

Parties' Requests for Disclosures.¹¹ Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.¹² In fact, Mr. Myrick stated in his deposition testimony that he provided "raw data" to his attorney and then his "attorney helped me with those numbers."¹³ He has demonstrated that he cannot calculate capacity for water systems nor has the ability to testify on capacity issues. The testimony proffered by Mr. Myrick is not even testimony prepared by him. Mr. Myrick stated repeatedly in his deposition testimony that he has not performed any calculations for the LPWC system.¹⁴ Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

6. Page 7, line 16 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, 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.¹⁵ 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 regarding capacity.¹⁶ 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

¹¹ See LPWC RFD, *supra* note 3.

¹² See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

¹³ See Myrick Deposition at 87-90, attached hereto as Exhibit C, *supra* note 4.

¹⁴ See Myrick Deposition at 87, 89-90, and 111, attached hereto as Exhibit D, *supra* note 4.

¹⁵ TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

¹⁶ TEX. R. EVID. 702.

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.¹⁷ Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.¹⁸ In fact, Mr. Myrick stated in his deposition testimony that he provided "raw data" to his attorney and then his "attorney helped me with those numbers."¹⁹ He has demonstrated that he cannot calculate capacity for water systems nor has the ability to testify on capacity issues. Mr. Myrick stated repeatedly in his deposition testimony that he has not performed any calculations for the LPWC system.²⁰ Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

7. Page 7, line 20 through page 8, line 6.

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 CCN rules related to the need for service. The proffered 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.²¹ 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 regarding need for

¹⁷ See LPWC RFD Responses, *supra* note 3.

¹⁸ See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

¹⁹ See Myrick Deposition at 87-90, *supra* note 13.

²⁰ See Myrick Deposition at 87, 89-90, and 111, *supra* note 14.

²¹ TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

service.²² 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.²³ Mr. Myrick, in deposition testimony, demonstrated that he is not an expert on CCN issues.²⁴ He has demonstrated that he is not familiar with the CCN rules that apply to this proceeding.²⁵ Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

8. Page 8, line 17 through page 9 line 16.

Lindsay objects to and moves to strike this testimony as the witnesses speculates on why Lindsay proffered the testimony and based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify about the "requestors" "plans for development"²⁶ and "Lindsay['s] hopes."²⁷ Mr. Myrick, despite his service on the City Council of Lindsay a decade ago and his living in the area, cannot possibly know what the requestors' intent may be with regarding to their property.

²² TEX. R. EVID. 702.

²³ See LPWC RFD Responses, *supra* note 3.

²⁴ See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

²⁵ See Myrick Deposition at 93-94, attached hereto as Exhibit E, *supra* note 4.

²⁶ See Myrick Direct Testimony at 8, l. 18.

²⁷ See *id.* at l. 21-23.

Likewise, Mr. Myrick has no knowledge as to Lindsay's "hope" with regard to its intent to secure a CCN amendment. Mr. Myrick's testimony is inadmissible speculation, conjecture, and opinion testimony under TEX. R. EVID. 602, 701, and 702. Mr. Myrick cannot possibly have personal knowledge regarding the actions or intentions of the City. Mr. Myrick does not work for the City, he is not on the City Council, and he is in no way connected with the day to day operations of the City. Mr. Myrick cannot have personal knowledge of any actions taken by or intentions of the City. Therefore, the testimony should be stricken.

Likewise, Mr. Myrick attempts to testify as an expert regarding the requests for service received by Lindsay and his opinions regarding the adequacy of the requests for service. 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.²⁸ 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.²⁹ 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

²⁸ TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

²⁹ TEX. R. EVID. 702.

in any of its responses or supplemental responses to the Parties' Requests for Disclosures.³⁰ Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.³¹

Additionally, the testimony regarding what Mr. Myrick believes regarding the City's intentions in obtaining a CCN amendment is inadmissible speculation, conjecture, and opinion testimony under TEX. R. EVID. 602, 701, and 702. Mr. Myrick cannot possibly have personal knowledge regarding the actions or intentions of the City. Mr. Myrick does not work for the City, he is not on the City Council, and he is in no way connected with the day to day operations of the City. Mr. Myrick cannot have personal knowledge of any actions taken by or intentions of the City. Therefore, the testimony should be stricken.

9. Page 9, line 1 through line 22.

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. The reasons behind Lindsay PWC not filing a CCN amendment when it had allegedly received requests for service does not provide the trier of fact with evidence that will be admissible at trial to determining 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.

³⁰ See LPWC RFD Responses, *supra* note 3.

³¹ See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

10. Page 10, line 1 through line 12.

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 population growth. The proffiled 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 or any other subject matter relevant to this proceeding.³² Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC, as well as a developer, but he is not an expert on any of the issues relevant to this proceeding.³³ In fact, Mr. Myrick in his deposition testimony stated that he had not even read Mr. Maroney's testimony; therefore his opinion on this testimony cannot be relied upon.³⁴ 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.³⁵ Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.³⁶ This testimony should be stricken.

³² TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 925 S.W.2d 549.

³³ TEX. R. EVID. 702.

³⁴ See Myrick Deposition at 96, l. 11-13, attached hereto as Exhibit F, *supra* note 4.

³⁵ See LPWC RFD Responses, *supra* note 3.

³⁶ See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

11. Page 11, 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 impact on the land within the South Ridge of Lindsay Subdivision if the City's CCN amendment was granted. 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.³⁷ 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.³⁸ 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.³⁹ Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.⁴⁰

As LPWC recognizes that Mr. Myrick is not an expert on any issue relevant to this proceeding, the testimony proffered may only be viewed as speculation as to what may transpire.

³⁷ TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

³⁸ TEX. R. EVID. 702.

³⁹ See LPWC RFD Responses, *supra* note 3.

⁴⁰ See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

As LPWC recognizes that Mr. Myrick is not an expert on any issue relevant to this proceeding, the testimony proffered may only be viewed as speculation as to what may transpire. As it is pure speculation, conjecture, and opinion testimony, it is inadmissible under TEX. R. EVID. 602, 701, and 702. This testimony should be stricken.

IV. CONCLUSION

Based on the foregoing, the City of Lindsay respectfully requests that Your Honor sustain these objections, strike the testimony and exhibits and exclude the references discussed above. Lindsay also respectfully requests any further relief to which it has shown itself to be justly entitled.

Respectfully submitted,

RUSSELL & RODRIGUEZ, L.L.P.

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Georgetown, Texas 78628

(512) 930-1317

(866) 929-1641 (Fax)


ARTURO D. RODRIGUEZ, JR.

State Bar No. 00791551

ATTORNEY FOR THE CITY OF LINDSAY,
TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2008, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following counsel or party representatives of record:

Mr. James W. Norman
Administrative Law Judge
300 West 15th Street
Austin, Texas 78701
Fax: 475-4994

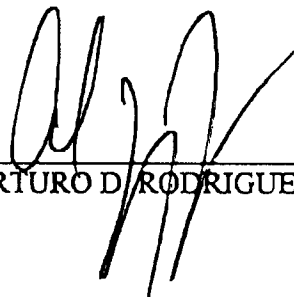
Mr. Brian MacLeod, Attorney
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TCEQ - MC 173
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Docket Clerk
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Fax: 239-3311

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 SEP 12 PM 3:39
CHIEF CLERKS OFFICE


ARTURO D. RODRIGUEZ, JR.

Oct-02-08 03:06pm From: ARMBRUST TOWN, L.L.P.

5124352380

T-372 P.03/08 F-503

**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 RESPONSE TO THE CITY OF LINDSAY'S
REQUEST FOR DISCLOSURE AND FIRST SET OF REQUESTS FOR PRODUCTION**

TO: The City of Lindsay, by and through its attorney of record, Arturo D. Rodriguez, Jr. of Russell & Rodriguez, L.L.P., 102 West Morrow Street, Suite 103, Georgetown, Texas 78626.

COMES NOW, Lindsay Pure Water Company, Protestant herein, and files its Response to the City of Lindsay's Request for Disclosure and First Set of Requests for Production.

REQUEST FOR DISCLOSURE

REQUEST FOR DISCLOSURE 194.2(c): The legal theories and, in general, the factual bases of the responding party's claims or defenses.

RESPONSE: Lindsay Pure Water Company and the City of Lindsay reached a service area settlement in 2002. That settlement addressed portions of the area requested in the Town of Lindsay's current application and Lindsay Pure Water Company believed that all service area matters were addressed by the settlement agreement.

REQUEST FOR DISCLOSURE 194.2(d): The amount and any method of calculating economic damages.

RESPONSE: Lindsay Pure Water Company is not seeking monetary damages at this time.

REQUEST FOR DISCLOSURE 194.2(e): The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

RESPONSE:

Joe O'Dell, Lindsay Pure Water Company, P.O. Box 1338, Gainesville, Texas 76241. Mr. O'Dell may be contacted through Lindsay Pure Water Company's attorney, John J. Carlton, at 435-2308. Mr. O'Dell has knowledge of the Town of Lindsay's CCN application.

John Carlton, Armbrust & Brown, L.L.P., 100 Congress, Suite 1300, Austin, Texas 78701, 435-2308. Mr. Carlton has knowledge of facts provided by his client and obtained through discovery from other parties, as well as knowledge regarding reasonable and necessary attorney's fees and costs for water and wastewater rate cases.

Oct-02-06 03:08pm

From-ARMURUST

OWN, L.L.P.

5124352360

T-372

P.04/08

F-503

REQUEST FOR DISCLOSURE 194.2(f): For any testifying expert:

- 1) The expert's name, address, and telephone number.

RESPONSE: No testifying expert has been retained at this time.**REQUEST FOR DISCLOSURE 194.2(f):** For any testifying expert:

- 2) The subject matter on which the expert will testify.

RESPONSE: A testifying expert for Lindsay Pure Water Company will testify regarding the application filed by the City of Lindsay, including any financial issues raised by the application. When a testifying expert is retained, this response will be supplemented.**REQUEST FOR DISCLOSURE 194.2(f):** For any testifying expert:

- 3) The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by you, employed by you, or otherwise subject to your control, documents reflecting such information.

RESPONSE: None at this time.**REQUEST FOR DISCLOSURE 194.2(f):** For any testifying expert:

- 4) If the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (a) All documents, tangible things, reports, models or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (b) The expert's current resume and bibliography.

RESPONSE: None at this time.**REQUEST FOR DISCLOSURE 194.2(i):** Any witness statements described in Rule 192.3(h).**RESPONSE:** None known at this time.

Oct-02-06 03:07pm From-AMBRUST BROWN, L.L.P.

5124352360

T-372 P.08/08 F-503

REQUEST FOR PRODUCTION NO. 16: Produce any and all documents purporting to give you authority to participate in this proceeding.

RESPONSE: To the extent they exist, such documents will be produced.

REQUEST FOR PRODUCTION NO. 17: Produce any and all documents between you and the Texas Commission on Environmental Quality purporting to give you authority to provide water in the area requested in Lindsay's Application.

RESPONSE: Responsive documents will be produced.

REQUEST FOR PRODUCTION NO. 18: Produce a copy of your current CCN.

RESPONSE: Responsive documents will be produced.

REQUEST FOR PRODUCTION NO. 19: Produce any and all documents related to any loans sought or received by you from the United States Department of Agriculture Rural Development Agency or any other federal agency.

RESPONSE: To the extent they exist, responsive documents will be produced.

REQUEST FOR PRODUCTION NO. 20: Produce any and all documents related to any grants sought or received by you from the United States Department of Agriculture Rural Development Agency or any other federal agency.

RESPONSE: To the extent they exist, responsive documents will be produced.

REQUEST FOR PRODUCTION NO. 21: Produce any and all documents related to receiving or purchasing water from any entity or person.

RESPONSE: To the extent they exist, responsive documents will be produced.

Respectfully submitted,

John J. Carlton / JJC
JOHN J. CARLTON

State Bar No. 03817600

AMBRUST & 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

Oct-02-06 03:07pm From: ARMBRUST, ROWN, L.L.P.

5124352960

T-372 P.00/00 F-503

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Lindsay Pure Water Company's Response to City of Lindsay's Request for Disclosure and First Set of Requests for Production has been sent by Facsimile and/or First Class Mail on this 2nd day of October, 2006, to the following:

Arturo D. Rodriguez, Jr.
Russell & Rodriguez, L.L.P.
102 West Morrow Street, Suite 103
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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


JOHN J. CARLTON

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

TRANSCRIPT OF PROCEEDINGS BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AUSTIN, TEXAS

APPLICATION OF THE TOWN OF	)	SOAH DOCKET NO.
LINDSAY TO AMEND WATER AND	)	582-06-2023
SEWER CERTIFICATES OF)	
CONVENIENCE AND NECESSITY)	
(CCN) NOS. 13025 AND 20927 IN)	
COOKE COUNTY, TEXAS	)	TCEQ DOCKET NO.
APPLICATION NOS. 35096-C & 35097-C)	)	2006-0272-UCR

ORAL DEPOSITION
JAMES MYRICK
WEDNESDAY, AUGUST 27, 2008

ORAL DEPOSITION OF JAMES MYRICK,
produced as a witness at the instance of the City of
Lindsay and duly sworn, was taken in the above-styled
and numbered cause on Wednesday, August 27, 2008, from
9:55 a.m. to 1:06 p.m., before Kim Pence, Certified
Shorthand Reporter in and for the State of Texas,
reported by machine shorthand at the offices of
Armbrust & Brown, L.L.P., 100 Congress Avenue, Suite
1300, Austin, Texas 78701, pursuant to the Texas Rules
of Civil Procedure and the provisions stated on the
record or attached hereto.

WEDNESDAY, AUGUST 27, 2008
DEPOSITION OF JAMES MYRICK

Exhibit B

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

Page 15

1 A No.

2 Q Okay. Do you hold any licenses or
3 certifications issued by any agency of the state of
4 Texas?

5 A Driver's license. No. I am on the tax
6 appraisal board, and obviously, you have to have
7 continuing ed there. That would be the --

8 Q Okay. Can you tell me who operates Lindsay
9 Pure Water Company?

10 A Yes. Charles Young.

11 Q Okay. And who is he?

12 A He operates Lindsay Pure Water Company. He
13 is a hired employee that takes care of all of the
14 required sampling, form filling. He does everything
15 that needs to be done to comply with the TECQ (sic).

16 Q Okay. And does he hold an operator's
17 license?

18 A Yes, he does.

19 Q What level?

20 A I do not know. I had given that --

21 Q Okay.

22 A -- in some -- some document somewhere you
23 have, has that number in it.

24 Q Charles Young is an employee of Lindsay Pure
25 Water, or is he a contractor?

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

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1 stipulated by the TNRCC.

2 Q Okay. So he comes to your system
3 approximately once a week?

4 A I think -- yes.

5 Q Does he do any system planning for Lindsay
6 Pure Water?

7 A Describe "planning."

8 Q Well, adding any new infrastructure, adding
9 any new taps, any --

10 A He advises me --

11 Q -- any planning at all.

12 A He advises me as to what I need to do.

13 Q He advises you on what you need to do with
14 respect to what?

15 A The water company.

16 Q Okay.

17 A As far as meeting the specifications and
18 requirements of the TECQ.

19 Q Does he provide advice on new infrastructure
20 that's needed?

21 A No.

22 Q Okay. Who would give you that advice?

23 A I would hire an engineer.

24 Q Do you have an engineer?

25 A Not on the payroll, no, sir.

HEARING ON THE MERITS

SOAH DOCKET NO. 582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

Page 29

1 Q Okay. And I think we established earlier
2 that he's not really an employee, he's just a
3 contractor. Is that correct?

4 A That's correct.

5 Q A vendor of services?

6 A Yes, sir.

7 Q Does Lindsay Pure Water have any employees?

8 A No.

9 Q Do you draw any salary from Lindsay Pure
10 Water?

11 A No.

12 Q Are you paid any dividends?

13 A No.

14 Q Are you paid anything from Lindsay Pure
15 Water?

16 A No.

17 Q Okay. How are decisions made at Lindsay Pure
18 Water? Who makes them?

19 A I make minor decisions.

20 Q Okay.

21 A If there are any major decisions, the
22 corporation owners make the decisions.

23 Q Do you decide then what is a major decision
24 or a minor decision?

25 A I guess it is based on monetary values.

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

Page 35

1 A No. I was in Austin.

2 Q Okay. So who does that in your absence then?

3 A No one. Charles Young does. He knew I was
4 going to be gone, but I don't know -- he would
5 normally do it. I don't know that he did it.

6 Q And do you hold an operator's license from
7 the TCEQ?

8 A No, I do not.

9 Q Have you ever had an operator's license from
10 the TCEQ?

11 A No, sir, I have not.

12 Q Do you know how Lindsay Pure Water Company is
13 treated by the TCEQ, whether it's an investor-owned
14 utility, a water supply corporation, some other --

15 A It's a --

16 Q -- some other type of utility?

17 A It is an investor.

18 Q Investor-owned utility?

19 A Yes.

20 Q Okay. And do you-all have an authorized
21 tariff to be operating --

22 A Yes, we do.

23 Q -- under?

24 A You have it.

25 Q Okay. When was the last time that tariff was

HEARING ON THE MERITS
SOAH DOCKET NO.582-06-2023 TCEQ DOCKET NO. 2006-0272-UCR

TRANSCRIPT OF PROCEEDINGS BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AUSTIN, TEXAS

APPLICATION OF THE TOWN OF	)	SOAH DOCKET NO.
LINDSAY TO AMEND WATER AND	)	582-06-2023
SEWER CERTIFICATES OF)	
CONVENIENCE AND NECESSITY)	
(CCN) NOS. 13025 AND 20927 IN)	
COOKE COUNTY, TEXAS	)	TCEQ DOCKET NO.
APPLICATION NOS. 35096-C & 35097-C)	)	2006-0272-UCR

ORAL DEPOSITION
JAMES MYRICK
WEDNESDAY, AUGUST 27, 2008

ORAL DEPOSITION OF JAMES MYRICK,
produced as a witness at the instance of the City of
Lindsay and duly sworn, was taken in the above-styled
and numbered cause on Wednesday, August 27, 2008, from
9:55 a.m. to 1:06 p.m., before Kim Pence, Certified
Shorthand Reporter in and for the State of Texas,
reported by machine shorthand at the offices of
Armbrust & Brown, L.L.P., 100 Congress Avenue, Suite
1300, Austin, Texas 78701, pursuant to the Texas Rules
of Civil Procedure and the provisions stated on the
record or attached hereto.

WEDNESDAY, AUGUST 27, 2008
DEPOSITION OF JAMES MYRICK

Exhibit C

HEARING ON THE MERITS
SOAH DOCKET NO.582-06-2023 TCEQ DOCKET NO. 2006-0272-UCR

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1 of 12, Lines 3 through 17, you discuss your ability to
2 provide service --

3 A Yes, sir.

4 Q -- and the capacity that Lindsay Pure Water
5 has. Correct?

6 A Yes, sir.

7 Q Did you prepare those numbers?

8 A I did.

9 Q Okay. And was this information that you
10 prepared, or was this information that someone
11 prepared for you?

12 A I gave the raw data, which was the amount of
13 storage, the amount of capacity the down-hole well
14 would pump and the capacity of the pressure pumps.

15 Q Let me see this. Okay. Yes, sir.

16 A And I believe my attorney helped me with
17 those numbers.

18 Q Okay. Did an engineer at all help you with
19 the -- coming up with the connection counts or the
20 capacity of the system?

21 A No.

22 Q Okay. Did Mr. Young help you with
23 determining what the capacity of the system is?

24 A No.

25 Q Okay. You provided raw data, and with

HEARING ON THE MERITS
SOAH DOCKET NO.582-06-2023 TCEQ DOCKET NO. 2006-0272-UCR

Page 88

1 respect to the raw capacity, that is indicated on
2 Page 5. Is that correct?

3 A Yes.

4 Q And I'm moving on to Page 6.

5 A Okay.

6 Q Did you perform any calculations to come up
7 with any of the connection capacities that are
8 reflected in your testimony from Lines 3 through 17?

9 A I did some calculations on pump capacity, and
10 I visited with -- the reason that we went from 206
11 to 155 connections and 420 to 210 because I was using
12 raw head pressure, I believe, or raw pump pressure,
13 and it has to be divided by 2.3.

14 And I was corrected by my water -- the
15 gentleman that does my well service, replace the pump,
16 and has drilled water wells for me, and I consulted
17 with him as to whether I was correct or not, and he
18 told me the errors of my way.

19 Q Okay. And you indicated that you did the
20 pump capacity, and what was the other calculation that
21 you performed?

22 A I was in -- I am in the process and have
23 completed the change-out of the high volume to a -- to
24 the high pressure to the high-volume pump, and I was
25 under the impression that it would do 420.

HEARING ON THE MERITS
SOAH DOCKET NO.582-06-2023 TCEQ DOCKET NO. 2006-0272-UCR

Page 89

1 Q Okay.

2 A And I bought the pump from him and asked him,
3 you know, what will it do? And he said, well, you've
4 got to divide by 2.3 to end up getting the -- I said,
5 well, then I'm twice -- I'm two times -- I have
6 misstated the connections by 50 percent.

7 Q Where did you -- what calculations did you
8 perform to come up with a figure of 500 connections of
9 storage tank capacity that was reflected on Line 4?

10 A You mean 100 connections on Line 4?

11 Q Storage tank capacity of 500 connections.

12 A Ah. I believe my attorney and I came up with
13 that.

14 Q Okay. Did you perform any calculations to
15 come up with that figure?

16 A No.

17 Q The current pump capacity of 155 connections
18 that's reflected on Line 5?

19 A Yes.

20 Q And then the 210 that are reflected on Line 6
21 of Page 6?

22 A Yes.

23 Q Did you perform any calculations to come up
24 with that -- those connection counts?

25 A No.

HEARING ON THE MERITS
SOAH DOCKET NO.582-06-2023 TCEQ DOCKET NO. 2006-0272-UCR

Page 90

1 Q On Line No. 7, you have 250 connections. It
2 would be the capacity for the distribution lines. Is
3 that an accurate paraphrasing of that testimony?

4 A That's correct.

5 Q What calculations did you perform to come up
6 with the 250 connections?

7 A I did not.

8 Q Okay. How about on Line 8, the 168
9 connections for the 100-gallon-per-minute well
10 capacity, what calculations did you perform to come up
11 with those figures?

12 A I gave the raw data to my attorney, and
13 evidently there is -- he got those numbers from
14 whatever is standard.

15 Q Okay. Would that be the same for all the
16 other connection counts that you're --

17 A Yes.

18 Q -- that are described in that?

19 A That is correct.

20 Q You didn't perform any calculations to come
21 up with those. Is that correct?

22 A No.

23 Q What did you utilize to determine that the
24 data that was provided back to you, the connection
25 counts, were accurate?

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

TRANSCRIPT OF PROCEEDINGS BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AUSTIN, TEXAS

APPLICATION OF THE TOWN OF	)	SOAH DOCKET NO.
LINDSAY TO AMEND WATER AND	)	582-06-2023
SEWER CERTIFICATES OF)	
CONVENIENCE AND NECESSITY)	
(CCN) NOS. 13025 AND 20927 IN)	
COOKE COUNTY, TEXAS	)	TCEQ DOCKET NO.
APPLICATION NOS. 35096-C & 35097-C)	)	2006-0272-UCR

ORAL DEPOSITION
JAMES MYRICK
WEDNESDAY, AUGUST 27, 2008

ORAL DEPOSITION OF JAMES MYRICK,
produced as a witness at the instance of the City of
Lindsay and duly sworn, was taken in the above-styled
and numbered cause on Wednesday, August 27, 2008, from
9:55 a.m. to 1:06 p.m., before Kim Pence, Certified
Shorthand Reporter in and for the State of Texas,
reported by machine shorthand at the offices of
Armbrust & Brown, L.L.P., 100 Congress Avenue, Suite
1300, Austin, Texas 78701, pursuant to the Texas Rules
of Civil Procedure and the provisions stated on the
record or attached hereto.

WEDNESDAY, AUGUST 27, 2008
DEPOSITION OF JAMES MYRICK

Exhibit D

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

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1 of 12, Lines 3 through 17, you discuss your ability to
2 provide service --

3 A Yes, sir.

4 Q -- and the capacity that Lindsay Pure Water
5 has. Correct?

6 A Yes, sir.

7 Q Did you prepare those numbers?

8 A I did.

9 Q Okay. And was this information that you
10 prepared, or was this information that someone
11 prepared for you?

12 A I gave the raw data, which was the amount of
13 storage, the amount of capacity the down-hole well
14 would pump and the capacity of the pressure pumps.

15 Q Let me see this. Okay. Yes, sir.

16 A And I believe my attorney helped me with
17 those numbers.

18 Q Okay. Did an engineer at all help you with
19 the -- coming up with the connection counts or the
20 capacity of the system?

21 A No.

22 Q Okay. Did Mr. Young help you with
23 determining what the capacity of the system is?

24 A No.

25 Q Okay. You provided raw data, and with

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

Page 89

1 Q Okay.

2 A And I bought the pump from him and asked him,
3 you know, what will it do? And he said, well, you've
4 got to divide by 2.3 to end up getting the -- I said,
5 well, then I'm twice -- I'm two times -- I have
6 misstated the connections by 50 percent.

7 Q Where did you -- what calculations did you
8 perform to come up with a figure of 500 connections of
9 storage tank capacity that was reflected on Line 4?

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13 that.

14 Q Okay. Did you perform any calculations to
15 come up with that figure?

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18 that's reflected on Line 5?

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20 Q And then the 210 that are reflected on Line 6
21 of Page 6?

22 A Yes.

23 Q Did you perform any calculations to come up
24 with that -- those connection counts?

25 A No.

HEARING ON THE MERITS
SOAH DOCKET NO. 582-06-2023 TCEQ DOCKET NO. 2006-0272-UCR

Page 90

1 Q On Line No. 7, you have 250 connections. It
2 would be the capacity for the distribution lines. Is
3 that an accurate paraphrasing of that testimony?

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6 with the 250 connections?

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8 Q Okay. How about on Line 8, the 168
9 connections for the 100-gallon-per-minute well
10 capacity, what calculations did you perform to come up
11 with those figures?

12 A I gave the raw data to my attorney, and
13 evidently there is -- he got those numbers from
14 whatever is standard.

15 Q Okay. Would that be the same for all the
16 other connection counts that you're --

17 A Yes.

18 Q -- that are described in that?

19 A That is correct.

20 Q You didn't perform any calculations to come
21 up with those. Is that correct?

22 A No.

23 Q What did you utilize to determine that the
24 data that was provided back to you, the connection
25 counts, were accurate?

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

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1 Q (BY MR. RODRIGUEZ) I just have a couple of
2 follow-up questions, and then I think I'll be done,
3 Mr. Myrick. I appreciate your patience.

4 A Not a problem.

5 Q One thing I -- you've got your testimony
6 right there that you prefiled. I'm going to ask you
7 to go back to Page 6 on that, and it was the
8 connection counts, and I think we discussed earlier
9 that you didn't provide any of the -- you didn't
10 perform any of the calculations that came up with the
11 connection counts on that page. Do you remember that
12 testimony?

13 A That's correct, yes.

14 Q Do you know, either through knowledge or
15 training, how one would come up with those connection
16 counts?

17 A I am sure that there are -- there is some
18 documentation that is available that will give you how
19 many gallons for each connection, and I'm sure that
20 that was what was used, and that's what I would have
21 to find to get through that calculation.

22 Q Have you ever performed a calculation that
23 would allow you to arrive at any of these connection
24 counts?

25 A No.

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

TRANSCRIPT OF PROCEEDINGS BEFORE THE
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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APPLICATION OF THE TOWN OF)	SOAH DOCKET NO.
LINDSAY TO AMEND WATER AND)	582-06-2023
SEWER CERTIFICATES OF)	
CONVENIENCE AND NECESSITY)	
(CCN) NOS. 13025 AND 20927 IN)	
COOKE COUNTY, TEXAS	)	TCEQ DOCKET NO.
APPLICATION NOS. 35096-C & 35097-C)	)	2006-0272-UCR

ORAL DEPOSITION

JAMES MYRICK

WEDNESDAY, AUGUST 27, 2008

ORAL DEPOSITION OF JAMES MYRICK,

produced as a witness at the instance of the City of Lindsay and duly sworn, was taken in the above-styled and numbered cause on Wednesday, August 27, 2008, from 9:55 a.m. to 1:06 p.m., before Kim Pence, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand at the offices of Armbrust & Brown, L.L.P., 100 Congress Avenue, Suite 1300, Austin, Texas 78701, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

WEDNESDAY, AUGUST 27, 2008
DEPOSITION OF JAMES MYRICK

Exhibit E

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

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1 A Yes.

2 Q Okay. In applying for a new or an amended
3 CCN application, are you familiar with the rules, the
4 TCEQ rules, or state statutes with respect to granting
5 CCNs?

6 A Maybe you need to refresh my memory.

7 Q As to whether you're familiar with them?

8 A No. What they are.

9 Q Okay. Are you familiar with them?

10 A I am familiar with them.

11 Q Okay. When was the last time you reviewed
12 them?

13 A 2002.

14 Q Okay. Can you recount for me what your
15 understanding is, any of the factors that are required
16 for the TCEQ to review in granting a new or an amended
17 CCN?

18 A Verbatim, no, I can't.

19 Q I'm asking what your understanding is.

20 A My understanding is that you would have to
21 economically be able to supply the water; two, it
22 would be -- need to be within your ability to service
23 that water, that area with water; and you would have
24 to have their blessing to do that.

25 Q The TCEQ's?

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

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1 A TECQ's blessing to do that and would have to
2 file a CCN to do that.

3 Q Okay. Can you tell me what you have reviewed
4 that would indicate to you that it would not be
5 economical for the City of Lindsay to provide water
6 service to its requested CCN area?

7 A I have reviewed nothing that would tell me
8 that they would or could not be -- economically
9 provide that service.

10 Q Okay.

11 A I do know that it would be very expensive.

12 Q Okay. And that's based on your experience
13 with the telephone company?

14 A That's right.

15 Q Okay. Any other experience other than that?

16 A No.

17 Q Do you know how much it would cost to have
18 a -- to bore under the creek for water -- to lay
19 waterline.

20 A My estimation was 250,000.

21 Q Okay. And where did you come up with that
22 estimate?

23 A I -- that's just my estimate.

24 Q Okay. Based on what?

25 A Based on what I figured it would cost to do

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

TRANSCRIPT OF PROCEEDINGS BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AUSTIN, TEXAS

APPLICATION OF THE TOWN OF	)	SOAH DOCKET NO.
LINDSAY TO AMEND WATER AND	)	582-06-2023
SEWER CERTIFICATES OF)	
CONVENIENCE AND NECESSITY)	
(CCN) NOS. 13025 AND 20927 IN)	
COOKE COUNTY, TEXAS	)	TCEQ DOCKET NO.
APPLICATION NOS. 35096-C & 35097-C)	)	2006-0272-UCR

ORAL DEPOSITION
JAMES MYRICK
WEDNESDAY, AUGUST 27, 2008

ORAL DEPOSITION OF JAMES MYRICK,

produced as a witness at the instance of the City of Lindsay and duly sworn, was taken in the above-styled and numbered cause on Wednesday, August 27, 2008, from 9:55 a.m. to 1:06 p.m., before Kim Pence, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand at the offices of Armbrust & Brown, L.L.P., 100 Congress Avenue, Suite 1300, Austin, Texas 78701, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

WEDNESDAY, AUGUST 27, 2008
DEPOSITION OF JAMES MYRICK

Exhibit F

HEARING ON THE MERITS
SOAH DOCKET NO.582-06-2023 TCEQ DOCKET NO. 2006-0272-UCR

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1 Q And that's fair. Let me ask you this: Do
2 you have any information that would lead you to
3 believe that the City of Lindsay would be unable to
4 provide service to the area that it has requested?

5 A No, I have nothing that would say that they
6 would not be able to.

7 Q Okay. Have you reviewed the prefiled
8 testimony that the City of Lindsay provided in this
9 case?

10 A No.

11 Q Okay. Did you read Mr. Kerry Maroney's
12 prefiled testimony?

13 A No.

14 Q Okay. Did you read Mr. Metzler's?

15 A No.

16 Q Mr. Jack Stowe's?

17 A No.

18 Q I think you refer in your testimony to
19 Mr. Maroney, so I just assumed that you had read his
20 testimony.

21 A Not to my knowledge.

22 Q Are you aware of any requests for service
23 that the City of Lindsay received for -- requesting
24 water and wastewater service from the City of Lindsay?

25 A Only mine.

RUSSELL & RODRIGUEZ, L.L.P.

Attorneys at Law

Texas Heritage Plaza, 102 West Morrow Street, Suite 103, Georgetown, Texas 78626

Phone (512) 930-1317

E-mail: arodriguez@txadminlaw.com

Fax (512) 930-1742

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 SEP 12 PM 3:39
CHIEF CLERKS OFFICE

FACSIMILE COVER PAGE

September 12, 2008

Please Deliver the Following page(s) to:

Mr. James W. Norman

Fax Number: (512) 475-4994

Mr. John Carlton, Attorney

Fax Number: (512) 435-2360

Mr. Blas Coy, Attorney

Fax Number: (512) 239-6377

Mr. Brian MacLeod

Fax Number: (512) 239-0606

TCEQ Chief Clerk

Fax Number: (512) 239-3311

Mr. Pat Dillon

Fax Number: (972) 680-0003

Client Number: 1140-00

From: Arturo D. Rodriguez, Jr.

Direct Phone: (512) 930-1317

Pages: 40 (Including Cover Sheet)

Re:

Comments: City of Lindsay's Objections to Testimony

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

2008 AUG 25 AM 11:10

CHIEF CLERKS OFFICE

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

**NOTICE OF INTENTION
TO TAKE ORAL DEPOSITION OF MR. JIM MYRICK**

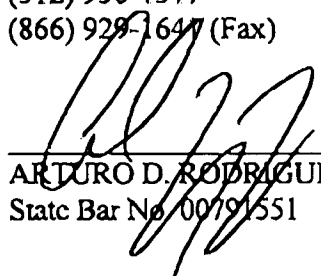
TO: Mr. Jim Myrick, by and through his attorney, Mr. John Carlton, Armbrust & Brown, L.L.P., 100 Congress Avenue, Suite 1300, Austin, Texas 78701.

PLEASE TAKE NOTICE THAT the City of Lindsay ("City"), by and through its attorney, intends to take the oral deposition of Mr. Jim Myrick on August 27, 2008, at 10:00 a.m. at 100 Congress Avenue, Suite 1300, Austin, Texas 78701, pursuant to Rule 199 of the Texas Rules of Civil Procedure. The deposition will be taken before a court reporter, and shall continue from day-to-day until completed. The deposition and any documents produced at or prior to such deposition may be used as evidence upon the hearing on the merits. A representative of your choice is invited to attend and cross-examine you, as the witness. Please be advised that any City witness with knowledge related to the area of your testimony and any City attorney and/or paralegal may attend this deposition.

This notice, as mailed to Jim Myrick, through Mr. John Carlton, shall also serve as a subpoena as authorized by Rule 176 of the Texas Rules of Civil Procedure.

Respectfully submitted.

Russell & Rodriguez, L.L.P.
1633 Williams Drive, Building 2, Suite 200
Georgetown, Texas 78628
(512) 930-1317
(866) 928-1647 (Fax)



ARTURO D. RODRIGUEZ, JR.
State Bar No. 00791551

ATTORNEY FOR THE CITY OF LINDSAY,
TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 2008, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following counsel of record:

Mr. John Carlton, Attorney
Armbrust & Brown, LLP
100 Congress Avenue, Suite 1300
Austin, Texas 78701
Fax: 512/435-2360

Mr. Blas Coy, Attorney
Office of Public Interest Counsel
TCEQ - MC 103
P.O. Box 13087
Austin, Texas 78711-3087
Fax: 239-6377

Mr. Brian MacLeod, Attorney
Mr. Christiaan Siano
Environmental Law Division
TCEQ - MC 173
P.O. Box 13087
Austin, Texas 78711-3087
Fax: 239-0606

Docket Clerk
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Fax: 239-3311

CHIEF CLERKS OFFICE

2008 AUG 25 AM 11:10

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY



ARTURO D. RODRIGUEZ, JR.

RUSSELL & RODRIGUEZ, L.L.P.

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August 25, 2008

Please Deliver the Following page(s) to:

Mr. John Carlton, Attorney

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Mr. Blas Coy, Attorney

Fax Number: (512) 239-6377

Mr. Brian MacLeod

Fax Number: (512) 239-0606

TCEQ Chief Clerk

Fax Number: (512) 239-3311

Client Number: 1140-00

From: Arturo D. Rodriguez, Jr.

Direct Phone: (512) 930-1317

Pages: 4 (Including Cover Sheet)

Re:

Comments: City of Lindsay's Notice of Intention to Take Oral Deposition of Jim Myrick

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 AUG 25 AM 11:10
CHIEF CLERKS OFFICE

ARMBRUST & BROWN, L.L.P.

ATTORNEYS AND COUNSELORS

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

FACSIMILE 512-435-2360

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

July 18, 2008

VIA FACSIMILE: (512) 475-4994

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:

Enclosed herewith are revised pages 5, 6 and 7 of the Prefiled Direct Testimony and Exhibits of Jim Myrick filed July 7, 2008. Please replace the existing pages 5, 6 and 7 of the prefiled testimony with the enclosed replacement pages. I apologize for any inconvenience this has caused. By copy of this letter, copies of the attached are being forwarded to all participating parties.

Thank you for your attention to this matter. 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

CHIEF CLERKS OFFICE
2008 JUL 13 PM 3:47

1 **LINDSAY PURE WATER COMPANY SYSTEM**

2 **Q.** PLEASE DESCRIBE THE LINDSAY PURE WATER COMPANY SYSTEM.

3 **A.** This system was initially designed to serve, at a minimum, the South Ridge of Lindsay
4 subdivision at full build-out of Phases 1 through 4, which included 65 connections, but it
5 has been oversized in many ways that will allow it to serve other areas. The main
6 components of the water system include:

- 7 (1) approximately 1.2 miles of 6-inch C900 PVC distribution lines;
8 (2) a 100,000 gallon standpipe, with maximum elevation of 963 feet above
9 sea level;
10 (3) a well that is 905 feet deep, has a static water level of 325 feet and is
11 pumping a minimum of 100 gallons per minute from 515 feet deep;
12 (4) a 2000 gallon pressure tank;
13 (5) a 10-horsepower service pump with a capacity of ~~420~~ 210 gallons per
14 minute; and
15 (6) a 3-horsepower high pressure pump with 100 gallons per minute capacity.

16 We are planning to replace the 3-horse power pump with another 10-horsepower pump
17 with a capacity of ~~420~~ 210 gallons per minute in the next few months. With two 10-
18 horsepower pumps we should be able to supply ~~840~~ 420 gallons per minutes at 60 pounds
19 of head pressure.

1 Q. HOW MANY CONNECTIONS IS THE LINDSAY PURE WATER SYSTEM
2 CAPABLE OF SERVING?

3 A. Based upon the Commission rules and the way the system is currently operated, it can
4 serve up to 100 connections. The storage tank capacity is sufficient for 500 connections at
5 200 gallons per connection. The currently pump capacity is sufficient for ~~260~~ 155
6 connections (the new pump would allow us to serve ~~420~~ 210 connections). The
7 distribution lines are sufficient for up to 250 connections. The 100 gallon per minute well
8 capacity is sufficient for 168 connections. The limiting factor is the pressure tank, which
9 has a capacity to serve 100 connections. The Commission rules require a system to have
10 pressure tank capacity of 20 gallons for every connection. By changing the way we
11 operate to eliminate the use of pressure tank, the system could serve up to 168
12 connections, which is the well capacity limit. This is because the capacity of the
13 standpipe that is 80 feet above the highest service connection, which is considered
14 elevated storage, is sufficient to serve about 180 connections. By adding a second well,
15 depending on the production of the well, the system could serve up to 180 connections
16 without any additional improvements. By adding additional elevated storage or pressure
17 tank capacity, the system can be expanded to serve even more connections.

18 **SOUTH RIDGE OF LINDSAY DEVELOPMENT STATUS**

19 Q. WHO OWNS THE UNSOLD LOTS IN PHASE 3 OF THE SOUTH RIDGE OF
20 LINDSAY SUBDIVISION?

21 A. Myrick Development.

22 Q. WHO OWNS THE PROPERTY THAT WILL BE PHASE 4 OF THE SOUTH RIDGE
23 OF LINDSAY SUBDIVISION?

24 A. Myrick Development.

1 Q. HOW MANY ACRES OF LAND DOES MYRICK DEVELOPMENT OWN WITHIN
2 THE SOUTH RIDGE OF LINDSAY SUBDIVISION?

3 A. Myrick Development owns approximately 42 acres of land within the South Ridge of
4 Lindsay, which includes 8 unsold lots of approximately 1 acre each and approximately 34
5 acres of land that is to be developed as Phase 4.

6 Q. WHICH UTILITY COMPANY DO YOU WANT TO PROVIDE WATER SERVICE
7 TO THE MYRICK DEVELOPMENT PROPERTY WITHIN THE SOUTH RIDGE OF
8 LINDSAY SUBDIVISION?

9 A. Lindsay Pure Water Company.

10 **EXPANSION OF LINDSAY SYSTEM**

11 Q. WHAT ARE LINDSAY PURE WATER COMPANY'S DESIRES WITH REGARD TO
12 PROVIDING SERVICE IN THE AREA SURROUNDING ITS CURRENT CCN?

13 A. Our company would like to be the service provider in the area that surrounds our CCN.

14 Q. WHY IS THAT?

15 A. We would like to be the service provider because we have facilities in close proximity that
16 have sufficient capacity to serve a significant number of additional connections, and with
17 some slight improvements, could serve ~~an~~ many more connections on top of that. By
18 serving additional connections, we would be able to fully utilize our system's resources
19 and cost efficiently serve landowners in the area surrounding us.

20 Q. IF YOU WANT TO SERVE IN THE AREA SURROUNDING YOU, WHY HAVE
21 YOU NOT APPLIED FOR A CCN FOR THAT AREA?

22 A. There is no current need for service.

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

CHIEF CLERKS OF THE

NAME:	COMPANY:	FACSIMILE NO.:	TELEPHONE NO.:
James W. Norman, ALJ	State Office of Administrative Hearings	(512) 475-4994	(512) 475-4993
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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: Replacement pages for Prefiled Direct Testimony and Exhibits of Jim Myrick for Lindsay Pure Water Company.

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**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**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

CHIEF CLERKS OFFICE

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JUL 7 2008

PREFILED DIRECT TESTIMONY AND EXHIBITS OF

JIM MYRICK

FOR

LINDSAY PURE WATER COMPANY

July 7, 2008

**PREFILED DIRECT TESTIMONY AND EXHIBITS
OF
JIM MYRICK**

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EXHIBITS:

- LPWC 1:** Google Earth Map of South Ridge of Lindsay, Lindsay Pure Water Company service area and Surrounding Area
- LPWC 2:** Google Earth Map of South Ridge of Lindsay Subdivision Area
- LPWC 3:** South Ridge of Lindsay Phase 1 Subdivision Map
- LPWC 4:** South Ridge of Lindsay Phase 2 Subdivision Map
- LPWC 5:** South Ridge of Lindsay Phase 3 Subdivision Map
- LPWC 6:** TCEQ Order issuing CCN No. 12858 to Lindsay Pure Water Company
- LPWC 7:** Rate Schedule from Lindsay Pure Water Company Tariff

1 **PREFILED DIRECT TESTIMONY AND EXHIBITS**
2 **OF**
3 **JIM MYRICK**
4 **BACKGROUND**

5 **Q.** PLEASE STATE YOUR NAME AND ADDRESS.

6 **A.** My name is Jim Myrick. My business address is Lindsay Pure Water Company, P.O. Box
7 1338, Gainesville, Texas 76241.

8 **Q.** PLEASE DESCRIBE YOUR EDUCATION, EXPERIENCE AND ANY DEGREES
9 OBTAINED SINCE HIGH SCHOOL.

10 **A.** I received a Bachelor of Arts degree in industrial engineering from North Texas State in
11 1965. I worked in production management in Ling Temco Vaught (LTV) in the industrial
12 engineering division for 7 years. I have owned my own appliance store for over 25 years.
13 I have been a general contractor for the last 11 years both in commercial and residential
14 construction. I have been developing land for subdivisions since 1976. In addition, I
15 served as a council member on the Town of Lindsay City Council from about 1975 until
16 about 1981. I have also actively served the community as a member of the Lindsay
17 School Board for 18 years (11 as President). I have served on the Cooke County
18 Appraisal District Board of Directors for the past 7 years, the last 4 of which I have been
19 the President.

20 **Q.** WHAT IS YOUR POSITION WITH LINDSAY PURE WATER COMPANY?

21 **A.** I am the President of the company.

22 **Q.** HOW LONG HAVE YOU BEEN AN OWNER OF LINDSAY PURE WATER
23 COMPANY?

24 **A.** I have owned part of the company and been President since it was created in 1997.

1 Q. WHAT HAVE BEEN YOUR RESPONSIBILITIES AS PRESIDENT OF THE
2 COMPANY?

3 A. I have supervised both the acquisition of the various permits and approvals necessary to
4 operate the water system and the construction and operation of the water system since it
5 began.

6 CREATION OF LINDSAY PURE WATER COMPANY

7 Q. WHY WAS LINDSAY PURE WATER COMPANY CREATED?

8 A. The company was created to provide water service to the South Ridge of Lindsay
9 Subdivision, which is located in the area shown on the Google Earth maps I have attached
10 as Exhibits LPWC 1 and LPWC 2.

11 Q. DO THESE MAPS ACCURATELY SHOW THE LOCATION OF THE SOUTH
12 RIDGE OF LINDSAY SUBDIVISION?

13 A. They do.

14 Q. WHO IS THE DEVELOPER FOR THE SOUTH RIDGE OF LINDSAY?

15 A. Myrick Development Company.

16 Q. PLEASE DESCRIBE YOUR RELATIONSHIP WITH MYRICK DEVELOPMENT
17 COMPANY.

18 A. I am an owner and the President of Myrick Development Company.

19 Q. PLEASE DESCRIBE THE SUBDIVISION.

20 A. The South Ridge of Lindsay is approximately 96 acres of land located along County Road
21 3108 approximately one mile south of the City of Lindsay. The property was purchased
22 by Myrick Development Company in 1997, and the subdivision has been developed in
23 phases. There will ultimately be about 65 lots within the subdivision. Phases 1, 2 and 3
24 have been platted for 44 lots, and all but 8 of the lots have been sold. Phase 4, which is

1 the final phase, will begin development within the next 6 months. The first 2 homes were
2 constructed in 1998, and we have averaged 2.6 new homes per year over the 10 years that
3 the project has been active. There are now 26 homes within the subdivision and 14 sold,
4 but vacant, lots. Copies of the plats for Phases 1, 2 and 3 are attached as **Exhibits LPWC**
5 **3, LPWC 4 and LPWC 5.**

6 **Q. DID YOU TRY TO OBTAIN WATER SERVICE FOR THE SOUTH RIDGE OF**
7 **LINDSAY SUBDIVISION INSTEAD OF CREATING LINDSAY PURE WATER**
8 **COMPANY?**

9 **A. Yes.**

10 **Q. WHAT HAPPENED?**

11 **A. I initially requested service from the Town of Lindsay. They refused to extend service**
12 **from their water system or even allow me to pay to extend their lines to the subdivision.**
13 **Consequently, we had to create Lindsay Pure Water Company, drill a new well and**
14 **construct a new water system to serve the subdivision.**

15 **LINDSAY PURE WATER COMPANY CCN**

16 **Q. DOES LINDSAY PURE WATER COMPANY HOLD A CERTIFICATE OF**
17 **CONVENIENCE AND NECESSITY TO PROVIDE RETAIL WATER SERVICE**
18 **FROM THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY?**

19 **A. Yes.**

20 **Q. WHAT IS THE CCN NUMBER?**

21 **A. The CCN number is 12858**

22 **Q. WHEN WAS THE CCN ISSUED?**

23 **A. The CCN was issued by the Commission in 1998. A copy of the Order is attached as**
24 **Exhibit LPWC 6.**

1 Q. PLEASE DESCRIBE THE CERTIFICATE OF CONVENIENCE AND NECESSITY
2 HELD BY LINDSAY PURE WATER COMPANY?

3 A. The current CCN for the Company only covers what is known as Phase 1 of the South
4 Ridge of Lindsay Subdivision and a portion of Phase 2.

5 Q. WHY IS PHASE 1 THE ONLY AREA COVERED BY THE CCN?

6 A. I do not know and believe this is in error. The entire South Ridge of Lindsay subdivision
7 should be within the Lindsay Pure Water Company CCN. However, the public records at
8 the Commission are incomplete, and I have been unable to locate a copy of our original
9 application to confirm my opinion.

10 Q. WHEN DID YOU DISCOVER THIS ERROR?

11 A. I discovered this error in the course of preparing for this case.

12 Q. HOW IS LINDSAY PURE WATER COMPANY SERVING THE EXISTING HOMES
13 IN AREAS OUTSIDE ITS CCN?

14 A. Those homes, like the remainder of the subdivision property are within ¼ mile of the
15 company's CCN boundary. Consequently, the company is authorized to serve them under
16 the Commission's rules. As soon as we have finished this case and have enough
17 resources, I intend to apply for an amendment to the company's CCN in order to add the
18 remainder of Phase 2, and Phases 3 and 4 to CCN No. 12858.

19 Q. HOW MUCH DOES LINDSAY PURE WATER COMPANY CHARGE ITS
20 CUSTOMERS FOR SERVICE?

21 A. We charge the rates that are set by our tariff, which has been approved by the
22 Commission. A copy of the rate schedule page from our tariff is attached as **Exhibit**
23 **LPWC 7.**

LINDSAY PURE WATER COMPANY SYSTEM

Q. PLEASE DESCRIBE THE LINDSAY PURE WATER COMPANY SYSTEM.

A. This system was initially designed to serve, at a minimum, the South Ridge of Lindsay subdivision at full build-out of Phases 1 through 4, which included 65 connections, but it has been oversized in many ways that will allow it to serve other areas. The main components of the water system include:

- (1) approximately 1.2 miles of 6-inch C900 PVC distribution lines;
- (2) a 100,000 gallon standpipe, with maximum elevation of 963 feet above sea level;
- (3) a well that is 905 feet deep, has a static water level of 325 feet and is pumping a minimum of 100 gallons per minute from 515 feet deep;
- (4) a 2000 gallon pressure tank;
- (5) a 10-horsepower service pump with a capacity of 420 gallons per minute; and
- (6) a 3-horsepower high pressure pump with 100 gallons per minute capacity.

We are planning to replace the 3-horse power pump with another 10-horsepower pump with a capacity of 420 gallons per minute in the next few months. With two 10-horsepower pumps we should be able to supply 840 gallons per minutes at 60 pounds of head pressure.