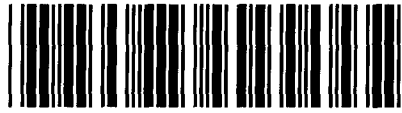


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**APPLICATION OF RIO CONCHO AVIATION, INC. FOR A RATE/TARIFF CHANGE** **BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**STEPHEN GRACE'S RESPONSE TO RIO CONCHOS OBJECTION TO AND MOTION TO STRIKE A PORTION OF RATEPAYER, STEPHEN GRACE, DIRECT TESTIMONY**

**TEXAS RULES OF EVIDENCE,**

**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 803; Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness**

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

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

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

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## **II.**

### **Mr. Grace objects to the motion to strike the following testimonies applying the above Rules.**

#### **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. CD/. EVID. 801 and 802.

- A. Mr. Grace was present at that meeting and did hear what Mr. Brunson said regarding what would take place if anyone objected the proposed rate increase.  
**Rule 803 (5) (b & c)**

#### **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.

- A. Mr. Grace knows an aviation fuel pump has nothing to do with a water distribution system. A helicopter landing pad has nothing to do with a water system. Therefore, it is obvious the land which these two items occupy have nothing to do with the water system. Also, Rio Concho shows a paving bill in their expense report which states the paving was done for purposes other than for the water system.  
**Rule 701 (a&b) and Rule 602**

#### **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.

- A. Mr. Grace prepares his own tax returns, manages his two companies' books and understands how to move numbers around in the "books." Pay one company from another company to show a different profit and losses for each. Also, Mr. Grace is a full time resident of Hicks airfield. He is constantly driving through and around the airfield. It is obvious when a hanger door is open or closed. He, prior to this case, has never seen the hanger in which there is now a water office, open. Therefore, he has never seen the new water office open. There was no notice of the lock box on the hanger claimed to house a water department office till after this rate case was initiated.

**Rule 701 (a&b), Rule 803 and Rule 602**

**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.

- A. Rio Concho states they have operated in the "Red" or without an adequate rate of return. Yet when examining their P&L statements and adding in the benefits and compensation given to their officers, employees AND noting that the officers and employee own Rio Concho it is easy to establish the books can look bad yet there is substantial income to the company, its officers and one full time employee. Also supply and demand and pricing do have a large effect on how much of a product will be sell IF there is competition and another source of a product. Economics 101

**Rule 701 (a&b) and Rule 602**

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

- A. The unreasonable expense incurred for this rate increase is more than speculation. Rio Concho is not trying to keep their cost down. Rio Concho is doing exactly what they said they would do, as stated in the meeting Mr. Grace attended. Also, examining Rio Conchos' financial information, it is clear they have not tried to keep expenses down. One example is the purchase of a luxury automobile as the water department vehicle.

**Rule 602, Rule 701 (a&b) and Rule 803**

**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.

- A. Mr. Grace has examined Rio Concho's P&L statements and all their confidential accounting entries. The profits extracted from Rio Concho are for the benefit of its officers and employee.

**Rule 701 (a&b)**

**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

- A. The fact Rio Concho mentioned other water companies' rates at the meeting and how Rio Concho should not be compared because of the differences in relative size, Rio Concho being so much smaller therefore must charge a higher rate to survive. It is only right to also look at a very similar water system although much smaller than Rio Concho and compare their rates and using the same argument Rio Concho is applying for a rate increase that well exceeds their needs to survive. To compare rate structures is a method of testing the proposed rates and validating the need for a rate increase.

**Rule 701 (a&b) and Rule 401**

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

- A. The fact companies have eliminated pensions and retirement medical packages It is public record; it has been in the news. It's just business. Therefore, it does not make you a second class citizen.

Mr. Grace, an employee of American Airlines, has endured a company bankruptcy which resulted in the freeze of his defined retirement benefit plan and the elimination of all his retiree medical benefits. It is a known fact that large companies have followed the same path of eliminating and or severely reducing retirement benefits. Mr. Grace does possess personal knowledge of retirement benefits and or the lack of the same.

**Rule 401, Rule 602 and Rule 701 (a&b)**