only after gaining this knowledge, that I testified.
- 3) As a Lay Witness, I would also point to 701(a) and (b) in that all of the information contained in my testimony is rationally based on my perception of the evidence (a) and is helpful to clearly understand the witness's testimony or to determine a fact in issue as submitted by Rio Concho (b).
- 4) In addition, I have 3 years of experience as a labor union auditor despite not having any formal training in accounting,

II.

SPECIFIC RESPONSES

(Lettered and Bolded lines are from Rio Concho's objection's below.)

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.

I would point to the same rule that Rio Concho highlights in their objection, Tex. R. Evid. 401.

" Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence;" In this case, it is more probable. Water rates throughout the state of Texas are not stand-alone rates to be set without reference to comparable water companies, comparable cities, not-for-profit companies and for-profit companies. Those comparisons are the basis for the PUC structure and the responsibility of the PUC staff. The Mission of the PUCT is "We protect customers, foster competition, and promote high quality infrastructure." If water rates were allowed to operate in a vacuum without reference to surrounding communities, the PUCT would be violating its own Mission statement to protect customers.

Regarding line 15, opinion testimony by Lay Witnesses is allowed if "rationally based on the witnesses' perception" and "helpful to clearly understand the witness's testimony or to determining a fact in issue." Rule 701(a) and (b).

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.

I believe the reference here should be lines 16-18 and not the stated lines 6-8 as lines 6-8 pertain to my Professional Background. I have no objection to striking lines 16-18. I do object to striking any lines in my Professional Background as Rio Concho has no personal knowledge as required in Tex. R. Evid 602.

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, is witness must only testify to factual matters on which the witness has personal knowledge. ex. R. Evid. 602.

I agree that there is speculation in line 9-10 as I was attempting to give a full and complete answer. I have no objection to striking lines 9-10. I do object to striking line 8, as it is not speculation and is a response to a

factual matter since becoming a Rio Concho water customer in July 2014. I do have a personal knowledge of this topic as required by 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.

I have no objection to striking line 19.

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.

I have no objection to striking lines 1-3.

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.

I believe the reference should be page 6, lines 9-11 and not the stated page 5 as that reference was already addressed in para C above.

I have no objection to striking p 6, lines 9-11 if this corrected page number is accurate.

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.

I object to striking these lines as personal knowledge was gained via reading Rio Concho confidential submissions in the course of this rate application. Thus, I gained personal knowledge of the facts as required in Tex. R. Evid 602. In addition, I object as opinion testimony by Lay Witnesses is allowed if “rationally based on the witness’s perception” and “helpful to clearly understand the witness’s testimony or to determining a fact in issue.” Rule 701 (a) and (b):

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 being admitted into the record under either Rule 701 or Rule 702.

I agree to strike the last sentence beginning on line 13-14 but do not agree to strike lines 1-13. I have gained personal knowledge via Rio Concho's confidential submissions in the course of this rate application, thus, I have gained personal knowledge of the facts as required in Tex. R. Evid 602. In addition, I object as opinion testimony by Lay Witnesses is allowed if "rationally based on the witness's perception" and "helpful to clearly understand the witness's testimony or to determining a fact in issue." Rule 701(a) and (b).

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.

It does not take a lawyer to be able to read this PUC statute and interpret it without speculation. I submit that after reading the statute several times, and ticking off the Rio Concho violations of that statute, I have gained personal knowledge required by Tex. R. Evid 602. I also object as opinion testimony by Lay Witnesses is allowed if "rationally based on the witness's perception" and "if helpful to clearly understand the witness's testimony or to determining a fact in issue". Tex. R. Evid 701(a) and (b).

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.

Rio Concho submitted documents which I studied, analyzed, and audited. To state that I have no personal knowledge ignores the obvious fact that I do possess said knowledge as required by Tex. R. Evid 602. I further object as opinion testimony by Lay Witnesses is allowed if "rationally based on the witness's perception" and "helpful to clearly understand the witness's testimony or to determining a fact in issue." Rule 701(a) and (b).

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.

Rio Concho submitted documents which I studied, analyzed, and audited. To state that I have no personal knowledge ignores the obvious fact that I do possess said knowledge as required by Tex. R. Evid 602. I further object as opinion testimony by Lay Witnesses is allowed if “rationally based on the witness’s perception” and “helpful to clearly understand the witness’s testimony or to determining a fact in issue.” Rule 701(a) and (b).

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.

I object as opinion testimony by Lay Witnesses is allowed if “rationally based on the witness’s perception” and “helpful to clearly understand the witness’s testimony or to determining a fact in issue.” Rule 701(a) and (b).

In addition, factual matters as presented in Rio Concho’s Confidential submissions has allowed me to gain the personal knowledge required in Tex. R. Evid 602.

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

I object as opinion testimony by Lay Witnesses is allowed if “rationally based on the witness’s perception” and “helpful to clearly understand the witness’s testimony or to determining a fact in issue.” Rule 701(a) and (b).

In addition, factual matters as presented in Rio Concho’s Confidential submissions has allowed me to gain the personal knowledge required in Tex. R. Evid 602.

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

After reviewing the Confidential documents submitted by Rio Concho, I have gained the personal knowledge required by Tex R. Evid 602. I object as opinion testimony by Lay Witnesses is allowed if “rationally based on the witness’s perception” and “helpful to clearly understand the witness’s testimony or to determining a fact in issue.” Rule 701(a) and (b).

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.

I object as opinion testimony by Lay Witnesses is allowed if “rationally based on the witness’s perception” and “helpful to clearly understand the witness’s testimony or to determining a fact in issue.” Rule 701(a) and (b).

In addition, factual matters as presented in Rio Concho’s Confidential submissions has allowed me to gain the personal knowledge required in Tex. R. Evid 602.

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.

I believe the reference should be page 10, lines 16-21 and not page 9 as stated. If I’m correct, then all intervenors have observed Ms Brunson drive more than one vehicle to the airport. That is not speculation. That is a factual matter on which I have personal knowledge as required by Tex R. Evid 602. Tex. R. Evid. 701(a) and (b) allows opinion by Lay Witnesses if rationally based on the witness’s perception” and “helpful to clearly understand the witness’s testimony or to determining a fact in issue”. As I stated in this passage, I don’t know if multiple vehicles are being expensed and hope the PUC Staff and ALJ investigate.

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.

Knowledge on this issue was gained by reading Ms Brunson's testimony, the PUC Staff's objection to her testimony, and my own research into the prior rate case. That knowledge gave me the personal knowledge required by Tex. R. Evid 602.

After I read the prior rate case, no factual evidence was found to support Ms Brunson's testimony. The prior rate case is public record, thus Tex. R. Evid. 803 (8) Exception to the Rule against Hearsay applies:

(8) Public Records. A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not

including, in a criminal case, a matter observed by law enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual

findings from a legally authorized investigation; and

(B) the opponent fails to demonstrate that the source of information or other circumstances indicate a lack of trustworthiness.

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.

Knowledge gained by auditing Rio Concho's Confidential filings has given me the personal knowledge required by Tex. R. Evid. 602 to submit testimony in this rate case. In addition, Tex. R. Evid. 701(a) and (b) allows opinion by Lay Witnesses if rationally based on the witness's perception" and "helpful to clearly understand the witness's testimony or to determining a fact in issue".

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.

I object and point to the same Tex. R. Evid. 401 that Rio Concho does as a reason why my testimony is relevant. Having experience as an auditor, whether working at a labor union or conducting research on Rio Concho's Confidential Filings, is of little difference. The act of verifying claimed expenses is the same and in this case is relevant to this case to determine the facts.

"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." My testimony does relate to the facts as presented by Rio Concho and, in this case, makes the material more probable.

Conducting my research allowed me to gain the knowledge required by Tex. R. Evid. 602.

I do agree to strike the last two sentences in of the first paragraph as found in lines 7-8. Quickbooks is now considered acceptable by IRS standards as accounting software, but not for receipt verification.

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.

I point to the same Tex R. Evid 401 that Rio Concho does as a reason why my testimony is relevant. Having experience as an auditor, I submit that whether working at a labor union or conducting research on Rio Concho's Confidential Filings, is of little difference. The act of verifying claimed expenses is the same and in

this case is relevant to this case to determine the facts. Tex. R. Evid. 401 states: "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."

In addition, my testimony as a fact witness is on factual matters on which I have personal knowledge gained through auditing experience and research into Rio Concho's Confidential Filings as required by Tex. R. Evid. 602.

I do agree to strike "the use of Quickbooks as a source document" in line 3.

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.

Ms Brunson testified, in numerous instances, as to her duties. There is no speculation made as to those duties.

Ms Brunson stated fact. I read those statements and now possess personal knowledge of her duties as

Required by Tex. R. Evid 602.

Having accomplished an audit, I can determine that double expensing is occurring at Rio Concho and is essential in our rate case argument.

Further, Tex. R. Evid. 701 Opinion Testimony by Lay Witnesses allows opinion "rationally based on the witness's perception" and is "helpful to clearly understanding the witness's testimony or to determining a fact in issue".

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.

Knowledge acquired by reading Rio Concho's Confidential Filings has allowed me to gain the personal knowledge required by Tex. R. Evid 602 in this case.

Having accomplished an audit, I can determine that double expensing is occurring at Rio Concho and is essential in our rate case argument.

Further, Tex. R. Evid. 701 Opinion Testimony by Lay Witnesses allows opinion “rationally based on the witness’s perception” and is “helpful to clearly understanding the witness’s testimony or to determining a fact in issue”.

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.

Knowledge acquired by reading Rio Concho’s Confidential Filings has allowed me to gain the personal knowledge required by Tex. R. Evid 602 in this case.

Further, Tex. R. Evid. 701 Opinion Testimony by Lay Witnesses allows opinion “rationally based on the witness’s perception” and is “helpful to clearly understanding the witness’s testimony or to determining a fact in issue.”

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.

Ms Brunson’s testified, in numerous instances, as to her duties. There is no speculation made as to those duties.

Ms Brunson stated fact. I read those statements and now possess personal knowledge of her duties as

Required by Tex. R. Evid 602.

Meter reading fees as expensed by Rio Concho were presented in Rio Concho documents. There is no speculation as to what those fees are for 2013-2014-2015.

Further, Tex. R. Evid. 701 Opinion Testimony by Lay Witnesses allows opinion “rationally based on the witness’s perception” and is “helpful to clearly understanding the witness’s testimony or to determining a fact in issue.”

Y. Sheets Testimony, Question and Answer at page 16, lines 11-13.

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.

As an experienced auditor, I have gained knowledge of how an audit is conducted and what records are required to do said audit. As such, after researching Rio Concho’s Filings, I have the personal knowledge required in Tex. R. Evid 602. Further, Tex. R. Evid. 701 Opinion Testimony by Lay Witnesses allows opinion “rationally based on the witness’s perception” and is “helpful to clearly understanding the witness’s testimony or to determining a fact in issue.”

I do agree to strike the last sentence in line 13 (“Garbage In, Garbage Out”) without objection.

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.

In regards to the statement by Mr Munson, I submit that his statement is an exception to the Hearsay Rule in

Tex. R. Evid 803(1), Exceptions to the Rule Against Hearsay as stated:

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) *Present Sense Impression.* A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

And further its excepted in Rule 803(5)

Recorded Recollection. A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge, unless the circumstances of the record's preparation cast doubt on its trustworthiness.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

In regards to lines 2-10, yes, there is some opinion however, it is based on knowledge gained via my inspection of their filings. That knowledge gained meets the requirement specified in Tex. R. Evid 602, Need for Personal Knowledge. The opinion is justified via Tex. R. Evid 701 (a) and (b) Opinion Testimony by Lay Witnesses which allows "opinion rationally based on the witness's perception" and is "helpful to clearly understanding the witness's testimony or to determining a fact in issue."