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2008 SEP 29 AM 10:04

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JOHN CARLTON
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September 26, 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 Lindsay Pure Water Company's Response to the Town of Lindsay's Objections to the Prefiled Testimony and Exhibits of Jim Myrick.

By copy of this letter, copies of the attached are being forwarded to all participating parties.

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
TCEQ Docket Clerk

SOAH DOCKET NO. 582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

2008 SEP 29 AM 10: 04

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

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Lindsay Pure Water Company ("LPWC"), Protestant herein, and submits the following Responses to the Town of Lindsay's ("Lindsay") Objections to the Prefiled Testimony and Exhibits of Jim Myrick.

Response to Objections to Testimony and Exhibits of Jim Myrick

1. Page 3, lines 10-12.

LINDSAY'S OBJECTION: 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.

LPWC'S RESPONSE: The City of Lindsay's objections to Mr. Myrick's testimony are longer than the testimony itself. Mr. Myrick's testimony regarding why he formed LPWC is a personal recollection. Mr. Myrick does not recount statements made by others; rather, he explains why he had to create LPWC to serve his subdivision. Mr. Myrick's personal recollection is not hearsay.

2. Page 4, line 5-11.

LINDSAY'S OBJECTION: 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.

LPWC'S RESPONSE: The City of Lindsay is seeking to serve part of the subdivision that Mr. Myrick believed and understood was part of LPWC's service area. Until he began preparing for this matter, he did not know that a portion of an area he intended to serve and could serve was allegedly excluded from LPWC's CCN. He is stating his opinion of his service area as the owner of the water system.

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

LINDSAY'S OBJECTION: Lindsay objects to and moves to strike this testimony as drawing a legal conclusion that the witness is not qualified to make. Mr. Myrick's 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. 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. 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. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

LPWC'S RESPONSE: As an owner of a water system, Mr. Myrick is uniquely qualified to testify regarding his service area. In the many years Mr. Myrick has owned LPWC, he has undoubtedly had to familiarize himself with certain TCEQ rules that may impact his system. The rule Mr. Myrick refers to is straightforward and does not require an expert to interpret. There has been no testimony to refute Mr. Myrick's correct assertion that LPWC may serve customers within ¼ mile of LPWC's CCN boundaries.

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'S OBJECTION: 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. 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. 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. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

LPWC'S RESPONSE: Because Mr. Myrick oversaw the design and construction of his own water system, it follows that he can testify regarding what areas he intended his water system to serve and the size of the system he built. In the testimony following this, he describes in detail the components of his system. The City of Lindsay does not object to this detailed testimony. Mr. Myrick's time and experience as the owner of LPWC makes him qualified to testify regarding initial design and future plans for expansion.

Regarding the testimony at lines 17-19, Mr. Myrick is doing a little multiplication. The testimony at lines 16-17 (to which there was no objection), establishes that one 10-horsepower pump would have a capacity of 210 gallons per minute. The following line merely states that the addition of another 10-horsepower pump would double that output. That is simple math, and a particular degree is not required to establish that fact.

5. Page 6, line 1 through line 17.

LINDSAY'S OBJECTION: 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. 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. 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. Mr. Myrick, in

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

LPWC'S RESPONSE: As an owner of LPWC, Mr. Myrick is well aware of his system's capacity, and he testifies in great detail about that capacity – both present and future. He has personally supervised the construction and operation of LPWC since its inception. He has first-hand knowledge of how his system works, including its capacity and its limitations, and that knowledge is evident through this testimony. Mr. Myrick does not have to be an expert to testify regarding a system he works with every day.

6. Page 7, line 16 through line 19.

LINDSAY'S OBJECTION: 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. 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. 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. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert. 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." 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. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

LPWC'S RESPONSE: As an owner of LPWC, Mr. Myrick is well aware of his system's capacity, and he testifies in great detail about that capacity – both present and future. He has personally supervised the construction and operation of LPWC since its inception. He has first-hand knowledge of how his system works, including its capacity and its limitations, and that knowledge is evident throughout this testimony. Mr. Myrick does not have to be an expert to testify regarding a system he works with every day.

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

LINDSAY'S OBJECTION: 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 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. 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 service. 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. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert on CCN issues. He has demonstrated that he is not familiar with the CCN rules that apply to this proceeding. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

LPWC'S RESPONSE: Besides being an owner of LPWC, Mr. Myrick is a developer. He developed the subdivision that LPWC serves. He knows the area and knows there has not been any development in the area for many years. It is his opinion there was no need to expand his CCN in the absence of any development in his CCN area. The City of Lindsay may disagree, but given his experience in the area and with the water system for many years, it is a valid opinion nonetheless.

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

LINDSAY'S OBJECTION: 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" and "Lindsay['s] hopes." 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. 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. 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. 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. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.

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.

LPWC'S RESPONSE: Besides being an owner of LPWC, Mr. Myrick is a developer. He developed the subdivision that LPWC serves. He knows the area and knows there has not been any development in the area for many years. He has served on the City Council, the county appraisal board, and is active in the community. After his research on the alleged requests for service, he found no actual plans for development anywhere in the area. It is his opinion that the alleged requests are essentially a sham. The City of Lindsay may disagree, but given his experience in the area and with the water system for many years, it is a valid opinion nonetheless.

9. Page 9, line 1 through line 22

LINDSAY'S OBJECTION: 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 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.

LPWC'S RESPONSE: The City of Lindsay objected to page 9, lines 1-16 above. LPWC's response to that objection is incorporated herein. Regarding the testimony at lines 19-22, Mr. Myrick is testifying as to his personal actions as an owner of LPWC as well as his personal decision to not complete the CCN amendment process. This testimony supports his opinion as an owner of LPWC as to why there is no need to expand *any* CCN in the area at this time.

10. Page 10, line 1 through line 12.

LINDSAY'S OBJECTION: 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 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 or any other subject matter relevant to this proceeding. 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. 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. 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' Request for Disclosures. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert. This testimony should be stricken.

LPWC'S RESPONSE: Besides being an owner of LPWC, Mr. Myrick is a developer. He developed the subdivision that LPWC serves. He knows the area and knows there has not been any development in the area for many years. He has served on the City Council, the county appraisal board, and is active in the community. After his research on the alleged requests for service, he found no actual plans for development anywhere in the area. It is his opinion that the only growth is in areas already a part of either LPWC's or the City of Lindsay's CCNs. The City of Lindsay may disagree, but given his experience in the area and with the water system for many years, it is a valid opinion nonetheless.

11. Page 11, line 1 through line 17

LINDSAY'S OBJECTION: 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. 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. 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' Request for Disclosures. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.

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.

LPWC'S RESPONSE: As a developer and as an owner of a water system, Mr. Myrick understands the cost of development and utility expansion. Mr. Myrick knows that it will cost more for a distant utility (the City of Lindsay) to serve potential new customers in the South Ridge of Lindsay than it would cost for a closer utility, basically a utility in their own neighborhood - LPWC, to serve them. Mr. Myrick has established his system's capacity and forthcoming upgrades, and it is clear LPWC is the closest in proximity to the additional potential phases of the South Ridge of Lindsay. Interestingly, the City of Lindsay makes no objection to Mr. Myrick's testimony that follows at page 11, line 18 – page 12, line 13, which discusses similar points.

Respectfully submitted,



JOHN J. CARLTON

State Bar No. 03817600

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**ATTORNEYS FOR LINDSAY PURE WATER
COMPANY**

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 26th day of September, 2008, to the following:

James W. Norman, ALJ
State Office of Administrative Hearings
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Blas J. Coy, Jr.
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Brian MacLeod, Attorney
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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

CHIEF CLERKS OFFICE

2008 SEP 29 AM 10:04

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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

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

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BEFORE THE STATE OFFICE

SEP 28 AM 10:04

CHIEF CLERKS OFFICE

OF

ADMINISTRATIVE HEARINGS

**LINDSAY PURE WATER COMPANY'S THIRD SUPPLEMENTAL RESPONSE TO
THE EXECUTIVE DIRECTOR'S FIRST REQUEST FOR DISCLOSURE,
INTERROGATORIES AND REQUESTS FOR PRODUCTION**

TO: The Executive Director, by and through its attorney of record, Brian MacLeod, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711.

COMES NOW, Lindsay Pure Water Company, Protestant herein, and files its Third Supplemental Response to the Executive Director's First Request for Disclosure, Interrogatories and Requests for Production.

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

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

RESPONSE:

Jim Myrick, Lindsay Pure Water Company, P.O. Box 1338, Gainesville, Texas 76241. Mr. Myrick may be contacted through LPWC's attorney, John J. Carlton, at 435-2308.

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

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

RESPONSE:

Mr. Myrick will testify regarding Lindsay Pure Water Company, its inception, construction, capacity - now and in the future, service area, costs to serve its customers, and issues related to the City of Lindsay's CCN application as it relates to its impact on LPWC.

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

- 3) The general substance of the expert's mental impressions 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:

See the prefiled testimony and deposition testimony of Jim Myrick taken in this matter.

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:

Mr. Myrick did not create a report, but was deposed by The City of Lindsay. Documents reviewed by Mr. Myrick were referenced in his deposition and have been previously produced. Mr. Myrick testified regarding his resume in his prefiled testimony.

Respectfully submitted,



JOHN J. CARLTON

State Bar No. 03817600

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**ATTORNEYS FOR LINDSAY PURE
WATER COMPANY**

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 26 day of September, 2008, to the following:

Arturo D. Rodriguez, Jr.
Russell & Rodriguez, L.L.P.
1633 Williams Drive
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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 SEP 29 AM 10:05
CHIEF CLERKS OFFICE



JOHN J. CARLTON

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

2008 SEP 29 AM 10:05

APPLICATION FROM THE TOWN OF § BEFORE THE STATE OFFICE
LINDSAY TO AMEND A WATER §
CERTIFICATE OF CONVENIENCE AND §
NECESSITY (CCN) NO. 13025 IN COOKE §
COUNTY; APPLICATION NO. 35096-C; AND § OF
APPLICATION TO AMEND A SEWER §
CERTIFICATE OF CONVENIENCE AND §
NECESSITY (CCN) IN COOKE COUNTY, §
TEXAS; APPLICATION NO. 35097-C § ADMINISTRATIVE HEARING

CHIEF CLERKS OFFICE

**LINDSAY PURE WATER COMPANY'S SECOND SUPPLEMENTAL RESPONSE TO
THE CITY OF LINDSAY'S REQUEST FOR DISCLOSURE**

TO: The City of Lindsay, by and through its attorney of record, Arturo D. Rodriguez, Jr. of Russell & Rodriguez, L.L.P., 1633 Williams Drive Building 2, Suite 200 Georgetown, Texas 78628

COMES NOW, Lindsay Pure Water Company, Protestant herein, and files its Second Supplemental Response to the City of Lindsay's Request for Disclosure.

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

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

RESPONSE:

Jim Myrick, Lindsay Pure Water Company, P.O. Box 1338, Gainesville, Texas 76241. Mr. Myrick may be contacted through LPWC's attorney, John J. Carlton, at 435-2308.

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

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

RESPONSE:

Mr. Myrick will testify regarding Lindsay Pure Water Company, its inception, construction, capacity - now and in the future, service area, costs to serve its customers, and issues related to the City of Lindsay's CCN application as it relates to its impact on LPWC.

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

- 3) The general substance of the expert's mental impressions 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:

See the prefiled testimony and deposition testimony of Jim Myrick taken in this matter.

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:

Mr. Myrick did not create a report, but was deposed by The City of Lindsay. Documents reviewed by Mr. Myrick were referenced in his deposition and have been previously produced. Mr. Myrick testified regarding his resume in his prefiled testimony.

Respectfully submitted,



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COMPANY**

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 26th day of September, 2008, to the following:

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QUALITY



JOHN J. CARLTON

**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

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the City of Lindsay ("Lindsay" or "City") and files this, its Reply to Lindsay Pure Water Company's ("LPWC") Objections to the Prefiled Testimony and Exhibits of the City of Lindsay, in the above-styled matter. For the sake of expedieny and convenience, Lindsay has re-stated LPWC's objections and provided the City's response immediately following the objection. The objections are copied verbatim from LPWC's pleading and ordered and numbered in the same manner as provided by LPWC. The City reserves it right to respond to any additional objections that may be late filed by LPWC.

I. GENERAL RESPONSE

Many of LPWC's objections are spurious in nature and not founded on applicable legal theories and not supported by Texas Rules of Evidence. LPWC has chosen to ignore rules of evidence that allow expert witnesses to depend on hearsay evidence in order to formulate their opinions as well as the requirement of rules of evidence that records of a public office are in fact exceptions to the hearsay rules. As such, all of LPWC's hearsay objections should be overruled as a matter of law.

It is also important to point out to Your Honor that during the deposition of Mr. Jim Myrick, witness for LPWC, he states on the record that LPWC is not protesting the sewer application of Lindsay.¹ Yet despite that assertion, many, if not all, of LPWC's objections as they relate to Mr. Jack Stowe center on his testimony related to the sewer portion of Lindsay's application and the TCEQ regulatory guidelines with which Lindsay must show compliance. As such, LPWC's objections to Mr. Stowe's testimony should be overruled.

II. SPECIFIC OBJECTIONS

Objections to the Prefiled Testimony of Donald L. Metzler.

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.

RESPONSE: The City contends that the testimony provided and the Exhibit DLM-2 is relevant as TCEQ requires an applicant to provide information regarding the legal status of the applicant. Item 1.B. of the Commission's application form requires that the legal of the status of the applicant be identified.² As such, DLM-2 provides evidence of the City's legal status as a municipality. For these reasons, the objections to the testimony and related attachments should be overruled.

¹ 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 41-42 (Aug. 27, 2008) [hereinafter "Myrick Deposition"], attached hereto as Exhibit A.

² See City of Lindsay Exhibit APP 1 at APP1001.

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.

RESPONSE: The testimony on page 4, lines 11-12 and Exhibit DLM-5 are not hearsay. Regarding the objected to portion of the testimony, it is not hearsay as it is within Mr. Metzler's personal knowledge that the City sought changes to its CCN since the last CCN was granted. The objected to portion of the testimony is not hearsay as Mr. Metzler does not provide any hearsay testimony, just testimony regarding matters within his personal knowledge. Further, the identification of the documents is not hearsay and is not offered to prove the truth of the matter asserted. Thus, the testimony is not hearsay.

As Mayor *Pro Tempore*, Mr. Metzler is able to review the City's records and testify based on his review of the City's records. Further, the City has established that the testimony and referenced documents are excepted from the hearsay rules pursuant to TEX. R. EVID. 803 (8). As a public office, the testimony and exhibit establish that the information contained in the testimony and all of DLM-5 is records of a public office that sets forth the activities of the office (i.e. certificated provision of water and sewer services to potential customers of the City's water and sewer utility). A certified copy of the document contained in Exhibit DLM-5 will be produced for the record copy at the hearing. The certified document should remove any objection as to authentication pursuant to TEX. R. EVID. 902 (1). In the alternative, if Your Honor finds that it is hearsay, the testimony and exhibit are not offered to prove the truth of the matter asserted but to demonstrate the witness's belief that the City has sought changes to its water and/or sewer CCN since the last amendment was by the TCEQ.

Finally, the testimony and Exhibit DLM-5 are relevant to the service area sought in this matter. What area may be included as a result of the motion contained in DLM-5 has a direct relationship with what area will be sought in this proceeding. For these reasons, the objections to the testimony and related attachments should be overruled.

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.

RESPONSE: The testimony on page 4, lines 14 through page 5, line 1 is not hearsay. The testimony is being offered to provide context and understanding of Mr. Metzler's belief. Thus, it is not being offered to prove the truth of the matter asserted but to demonstrate Mr. Metzler's and the City's belief. Mr. Metzler was asked, and he responded, regarding whether any additional changes to the City's water or sewer CCN since the last amendment was granted had been made. The identification of the process that the City underwent to seek its Motion for *Nunc Pro Tunc* be heard and decided upon is not hearsay and is not offered to prove the truth of the matter asserted. Thus, the testimony is not hearsay. For these reasons, the objections to the testimony should be overruled.

4. **Exhibits (sic) 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.

RESPONSE: The referenced testimony is relevant as it discusses the City's current water CCN boundary and a change that has been approved to such boundary. The TCEQ requires an

applicant to demonstrate its current CCN in the process of applying for an amendment. That is what the City has done with this document. Additionally, it was discovered that this should have been a 2-sided exhibit and was inadvertently copied as a 1-sided document. Therefore, the City is attaching a new Exhibit DLM-6 to this response for all Parties to replace. A certified copy of the document contained in Exhibit DLM-6 will be produced for the record copy at the hearing. The certified document should remove any objection as to authentication pursuant to TEX. R. EVID. 902 (1).

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.

RESPONSE: The referenced testimony does not contain any out of court statements used to prove the truth of the matter asserted. Mr. Metzler is making a statement related to the accuracy of the CCN application, which he sponsors. Additionally, he is not testifying about opinions presented by other witnesses, he is simply stating that the application is true and correct, unless one of the City's experts modified such application. Furthermore, the witness has not relied on out of court statements as no statements have been made and the testimony has not been offered. There is simply no hearsay testimony being provided. Further, any testimony provided by any other City witness cannot possibly be hearsay as such statements would all be in court statements and not out of court statements. The testimony of other City witnesses is simply not hearsay. As such, the objection should be overruled.

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.

RESPONSE: The testimony on page 7, lines 14-18 is not hearsay. The testimony of Mr. Metzler is supported by TCEQ records and City records which the City possesses. These records are kept in the course of a regularly conducted business activity. In the alternative, if Your Honor finds that it is hearsay, the testimony is not offered to prove the truth of the matter asserted but offered to demonstrate the witnesses belief that the TCEQ had accepted the City's application for filing and offered for the limited purpose of demonstrating compliance with the Commission's regulations.

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.

RESPONSE: The testimony on page 8, lines 11-20 is not speculation. Mr. Metzler is testifying on behalf of the City and as a city council member that has the knowledge and capacity to discuss the employees of the City and the technical ability of the City to provide continuous and adequate service to the requested area as his responsibilities require that the City ensure compliance with TCEQ regulations. In the alternative, if the Judge is inclined to sustain the objection, the City requests that Mr. Metzler be allowed to provide the testimony regarding the factual aspects of his response regarding the number of certified operators and their levels of certification. To that extent, if the Judge sustains the objection, the City requests that it be allowed to ask: "Are you familiar with the certification levels of the City's contract operators? If so, please explain."

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.

RESPONSE: The referenced testimony and documents are not hearsay. The documents and testimony of Mr. Metzler are City records which the City has authenticated. As such, the documents are not hearsay pursuant to TEX. R. EVID. 803 (6) and (8). As Mayor *Pro Tempore*, Mr. Metzler is able to review the City's records and testify based on his review of the City's records. The testimony relies on the attachments and the attachments contain an affidavit which declares the attachments to be official records of the City, the record was made from information transmitted by a person with knowledge of the facts, the record was made at or near the time of the acts, events, conditions, opinions, diagnoses appearing on it, the record was made as part of the regular practice of that business activity, and the record was kept in the course of a regularly conducted business activity.³ Further, the City has established that the testimony and referenced documents are excepted from the hearsay rules pursuant to TEX. R. EVID. 803 (8). As a public office, the testimony and attachment establish that the information contained in the testimony and all of Exhibit DLM-10 is a record of a public office that sets forth the activities of the office (i.e. location of persons requesting water or sewer service from the City's water and sewer utility). In the alternative, if Your Honor finds that it is hearsay, the testimony and attachment are not offered to prove the truth of the matter asserted but as a response to the Commission's

³ See TEX. R. EVID. 803(6); see also *In re. K.C.P.*, 142 S.W.3d 574, 578 (Tex.App.-Texarkana 2004, no pet.). "The predicate for admission of a business record may be established by an affidavit... The predicate witness does not have to be the record's creator or have personal knowledge of the record. The witness is only required to have personal knowledge of the manner in which the records were prepared." *Id.*

regulatory requirement and offered for the limited purpose of demonstrating compliance with the Commission's regulations. Further, they are offered not for the proof of the matter asserted, but merely that the statements were made and to formulate the witness's belief that 55 property owners have requested service from the City. As such, they are not hearsay.

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.

RESPONSE: The referenced testimony and documents are not hearsay. The testimony on page 11, line 16 is not hearsay. The testimony of Mr. Metzler is supported by City records which the City is in possession of and was made at the direction of the City. These records are kept in the course of a regularly conducted business activity. Further, the City has established that the testimony and referenced documents are excepted from the hearsay rules pursuant to TEX. R. EVID. 803 (8). As a public office, the testimony and attachment establish that the information contained in the testimony and all of Exhibits DLM-11 and DLM-12 are records of a public office that sets forth the activities of the office (i.e. location of persons requesting water or sewer service from the City's water and sewer utility). In the alternative, if Your Honor finds that it is hearsay, the testimony and attachments are not offered to prove the truth of the matter asserted but as a response to the Commission's regulatory requirement and offered for the limited purpose of demonstrating compliance with the Commission's regulations.

10. Page 12, lines 12-16, "I have attached...testimony as DLM-3"(sic) 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.

RESPONSE: The referenced testimony and document is not hearsay. The testimony on page 12, lines 12-16 is not hearsay. The testimony of Mr. Metzler is supported by City records which the City is in possession of and was made at the direction of the City. These records are kept in the course of a regularly conducted business activity. In the alternative, if Your Honor finds that it is hearsay, the testimony and attachment are not offered to prove the truth of the matter asserted but as a response to the Commission's regulatory requirement and offered for the limited purpose of demonstrating compliance with the Commission's regulations.

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.

RESPONSE: The testimony on page 12, lines 18 through 23 is not speculation. As the Mayor *Pro Tempore*, Mr. Metzler and the other city councilpersons have the duty to oversee all operations of the City, including the water and sewer utilities. The testimony of Mr. Metzler is based on his review of official City records. As Mayor *Pro Tempore*, Mr. Metzler is able to review the City's records and testify based on his review of the City's records. Mr. Metzler is allowed to offer his opinion as it is rationally based on his perception based on the documents he has reviewed and the opinion is helpful to clearly understand his testimony and the determination of a fact issue. As such, the testimony is allowed pursuant to TEX. R. EVID. 701.

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.

RESPONSE: The City withdraws the testimony: "Most municipalities with utilities believe that it is key to provide utility services to its citizens and residents of the ETJ."

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.

RESPONSE: The testimony on page 16, lines 19-22 is not speculation. Mr. Metzler is testifying on behalf of the City and as Mayor *Pro Tempore* has the knowledge and capacity to discuss the technical ability of the City to provide continuous and adequate service to the requested area.

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.

RESPONSE: The testimony on page 18, lines 16-19 is not speculation. Mr. Metzler is testifying on behalf of the City and as Mayor *Pro Tempore* has the knowledge and capacity to discuss the financial ability of the City to provide continuous and adequate service to the requested area.

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.

RESPONSE: The testimony on page 21, lines 11-17 is not speculation. Mr. Metzler is testifying on behalf of the City and as Mayor *Pro Tempore* has the knowledge and capacity to discuss the technical ability of the City to provide continuous and adequate service to the requested area and the improvements to water and sewer service that would be seen if the City were to receive the requested amendment. Mr. Metzler is allowed to offer his opinion as it is rationally based on his perception based on the documents he has reviewed and the opinion is helpful to clearly understand his testimony and the determination of a fact issue. As such, the testimony is allowed pursuant to TEX. R. EVID. 701.

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.

RESPONSE: The testimony on page 22, lines 5-8 is not speculation. Mr. Metzler is testifying on behalf of the City and as Mayor *Pro Tempore* has the knowledge and capacity to discuss the employees of the City as well as the technical, managerial, and financial capability of the City to provide continuous and adequate service to the requested area. Mr. Metzler is allowed to offer his opinion as it is rationally based on his perception based on the documents he has reviewed and the opinion is helpful to clearly understand his testimony and the determination of a fact issue. As such, the testimony is allowed pursuant to TEX. R. EVID. 701.

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.

RESPONSE: The testimony on page 22, lines 10-13 is not speculation. Mr. Metzler is testifying on behalf of the City and as Mayor *Pro Tempore* has the knowledge and capacity to discuss the technical ability of the City to provide continuous and adequate service to the requested area. Mr. Metzler is allowed to offer his opinion as it is rationally based on his perception based on the documents he has reviewed and the opinion is helpful to clearly understand his testimony and the determination of a fact issue. As such, the testimony is allowed pursuant to TEX. R. EVID. 701.

OBJECTIONS TO THE PREFILED TESTIMONY OF KERRY D. MARONEY

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.

RESPONSE: The referenced testimony and Exhibits are City records, some of which the City has authenticated, others of which are created by TCEQ and are business records and open records. As an expert for the City, Mr. Maroney is able to review the City's records and testify based on his review of the City's records and other pertinent documents. The testimony relies

on his review of all documents contained in his exhibits and some of those exhibits contain an affidavit which declares the exhibits to be a business record of the City, the record was made from information transmitted by a person with knowledge of the facts, the record was made at or near the time of the acts, events, conditions, opinions, diagnoses appearing on it, the record was made as part of the regular practice of that business activity, and the record was kept in the course of a regularly conducted business activity.⁴ As a result, the testimony and referenced exhibits are an exception to the hearsay rules pursuant to TEX. R. EVID. 803 (6). Further, the City has established that the testimony and referenced documents are excepted from the hearsay rules pursuant to TEX. R. EVID. 803 (8). As a public office, the testimony and exhibits establish that the information contained in the testimony and all of Attachments KDM-2, KDM-3, KDM-4, KDM-5, KDM-6, KDM-7, KDM-8, KDM-9, and KDM-10 are records of a public office that sets forth the activities of the office (i.e. location of persons requesting water or sewer service from the City's water and sewer utility, correspondence with governmental agencies related to City's provision of water and sewer services, etc.). Additionally, even if the testimony could be regarded as hearsay, as an expert, Mr. Maroney may rely on hearsay to support his opinion regarding the City's ability to provide continuous and adequate service. Further, Mr. Maroney is a designated expert on the City of Lindsay's managerial and technical ability to provide continuous and adequate service to the requested area. As an expert, Mr. Maroney may testify on all components of establishing managerial and technical ability to provide continuous and adequate service to the requested area. An expert may offer testimony based on hearsay.⁵

⁴ *Id.*

⁵ TEX. R. EVID. 703.

In the alternative, if Your Honor finds that it is hearsay, the testimony and attachment are not offered to prove the truth of the matter asserted but as a response to the Commission's regulatory requirement and offered for that limited purpose of demonstrating compliance with the Commission's regulations. For these reasons, the objections to the testimony and related attachments should be overruled.

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.

RESPONSE: The referenced testimony and attachment is a City record which was created by TCEQ and is a business record. As an expert for the City, Mr. Maroney is able to review the City's records and testify based on his review of the City's records and other pertinent documents. As a result, the testimony and referenced attachment is an exception to the hearsay rules pursuant to TEX. R. EVID. 803 (6). Further, the City has established that the testimony and referenced document is excepted from the hearsay rules pursuant to TEX. R. EVID. 803 (8). As a public office, the testimony and attachment establish that the information contained in the testimony and all of Attachment KDM-2 is a record of a public office that sets forth the activities of the office (i.e., correspondence with governmental agencies related to City's provision of water and sewer services, etc.). Additionally, even if the testimony could be regarded as hearsay, as an expert, Mr. Maroney may rely on hearsay to support his opinion regarding the City's ability to provide continuous and adequate service. Further, Mr. Maroney is a designated expert on the City of Lindsay's managerial and technical ability to provide continuous and adequate service to the requested area. As an expert, Mr. Maroney may testify on all components of establishing managerial and technical ability to provide continuous and

adequate service to the requested area. An expert may offer testimony based on hearsay.⁶ In the alternative, if Your Honor finds that it is hearsay, the testimony and attachment are not offered to prove the truth of the matter asserted but as a response to the Commission's regulatory requirement and offered for that limited purpose of demonstrating compliance with the Commission's regulations. Further, even if the documents are hearsay, Mr. Maroney may testify regarding the documents as the basis upon which he formulates his opinions. For these reasons, the objections to the testimony and related attachment should be overruled.

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.

RESPONSE: The referenced testimony and attachment are City records which were created by TCEQ and are business records. As an expert for the City, Mr. Maroney is able to review the City's records and testify based on his review of the City's records and other pertinent documents. The testimony relies on his review of the map contained in this attachment. As a result, the testimony and referenced attachment is an exception to the hearsay rules pursuant to TEX. R. EVID. 803 (6). Further, the City has established that the testimony and referenced document is excepted from the hearsay rules pursuant to TEX. R. EVID. 803 (8). As a public office, the testimony and attachment establish that the information contained in the testimony and all of Attachment KDM-3 is a record of a public office that sets forth the activities of the office (i.e. location of City's authority to provide water and sewer utility service). Additionally, even if the testimony could be regarded as hearsay, as an expert, Mr. Maroney may rely on hearsay to support his opinion regarding the City's ability to provide continuous and adequate

⁶ *Id.*

service. Further, Mr. Maroney is a designated expert on the City of Lindsay's managerial and technical ability to provide continuous and adequate service to the requested area. As an expert, Mr. Maroney may testify on all components of establishing managerial and technical ability to provide continuous and adequate service to the requested area. An expert may offer testimony based on hearsay.⁷ In the alternative, if Your Honor finds that it is hearsay, the testimony and attachment are not offered to prove the truth of the matter asserted but as a response to the Commission's regulatory requirement and offered for that limited purpose of demonstrating compliance with the Commission's regulations. For these reasons, the objections to the testimony and related attachment should be overruled. Further, even if the document is hearsay, Mr. Maroney may testify regarding the document as the basis upon which he formulates his opinions.

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.

RESPONSE: The referenced testimony and documents are not hearsay. The documents and testimony of Mr. Maroney are City records which the City has authenticated. As such, the documents are not hearsay pursuant to TEX. R. EVID. 803 (6) and (8). As an expert witness for the City, Mr. Maroney is able to review the City's records and testify based on his review of the City's records. The testimony relies on the attachments and the attachments contain an affidavit which declares the attachments to be official records of the City, the record was made from information transmitted by a person with knowledge of the facts, the record was made at or near

⁷ *Id.*

the time of the acts, events, conditions, opinions, diagnoses appearing on it, the record was made as part of the regular practice of that business activity, and the record was kept in the course of a regularly conducted business activity.⁸ Further, the City has established that the testimony and referenced documents are excepted from the hearsay rules pursuant to TEX. R. EVID. 803 (8). As a public office, the testimony and attachments establish that the information contained in the testimony and all of Exhibit KDM-5 is a record of a public office that sets forth the activities of the office (i.e. location of persons requesting water or sewer service from the City's water and sewer utility). Further, Mr. Maroney is a designated expert on the City of Lindsay's managerial and technical ability to provide continuous and adequate service to the requested area. As an expert, Mr. Maroney may testify on all components of establishing managerial and technical ability to provide continuous and adequate service to the requested area. An expert may offer testimony based on hearsay.⁹ In the alternative, if Your Honor finds that it is hearsay, the testimony and attachments are not offered to prove the truth of the matter asserted but as a response to the Commission's regulatory requirement and offered for the limited purpose of demonstrating compliance with the Commission's regulations. Further, even if the documents are hearsay, Mr. Maroney may testify regarding the documents he reviewed as the basis upon which he formulates his opinions.

⁸ See TEX. R. EVID. 803(6); see also *In re. K.C.P.*, 142 S.W.3d 574, 578, *supra* note 3.

⁹ TEX. R. EVID. 703.

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.

RESPONSE: The documents and testimony of Mr. Maroney are records Mr. Maroney has reviewed in order to formulate his opinions and testimony. As an expert witness for the City, Mr. Maroney may testify on all components of establishing managerial and technical ability to provide continuous and adequate service to the requested area, growth to the requested area which the Commission requires a showing of, and the ability of the City to provide continuous and adequate service to the new growth in the City. An expert may offer testimony based on hearsay.¹⁰ Even if the documents are hearsay, Mr. Maroney may testify regarding the documents as the basis upon which he formulates his opinions.

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.

RESPONSE: Upon providing his testimony, there will be evidence of the environmental need for the service to be provided by the City. Mr. Maroney explains the environmental needs on the water side and sewer side.¹¹ Mr. Maroney is a registered professional engineer who designs water and sewer systems throughout the state. He is familiar with the environmental impacts of different systems. The City welcomes any examination of these issues with Mr. Maroney. If it

¹⁰ *Id.*

¹¹ See APP Exhibit 3 at 10, l. 6-22.

pleases the court, the City would be willing to move the objected to testimony to follow page 10, line 22 after Mr. Maroney explains the environmental needs for the CCN.

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.

RESPONSE: These objections are spurious at best. As a qualified expert, Mr. Maroney may utilize his testimony time to discuss the environmental impacts of the City's CCN application. While not discussing OSSF failures in the proposed area, Mr. Maroney's opinion need not be that restrictive. He may offer his opinion based on his experience. Although LPWC may not like the opinions, the objections go more to the weight, not the admissibility, of the testimony. The City welcomes any examination of these issues with Mr. Maroney.

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.

RESPONSE: The referenced testimony and documents are not hearsay. The documents and testimony of Mr. Maroney are records Mr. Maroney has reviewed in order to formulate his testimony. As an expert witness for the City, Mr. Maroney may testify on all components of establishing managerial and technical ability to provide continuous and adequate service to the requested area, current service in the area, problems arising in the requested area from current

utility service, etc. An expert may offer testimony based on hearsay.¹² In the alternative, if Your Honor finds that it is hearsay, the testimony and attachment are not offered to prove the truth of the matter asserted but as a response to the Commission's regulatory requirement and offered for the limited purpose of demonstrating compliance with the Commission's regulations. Even if the documents are hearsay, Mr. Maroney may testify regarding the documents and information he relied upon as the basis upon which he formulates his opinions.

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

LPWC objects to this testimony as hearsay.

RESPONSE: This cannot be hearsay as Mr. Maroney has not attributed this statements to anyone's out of court statements. Because the testimony is not based on out of court statements, it cannot be hearsay. Even if the testimony were based on hearsay, Mr. Maroney could utilize that hearsay evidence to formulate his opinion that LPWC will not be impacted by the City's sewer CCN.

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.

¹² TEX. R. EVID. 703.

RESPONSE: As a professional engineer that has designed water and sewer systems throughout the state, Mr. Maroney has the requisite knowledge, skills, and training to discuss capacity issues. Mr. Maroney may provide this testimony as an expert. If anyone seeks to challenge the conclusions, they are welcome to do so. Merely because the calculations were not listed in his testimony does not mean his conclusions are inadmissible. LPWC's objections go solely to the weight, not the admissibility of the evidence.

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.

RESPONSE: As an expert witness, Mr. Maroney is merely responding to the question regarding the feasibility of obtaining services from an adjacent retail public utility. LPWC's actions under the settlement agreement are relevant to the feasibility of receiving service from at least LPWC, thus are relevant to the issue. The testimony is responsive as it relates to the question in that LPWC's actions under the settlement agreement provide the basis for his opinion regarding the feasibility of receiving service from an adjacent retail public utility, one of the factors the TCEQ must consider in this case. The basis of Mr. Maroney's opinion is the lack of action taken by LPWC relative to the settlement agreement. Mr. Maroney is a qualified expert to understand the inactions of LPWC and draw his conclusions. LPWC's objections go solely to the weight, not the admissibility of the evidence.

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.

RESPONSE: The witness does provide the evidence regarding water supply in the future. He provides this testimony on page 14 of his direct testimony. If LPWC disputes the basis for the opinion, they are welcome to examine Mr. Maroney on the issue. LPWC's objections go solely to the weight, not the admissibility of the evidence.

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.

RESPONSE: The witness does provide the evidence regarding water quality. He provides this testimony on page 18 of his direct testimony. If LPWC disputes the basis for the opinion, they are welcome to examine Mr. Maroney on the issue. LPWC's objections go solely to the weight, not the admissibility of the evidence.

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.

RESPONSE: The referenced testimony and documents are not hearsay. The documents and testimony of Mr. Maroney are records Mr. Maroney has reviewed in order to formulate his testimony. As an expert witness for the City, Mr. Maroney may testify on all components of establishing managerial and technical ability to provide continuous and adequate service to the requested area, current service in the area, problems arising in the requested area from current utility service, etc. An expert may offer testimony based on hearsay.¹³ In the alternative, if Your Honor finds that it is hearsay, Mr. Maroney may testify regarding the documents as the basis upon which he formulates his opinions.

¹³ *Id.*

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.

RESPONSE: Mr. Maroney is an expert on engineering and environmental matters for water and sewer systems. He may testify regarding his understanding of recent state trends. If LPWC disputes the basis for the opinion, they are welcome to examine Mr. Maroney on the issue. LPWC's objections go solely to the weight, not the admissibility of the evidence.

20. 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.

RESPONSE: The witness does provide the evidence regarding capacity. He provides this testimony on page 14 of his direct testimony. If LPWC disputes the basis for the opinion, they are welcome to examine Mr. Maroney on the issue. LPWC's objections go solely to the weight, not the admissibility of the evidence.

Objections to the Prefiled Testimony of Jack E. Stowe

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.

RESPONSE: The documents and testimony of Mr. Stowe are records Mr. Stowe has reviewed in order to formulate his testimony. As an expert witness for the City, Mr. Stowe may testify on all components of establishing the financial ability to provide continuous and adequate service to the requested area. An expert may offer testimony based on hearsay.¹⁴ As an expert,

¹⁴

Id.

Mr. Stowe may testify from hearsay documents that formulate his opinions. LPWC's objection goes to the weight, not the admissibility, of the testimony and the documents.

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.

RESPONSE: The documents and testimony of Mr. Stowe are records Mr. Stowe has reviewed in order to formulate his testimony. As an expert witness for the City, Mr. Stowe may testify on all components of establishing the financial ability to provide continuous and adequate service to the requested area. An expert may offer testimony based on hearsay.¹⁵ As an expert, Mr. Stowe may testify from hearsay documents that formulate his opinions. LPWC's objection goes to the weight, not the admissibility, of the testimony and the documents.

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.

¹⁵

Id.

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-g, 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.

RESPONSE: The above objections are nothing more than spurious objections in their entirety. Regarding the relevancy objection, all documents and testimony are relevant to the environmental impacts of a sewer CCN which will be served through a central sewer system. The relative costs are relevant to the need for the central sewer system and the potential costs of the service to consumers. All such factors are to be considered by the TCEQ in this proceeding. Regarding the objections of Mr. Stowe not being qualified to provide an expert opinion on environmental effects in this matter, Mr. Stowe's company conducted a study regarding on-site sewage facilities.¹⁶ As such, Mr. Stowe is qualified based on his knowledge, skills, and experience to provide this testimony. If LPWC challenges his qualifications, they

¹⁶ See APP Exhibit 4 at Attachment JES-8.

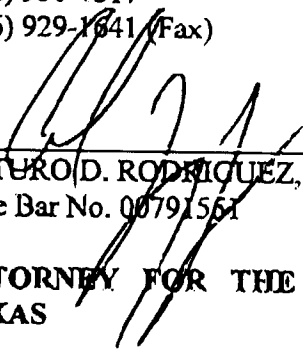
are more than welcome to examine Mr. Stowe on the issues. Further, as one with the qualifications to testify on issues related to OSSFs, Mr. Stowe can reference other materials to formulate the opinions contained in his testimony. An expert may offer testimony based on hearsay.¹⁷ As an expert, Mr. Stowe may testify from hearsay documents that formulate his opinions. LPWC's objections go to the weight, not the admissibility, of the testimony and documents.

CONCLUSION

Lindsay respectfully requests that Your Honor overrule the objections filed by Lindsay Pure Water Company. Lindsay also respectfully requests any further relief to which it has shown itself to be justly entitled.

Respectfully submitted,

RUSSELL & RODRIGUEZ, L.L.P.
1633 Williams Drive, Building 2, Suite 200
Georgetown, Texas 78628
(512) 930-1317
(866) 929-1641 (Fax)



ARTURO D. RODRIGUEZ, JR.
State Bar No. 00791561

ATTORNEY FOR THE CITY OF LINDSAY,
TEXAS

¹⁷

TEX. R. EVID. 703.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th 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 Norman
Administrative Law Judge
300 West 15th Street
Austin, Texas 78701
Fax: 475-4994

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Environmental Law Division
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Docket Clerk
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Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Fax: 239-3311

CHIEF CLERKS OFFICE

2008 SEP 26 PM 3:27

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY
ARTURO D. RODRIGUEZ, JR.

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 A

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

Page 41

1 A They provide their own with an aerobic
2 system, which is part of the restrictions requested by
3 the county.

4 Q That would be Cooke County?

5 A Yes.

6 Q Does Lindsay Pure Water provide any
7 wastewater service?

8 A No, sir.

9 Q Okay. Is Lindsay Pure Water with respect to
10 the City of Lindsay's CCN application for which
11 you're -- I'm deposing you here today, is there any
12 part of the City of Lindsay's sewer CCN application
13 that you're contesting or that Lindsay Pure Water is
14 contesting?

15 A Contesting the sewer CCN, no.

16 Q Okay.

17 THE WITNESS: I don't think we did, did
18 we?

19 MR. CARLTON: (Nodded)

20 Q (BY MR. RODRIGUEZ) So is it fair to say then
21 that the only part of the City of Lindsay's CCN
22 application that you -- that Lindsay Pure Water is
23 contesting is just the -- it's the City's water CCN
24 amendment?

25 A That is correct.

HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

Page 42

1 Q Okay. So no part of the sewer CCN do you --

2 A No, sir. I do not want to have anything to
3 do with the sewer system.

4 Q Okay. I can't say that I blame you.

5 When you developed -- excuse me. Strike
6 that.

7 When you went and platted the South
8 Ridge of Lindsay subdivision, that was platted through
9 the county. Is that correct?

10 A Yes.

11 Q Was it -- was there a plat application that
12 was required to go through the City of Lindsay?

13 A No.

14 Q Okay. So the only plat approval you got was
15 from the county of Cooke?

16 A That is correct.

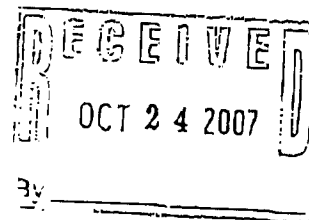
17 Q Okay. Do the Cooke County subdivision
18 regulations or any other regulations require the
19 Lindsay Pure Water to provide any kind of fire flow or
20 fire protection services for the South Ridge of
21 Lindsay?

22 A No. They were -- one of the Commissioners
23 asked to have a fire hydrant put up close to the road.

24 Q Okay. Was that hydrant provided?

25 A Most definitely.

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



Texas Commission on Environmental Quality
Protecting Texas by Reducing and Preventing Pollution

October 17, 2007

Ms. Celeste Baker, Acting General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087 (MC 101)
Austin, Texas 78711-3087

Re: TCEQ DOCKET NO. 2006-1778-UCR, EXECUTIVE DIRECTOR'S REQUEST
FOR A CORRECTION TO CITY OF LINDSAY'S CERTIFICATE OF
CONVENIENCE AND NECESSITY UNDER 30 TEX. ADMIN. CODE § 50.145.

Dear Ms. Baker:

On May 16, 2003, the Executive Director issued an Order approving the City of Lindsay's application for a water CCN. The Order stated that approval was reflected in the copy of the official water service area map for Cooke County, Texas, which was attached to the Order.

On September 1, 2006, the Chief Clerk of the Commission received the City's *Motion for Judgment Nunc Pro Tunc*. The City claimed that the water CCN map approved in the Order was a clerical mistake and requested that the Commission correct the purported error by substituting that map with maps attached to the City's settlement agreements with the protestants.

The Commission heard the City's request at the October 10, 2007, Commission Meeting and gave guidance to the Executive Director that the substitution of the maps would correct an error and therefore would constitute a nonsubstantive correction to the CCN under 30 TAC §§50.145(b)(4) and (5).

Pursuant to 30 TAC §50.145(c), the Executive Director hereby provides notice to the Office of the General Counsel and the Office of the Public Interest Counsel of the Executive Director's intent to make the requested map revisions. The Executive Director has spoken with the City and is awaiting digital mapping which will be used to accomplish the revisions. When the Executive Director receives adequate maps to accomplish the revision, the Executive Director will issue an endorsement to the permit.

DLM-6

SEP-26-2008(FRI) 15:09

Received:

Russell Rodriguez, LLP

Sep 26 2008 03:22pm

(FAX) 866 1641

P. 034/034

If you have comments or questions, please contact Ms. Tammy Benter by phone at 512/239-6136, or by email at Tholguin@tceq.state.tx.us.

Sincerely,

Doug Holcomb

Doug Holcomb, Section Manager
Utilities & Districts Section
Water Supply Division

cc: Mailing list

RUSSELL & RODRIGUEZ, L.L.P.

Attorneys at Law

1633 Williams Drive, Building 2, Suite 200, Georgetown, Texas 78628

Phone (512) 930-1317

E-mail: arodriguez@txadminlaw.com

Fax (866) 929-1641

FACSIMILE COVER PAGE

September 26, 2008

Please Deliver the Following page(s) to:

Mr. James W. Norman

Mr. John Carlton, Attorney

Mr. Blas Coy, Attorney

Mr. Brian MacLeod

TCEQ Chief Clerk

Mr. Pat Dillon

Fax Number: (512) 475-4994

Fax Number: (512) 435-2360

Fax Number: (512) 239-6377

Fax Number: (512) 239-0606

Fax Number: (512) 239-3311

Fax Number: (972) 680-0003

Client Number: 1140-00

From: Arturo D. Rodriguez, Jr.

Direct Phone: (512) 930-1317

Pages: 34 (Including Cover Sheet)

Re:

Comments: City of Lindsay's Responses to LPWC's Objections to Testimony