

1 A. I will review the interrogatories and
2 production request and admissions from AquaSource.

3 Q. Uh-huh. Will you be providing any
4 testimony regarding AquaSource?

5 A. Well, AquaSource is a protestant to the
6 City of Austin's applications.

7 Q. Right.

8 A. So I'm sure I will be asked about
9 AquaSource as I testify.

10 Q. Okay. But in -- do you understand the --
11 the process regarding prefiled testimony?

12 A. Yes.

13 Q. Right. Do you anticipate that you will be
14 providing testimony, prefiled testimony, regarding
15 AquaSource? What I'm asking is: I understand that
16 you're -- you're saying that other parties may, when
17 you're on the stand, ask you about AquaSource.

18 A. Uh-huh.

19 Q. What I'm asking is: Are you going to be
20 proffering any opinions about AquaSource as a TCEQ
21 expert in your prefiled testimony?

22 A. Yes.

23 Q. Okay. Do you know what those opinions are
24 at this time?

25 A. No, I do not.

1 Q. Okay. Do you have any knowledge regarding
2 AquaSource at this time?

3 A. I know that they serve within the proposed
4 area.

5 Q. Okay. Any -- anything else?

6 A. Not really.

7 Q. Okay. Have you discussed AquaSource with
8 anybody at -- at TCEQ or otherwise?

9 A. I haven't really talked to anybody about
10 AquaSource.

11 Q. Okay. And you said that you have not
12 formulated an opinion about AquaSource's ability to
13 serve or capability in any way as of yet?

14 A. Correct.

15 Q. Okay. When do you expect that you will be
16 formulating those opinions?

17 A. As we receive our -- our discovery and our
18 prefiled testimony, I'll begin to form an opinion.

19 Q. Okay. I'm going to ask you the same
20 questions regarding Creedmore-Maha. Do you have any
21 knowledge of Creedmore-Maha?

22 A. I know that the Creedmore-Maha area is
23 abutted by the proposed City of Austin area.

24 Q. Uh-huh. Will you be providing any
25 testimony regarding Creedmore?

1 A. As a protestant, yes.

2 Q. Okay.

3 A. As a --

4 Q. In your prefiled testimony?

5 A. Yes.

6 Q. Okay. Have you discussed Creedmore-Maha,
7 their operations, their management, anything, with
8 anybody at TCEQ or otherwise?

9 A. Victoria Harkins processed the Creedmore
10 application, and we used to visit about that case.

11 Q. Okay. And -- and what specifically did you
12 visit about?

13 A. City of Austin, I believe, had protested
14 the Creedmore-Maha application, and I went to the
15 evidentiary hearing and saw and heard Victoria
16 testify.

17 Q. Okay. Did you-all talk about that
18 testimony either before or after the fact?

19 A. Sure. We did discuss it, but I can't
20 recall what was said at this time.

21 Q. Okay. Have you formulated any opinion
22 regarding Creedmore-Maha?

23 A. No.

24 Q. Its ability to serve, anything like that?

25 Okay. Will you be providing any

1 testimony regarding the City of Mustang Ridge?

2 A. I'm sure they will be mentioned in the
3 prefile list.

4 Q. Okay. Again, have you discussed the City
5 of Mustang Ridge with anyone?

6 A. No.

7 Q. Okay. Have you formulated any opinions
8 regarding the City of Mustang Ridge?

9 A. No.

10 Q. Okay. One more. Will you be providing any
11 testimony regarding LCRA?

12 A. Yes.

13 Q. Have you discussed LCRA with anyone at TCEQ
14 or otherwise?

15 A. Not that I can recall, no.

16 Q. Okay. Do you have any opinion regarding
17 the LCRA, their ability to serve, their
18 qualifications?

19 A. No.

20 Q. Okay. Okay. Let's go back and talk about
21 your background again for a second. What -- what is
22 your educational background?

23 A. I have a bachelor's in microbiology from
24 Oklahoma State University and a master's in
25 environmental engineering from Oklahoma State

1 University.

2 Q. Have you held any other positions at TCEQ
3 besides the one that you're currently in?

4 A. I worked for two years and two months in
5 the public -- public drinking water section.

6 Q. Uh-huh.

7 A. And I reviewed exception requests to the
8 public drinking water rules, 290 rules, Subchapter
9 D, and reviewed superior status requests from water
10 systems.

11 Q. Okay. How long have you been in your
12 current position? I can't remember if I asked you
13 that before.

14 A. Two years and three months.

15 Q. How many days? No, I'm kidding. Just
16 kidding. I can tell you to the day in my job. No,
17 I'm just kidding.

18 When you first -- did you say you were
19 an engineer specialist?

20 A. Yes.

21 Q. Okay. When you first became an engineer
22 specialist, did you receive any specific training
23 regarding the review of CCN applications?

24 A. The -- my supervisor pretty much told --
25 taught me how to review CCN applications.

1 Q. And who was your supervisor?

2 A. Victoria Harkins.

3 Q. Okay. How many CCN applications have you
4 reviewed? And that can be an estimate.

5 A. Probably 55.

6 Q. Okay. Were these applications for CCN
7 amendments as well as new CCNs?

8 A. Yes.

9 Q. Okay. And did you review those in your
10 capacity as an engineering specialist?

11 A. Yes.

12 Q. Okay. Were all of these 55 applications
13 applications that you were solely responsible for
14 the review of?

15 A. Yes.

16 Q. Okay. And I'm looking for a percentage
17 here. Of these applications, how many were
18 contested? Or you can give me a number, if you know
19 what the number was.

20 A. Probably 65 percent of the applications I
21 receive are contested.

22 Q. Wow. Were any of the applications that
23 you've reviewed personally submitted by
24 municipalities?

25 A. Yes, some were.

1 Q. Okay. Do you have any idea about how many?

2 A. I cannot recall.

3 Q. Rough percentage?

4 A. Fifteen percent.

5 Q. Okay. Do you recall which municipalities
6 these were?

7 A. City of Bulverde, Village of Wimberley,
8 City of College Station, City of Bryan, and that's
9 all I can recall at this time.

10 Q. Thank you. Were any of these applications
11 similar to the City of Austin's?

12 A. Similar to the City of Austin's?

13 Q. In any way?

14 A. Well, I would imagine they're all similar,
15 cities or municipalities proposing to serve an area
16 and be granted a CCN.

17 Q. Uh-huh. Okay. You're looking at me like,
18 "Stupid question. Stupid question." That's okay.
19 I ask those sometimes. Cut me a break here. Okay?

20 A. Yeah.

21 Q. Okay. Do you in your review of these 55
22 applications and your experience, do you evaluate
23 applications for CCN amendments differently than you
24 do for new CCNs?

25 A. No. The same criteria apply to both.

1 Q. Okay. How about applications that are
2 contested versus applications that are uncontested?
3 Is the review process different in any way?

4 A. It's pretty much the same.

5 Q. Okay. When you receive an application and
6 you are -- are reviewing it, at what point does it
7 usually -- tell me how -- how you -- okay. Let's
8 back up.

9 So what you're saying is that if you
10 receive an application and you're reviewing it and
11 it's going through the notice period, so on and so
12 forth, it's been declared administratively complete
13 and you receive protests from different entities;
14 you're saying that that does not change in any way
15 the manner of your review?

16 A. I would -- when an application is -- when I
17 receive protests to an application --

18 Q. Right.

19 A. -- I do everything I can to encourage the
20 two parties to come to an agreement --

21 Q. Okay.

22 A. -- so the cases don't have to be referred
23 to SOAH --

24 Q. Okay.

25 A. -- and a hearing scheduled.

1 Q. Makes sense. Okay. Anything else?

2 A. No.

3 Q. Okay. Have you been a witness for the
4 executive director in contested cases before?

5 A. Yes.

6 Q. Okay. About how many?

7 A. I've processed an application for Bexar
8 Met, and I processed an application for the City of
9 Bulverde, and the -- those cases were combined at
10 hearing.

11 Q. Oh, okay.

12 A. And I testified at that hearing.

13 Q. So you've testified one time?

14 A. Yes.

15 Q. Okay.

16 MR. DEERING: So the record is
17 correct, actually Mr. Howell has testified twice.

18 THE WITNESS: Yes, but that was a rate
19 application.

20 MR. DEERING: Were you asking for all
21 testifies?

22 MS. JACOBS: Yes, I was, but I did not
23 make that clear. That was my fault.

24 MR. DEERING: Just to make sure the
25 record is clear.

1 MS. JACOBS: Thank you, John.

2 Q. (BY MS. JACOBS) Okay. Getting back to
3 your technical review of the City's applications,
4 how were you chosen or how are the assignments made
5 regarding the application, who is going to do which
6 application?

7 A. Contested applications are usually assigned
8 to somebody with an engineering degree.

9 Q. Okay.

10 A. And I got lucky.

11 MS. JACOBS: Please note the sarcasm
12 for the record.

13 Q. (BY MS. JACOBS) Okay. And so -- so who
14 actually told you that you had this assignment?

15 A. Victoria Harkins, my team leader.

16 Q. Okay. Did she give you any instructions
17 regarding the review of the applications as your
18 supervisor?

19 A. Well, I had been trained by Victoria on how
20 to process applications before I received the City
21 of Austin application.

22 Q. Okay. And so what did that training
23 consist of? I mean, I don't know if you can recall.
24 I'm not asking you to recall exactly, but what was
25 the -- the gist of what she was telling you about

1 how you go about reviewing these applications?

2 A. Well, we -- we looked at the application
3 and she showed me which items in the application I
4 want to -- I needed to receive to continue
5 processing the application, and if I didn't receive
6 one of those items, I needed to send a letter
7 requesting that item.

8 Q. Uh-huh.. Did she give you any kind of
9 instruction regarding any of the factors, the
10 statutory factors?

11 A. Yes. She referred me to the 291.102 rules,
12 and we looked through those also so I would be
13 familiar with them.

14 Q. Okay. Did she discuss with you -- and, of
15 course, I'm talking specifically about the need for
16 service factor. Did she talk to you about what are
17 the kinds of things we look for?

18 A. Yes.

19 Q. Okay. Did she explain to you why you look
20 for the things that she specified you should look
21 for?

22 A. We -- we would look for items that
23 demonstrate need for service just so we're not
24 granting CCN area to applicants that aren't going
25 to -- where there are -- is no need for service.

1 Q. Okay. And was there a -- was there a
2 supervisor besides Victoria, anyone else that was
3 responsible for overseeing your review of the
4 applications?

5 A. Our section manager also would look through
6 an application before -- as an application was near
7 completion, he would look through the application
8 also.

9 Q. And are you referring to Doug Holcomb?

10 A. Yes.

11 Q. Okay. And did you discuss with either Doug
12 Holcomb, Victoria, Michelle, your conclusions
13 regarding the City's applications? Or -- or -- let
14 me back up -- or any -- any -- at any time during
15 your review, did you all have meetings and discuss
16 them?

17 A. Repeat your question, please.

18 Q. I -- I garbled that.

19 When you were reviewing the
20 applications, did you have any meetings or
21 discussions with any of your supervisors? And by
22 "supervisors," I mean Victoria Harkins, Michelle
23 Abrams or Doug Holcomb.

24 A. Victoria and I, once we received the map
25 showing where City of Austin currently proposed --

1 currently provided service and where they had
2 request for service within the proposed area --

3 Q. Right.

4 A. -- we looked and saw -- we both looked at
5 the map.

6 Q. Okay. Do you recall if -- do you recall
7 any comments made by -- by Victoria Harkins
8 regarding the maps?

9 A. Not really.

10 Q. How long did it take you to review the
11 applications?

12 A. Oh, I'm continuing to review the
13 applications, and I've had them for a long time.

14 Q. Okay. So you -- your review is not
15 complete --

16 A. That is true.

17 Q. -- as of yet? Okay.

18 In conducting your review, do you use
19 any kind of checklist or a form, any kind of
20 guidance document?

21 A. We have a checklist that when -- before the
22 application is finalized, I will fill out that
23 checklist and submit it along with recommendation
24 form and a certificate and the cover letter and the
25 mailing list.

1 Q. Have you filled out that checklist for the
2 City's applications?

3 A. No, I have not.

4 Q. Okay. When do you anticipate that you will
5 fill out that checklist?

6 A. Before I submit those items that I just
7 listed to my team leader, I will complete that
8 checklist.

9 Q. When do you think you will submit those
10 items that your team leader?

11 A. Once -- if this case goes to hearing, once
12 we hear the reply from the SOAH judge and the
13 commissioners and everybody --

14 Q. Okay. So after --

15 A. Makes their decision.

16 Q. -- after the judge issues the PFD?

17 A. Right.

18 Q. The proposal for decision?

19 A. (Moving head up and down.)

20 Q. Okay. When you were -- well, as you are
21 doing your review, do you take any notes?

22 A. Yes.

23 Q. Okay. Do you -- have you written any
24 e-mails regarding the applications to anyone?
25 Obviously you're not going to sit there and write

1 e-mails to yourself.

2 A. Yeah.

3 Q. Okay.

4 A. As interrogatories are -- are being --
5 being created, the legal group and myself have to
6 correspond about the application.

7 Q. Okay. Have you written any notes on the
8 applications themselves?

9 A. No.

10 Q. Okay.

11 MS. JACOBS: Would you be willing to
12 produce these notes?

13 MR. DEERING: Sure.

14 MS. JACOBS: Okay.

15 Q. (BY MS. JACOBS) Okay. Let's talk for a
16 moment about -- do you recall a letter that was sent
17 to the City regarding the fact that the application
18 was protested and that the TCEQ was opposed to the
19 City's applications?

20 A. Yes, I recall that letter.

21 Q. Okay. Who drafted that letter?

22 A. I drafted that letter.

23 Q. Okay. Did Victoria Harkins have input on
24 that? Did she review it? Did she assist you in
25 drafting?

1 A. Yes. I -- I gave a letter to Victoria once
2 I drafted it.

3 Q. Okay. Did anyone else review that letter
4 besides Victoria before that went out?

5 A. I don't think so.

6 Q. Okay. So you were the one that made the
7 initial recommendation to oppose the City's
8 applications?

9 A. When Victoria and I looked at the map of
10 the proposed area and the map of the request for
11 service that the City had submitted, that's when I
12 decided that staff should also protest the
13 application.

14 Q. Okay. So your decision to protest the
15 applications were based upon the -- looking at the
16 proposed area and then looking at the service
17 extension request?

18 A. Yes.

19 Q. Was that decision based on anything else?

20 A. The time that it would take the applicant
21 to provide service to the entire proposed area and
22 the cost to a -- to a potential customer to
23 provide -- to receive service from the City of
24 Austin rather than one of the existing utilities
25 near -- near them.

1 Q. Do you have knowledge of -- of what that
2 cost might be to customers?

3 A. No, I don't.

4 Q. Okay. Do you have knowledge of the City's
5 ability to provide timely service?

6 A. Well, if the City's existing utilities are
7 a long ways away from a potential customer and
8 there's a neighboring utility near that potential
9 customer, I believe that that potential customer
10 could receive service from the existing utility
11 sooner and possibly cheaper from the existing
12 utility than from the applicant.

13 Q. Do you have any specific knowledge, though,
14 about the City's abilities in that regard?

15 A. No.

16 Q. Based on your review of the application?

17 A. No.

18 Q. Okay. So backing up for a second, Victoria
19 reviewed the letter that said that you were opposing
20 the applications but didn't -- did she approve it?

21 A. Yes.

22 Q. Okay. She approved it. So would you
23 call -- it was a joint decision to oppose the
24 applications?

25 A. Yes.

1 Q. Okay. And when were the applications
2 declared technically complete?

3 A. When were they declared technically
4 complete?

5 Q. Yes.

6 A. I don't know that they've ever been
7 declared technically complete.

8 Q. Okay. Do you know if -- I think you said
9 that -- that Ms. Harkins reviewed the maps with you.

10 A. Yes.

11 Q. Okay. Do you know whether she reviewed any
12 other portions of the applications?

13 A. I'm sure she looked through other portions
14 of the applications also.

15 Q. Okay. Do you know which portions she
16 looked at?

17 A. No.

18 Q. Okay. Do you know if she took any notes?

19 A. I don't believe she did.

20 Q. Okay. And forgive me if I already asked
21 you this, but the request for information that was
22 sent to the City --

23 A. Uh-huh.

24 Q. -- did you prepare that?

25 A. Yes.

1 Q. Okay. So you drafted that letter?

2 A. Yes, I did.

3 Q. And Victoria Harkins reviewed that letter?

4 A. Yes.

5 Q. Okay. Let's look through -- let me see if
6 I have that -- the RFI response. Did you review the
7 RFI response that the City submitted?

8 A. Yes.

9 Q. Okay. Okay. Part one of the RFI response
10 is the water service extension request.

11 A. Yes.

12 Q. Okay. Did you review these service
13 extension requests?

14 A. Yes.

15 Q. Did you read all of them?

16 A. Yes.

17 Q. Every page?

18 A. I verified that the extension requests
19 there were on the map.

20 Q. Okay. Did you review any of the
21 information regarding -- sometimes these contain,
22 like, engineering information. Did you review any
23 of that?

24 A. I -- I read through those documents, yes.

25 Q. Okay. Are -- is this, in your opinion, a

1 relevant factor in your determining need for service
2 in an area?

3 A. Yes.

4 Q. Okay. Same answer apply to the wastewater
5 service extension request, part two?

6 A. Yes.

7 Q. Okay. Part three is the actual wholesale
8 service contracts the City has.

9 A. Uh-huh.

10 Q. Did you review those?

11 A. Yes, I looked at those.

12 Q. Did you review every page?

13 A. I can't say that I reviewed every page.

14 Q. Okay. And I think you said before that
15 those also are a relevant factor in your assessing
16 need for service?

17 A. Yes.

18 Q. Okay. Part four is -- contains information
19 regarding the City's water retail customers, outside
20 City water retail customers.

21 A. Uh-huh.

22 Q. Did you review that information?

23 A. Yes.

24 Q. Okay. Did you review all parts of that
25 information?

1 A. Yes.

2 Q. Okay. Is that also a relevant factor in
3 your assessment of the need for service?

4 A. Yes, it is.

5 Q. Okay. And the same questions with respect
6 to outside City wastewater retail customers.

7 A. Repeat the question, please.

8 Q. I'm sorry. Did you review part five of the
9 request for information response dealing with
10 outside City wastewater retail customers?

11 A. Yes.

12 Q. Okay. But you didn't review -- or you did
13 review every part of that, you believe?

14 A. I believe I did, yes.

15 Q. Okay. Is that a relevant factor in your
16 assessing need for service?

17 A. Yes.

18 Q. Okay. Did you review the part six service
19 extension request maps?

20 A. Yes, I did.

21 Q. Okay. And that is also a relevant factor
22 in assessing need for service?

23 A. Yes.

24 Q. Okay. Did you review the subdivision maps
25 in part seven?

1 A. Yes, I did.

2 Q. Okay. Do you think that that's relevant in
3 determining need for service?

4 A. Can I see one of those subdivision maps?

5 Q. Sure.

6 A. (Witness perusing document.) Yes, I
7 believe that is relevant to the demonstration of
8 need for service in the proposed area.

9 Q. Okay. And do you recall reviewing the
10 letter that came with the RFI response?

11 A. Yes.

12 Q. Okay. Did you have any questions or
13 concerns regarding the letter or any of the
14 information contained in the RFI response?

15 A. Well, I was concerned about how much of the
16 proposed area did not have request for service.

17 Q. Okay. Did you have any questions or
18 concerns regarding the validity of the information?

19 A. No.

20 Q. Now that Victoria Harkins has moved on to
21 another position outside of TCEQ, who, if anyone, do
22 you discuss issues regarding the City of Austin's
23 applications with?

24 A. The section manager, Doug Holcomb, and I
25 talk about City of Austin if I have a question and I

1 need an answer.

2 Q. Okay. Have you talked to him about the
3 City's applications?

4 A. We talked about the demonstration of need
5 for service.

6 Q. Okay. And what was the -- the substance of
7 that discussion, if you can recall?

8 A. The -- that -- the peer review, we -- as I
9 had talked earlier.

10 Q. Right.

11 A. We discussed it.

12 Q. Okay. So he was a part of the discussion
13 when you were talking about what are appropriate and
14 relevant factors to assessing the need for service?

15 A. Yes.

16 Q. Okay. Let's refer for a moment to the
17 code. Okay. I'm going to refer to Section 30 TAC,
18 Section 291.102 entitled, "Criteria For Considering
19 and Granting Certificates or Amendments."

20 A. Uh-huh.

21 Q. And I would like to ask you -- I'm going
22 to -- actually going to refer to -- specifically to
23 part D, which first starts out, "In considering
24 whether to grant or amend a certificate, the
25 Commission shall also consider," and then it lists

1 eight factors --

2 A. Uh-huh.

3 Q. -- as I -- as I know you're aware of. And
4 I'd like to ask you, okay, with respect -- I'm going
5 to read the factor to you, okay, and then I'm going
6 to ask you a question about it.

7 Number one: Is the adequacy of
8 service currently provided to the requested area.
9 Okay. Let's take the water application first. Do
10 you have an opinion regarding this factor and the
11 City of Austin's water application?

12 A. There is need for service in portions of
13 the City of Austin's applications.

14 Q. Okay. But with respect to the -- that's --
15 you're tying that to the adequacy of -- of current
16 service there?

17 A. Is service -- okay.

18 Q. I'm sorry. Let me repeat -- repeat the
19 factor. "The adequacy of service" -- this is --
20 "The Commission shall also consider the adequacy of
21 service currently provided to the requested area."

22 A. Uh-huh.

23 Q. Do you have an opinion about the adequacy
24 of service in the City's requested water CCN area?

25 A. There are existing utilities in portions of

1 the proposed area --

2 Q. Uh-huh.

3 A. -- that -- that may be able to provide
4 service to some of the proposed area near their
5 existing facilities.

6 Q. Okay. But specifically regarding -- I
7 mean, putting that aside for a second and just
8 looking at the unserved proposed area, do you have
9 any opinion about the adequacy of service currently
10 there?

11 A. There are portions of the proposed area
12 where there is not yet a provider.

13 Q. Okay. And recall that earlier, we
14 discussed the fact that the City is not overlapping
15 anyone else's service area. So we're not talking
16 about areas in which there are providers. We're
17 talking about the proposed area in which there are
18 no other providers. And that's what I'm -- that's
19 what I'm talking about, the adequacy of service in
20 that area.

21 A. I believe the City of Austin proposed area
22 surrounds existing utilities.

23 Q. Right.

24 A. And for those areas where there are
25 existing utilities, service may be adequate.

1 Q. Okay. But when the City is surrounding --
2 when the City is surrounding the -- the utility --

3 A. Uh-huh.

4 Q. -- it's not in an area that is being served
5 by that utility. So we're, again, talking about
6 areas where there is no utility service, per se. Do
7 you see what I'm saying? I'm -- it's -- I'm not
8 making myself very clear, but does that make sense
9 what I just said? So I'm asking you about the
10 adequacy of the service in the area that is not
11 being served by any utility and if you have an
12 opinion as to that.

13 A. There -- there -- if -- in some portions of
14 the proposed area, service is not adequate at this
15 time.

16 Q. Okay. We'll leave that at that. Okay.
17 Factor two is our favorite factor, the need for
18 additional service in the requested area.

19 A. Uh-huh.

20 Q. Do you have an opinion -- and I'm -- I'm
21 going to go through just the -- the water
22 application first, and then we can talk about the
23 sewer separately so we don't get all messed up.

24 Do you have an opinion regarding need
25 for additional service in the requested water area

1 with respect to the City's application?

2 A. There are large portions of the proposed
3 area where there are no requests for service.

4 Q. Okay. And if there are no requests for
5 service, then you equate that with being that there
6 is no need for additional service?

7 A. It hasn't been demonstrated that there's a
8 need for service in those areas.

9 Q. Okay. So it sounds like what you're saying
10 to me that -- is that, actually, the only factor or
11 the only relevant factor that you're looking at in
12 determining need for service is a service extension
13 request. Is that a fair statement?

14 A. No. The other items that we review
15 contribute to demonstrating a need for service.

16 Q. The other items that we just reviewed in
17 the applications?

18 A. Right. But this is a huge proposed area.

19 Q. Right. So you're not just looking at SERs
20 in determining need for service?

21 A. Right. Right.

22 Q. Okay. Number three is the effect of the
23 granting of a certificate on the recipient of the
24 certificate and on any retail public utility of the
25 same kind already serving the proximate area. Do

1 you have an opinion with respect to the water
2 application regarding the effect of bringing the
3 certificate on the City and the effect on other
4 retail utilities?

5 A. Well, if the City were granted the CCN for
6 the entire proposed area, they -- they -- it may be
7 some time before they could provide service to some
8 of those areas.

9 Q. Right.

10 A. And even though they will be obligated to
11 serve once they had a CCN.

12 Q. Uh-huh.

13 A. The existing utilities, if their boundaries
14 were enclosed by the granting of the entire proposed
15 area to Austin, then that could stifle their growth.

16 Q. Okay. So in terms of the effect on
17 existing utilities, you're -- you're talking about a
18 loss of -- of their ability to grow?

19 A. Right.

20 Q. Okay.

21 A. They would not -- may have trouble
22 borrowing money to expand their systems and expand
23 their CCN areas if they were enclosed by City of
24 Austin applications.

25 Q. Okay. So basically we're talking about a

1 lost business opportunity?

2 A. Yes.

3 Q. Okay. When you analyze the effect on a
4 retail public utility of the same kind serving in
5 the proximate area, does it matter whether or not
6 that utility has a pending application?

7 A. I would like to see that utility have an
8 application in-house amending their existing area,
9 but they don't have to have an application in-house.

10 Q. Okay. Okay. Let's move on to the ability
11 of the applicant to provide adequate service. Do
12 you have any opinion regarding the City of Austin's
13 ability to provide adequate service in the proposed
14 water area?

15 A. The existing utilities in the proposed area
16 may be able to provide service faster and cheaper
17 than City of Austin who may have to -- may -- where
18 their facilities may be a long distance from the
19 person requesting service.

20 Q. Okay.

21 A. And it might cost a lot of money to get
22 service to the customer.

23 Q. Okay. Do you have any conclusive evidence
24 of that or do you know that for a fact, or is this a
25 supposition on your part?

1 A. That it's going to cost more to get service
2 from a utility that's a long ways away compared --

3 Q. That -- that a utility -- that another
4 utility might be better able -- talking about
5 ability to serve --

6 A. Uh-huh.

7 Q. -- an area than the City of Austin would
8 be?

9 A. I do not know that for sure.

10 Q. Okay. Do you have any -- the next factor
11 is factor five, and it's the feasibility of
12 obtaining service from an adjacent retail public
13 utility. Do you have an opinion regarding that
14 factor and the City of Austin's water CCN
15 application?

16 A. It may be feasible for a customer to obtain
17 service faster and sooner from an existing utility
18 than it would be from Austin, whose existing
19 facilities may be quite a ways away.

20 Q. And how will you assess or how have you
21 assessed that feasibility? Well, let me start --
22 have you assessed the feasibility of neighboring
23 utilities receiving service or providing service?
24 Pardon me.

25 A. I have an application that's been contested

1 in Medina County where an applicant wants to serve
2 on somebody else's CCN. And I -- we have not been
3 to evidentiary hearing yet, but I have reviewed the
4 information from the applicant trying to serve
5 within somebody else's CCN. And so, yes, I have
6 done that.

7 Q. Okay. Have you done that in this case?

8 A. No, I have not.

9 Q. Okay. And, again, how do you anticipate
10 that you will assess the feasibility of obtaining
11 service from an adjacent retail public utility when
12 you do that?

13 A. Well, we would need to see a cost estimate
14 from the each utility --

15 Q. Uh-huh.

16 A. -- to provide service to a certain area --

17 Q. Uh-huh.

18 A. -- and...

19 Q. Will you look at -- will you look at these
20 adjacent utilities and will you compare them on all
21 of these factors to the City of Austin?

22 A. Yes. I will look at those criteria in the
23 291.102 rules.

24 Q. What if you have two utilities that meet
25 the same minimum requirements? Okay. This is a

1 hypothetical.

2 If you're confronted with two
3 utilities that meet the same minimum requirements
4 and it is equally feasible for them to serve the
5 area, what do you do then? Do you go beyond and
6 look at which utility is going to provide better
7 service to -- to the customers or do you just stop
8 there and say that's the -- that's the end of your
9 opinion? Do you understand my question?

10 A. Yes. I think you -- I would look and see
11 who could provide service faster and cheaper.

12 Q. Okay. So in other words, you would -- you
13 would try to assess not just who is meeting minimum
14 requirements but who is the better provider overall?

15 A. Yes.

16 Q. Okay. All right. Moving on to number six,
17 which is the financial stability of the applicant,
18 including, if applicable, the adequacy of the
19 appellant's debt equity ratio. This is something
20 that you have an -- if I'm understanding your
21 previous testimony, this is something you have an
22 opinion on based on Mr. Smith's opinion; is that
23 correct?

24 A. Right. Yes.

25 Q. Okay. And his opinion, you stated before,

1 was that the City of Austin is financially stable or
2 that the City of Austin meets this criteria?

3 A. Yes.

4 Q. Okay. The next one is environmental
5 integrity. Do you have any opinion regarding the
6 City of Austin's water application with respect to
7 this factor?

8 A. Not in particular. I know that
9 environmental integrity isn't disrupted when -- when
10 construction is done temporarily.

11 Q. Right.

12 A. But that's pretty much all the cases.

13 Q. Okay. And then the final factor is the
14 probable improvement in service or lowering of cost
15 to consumers in that area. Do you have any opinion
16 regarding this factor and the City of Austin's water
17 application? And, again, we're talking about an
18 area that is unserved.

19 A. For areas that are unserved that are near
20 existing utilities, it may be possible to receive
21 service faster and cheaper from the existing utility
22 than it would be from City of Austin.

23 Q. Okay. But you don't have a final opinion
24 regarding that?

25 A. I have not made a final opinion yet.

1 Q. Okay. Would you characterize your opinion
2 that the executive director is opposed to the
3 applications as a final opinion?

4 A. No. We are still in the discovery process
5 and will -- may receive information to -- to make
6 our -- make our final recommendation on yet that we
7 don't have at this time.

8 Q. Okay. Moving to 291.102 (a) -- which I'm
9 going to just read the text of it for you. (As
10 read) In determining whether to grant a new
11 certificate of public convenience and necessity, the
12 Commission shall ensure that the applicant possesses
13 the financial, managerial and technical capability
14 to provide continuous and adequate service.

15 I believe that you've already stated
16 that the TCEQ's assessment is that the City is
17 financially capable of providing service; is that
18 correct?

19 A. Yes.

20 Q. And did you also say that Mr. Smith did the
21 managerial assessment?

22 A. Yes.

23 Q. Okay. And that his conclusion was that the
24 City was managerially capable of serving the
25 proposed water area?

1 A. Yes.

2 Q. Okay. And you are doing the technical
3 assessment?

4 A. Yes.

5 Q. The assessment of technical capability?

6 A. Uh-huh.

7 Q. Do you believe the City has the technical
8 capability to serve the proposed areas?

9 A. Our review is not done, so I would rather
10 not give a final opinion at this time.

11 Q. Have you seen anything up to this time that
12 would indicate to you -- and, again, I'm not asking
13 for a final opinion, but that would indicate to you
14 that the City is not technically capable of
15 serving -- providing water service to this area?

16 A. No.

17 Q. Okay. Same questions for the wastewater
18 application. Is your answer on financial and
19 managerial the same?

20 A. Yes.

21 Q. Is your answer on technical capability the
22 same?

23 A. Yes.

24 Q. Okay. And, of course, I completely
25 neglected to return to the factors regarding the

1 sewer application.

2 Let me just ask you: Regarding the
3 sewer application and the factors in 291.102 (d),
4 the eight factors we just went through for the water
5 application, are any of your answers about your
6 conclusions on any of these factors -- and I can
7 read them again if you want me to. Are any of --
8 are any of your answers different than the answers
9 that you gave --

10 A. No.

11 Q. -- on the water application? Okay.

12 MS. JACOBS: Do you want to take any
13 kind of break?

14 THE WITNESS: Yeah, I'd like to take a
15 break.

16 MS. JACOBS: Off the record.

17 (Recess taken from 11:04 a.m. to
18 11:19 a.m.)

19 Q. (BY MS. JACOBS) Have you take a look at
20 these maps we have. I'm showing you a map of the
21 City's proposed water service area. And do you
22 recognize this map as part of the application?

23 A. Yes.

24 Q. Okay. And you reviewed this map
25 previously?

1 A. Yes.

2 Q. Okay. Maybe if we could borrow someone's
3 pen. Everybody at once.

4 Could you go ahead on this map, to the
5 best of your ability, and mark the area -- start --
6 we'll go north of 290, U.S. 290 East. Mark the
7 areas in the proposed area that you do not believe
8 the City of Austin has shown a need for service for.

9 A. Well, when -- when I compared this map with
10 the map showing the areas where Austin had requests
11 for service, then I could do that, but I don't have
12 that map in front of me right now.

13 Q. Okay. So you're saying that the areas that
14 you don't believe the City has shown a need for
15 service for are the areas where there are no SERs?

16 A. There were large portions of that area
17 where there were no requests for service, yes.

18 Q. Okay. So -- so, again, you're equating
19 need for service with the existence of SERs?

20 A. Yes.

21 Q. Okay. You know, when we talked about the
22 relevant factors to determining need for service in
23 the applications --

24 A. Uh-huh.

25 Q. -- have you combined those relevant factors

1 with the service extension requests in analyzing the
2 need for service? I mean, looked at that as a
3 totality?

4 A. There -- well, I haven't come up with my
5 final recommendation because we're not even close to
6 the date of the evidentiary hearing yet.

7 Q. Okay. So you're saying no, you haven't
8 looked at the combination of relevant factors in
9 determining the need for service. You've just
10 looked at the SERs?

11 A. Well, I've also reviewed the documentation
12 that the City of Austin has provided.

13 Q. Okay. But you haven't -- I'm not -- I'm
14 just going to rephrase this.

15 You have -- you have not yet made a
16 final determination regarding need for service and
17 the City of Austin's applications?

18 A. Yes.

19 Q. Yes, you have not?

20 A. I have not yet made that determination.

21 Q. Okay. And you said that -- so -- so just
22 to clarify here, you are not able at this time to
23 show me on the proposed water map where you believe
24 the City has not shown a need for service?

25 A. Well, this map would be a layer showing the

1 proposed area.

2 Q. Uh-huh.

3 A. And the -- the map that Austin provided
4 showing the request for service would be another
5 layer. And if you were to -- to be able to layer
6 one map on top of the other map, then you could see
7 the proposed area in relation to the areas where
8 Austin has request for service.

9 Q. Okay. Would another layer to that map, in
10 your opinion, be the areas where Austin is providing
11 wholesale service?

12 A. Yes.

13 Q. Okay. And then another layer to that map
14 would be letters Austin has received -- letters of
15 intent Austin has received from developers or
16 landowners?

17 A. Well, the -- the map showing a request for
18 service.

19 Q. I -- I'm sorry. I'm making a distinction
20 between formal service extension requests filled out
21 on a form --

22 A. Uh-huh.

23 Q. -- and a letter of intent from someone
24 saying, "I own this land," or, "I'm a developer and
25 I'm not ready to fill out a formal request for

1 service, but I intend on doing so."

2 A. Yes. If we had a -- a map showing the
3 location of those people --

4 Q. Uh-huh. That would be another layer?

5 A. Right. That would be another layer.

6 Q. Okay. Okay. What about, like, planned
7 facilities? We talked about engineering plans,
8 things of that nature.

9 A. Uh-huh.

10 Q. Would that be another layer?

11 A. In the demonstration of need for service?

12 Q. Right.

13 A. Yes.

14 Q. Okay. After you have all of those layers
15 added together, if this area was completely covered
16 with all of those layers, would you then feel -- and
17 this is -- I realize that this is speculation on
18 your part, but I'm speaking in a hypothetical sense.
19 Would you then feel that the City had established a
20 need for service in the proposed area?

21 A. Yes.

22 Q. Okay. Do you feel -- we talked about
23 population and growth projections before. Is the
24 population and growth projections, can that also
25 be -- is that also one of those layers that could

1 help fill in some of those gaps if you place it in
2 combination with these other factors?

3 A. It would contribute to demonstrating need
4 for service.

5 Q. Okay. And, again, I'm not asking in
6 isolation. I'm not saying you just have one layer
7 of growth projections. I'm saying in the
8 combination of the different layers we've talked
9 about. And your answer would be yes?

10 A. Yes.

11 Q. Okay. And then the other factor, of
12 course, we've talked about has been, you know,
13 planned roadways, and that could be yet another
14 layer in what you're talking about?

15 A. Right.

16 Q. Correct? Okay. One of the reasons that
17 I'm talking about a combination of factors is in one
18 of the discovery responses that you drafted -- and
19 I'm going to refer to, if I ever find it, request
20 for admission number two, the admissions that we
21 sent to you guys. Are you familiar with what an
22 admission is?

23 A. Yes.

24 Q. Right. Okay. The -- the request for
25 admission number two that we sent said, (As read)

1 The City may demonstrate need for service by either
2 service extension requests or by a combination of
3 service extension requests and population and growth
4 projections in the proposed service areas and you
5 answered "Deny." Do you agree with that? You still
6 agree with that?

7 A. The --

8 Q. And -- and you know what? -- Let me -- let
9 me -- well, go ahead and answer that first.

10 A. I would review anything that a applicant
11 felt demonstrated need for service.

12 Q. Okay. It also says here that -- it says,
13 (As read) The executive director -- and tell me if
14 this is -- if this is part of what you wrote.

15 (As read) The executive director
16 qualifies this response by stating that the
17 executive director's denial is in response to a
18 compound request. While service extension requests
19 may demonstrate a need for service, a combination of
20 service extension requests and the mere existence of
21 population and growth projections in a proposed
22 service area would not necessarily demonstrate a
23 need for service in the proposed service area.

24 Do you agree with that part?

25 A. Could you read it one more time, please?

1 Q. Of course. (As read) While service
2 extension requests may demonstrate a need for
3 service, a combination of service extension requests
4 and the mere existence of population and growth
5 projections in a proposed service area would not
6 necessarily demonstrate a need for service in the
7 proposed service area.

8 A. Well, I would consider anything that an
9 applicant submitted --

10 Q. Okay.

11 A. -- in their...

12 Q. The next sentence says, (As read)
13 Demonstration of need for service would depend on
14 the combination of service extension requests, data
15 contained in those population and growth projections
16 and any other relevant factor.

17 Do you agree with that?

18 A. Yes.

19 Q. And that's essentially what we've been
20 talking about --

21 A. Right.

22 Q. -- is the specific combination, the map
23 overlays, the different levels and the overlapping
24 and a combination of all of those factors?

25 A. Uh-huh.

1 Q. Okay. And so my understanding -- forgive
2 me for being repetitive -- is that you have not yet
3 combined all of those overlays and all of those
4 factors in making your final recommendation
5 regarding the need for service factor?

6 A. That is true.

7 Q. Okay. I realize I phrased that a little
8 weirdly. Do you want me to rephrase that to be
9 absolutely sure?

10 A. No. That's fine.

11 Q. Have you discussed the City's applications
12 with any of the other parties --

13 A. No.

14 Q. -- to this proceeding?

15 A. No.

16 Q. You have not discussed -- or their
17 attorneys?

18 A. No.

19 Q. No discussions regarding that? Okay. Have
20 you -- let me go back through here. Let me ask you
21 this.

22 What do you think -- this may be just
23 a rephrasing of what I already asked you, but what
24 do you think the consequence would be -- say you get
25 an application, and -- and the application is for an

1 area, a larger area, and you determine that that
2 applicant is financially capable, managerial --
3 managerially capable and technically capable of
4 serving that area and you grant or you recommend to
5 grant and -- of a CCN and that applicant is granted
6 that CCN for that area, but the applicant has no
7 growth projections, has no service extension
8 requests, has no transportation map, has no
9 wholesale service in the area, doesn't have any of
10 those factors that we've talked about that can be --
11 that are relevant to determining need in an area.
12 Are you following me?

13 A. I think so.

14 Q. Okay. So they haven't submitted anything
15 like that to you. What is the consequence -- what
16 would -- what would be so bad about granting that
17 area to that applicant if they're able to serve it?
18 Does that make sense? They haven't submitted to you
19 any of the evidence that the City has submitted to
20 you regarding, like, need for service, but they're
21 able to serve.

22 A. Uh-huh.

23 Q. What do you -- what do you -- do you see a
24 negative consequence to that?

25 A. Well, I don't think I'd grant the CCN if

1 they didn't demonstrate need for service.

2 Q. Work with me, hypothetically speaking?

3 A. Okay.

4 Q. Do you understand my question? What is the
5 negative consequence if you don't establish a need
6 for service in a particular area if that applicant
7 is capable of serving, or is there one that you know
8 of?

9 A. Well, if you -- a CCN entitles that utility
10 to be the sole service provider to that area.

11 Q. Uh-huh.

12 A. There may be neighboring utilities that
13 would like to serve that area also. And if I
14 granted the CCN to a utility where there is no
15 demonstration of need for service and this
16 neighboring utility will -- may want to acquire that
17 area someday but it's too late.

18 Q. Okay. So you're really talking about the
19 effects not on potential customers but the effects
20 on the neighboring utilities who might want to serve
21 that area?

22 A. I thought that there weren't any customers
23 in this proposed --

24 Q. Potential customers.

25 A. Okay. Well, one of the criteria in 102

1 is -- is the effect on the existing utilities.

2 Q. Right. Right.

3 A. So I'd consider that in my review.

4 Q. Okay. All righty. Are you -- let's go
5 back to -- and we already covered in terms of -- of
6 documentation and documents in your possession, that
7 you do have notes, personal notes, that you've made
8 regarding the applications.

9 A. Yes.

10 Q. Okay. Is there anything else that you have
11 written down or any memos? I think you've said you
12 got that memo from -- from Mr. Smith; right?

13 A. Right.

14 Q. Do you have any other memos regarding the
15 City's applications?

16 A. No.

17 Q. Do you have -- have you created any memos
18 regarding the City's applications?

19 A. No.

20 Q. Okay. Is there anything else in your
21 working file regarding the City's applications?

22 A. No.

23 Q. All right. And you don't have anything in
24 writing in your possession regarding Hornsby Bend --

25 A. No.

1 Q. -- their applications or any of the other
2 protestants in this case?

3 A. No.

4 Q. Okay. Are you one of the -- the things
5 that you are talking about is the -- the cost of
6 providing service; correct?

7 A. Yes.

8 Q. That's one of your concerns. Are you
9 familiar with the City's reimbursement program?

10 A. I've heard about it.

11 Q. Are you familiar with the -- the details
12 and requirements of that program?

13 A. Not really.

14 Q. Are you familiar with the City's cost
15 participation program?

16 A. I've heard about that also.

17 Q. Okay. But, again, you're not familiar with
18 the details of how that works?

19 A. No.

20 Q. Okay. With respect to the City's existing
21 facilities and your information regarding how easy
22 it would be for the City to serve particular areas
23 as opposed to how easy it might be for some other
24 utility to serve particular areas --

25 A. Uh-huh.

1 Q. -- what sort of knowledge do you have
2 regarding the City's existing facilities?

3 A. I toured one of their plants over in west
4 Austin before, one of their water treatment plants.
5 I toured their wastewater facility somewhere on the
6 east side of town. I believe it's Walnut Creek
7 Wastewater Treatment Facility. I've spoke with
8 Ronnie Jones about some of the plans for the future
9 to provide service to these areas.

10 Q. Do you -- do you have -- I'll be more
11 specific. Do you have any information regarding
12 capacity of existing facilities?

13 A. Well, that information would be in the
14 sanitary surveys that the inspectors from the
15 regions completed.

16 Q. And have you reviewed those?

17 A. I looked through those, yes.

18 Q. Okay.

19 A. It's been a while. I've looked at them.

20 Q. Okay. So you do know about existing
21 capacity that -- do you have any opinion regarding
22 the existing capacity that the City has, either
23 water or sewer?

24 A. Well, these are awfully large proposed
25 areas and so I would be surprised if the existing

1 facilities could provide service to the entire
2 proposed area.

3 Q. Uh-huh. Do you have -- do you have any
4 opinion regarding the City's planned expansions and
5 planned facilities?

6 A. Do I have what, now?

7 Q. Any opinion regarding the City's planned
8 expansions and planned facilities to propose to
9 serve the proposed area?

10 A. Not really.

11 Q. Okay. That's something that -- that when
12 we were talking about the plans, you indicated you
13 hadn't reviewed those but you were in the process of
14 reviewing?

15 A. The plans and specifications?

16 Q. Yeah, the long-term plans.

17 A. Oh, okay. The -- the master plan, yes.

18 Q. Right. Right. So you're in the process of
19 reviewing those?

20 A. Right.

21 Q. Okay. Have you in the past in your
22 experience with other applications ever had an
23 application or handled an application that was for a
24 large service area?

25 A. Yes.