

- System has adequate working capital ratio.
- System has a high rate of collection of customer accounts.
- System has written policies for collection and termination of service.
- Collection policies are enforced.
- System has low number of disconnects due to failure to pay bill.

Features That Can Indicate Managerial Capability

- System is aware of type of organization it is and has legal authority to operate.
- System has an operating budget.
- System has written operating policies.
- Customers have access to water system personnel at all times in case of emergency.
- Records are maintained and updated on a regular basis.
- Budget is used to determine rates.
- System has adequate water supply.
- System has written emergency plans.
- System has conveyable title to water-producing assets.
- Governing board is able to conduct meetings and make decisions (that is, a quorum is usually present, and there is a majority vote for most major operating decisions).
- Every connection is metered.
- Customers are billed on consistent billing cycles based on meter readings.
- System owners or board has current CCN (if required).
- System has an approved drought contingency plan.
- System has an employee handbook or policies.

Features That Can Indicate Technical Capability

- Licensed operator is on site or available to operate the system.
- All operators are licensed.
- Operators have the appropriate certifications for the size of the system.
- System staff can identify oldest piece of equipment and the most vulnerable part of the system.
- Process control and preventive maintenance are performed and documented.
- System calculates unaccounted-for water and does not have excessive amounts.
- System does not have a history of noncompliance with regulatory requirements.

Appendix B

Statutory and Regulatory Authority

This policy implements portions of Senate Bill 1 (1997) and is intended to assist our Utilities and Districts program staff and the regulated community with the implementation of the regionalization requirements in Title 30 Texas Administrative Code (30 TAC) Chapters 290 and 291. Regionalization was one of the key goals of Senate Bill 1 (1997) in order to optimize the use of existing financial, managerial, and technical resources. In addition, this policy is based on the following statutory provisions.

General Statutory Authority

The Texas Health and Safety Code, Chapter 341, Subchapter C, requires that public drinking water be free from deleterious matter and comply with the standards established by the TCEQ or the United States Environmental Protection Agency. The TCEQ may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

The Texas Water Code Chapter 13 establishes a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to ensure that rates, operations, and services are just and reasonable to the consumers and to the retail public utilities.

Specific Authority

Public Water Systems

Section 341.0315(a)–(d) of the Texas Health and Safety Code, relating to public drinking water supply system requirements, requires that:

- (a) To preserve the public health, safety, and welfare, the commission shall ensure that public drinking water supply systems:
 - (1) supply safe drinking water in adequate quantities;
 - (2) are financially stable; and
 - (3) are technically sound.
- (b) The commission shall encourage and promote the development and use of regional and areawide drinking water supply systems.
- (c) Each public drinking water supply system shall provide an adequate and safe drinking water supply. The supply must meet the requirements of Section 341.031 and commission rules.

- (d) The commission shall consider compliance history in determining issuance of new permits, renewal permits, and permit amendments for a public drinking water system.

Texas Health and Safety Code § 341.035 requires that before constructing a new system a person submit plans and specifications and, with certain exceptions, a business plan that demonstrates that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The TCEQ may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws and rules, in the form of a bond or as specified by the commission, unless the executive director finds that the business plan demonstrates adequate financial capability.

Title 30 TAC § 290.39 ensures that regionalization and area-wide options are fully considered; ensures the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations or changes; establishes minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices; and requires that minimum acceptable financial, managerial, technical and operating practices are specified to ensure that systems are properly operated to produce and distribute safe, potable water.

Water and Sewer CCNs

Texas Water Code § 13.241 requires that an applicant for a CCN demonstrate that it possesses the financial, managerial, and technical capability to provide continuous and adequate service and also requires that an applicant for a new CCN for a physically separate water or sewer system demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

Texas Water Code § 13.246 specifies the factors to be considered by the commission concerning CCN notice and hearing and CCN issuance or refusal.

Texas Water Code § 13.253 requires that a CCN holder located in an affected county that has not been able to provide continuous and adequate service obtain service from another consenting utility service provider. Title 30 TAC § 291.102(a) provides that the TCEQ must ensure that an applicant possesses financial, managerial, and technical capability to provide continuous and adequate service.

Title 30 TAC § 291.102(b) requires that where a new CCN is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

Title 30 TAC § 291.102(c) requires that the TCEQ consider the following in considering whether to grant a CCN:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area;
- (3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity; and
- (8) the probable improvement in service or lowering of cost to consumers in that area.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

ARMBRUST & BROWN, L.L.P.
ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300
AUSTIN, TEXAS 78701-2744
512-435-2300

FACSIMILE 512-435-2360

SEP 15 AM 10:19
CHIEF CLERKS OFFICE

JOHN CARLTON
(512) 435-2308
jcarlton@abaustin.com

September 12, 2008

VIA HAND DELIVERY

James W. Norman
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street
Austin, Texas 78701

Re: SOAH Docket No. 582-06-0203; TCEQ Docket No. 2006-0272-UCR; *Application of the Town of Lindsay to Amend Water and Sewer Certificates of Convenience and Necessity (CCN) Nos. 13025 and 20927 in Cooke County, Texas*; Application Nos. 35096-C & 35097-C

Dear Judge Norman:

Pursuant to Order No. 6, enclosed for filing is (1) Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Executive Director; and (2) Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Town of Lindsay.

If you have any questions, please do not hesitate to contact me.

Sincerely,

ARMBRUST & BROWN, L.L.P.


John J. Carlton

Attorney for Lindsay Pure Water Company

Enclosure

cc: Arturo D. Rodriguez
Blas J. Coy
Brian MacLeod
Christiaan Siano
TCEQ Docket Clerk

SOAH DOCKET NO. 582-06-2023
TCEQ DOCKET NO. 2006-0272-UCR

SEP 15 AM 10:19
CHIEF CLERKS OFFICE

APPLICATION OF THE TOWN OF
LINDSAY TO AMEND WATER AND
SEWER CERTIFICATES OF
CONVENIENCE AND NECESSITY
(CCN) NOS. 13025 AND 20927 IN
COOKE COUNTY, TEXAS
APPLICATION NOS. 35096-C & 35097-C§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**LINDSAY PURE WATER COMPANY'S OBJECTIONS TO THE PREFILED
TESTIMONY AND EXHIBITS OF THE EXECUTIVE DIRECTOR**

TO THE HONORABLE ADMINSTRATIVE LAW JUDGE:

COMES NOW, Lindsay Pure Water Company ("LPWC") and files its objections to the
prefiled testimony and exhibits of the Executive Director ("ED") in the above-styled matter.

A.

Objections to the Prefiled Testimony of Tammy Lee Holguin-Benter.

LPWC makes the following objections to portions of Ms. Tammy Lee Holguin-Benter's
prefiled testimony as well as the exhibits introduced through Ms. Holguin-Benter's testimony.
LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or
specific parts of exhibits that are outlined below.

1. **Page 5, line 15 "Has Lindsay indicated..." – line 22.**

LPWC objects to the direct question at line 15 as calling for a hearsay answer. LPWC
further objects to the testimony at lines 16-22 as hearsay. The witness recounts what Donald
Meltzer said and that testimony is offered for the truth of the matter stated. The witness does not
demonstrate first-hand knowledge in her testimony.

2. **Page 8, line 20 "Does Lindsay have the ability..." – page 9, line 8.**

LPWC objects to the question posed as lines 20-21 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on Lindsay's ability to adequately provide water service based upon the capacity of the Lindsay's existing well capacity or the capacity of its storage tanks, pumps, distribution lines and other facilities. LPWC further objects to the testimony at lines 16-22 as hearsay. The witness recounts what Donald Meltzer said and that testimony is offered for the truth of the matter stated. The witness does not demonstrate first-hand knowledge of Lindsay's ability to adequately provide service in her testimony. In addition, the witness bases her opinion upon the unsupported opinion testimony of Kerry Maroney, which can not form the basis of her opinion.

3. **Page 9, line 9 "Does Lindsay have the ability..." – line 17.**

LPWC objects to the question posed as lines 9-10 as calling for speculation on the part of this witness, and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on Lindsay's ability to adequately provide sewer service based upon the treatment capacity of an existing wastewater treatment plant or wastewater collection system. LPWC further objects to the testimony at lines 11-17 as hearsay. The witness recounts what Donald Meltzer and Kerry Maroney said and that testimony is offered for the truth of the matter stated. The witness does not demonstrate first-hand knowledge of Lindsay's ability to adequately provide sewer service in her testimony. In addition, the witness bases her opinion upon the unsupported opinion testimony of Kerry Maroney, which can not form the basis of her opinion.

4. **Page 10, lines 7-10, "Although Lindsay Pure... currently serving."**

LPWC objects to this testimony as inadmissible. The testimony is based upon facts that are not in evidence and is contrary to the undisputed facts in the record. As stated in Mr. Myrick's testimony, Lindsay Pure Water company already provides service to numerous connections within $\frac{1}{4}$ mile of its existing CCN and intends to provide service to additional connections as homes are constructed within the South Ridge of Lindsay subdivision.

5. **Page 10, lines 14-18, "...the Applicant responds..." - "...the areas of overlap is executed."**

LPWC objects to this testimony as hearsay. The witness recounts statements from the Application, and such statements are offered for the truth of the matter stated. The Application itself is the best evidence of what it says.

6. **Page 11, lines 4-10, "...Mr. Jack Stowe...100% equity."**

LPWC objects to the question posed as line 4 as calling for speculation on the part of this witness, and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on the sufficiency of Lindsay's debt-equity ratio or ability to obtain loans, issue bonds, levy taxes or utilize fees or other funds to operate the utility system. LPWC further objects to this testimony as hearsay. The witness recounts testimony of Jack Stowe, and such testimony is offered for the truth of the matter stated.

7. **Page 11, lines 11 - 20, "Will the environmental integrity.... development or property in the area."**

LPWC objects to the question posed at lines 11-12 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on environmental integrity and the

differences in impact between centralized wastewater service versus OSSF systems or between centralized water systems and individual water wells.

8. **Page 11, line 21, "Will granting Lindsay's water..." – page 12, line 9, "...lower the cost to consumers."**

LPWC objects to the question posed at lines 21-22 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on improved service with regard to centralized water and wastewater systems versus OSSF systems and individual water wells. In addition, the witness admits to having no knowledge of Lindsay's rates and is not qualified as an expert to testify regarding the potential lowering of cost through economies of scale.

Respectfully submitted,



JOHN J. CARLTON

State Bar No. 03817600

ARMBRUST & BROWN, L.L.P.

100 Congress Avenue, Suite 1300

Austin, Texas 78701-2744

(512) 435-2300 – Telephone

(512) 436-2360 – Telecopy

**ATTORNEYS FOR THE CITY OF
PFLUGERVILLE**

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by Facsimile and/or First Class Mail on this 12th day of September, 2008, to the following:

Arturo D. Rodriguez, Jr.
Russell & Rodriguez, L.L.P.
1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628
Phone: (512) 930-1317
Facsimile: (866) 929-1641

Blas J. Coy, Jr.
Office of Public Interest Counsel
TCEQ – MC 103
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-6363
Facsimile: (512) 239-6377

Brian MacLeod, Attorney
TCEQ – MC-175
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-0750
Facsimile: (512) 239-0606

Docket Clerk
Office of the Chief Clerk – MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-3300
Facsimile: (512) 239-3311

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
SEP 15 AM 9:19
CHIEF CLERKS OFFICE


JOHN J. CARLTON

SOAH DOCKET NO. 582-06-2023

SEP 15 AM 10:19

TCEQ DOCKET NO. 2006-0272-UCR

CHIEF CLERK'S OFFICE

APPLICATION OF THE TOWN OF
LINDSAY TO AMEND WATER AND
SEWER CERTIFICATES OF
CONVENIENCE AND NECESSITY
(CCN) NOS. 13025 AND 20927 IN
COOKE COUNTY, TEXAS
APPLICATION NOS. 35096-C & 35097-C§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**LINDSAY PURE WATER COMPANY'S OBJECTIONS TO THE PREFILED
TESTIMONY AND EXHIBITS OF THE TOWN OF LINDSAY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Lindsay Pure Water Company ("LPWC") and files its objections to the prefiled testimony and exhibits of the Town of Lindsay ("Lindsay") in the above-styled matter.

A.

Objections to the Prefiled Testimony of Donald L. Metzler.

LPWC makes the following objections to portions of Mr. Donald L. Metzler' prefiled testimony as well as the exhibits introduced through Mr. Metzler' testimony. LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. Exhibit DLM-2 (Page 3, lines 15-16)

LPWC objects to the admission of DLM-2 as irrelevant. The Applicant's status as a Type "A" General law city is irrelevant to the consideration of issuance of a CCN amendment by the TCEQ.

2. Exhibit DLM-5 (Page 4, lines 11-12)

LPWC objects to the admission of DLM-5 as hearsay and irrelevant. The Motion was drafted by Mr. Rodriguez, attorney for the Applicant, and contains numerous statements of fact

that are beyond the personal knowledge of Mr. Metzler. In addition, the correction of an error to an order in a previous docket by the TCEQ is irrelevant to the consideration of an application to amend a CCN.

3. Page 4, line 14, "On October 10, 2007..." – page 5, line 1, "...testimony as DLM-8."

LPWC objects to the testimony offered by Mr. Metzler as hearsay. Mr. Metzler is a fact witness and Mayor *Pro Tempore* for Lindsay. He is not employed by TCEQ, and has not been offered as a witness qualified to speak regarding past TCEQ actions affecting Lindsay. Mr. Metzler relies upon correspondence created by others, and testifies as to the content of that correspondence. The testimony is offered for the truth of the matters stated in the correspondence.

4. Exhibits DLM-6 (Page 4, Lines 16-17)

LPWC objects to the admission of DLM-6 as irrelevant and not properly authenticated. The correspondence relates to the notice of the correction of an error to an order in a previous docket. The only relevant issue is the actual boundary of the Applicant's existing CCN, which is not addressed by this letter. In addition, there is no signature on the document that might be evidence of the document's accuracy, completeness or authenticity.

5. Page 6, lines 20 – 21, "Yes, except as otherwise modified by ... witnesses."

LPWC objects to this testimony as hearsay. The witness is testifying regarding the entire content of the Application and the testimony of other witness. The testimony is offered for the truth of the matter stated, but the witness has no personal knowledge of the facts or opinions set forth in the Application and in the testimony presented by other witnesses.

6. **Page 7, lines 14 – 18, “...stating that all...accepted for technical review.”**

LPWC objects to this testimony as hearsay. The witness is testifying regarding the content of correspondence created by TCEQ. The testimony is offered for the truth of the matter stated in the correspondence. Exhibit DLM-9 is the best evidence of its contents.

7. **Page 8, lines 11-20, “Does Lindsay have....only one certified contract operator.”**

LPWC objects to the direct question as calling for speculation on the part of the witness and the response as speculation. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding Lindsay’s technical ability to provide water and wastewater service.

8. **Page 11, lines 10-12, “Approximately....Attachment DLM-10” and Exhibit DLM-10.**

LPWC objects to this testimony and Exhibit DLM-10 as hearsay. DLM-10 contains copies of letters from various individuals. None of the individuals have been called to testify regarding their purported request for water or sewer service. The exhibit is offered to prove the truth of the matter stated.

9. **Page 11, line 16, “The map shown....” – page 12, line 2, “....CCN application” and Exhibits DLM-11 and DLM-12.**

LPWC objects to this testimony and Exhibits DLM-11 and DLM-12 as hearsay. The witness is testifying as to the content of maps he did not create. The maps themselves are hearsay as they were not created by this witness, nor are they offered or proven up by the individual who created them. The testimony and the maps are offered to prove the truth of the matters stated.

10. **Page 12, lines 12-16, “I have attached....testimony as DLM-3” and Exhibit DLM-13.**

LPWC objects to this testimony and Exhibit DLM-13 as hearsay. The witness is testifying as to the content of a map he did not create. The map itself is hearsay as it was not

created by this witness, nor is it offered or proven up by the individual who created it. The testimony and the map are offered to prove the truth of the matters stated.

11. Page 12, lines 18-23, "Is there a need....Proposed Service Territory."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether a need for service exists. This is ultimately a question for the trier of fact. Further, the witness relies upon a hearsay exhibit (DLM-10) in support of his speculation.

12. Page 14, lines 3-5, "Most municipalities.... residents of the ETJ."

LPWC objects to the response as speculative and hearsay. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding what "most municipalities" believe. The testimony is offered to prove the truth of the matter stated.

13. Page 16, lines 19-22, "Does Lindsay have....Proposed Service Territory."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether Lindsay has the ability to provide service.

14. Page 18, lines 16-19, "Does the City have....Yes."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or

experience, to testify regarding whether Lindsay has the financial resources to provide service. This is ultimately a question for the trier of fact.

15. Page 21, lines 11-17, "Will service to the proposed....being served by any provider."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether service by Lindsay would be an improvement to the proposed area. This is ultimately a question for the trier of fact.

16. Page 22, lines 5-8, "The City has properly....water or wastewater system."

LPWC objects to the response after, "Yes." as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether an operator is properly trained, whether the customers have received adequate service, and whether the financial position of the city is good or bad.

17. Page 22, lines 10-13, "If the certificate....Yes."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether issuing a CCN to Lindsay would best serve the public. This is ultimately a question for the trier of fact.

B.

Objections to the Prefiled Testimony of Kerry D. Maroney.

LPWC makes the following objections to portions of Mr. Kerry D. Maroney's prefiled testimony as well as the exhibits introduced through Mr. Maroney's testimony. LPWC moves to

strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. Page 6, lines 2-16 and Exhibits KDM-2 – KDM-10.

The witness testifies regarding the various exhibits attached to his prefiled testimony, Exhibits KDM-2 through KDM-10. LPWC objects to all of these exhibits. Exhibits KDM-2, KDM-3, KDM-5, KDM-6, KDM-7, KDM-8, KDM-9 and KDM-10 are hearsay. KDM-2 is a Notice of Violation letter to which the witness is not a party and a response to the notice of violation to which the witness is not a party. KDM-3, KDM-6 and KDM-7 are maps the witness did not create. KDM-5 is the same exhibit as DLM-10, purported requests for service, and none of the individuals who wrote the letters contained in KDM-5 are offered as witnesses. KDM-8 is information apparently pulled from the internet, was not prepared by the witness and is neither certified as true and correct nor properly authenticated. KDM-9 is a study prepared by someone other than this witness. Only a portion of the study is attached as Exhibit KDM-9. KDM-10 is a TPDES permit document that is not certified as true and correct. All of these exhibits are offered for the truth of the matters contained within them and are hearsay.

2. Page 7, lines 6-7, "A copy of...Attachment KDM-2."

LPWC has objected to Exhibit KDM-2 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. This testimony and the exhibit are hearsay.

3. Page 8, lines 16-17, "An official CCN...Attachment KDM-3."

LPWC has objected to Exhibit KDM-3 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. The witness did not create the map to which he refers, and the map has not been offered or certified as true and correct or properly authenticated. This testimony and the exhibit are hearsay.

4. **Page 9, lines 10-19, "There is a need....Mr. Metzler."**

LPWC has objected to Exhibits KDM-5 (and the same documents in Exhibit DLM-10), KDM-6 and KDM-7 as hearsay. The witness refers to these exhibits as representing the truth of the matters stated therein. The witness did not create any of the documents contained in Exhibit KDM-5, nor did he create the maps which are Exhibits KDM-6 and KDM-7. This testimony and the exhibits are hearsay.

5. **Page 9, lines 21-22, "Lindsay had... Census Bureau."**

LPWC objects to this testimony as hearsay.

6. **Page 9, lines 22-23, "I have attached...Attachment KDM-8."**

LPWC has objected to Exhibit KDM-8 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. This testimony and the exhibit are hearsay.

7. **Page 10, Lines 4-5, "Additionally, there are... is needed."**

LPWC objects to this testimony as inadmissible. There is no evidence in the record of to support the environmental reasons on which the witness bases this opinion, as further explained in paragraphs 9 and 10 below.

8. **Page 10, lines 6-8, "Regarding water,....lose water service."**

LPWC objects to this testimony as inadmissible. There is no evidence in the record of well failures on which the witness bases this opinion.

9. **Page 10, lines 14-18, "This is important...adversely affected."**

LPWC objects to this testimony as inadmissible. There is no evidence in the record of failure of OSSF systems, impacts from discharge coming from a failed OSSF system or pollutant levels on which the witness bases this opinion. There is no evidence in the record of OSSF failures in the proposed service area.

10. Page 11, lines 9-16, "I have attached ... could be understated."

LPWC has objected to Exhibit KDM-9 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. The witness also attempts to cite a statement attributed to the EPA. This testimony and the exhibit are hearsay.

11. Page 12, lines 18-19, "and has no plans... service business."

LPWC objects to this testimony as hearsay.

12. Page 14, lines 6-11, "Lindsay currently....304 additional customers."

LPWC objects to this testimony as inadmissible. The witness gives opinions regarding Lindsay's capacity to serve additional sewer customers and Lindsay's water wells. There is no evidence in the record regarding how Lindsay would serve 470 additional homes, nor is there evidence in the record regarding the capacity of Lindsay's wells.

13. Page 14, lines 16-18, "Additionally, the City...as growth demands."

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay's capacity and ability to serve, yet provides no underlying evidence or calculations in the record for this conclusion.

14. Page 15, lines 17-19, "Additionally,....Proposed Service Territory."

LPWC objects to the testimony at lines 17-19, as the witness states that "Lindsay is not in danger of running out of water," yet provides no basis for that conclusion.

15. Page 16, lines 9-13, "Furthermore,....requested by Lindsay."

LPWC objects to this testimony as irrelevant and nonresponsive. There is no basis for this opinion. The witness is not qualified to determine whether LPWC made a good faith effort in any fact situation, and particularly not as to past performance under a settlement agreement.

16. Page 18, line 22, "and the needs for the foreseeable future."

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay's water supply for the future, but there is no evidence in the record to support this conclusion.

17. Page 18, lines 19-20, "Lindsay's most... is established."

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay's water supply quality, but there is no evidence in the record to support this conclusion.

18. Page 19, lines 14-16, "A number....Attachment KDM-5."

LPWC has previously objected to the documents contained in KDM-5 as hearsay and that objection is reurged here.

19. Page 19, lines 18-21, "The State has made...surface water contamination..."

LPWC objects to this testimony as inadmissible. There is no evidence in the record to support the witness' conclusions.

16. Page 20, lines 15-17, "With Lindsay's...Proposed Service Territory."

LPWC objects to this testimony as inadmissible. There is no evidence in the record to support the witness' conclusions.

C.

Objections to the Prefiled Testimony of Jack E. Stowe.

LPWC makes the following objections to portions of Mr. Jack E. Stowe's prefiled testimony as well as the exhibits introduced through Mr. Stowe's testimony. LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. **Page 12, line 22 “According to the Federal Reserve...” – page 13, line 3, “...subject to in the market” and Exhibit JES-6.**

LPWC objects to the testimony and Exhibit JES-6 as hearsay. Exhibit JES-6 is not certified as correct or authenticated and cannot be offered for the truth of the matter stated by the witness.

2. **Page 13, lines 15-16, “As illustrated...taxable value.”**

LPWC objects to the testimony and Exhibit JES-7 as hearsay. Exhibit JES-7 is simply pulled from the internet, is not certified as correct or authenticated and cannot be offered for the truth of the matter stated by the witness.

3. **Page 16, lines 1-11, “In your opinion....water system development.”**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of Lindsay’s application. The witness is a financial expert.

4. **Page 16, lines 17-20, “However, ...well could be fixed.”**

LPWC objects to the testimony regarding reliability of water service. The witness is not qualified to testify regarding reliability of water service. The witness is a financial expert.

5. **Page 17, lines 6-13, “In your opinion,....treatment facilities.”**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of granting Lindsay’s application to amend Lindsay’s sewer CCN. The witness is a financial expert.

6. **Page 17, lines 15-21, “Mr. Stowe,evapotranspiration systems, etc.”**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding an OSSF facility. The witness is a financial expert.

7. Page 18, lines 1-6, "What impacts....can be adversely affected."

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of OSSF systems. The witness is a financial expert.

8. Page 18, line 8, "Have you reviewed...." – page 19, line2, "could be understated" and Exhibit JES-8.

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding OSSF systems in this matter. The witness is a financial expert. Further, the witness references Exhibit JES-8, which is a partial copy of a report and does not contain information on Region IV. The report is hearsay and irrelevant as attached to the testimony. The report should not be used to prove the truth of the matters stated therein.

9. Page 19, lines 4-14, "What will be....requested CCN area."

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental impacts of providing wastewater service. The witness is a financial expert.

10. Page 19, line 21, "In a study...." – page 20, line 9, "\$10,000 to install" and Exhibits JES-9 and JES-10.

LPWC objects to this testimony as irrelevant and objects to Exhibits JES-9 as hearsay and JES-10 as hearsay and irrelevant. The witness testifies regarding studies conducted by the Guadalupe Water Company and Harris County, which are not parties to this case, and which cover areas not at issue in this case. The testimony is irrelevant to this matter.

11. Page 20, lines 15-17, "As discussed above....approximately \$10,000."

LPWC objects to this testimony as irrelevant and objects to Exhibits JES-9 as hearsay and JES-10 as hearsay and irrelevant. The witness testifies regarding studies conducted by the Guadalupe Water Company and Harris County, which are not parties to this case, and which cover areas not at issue in this case. The testimony is irrelevant to this matter.

12. Page 21, lines 3-8, "According to....as high as \$760.20" and Exhibits JES-11 and JES-12.

LPWC objects to this testimony as irrelevant because it refers to information from the Agricultural Extension Service and the City of Austin, which are not parties to this case. LPWC further objects to the testimony as the witness is not qualified to testify regarding types of septic systems. The witness is a financial expert in this matter. Additionally, LPWC objects to Exhibits JES-11 and JES-12 as both hearsay and irrelevant. JES-11 is an article on Leaching Chambers and JES-12 is an article published by the City of Austin on the internet. Neither exhibit is certified and neither address the witness' financial testimony.

13. Page 22, lines 8-16. "The City would... revenue stream."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on development effects of centralized wastewater service. He is a financial expert for Lindsay.

14. Page 23, lines 1-7, "Mr. Stowe,....requested area."

LPWC objects to the direct question and the testimony in response to the question. The question requires the witness to speculate regarding environmental effects. The witness is not qualified to provide an expert opinion on environmental effects in this matter.

15. Page 23, lines 14-15, "It will also...OSSFs."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on environmental effects in this matter. He is a financial expert for Lindsay.

16. Page 24, line 17, "In your opinion....," – page 25, line 4, "Integrity of the requested area."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on environmental effects in this matter. He is a financial expert for Lindsay.

17. Page 25, lines 12-23. "As I previously.... OSSF requirements."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on development effects of centralized wastewater service, or the environmental effects and burdens of OSSF operations in this matter. He is a financial expert for Lindsay.

Respectfully submitted,



JOHN J. CARLTON

State Bar No. 03817600

ARMBRUST & BROWN, L.L.P.

100 Congress Avenue, Suite 1300

Austin, Texas 78701-2744

(512) 435-2300 – Telephone

(512) 436-2360 – Telecopy

**ATTORNEYS FOR LINDSAY PURE WATER
COMPANY**

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by Facsimile and/or First Class Mail on this 12th day of September, 2008, to the following:

Arturo D. Rodriguez, Jr.
Russell & Rodriguez, L.L.P.
1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628
Phone: (512) 930-1317
Facsimile: (866) 929-1641

Blas J. Coy, Jr.
Office of Public Interest Counsel
TCEQ – MC 103
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-6363
Facsimile: (512) 239-6377

Brian MacLeod, Attorney
TCEQ – MC-175
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-0750
Facsimile: (512) 239-0606

Docket Clerk
Office of the Chief Clerk – MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-3300
Facsimile: (512) 239-3311

CHIEF CLERKS OFFICE

08 SEP 15 AM 10:19

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY



JOHN J. CARLTON

ARMBRUST & BROWN, L.L.P.

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300
AUSTIN, TEXAS 78701-2744
512-435-2300

FACSIMILE 512-435-2380

JOHN CARLTON
(512) 435-2308
jcarlton@abawstin.com

September 12, 2008

CHIEF CLERKS OFFICE

SEP 12 PM 5:00

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY**VIA HAND DELIVERY**James W. Norman
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street
Austin, Texas 78701

Re: SOAH Docket No. 582-06-0203; TCEQ Docket No. 2006-0272-UCR; *Application of the Town of Lindsay to Amend Water and Sewer Certificates of Convenience and Necessity (CCN) Nos. 13025 and 20927 in Cooke County, Texas*; Application Nos. 35096-C & 35097-C

Dear Judge Norman:

Pursuant to Order No. 6, enclosed for filing is (1) Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Executive Director; and (2) Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Town of Lindsay.

If you have any questions, please do not hesitate to contact me.

Sincerely,

ARMBRUST & BROWN, L.L.P.

John I. Carlton

Attorney for Lindsay Pure Water Company

Enclosure

cc: Arturo D. Rodriguez
Blas J. Coy
Brian MacLeod
Christiaan Siano
TCEQ Docket Clerk

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

SEP 12 PM 5:00

CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

APPLICATION OF THE TOWN OF § BEFORE THE STATE OFFICE
LINDSAY TO AMEND WATER AND §
SEWER CERTIFICATES OF §
CONVENIENCE AND NECESSITY § OF
(CCN) NOS. 13025 AND 20927 IN §
COOKE COUNTY, TEXAS §
APPLICATION NOS. 35096-C & 35097-C§ ADMINISTRATIVE HEARINGS

**LINDSAY PURE WATER COMPANY'S OBJECTIONS TO THE PREFILED
TESTIMONY AND EXHIBITS OF THE EXECUTIVE DIRECTOR**

TO THE HONORABLE ADMINSTRATIVE LAW JUDGE:

COMES NOW, Lindsay Pure Water Company ("LPWC") and files its objections to the prefiled testimony and exhibits of the Executive Director ("ED") in the above-styled matter.

A.

Objections to the Prefiled Testimony of Tammy Lee Holguin-Benter.

LPWC makes the following objections to portions of Ms. Tammy Lee Holguin-Benter's prefiled testimony as well as the exhibits introduced through Ms. Holguin-Benter's testimony. LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. Page 5, line 15 "Has Lindsay indicated..." – line 22.

LPWC objects to the direct question at line 15 as calling for a hearsay answer. LPWC further objects to the testimony at lines 16-22 as hearsay. The witness recounts what Donald Meltzer said and that testimony is offered for the truth of the matter stated. The witness does not demonstrate first-hand knowledge in her testimony.

2. Page 8, line 20 "Does Lindsay have the ability..." – page 9, line 8.

LPWC objects to the question posed as lines 20-21 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on Lindsay's ability to adequately provide water service based upon the capacity of the Lindsay's existing well capacity or the capacity of its storage tanks, pumps, distribution lines and other facilities. LPWC further objects to the testimony at lines 16-22 as hearsay. The witness recounts what Donald Meltzer said and that testimony is offered for the truth of the matter stated. The witness does not demonstrate first-hand knowledge of Lindsay's ability to adequately provide service in her testimony. In addition, the witness bases her opinion upon the unsupported opinion testimony of Kerry Maroney, which can not form the basis of her opinion.

3. Page 9, line 9 "Does Lindsay have the ability..." – line 17.

LPWC objects to the question posed as lines 9-10 as calling for speculation on the part of this witness, and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on Lindsay's ability to adequately provide sewer service based upon the treatment capacity of an existing wastewater treatment plant or wastewater collection system. LPWC further objects to the testimony at lines 11-17 as hearsay. The witness recounts what Donald Meltzer and Kerry Maroney said and that testimony is offered for the truth of the matter stated. The witness does not demonstrate first-hand knowledge of Lindsay's ability to adequately provide sewer service in her testimony. In addition, the witness bases her opinion upon the unsupported opinion testimony of Kerry Maroney, which can not form the basis of her opinion.

4. Page 10, lines 7-10, "Although Lindsay Pure... currently serving."

LPWC objects to this testimony as inadmissible. The testimony is based upon facts that are not in evidence and is contrary to the undisputed facts in the record. As stated in Mr. Myrick's testimony, Lindsay Pure Water company already provides service to numerous connections within ¼ mile of its existing CCN and intends to provide service to additional connections as homes are constructed within the South Ridge of Lindsay subdivision.

5. Page 10, lines 14-18, "...the Applicant responds..." – "...the areas of overlap is executed."

LPWC objects to this testimony as hearsay. The witness recounts statements from the Application, and such statements are offered for the truth of the matter stated. The Application itself is the best evidence of what it says.

6. Page 11, lines 4-10, "...Mr. Jack Stowe...100% equity."

LPWC objects to the question posed as line 4 as calling for speculation on the part of this witness, and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on the sufficiency of Lindsay's debt-equity ratio or ability to obtain loans, issue bonds, levy taxes or utilize fees or other funds to operate the utility system. LPWC further objects to this testimony as hearsay. The witness recounts testimony of Jack Stowe, and such testimony is offered for the truth of the matter stated.

7. Page 11, lines 11 – 20, "Will the environmental integrity.... development or property in the area."

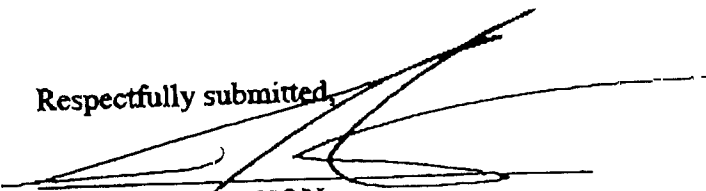
LPWC objects to the question posed at lines 11-12 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on environmental integrity and the

differences in impact between centralized wastewater service versus OSSF systems or between centralized water systems and individual water wells.

8. Page 11, line 21, "Will granting Lindsay's water..." – page 12, line 9, "...lower the cost to consumers."

LPWC objects to the question posed at lines 21-22 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on improved service with regard to centralized water and wastewater systems versus OSSF systems and individual water wells. In addition, the witness admits to having no knowledge of Lindsay's rates and is not qualified as an expert to testify regarding the potential lowering of cost through economies of scale.

Respectfully submitted,



JOHN J. CARLTON

State Bar No. 03817600

ARMBRUST & BROWN, L.L.P.

100 Congress Avenue, Suite 1300

Austin, Texas 78701-2744

(512) 435-2300 – Telephone

(512) 436-2360 – Telecopy

**ATTORNEYS FOR THE CITY OF
PFLUGERVILLE**

CERTIFICATE OF SERVICE**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent by Facsimile and/or First Class Mail on this 12th day of September, 2008, to the following:

Arturo D. Rodriguez, Jr.
Russell & Rodriguez, L.L.P.
1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628
Phone: (512) 930-1317
Facsimile: (866) 929-1641

Blas J. Coy, Jr.
Office of Public Interest Counsel
TCEQ – MC 103
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-6363
Facsimile: (512) 239-6377

Brian MacLeod, Attorney
TCEQ – MC-175
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-0750
Facsimile: (512) 239-0606

Docket Clerk
Office of the Chief Clerk – MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-3300
Facsimile: (512) 239-3311

CHIEF CLERKS OFFICE

SEP 12 PM 5:00

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
JOHN J. CARLTON

SOAH DOCKET NO. 582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

CHIEF CLERK'S OFFICE

SEP 12 PM 5:00

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

APPLICATION OF THE TOWN OF
LINDSAY TO AMEND WATER AND
SEWER CERTIFICATES OF
CONVENIENCE AND NECESSITY
(CCN) NOS. 13025 AND 20927 IN
COOKE COUNTY, TEXAS
APPLICATION NOS. 35096-C & 35097-C§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**LINDSAY PURE WATER COMPANY'S OBJECTIONS TO THE PREFILED
TESTIMONY AND EXHIBITS OF THE TOWN OF LINDSAY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Lindsay Pure Water Company ("LPWC") and files its objections to the prefiled testimony and exhibits of the Town of Lindsay ("Lindsay") in the above-styled matter.

A.

Objections to the Prefiled Testimony of Donald L. Metzler.

LPWC makes the following objections to portions of Mr. Donald L. Metzler' prefiled testimony as well as the exhibits introduced through Mr. Metzler' testimony. LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. Exhibit DLM-2 (Page 3, lines 15-16)

LPWC objects to the admission of DLM-2 as irrelevant. The Applicant's status as a Type "A" General law city is irrelevant to the consideration of issuance of a CCN amendment by the TCEQ.

2. Exhibit DLM-5 (Page 4, lines 11-12)

LPWC objects to the admission of DLM-5 as hearsay and irrelevant. The Motion was drafted by Mr. Rodriguez, attorney for the Applicant, and contains numerous statements of fact

that are beyond the personal knowledge of Mr. Metzler. In addition, the correction of an error to an order in a previous docket by the TCEQ is irrelevant to the consideration of an application to amend a CCN.

3. Page 4, line 14, "On October 10, 2007..." – page 5, line 1, "...testimony as DLM-8."

LPWC objects to the testimony offered by Mr. Metzler as hearsay. Mr. Metzler is a fact witness and Mayor *Pro Tempore* for Lindsay. He is not employed by TCEQ, and has not been offered as a witness qualified to speak regarding past TCEQ actions affecting Lindsay. Mr. Metzler relies upon correspondence created by others, and testifies as to the content of that correspondence. The testimony is offered for the truth of the matters stated in the correspondence.

4. Exhibits DLM-6 (Page 4, Lines 16-17)

LPWC objects to the admission of DLM-6 as irrelevant and not properly authenticated. The correspondence relates to the notice of the correction of an error to an order in a previous docket. The only relevant issue is the actual boundary of the Applicant's existing CCN, which is not addressed by this letter. In addition, there is no signature on the document that might be evidence of the document's accuracy, completeness or authenticity.

5. Page 6, lines 20 – 21, "Yes, except as otherwise modified by ... witnesses."

LPWC objects to this testimony as hearsay. The witness is testifying regarding the entire content of the Application and the testimony of other witness. The testimony is offered for the truth of the matter stated, but the witness has no personal knowledge of the facts or opinions set forth in the Application and in the testimony presented by other witnesses.

6. **Page 7, lines 14 – 18, “...stating that all...accepted for technical review.”**

LPWC objects to this testimony as hearsay. The witness is testifying regarding the content of correspondence created by TCEQ. The testimony is offered for the truth of the matter stated in the correspondence. Exhibit DLM-9 is the best evidence of its contents.

7. **Page 8, lines 11-20, “Does Lindsay have....only one certified contract operator.”**

LPWC objects to the direct question as calling for speculation on the part of the witness and the response as speculation. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding Lindsay's technical ability to provide water and wastewater service.

8. **Page 11, lines 10-12, “Approximately....Attachment DLM-10” and Exhibit DLM-10.**

LPWC objects to this testimony and Exhibit DLM-10 as hearsay. DLM-10 contains copies of letters from various individuals. None of the individuals have been called to testify regarding their purported request for water or sewer service. The exhibit is offered to prove the truth of the matter stated.

9. **Page 11, line 16, “The map shown....” – page 12, line 2, “....CCN application” and Exhibits DLM-11 and DLM-12.**

LPWC objects to this testimony and Exhibits DLM-11 and DLM-12 as hearsay. The witness is testifying as to the content of maps he did not create. The maps themselves are hearsay as they were not created by this witness, nor are they offered or proven up by the individual who created them. The testimony and the maps are offered to prove the truth of the matters stated.

10. **Page 12, lines 12-16, “I have attached....testimony as DLM-3” and Exhibit DLM-13.**

LPWC objects to this testimony and Exhibit DLM-13 as hearsay. The witness is testifying as to the content of a map he did not create. The map itself is hearsay as it was not

created by this witness, nor is it offered or proven up by the individual who created it. The testimony and the map are offered to prove the truth of the matters stated.

11. Page 12, lines 18-23, "Is there a need....Proposed Service Territory."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether a need for service exists. This is ultimately a question for the trier of fact. Further, the witness relies upon a hearsay exhibit (DLM-10) in support of his speculation.

12. Page 14, lines 3-5, "Most municipalities.... residents of the ETJ."

LPWC objects to the response as speculative and hearsay. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding what "most municipalities" believe. The testimony is offered to prove the truth of the matter stated.

13. Page 16, lines 19-22, "Does Lindsay have....Proposed Service Territory."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether Lindsay has the ability to provide service.

14. Page 18, lines 16-19, "Does the City have....Yes."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or

experience, to testify regarding whether Lindsay has the financial resources to provide service. This is ultimately a question for the trier of fact.

15. **Page 21, lines 11-17, "Will service to the proposed....being served by any provider."**

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether service by Lindsay would be an improvement to the proposed area. This is ultimately a question for the trier of fact.

16. **Page 22, lines 5-8, "The City has properly....water or wastewater system."**

LPWC objects to the response after, "Yes." as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether an operator is properly trained, whether the customers have received adequate service, and whether the financial position of the city is good or bad.

17. **Page 22, lines 10-13, "If the certificate....Yes."**

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether issuing a CCN to Lindsay would best serve the public. This is ultimately a question for the trier of fact.

B.

Objections to the Prefiled Testimony of Kerry D. Maroney.

LPWC makes the following objections to portions of Mr. Kerry D. Maroney's prefiled testimony as well as the exhibits introduced through Mr. Maroney's testimony. LPWC moves to

strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. Page 6, lines 2-16 and Exhibits KDM-2 – KDM-10.

The witness testifies regarding the various exhibits attached to his prefiled testimony, Exhibits KDM-2 through KDM-10. LPWC objects to all of these exhibits. Exhibits KDM-2, KDM-3, KDM-5, KDM-6, KDM-7, KDM-8, KDM-9 and KDM-10 are hearsay. KDM-2 is a Notice of Violation letter to which the witness is not a party and a response to the notice of violation to which the witness is not a party. KDM-3, KDM-6 and KDM-7 are maps the witness did not create. KDM-5 is the same exhibit as DLM-10, purported requests for service, and none of the individuals who wrote the letters contained in KDM-5 are offered as witnesses. KDM-8 is information apparently pulled from the internet, was not prepared by the witness and is neither certified as true and correct nor properly authenticated. KDM-9 is a study prepared by someone other than this witness. Only a portion of the study is attached as Exhibit KDM-9. KDM-10 is a TPDES permit document that is not certified as true and correct. All of these exhibits are offered for the truth of the matters contained within them and are hearsay.

2. Page 7, lines 6-7, "A copy of...Attachment KDM-2."

LPWC has objected to Exhibit KDM-2 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. This testimony and the exhibit are hearsay.

3. Page 8, lines 16-17, "An official CCN...Attachment KDM-3."

LPWC has objected to Exhibit KDM-3 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. The witness did not create the map to which he refers, and the map has not been offered or certified as true and correct or properly authenticated. This testimony and the exhibit are hearsay.

4. Page 9, lines 10-19, "There is a need....Mr. Metzler."

LPWC has objected to Exhibits KDM-5 (and the same documents in Exhibit DLM-10), KDM-6 and KDM-7 as hearsay. The witness refers to these exhibits as representing the truth of the matters stated therein. The witness did not create any of the documents contained in Exhibit KDM-5, nor did he create the maps which are Exhibits KDM-6 and KDM-7. This testimony and the exhibits are hearsay.

5. Page 9, lines 21-22, "Lindsay had... Census Bureau."

LPWC objects to this testimony as hearsay.

6. Page 9, lines 22-23, "I have attached...Attachment KDM-8."

LPWC has objected to Exhibit KDM-8 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. This testimony and the exhibit are hearsay.

7. Page 10, Lines 4-5, "Additionally, there are... is needed."

LPWC objects to this testimony as inadmissible. There is no evidence in the record of to support the environmental reasons on which the witness bases this opinion, as further explained in paragraphs 9 and 10 below.

8. Page 10, lines 6-8, "Regarding water,.....lose water service."

LPWC objects to this testimony as inadmissible. There is no evidence in the record of well failures on which the witness bases this opinion.

9. Page 10, lines 14-18, "This is important...adversely affected."

LPWC objects to this testimony as inadmissible. There is no evidence in the record of failure of OSSF systems, impacts from discharge coming from a failed OSSF system or pollutant levels on which the witness bases this opinion. There is no evidence in the record of OSSF failures in the proposed service area.

10. Page 11, lines 9-16, "I have attached ... could be understated."

LPWC has objected to Exhibit KDM-9 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. The witness also attempts to cite a statement attributed to the EPA. This testimony and the exhibit are hearsay.

11. Page 12, lines 18-19, "and has no plans... service business."

LPWC objects to this testimony as hearsay.

12. Page 14, lines 6-11, "Lindsay currently....304 additional customers."

LPWC objects to this testimony as inadmissible. The witness gives opinions regarding Lindsay's capacity to serve additional sewer customers and Lindsay's water wells. There is no evidence in the record regarding how Lindsay would serve 470 additional homes, nor is there evidence in the record regarding the capacity of Lindsay's wells.

13. Page 14, lines 16-18, "Additionally, the City...as growth demands."

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay's capacity and ability to serve, yet provides no underlying evidence or calculations in the record for this conclusion.

14. Page 15, lines 17-19, "Additionally,....Proposed Service Territory."

LPWC objects to the testimony at lines 17-19, as the witness states that "Lindsay is not in danger of running out of water," yet provides no basis for that conclusion.

15. Page 16, lines 9-13, "Furthermore,....requested by Lindsay."

LPWC objects to this testimony as irrelevant and nonresponsive. There is no basis for this opinion. The witness is not qualified to determine whether LPWC made a good faith effort in any fact situation, and particularly not as to past performance under a settlement agreement.

16. Page 18, line 22, "and the needs for the foreseeable future."

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay's water supply for the future, but there is no evidence in the record to support this conclusion.

17. Page 18, lines 19-20, "Lindsay's most... is established."

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay's water supply quality, but there is no evidence in the record to support this conclusion.

18. Page 19, lines 14-16, "A number....Attachment KDM-5."

LPWC has previously objected to the documents contained in KDM-5 as hearsay and that objection is reurged here.

19. Page 19, lines 18-21, "The State has made...surface water contamination..."

LPWC objects to this testimony as inadmissible. There is no evidence in the record to support the witness' conclusions.

16. Page 20, lines 15-17, "With Lindsay's...Proposed Service Territory."

LPWC objects to this testimony as inadmissible. There is no evidence in the record to support the witness' conclusions.

C.

Objections to the Prefiled Testimony of Jack E. Stowe.

LPWC makes the following objections to portions of Mr. Jack E. Stowe's prefiled testimony as well as the exhibits introduced through Mr. Stowe's testimony. LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. **Page 12, line 22 "According to the Federal Reserve..." – page 13, line 3, "...subject to in the market" and Exhibit JES-6.**

LPWC objects to the testimony and Exhibit JES-6 as hearsay. Exhibit JES-6 is not certified as correct or authenticated and cannot be offered for the truth of the matter stated by the witness.

2. **Page 13, lines 15-16, "As illustrated...taxable value."**

LPWC objects to the testimony and Exhibit JES-7 as hearsay. Exhibit JES-7 is simply pulled from the internet, is not certified as correct or authenticated and cannot be offered for the truth of the matter stated by the witness.

3. **Page 16, lines 1-11, "In your opinion....water system development."**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of Lindsay's application. The witness is a financial expert.

4. **Page 16, lines 17-20, "However, ...well could be fixed."**

LPWC objects to the testimony regarding reliability of water service. The witness is not qualified to testify regarding reliability of water service. The witness is a financial expert.

5. **Page 17, lines 6-13, "In your opinion,....treatment facilities."**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of granting Lindsay's application to amend Lindsay's sewer CCN. The witness is a financial expert.

6. **Page 17, lines 15-21, "Mr. Stowe,evapotranspiration systems, etc."**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding an OSSF facility. The witness is a financial expert.

7. Page 18, lines 1-6, "What impacts....can be adversely affected."

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of OSSF systems. The witness is a financial expert.

8. Page 18, line 8, "Have you reviewed...." – page 19, line 2, "could be understated" and Exhibit JES-8.

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding OSSF systems in this matter. The witness is a financial expert. Further, the witness references Exhibit JES-8, which is a partial copy of a report and does not contain information on Region IV. The report is hearsay and irrelevant as attached to the testimony. The report should not be used to prove the truth of the matters stated therein.

9. Page 19, lines 4-14, "What will be....requested CCN area."

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental impacts of providing wastewater service. The witness is a financial expert.

10. Page 19, line 21, "In a study...." – page 20, line 9, "\$10,000 to install" and Exhibits JES-9 and JES-10.

LPWC objects to this testimony as irrelevant and objects to Exhibits JES-9 as hearsay and JES-10 as hearsay and irrelevant. The witness testifies regarding studies conducted by the Guadalupe Water Company and Harris County, which are not parties to this case, and which cover areas not at issue in this case. The testimony is irrelevant to this matter.

11. Page 20, lines 15-17, "As discussed above....approximately \$10,000."

LPWC objects to this testimony as irrelevant and objects to Exhibits JES-9 as hearsay and JES-10 as hearsay and irrelevant. The witness testifies regarding studies conducted by the Guadalupe Water Company and Harris County, which are not parties to this case, and which cover areas not at issue in this case. The testimony is irrelevant to this matter.

12. Page 21, lines 3-8, "According to....as high as \$760.20" and Exhibits JES-11 and JES-12.

LPWC objects to this testimony as irrelevant because it refers to information from the Agricultural Extension Service and the City of Austin, which are not parties to this case. LPWC further objects to the testimony as the witness is not qualified to testify regarding types of septic systems. The witness is a financial expert in this matter. Additionally, LPWC objects to Exhibits JES-11 and JES-12 as both hearsay and irrelevant. JES-11 is an article on Leaching Chambers and JES-12 is an article published by the City of Austin on the internet. Neither exhibit is certified and neither address the witness' financial testimony.

13. Page 22, lines 8-16. "The City would... revenue stream."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on development effects of centralized wastewater service. He is a financial expert for Lindsay.

14. Page 23, lines 1-7, "Mr. Stowe,....requested area."

LPWC objects to the direct question and the testimony in response to the question. The question requires the witness to speculate regarding environmental effects. The witness is not qualified to provide an expert opinion on environmental effects in this matter.

15. **Page 23, lines 14-15, "It will also...OSSFs."**

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on environmental effects in this matter. He is a financial expert for Lindsay.

16. **Page 24, line 17, "In your opinion....," – page 25, line 4, "Integrity of the requested area."**

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on environmental effects in this matter. He is a financial expert for Lindsay.

17. **Page 25, lines 12-23. "As I previously.... OSSF requirements."**

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on development effects of centralized wastewater service, or the environmental effects and burdens of OSSF operations in this matter. He is a financial expert for Lindsay.

Respectfully submitted,



JOHN J. CARLTON

State Bar No. 03817600

ARMBRUST & BROWN, L.L.P.

100 Congress Avenue, Suite 1300

Austin, Texas 78701-2744

(512) 435-2300 – Telephone

(512) 436-2360 – Telecopy

**ATTORNEYS FOR LINDSAY PURE WATER
COMPANY**

CERTIFICATE OF SERVICE**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent by Facsimile and/or First Class Mail on this 12th day of September, 2008, to the following:

Arturo D. Rodriguez, Jr.
Russell & Rodriguez, L.L.P.
1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628
Phone: (512) 930-1317
Facsimile: (866) 929-1641

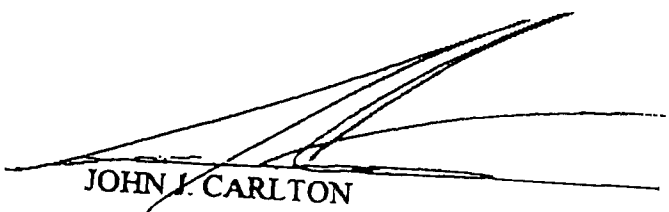
Blas J. Coy, Jr.
Office of Public Interest Counsel
TCEQ - MC 103
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-6363
Facsimile: (512) 239-6377

Brian MacLeod, Attorney
TCEQ - MC-175
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-0750
Facsimile: (512) 239-0606

Docket Clerk
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-3300
Facsimile: (512) 239-3311

CHIEF CLERKS OFFICE

SEP 12 PM 5:00

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
JOHN J. CARLTON

ARMBRUST & BROWN, L.L.P.
 ATTORNEYS AND COUNSELORS

 100 CONGRESS AVENUE, SUITE 1300
 AUSTIN, TEXAS 78701-2744
 512-435-2300

FACSIMILE 512-435-2360

FACSIMILE COVER PAGE

Date: May 21, 2008

 TEXAS
 COMMISSION
 ON ENVIRONMENTAL
 QUALITY
 SEP 12 PM 5:00
 CHIEF CLERKS OFFICE

NAME:	COMPANY:	FACSIMILE NO.:	TELEPHONE NO.:
James W. Norman, ALJ	State Office of Administrative Hearings	(512) 475-4994	(512) 475-4993
Arturo D. Rodriguez	Russell & Rodriguez, L.L.P.	(866) 929-1641	(512) 930-1317
Brian MacLeod Christiaan Siano	Texas Commission on Environmental Quality	(512) 239-0606	(512) 239-0750
Blas J. Coy, Jr.	Office of Public Interest Counsel	(512) 239-6377	(512) 239-6363
Docket Clerk	Texas Commission on Environmental Quality	(512) 239-3311	(512) 239-3311

Please call us immediately if the document you receive is incomplete or illegible.

From: John J. Carlton	Telephone No.: (512) 435-2375
Client/Matter No.: 52515.0101	Total No. of Pages Sent: 20

REMARKS:

- ☐ Urgent
 ☐ For Your Review
 ☐ Reply ASAP
 ☐ Please Comment
- ☐ Original To Follow Via:
 ☐ Hand Delivery
 ☐ Federal Express
 ☐ First Class Mail

RE: SOAH Docket No. 582-06-0203; TCEQ Docket No. 2006-0272-UCR; Application of the Town of Lindsay to Amend Water and Sewer Certificates of Convenience and Necessity (CCN) Nos. 13025 and 20927 in Cooke County, Texas; Application Nos. 35096-C & 35097-C

ATTACHMENTS:

- Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Executive Director Lindsay.
- Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Town of Lindsay.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE (COLLECT), AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U. S. POSTAL SERVICE. THANK YOU.

252890-1 03/24/2008

**SOAH DOCKET NO. 582-06-2023
TCEQ DOCKET NO. 2006-0272-UCR**

**APPLICATION OF THE TOWN OF
LINDSAY TO AMEND WATER AND
SEWER CERTIFICATES OF
CONVENIENCE AND NECESSITY
(CCN) NOS. 13025 AND 20927 IN
COOKE COUNTY, TEXAS
APPLICATION NOS. 35096-C & 35097-C**

§
§
§
§
§
§
§

**BEFORE THE STATE OFFICE OF

OF

ADMINISTRATIVE HEARINGS**

**2008 SEP 12 PM 3:39
CHIEF CLERKS OFFICE**

**TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY**

**CITY OF LINDSAY'S OBJECTIONS TO THE PREFILED TESTIMONY
AND EXHIBITS OF MR. JIM MYRICK**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the City of Lindsay ("Lindsay" or "City") and files these objections to the Prefiled Testimony and Exhibits of Mr. Jim Myrick ("Mr. Myrick"), filed on behalf of Lindsay Purc Water Company ("LPWC") in the above-styled matter. Additionally, Lindsay seeks to preserve its right to file objections to any other testimony or exhibits that might be later filed by Mr. Myrick.

I. BACKGROUND

The City of Lindsay filed its Application to amend its water and sewer certificate of convenience and necessity ("CCN") on August 31, 2005. The Parties abated the case for over a year for settlement negotiations that did not result in a settlement. As such, the City's Application has been on file and pending in front of the Texas Commission on Environmental Quality ("TCEQ") and the State Office of Administrative Hearings ("SOAH").

II. OBJECTIONS

Much of Mr. Myrick's testimony consists of irrelevant testimony that does nothing to refute the City's application as well as hearsay statements with no exception to the hearsay rule being presented. Mr. Myrick also attempts to testify as an expert on behalf of LPWC but

throughout the deposition of Mr. Myrick it was very clear that Mr. Myrick is nothing more than a fact witness with little to no knowledge of the technical issues necessary to provide evidence to refute the City's ability to provide continuous and adequate service to the entirety of the requested area. LPWC recognizes that Mr. Myrick is not an expert in any field as LPWC never designates any experts to testify on its behalf.

III. SPECIFIC OBJECTIONS

Direct Testimony of Jim Myrick, filed on July 7, 2008

Lindsay makes the following objections to specific portions of Mr. Jim Myrick's Direct testimony and moves to strike each portion of the referenced testimony and/or exhibits.

1. **Page 3, lines 10-12.**

Lindsay objects to and moves to strike this testimony as hearsay without providing an exception to the hearsay rule. Mr. Myrick attempts to testify regarding statements allegedly made by Lindsay without providing any foundation for whom made the statement, whether the statement was authorized, or whether the person making the statement was an agent of Lindsay. The statements are merely recitations of out of court statements allegedly made by Lindsay to prove the truth of the matter asserted. As such, the testimony violates TEX. R. EVID. 802 and should be stricken.

2. **Page 4, line 5-11.**

Lindsay objects to and moves to strike this testimony as irrelevant based on TEX. R. EVID. 401 and 402. The testimony proffered by Mr. Myrick is wholly irrelevant insofar as the Application of Lindsay is being considered. What may or may not have occurred in a prior CCN application filed by LPWC does not provide the trier of fact with evidence that will be admissible at trial to determine if the City of Lindsay has the economic, managerial, and technical capability to provide continuous and adequate service to the entirety of the area being

requested by Lindsay in its Application. Furthermore, no proof has been proffered to substantiate any of the claims being made by Mr. Myrick. The testimony should be stricken.

3. Page 4, line 15 beginning with "Consequently,..." and ending on line 16 with "...Commission's rules."

Lindsay objects to and moves to strike this testimony as drawing a legal conclusion that the witness is not qualified to make. Mr. Myrick attempts to testify as an expert regarding the Commission's rules. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter.¹ Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding.² At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures.³ Mr. Myrick, in deposition testimony, demonstrated that

¹ TEX. R. EVID. 702; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993); and *E. I. du Pont Nemours and Company v. C. R. Robinson*, 923 S.W.2d 549 (Tex. 1995).

² TEX. R. EVID. 702.

³ See Lindsay Pure Water Company's Response to the City of Lindsay's Request for Disclosure, *Application of the City of Lindsay to Amend its Water and Sewer Certificate of Convenience and Necessity (CCN) Nos. 13025 and 20927 in Cooke County, Application Nos. 35096-C and 35097-C*, SOAH Docket No. 582-06-2023, TCEQ Docket No. 2006-0272-UCR (Oct. 2, 2006) [hereinafter "LPWC RFD Responses"], attached hereto as Exhibit A.

he is not an expert.⁴ Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken

4. Page 5, line 2 through line 5 ending with "...to serve other areas." and lines 17 beginning with "With two 10-horsepower..." through line 19.

Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding the design, capacity, and future upgrades of the Lindsay PWC system. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter.⁵ Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding.⁶ At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has

⁴ See Oral Deposition of Jim Myrick, *Application of the City of Lindsay to Amend its Water and Sewer Certificate of Convenience and Necessity (CCN) Nos. 13025 and 20927 in Cooke County. Application Nos. 35096-C and 35097-C*, SOAH Docket No. 582-06-2023, TCEQ Docket No. 2006-0272-UCR at 15, 20, 29, and 35 (Aug. 27, 2008) [hereinafter "Myrick Deposition"], attached hereto as Exhibit B.

⁵ TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

⁶ TEX. R. EVID. 702.

been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures.⁷ Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.⁸ Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

5. Page 6, line 1 through line 17.

Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding the design, capacity, future upgrades of the Lindsay PWC system. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter.⁹ Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding.¹⁰ At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of LPWC in any of its responses or supplemental responses to the

⁷ See LPWC RFD, *supra* note 3.

⁸ See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

⁹ TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

¹⁰ TEX. R. EVID. 702.