

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

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

**THE CITY OF LINDSAY'S 3<sup>RD</sup> SUPPLEMENTAL RESPONSES TO THE  
EXECUTIVE DIRECTOR'S AND LINDSAY PURE WATER COMPANY'S  
REQUEST FOR DISCLOSURE**

TO: The Executive Director of the Texas Commission on Environmental Quality, by and through his attorney, Mr. Brian MacLeod, P.O. Box 13087, MC 173, Austin, TX 78711-3087.

Lindsay Pure Water Company, by and through its attorney, Mr. John Carlton, Armbrust & Brown, LLP, 100 Congress Avenue, Suite 1300, Austin, Texas 78701.

The City of Lindsay ("City" or "Lindsay"), serves this, its 3<sup>rd</sup> Supplemental Response to the Executive Director's Request for Disclosure by and through his attorney, Mr. Brian MacLeod, and to Lindsay Pure Water Company's Request for Disclosure by and through their attorney, Mr. John Carlton, pursuant to Rules 196, 197, and 198 and other applicable rules of the Texas Rules of Civil Procedure, Chapter 2001 of the Texas Government Code, and applicable rules and regulations of the Texas Commission on Environmental Quality ("TCEQ" or "Commission") and the State Office of Administrative Hearings ("SOAH").

**LINDSAY DID NOT FILE THIS RESPONSE PREVIOUSLY AS IT WAS THE CITY'S UNDERSTANDING OF THE RULES OF CIVIL PROCEDURE, SPECIFICALLY TEX. R. CIV. PROC. § 193.5(b), THAT IT WAS PAST THE TIME TO SUPPLEMENT DISCOVERY. BASED ON LINDSAY PURE WATER COMPANY'S SUPPLEMENT TO ITS REQUEST FOR DISCLOSURE TO NOW LIST MR. JIM MYRICK AS AN EXPERT WITNESS, LINDSAY IS HEREBY FILING THIS**

2008 SEP 26 PM 3:20  
CHIEF CLERK'S OFFICE

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY  
ON LINDSAY  
COUNTY

**RESPONSE IN ORDER TO PRESERVE ITS RIGHTS AND DUTIES TO  
SUPPLEMENT.**

**A. REQUEST FOR DISCLOSURE**

**Rule 194.2(f)** For any testifying expert:

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

**RESPONSE:**

Mr. Kerry D. Maroney  
Biggs and Mathews Environmental  
2500 Brook Ave.  
Wichita Falls, TX 76301-6105  
(940) 766-0156

Mr. Jack Stowe  
J. Stowe & Co.  
1560 J. Place  
Suite 379  
Plano, Texas 75074  
(469) 467-7799

Mr. Don Metzler  
Mayor *Pro-Tempore*  
City of Lindsay  
P.O. Box 153  
Lindsay, Texas 76250  
(940) 665-4455

**Rule 194.2(f)** For any testifying expert:

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

**RESPONSE:**

Mr. Maroney will testify regarding the technical and managerial ability of the City to provide continuous and adequate service to the entirety of the proposed service area. Mr. Maroney will also testify about the current service in the area, the effects on the environment of failed OSSFs, the costs to provide service to the area, and the capacity remaining in the current systems of Lindsay.

Mr. Stowe will testify regarding the financial ability of the City to provide continuous and adequate service to the entirety of the proposed service area. Mr. Stowe will also testify regarding the feasibility of the City to provide continuous and adequate service to the entirety of the proposed service area. Mr. Stowe will also testify about the current service in the

area, the effects on the environment of failed OSSFs, the costs to provide service to the area, and the capacity remaining in the current systems of Lindsay.

Mr. Metzler is the Mayor Pro-Tempore and will testify about the need for service in the area, the current and projected growth in the area, as well as the City's capability to provide continuous and adequate service to the entirety of the requested area. He will also provide testimony regarding the City's technical, managerial, and financial capability to provide continuous and adequate service to the entirety of the City's proposed service area.

**Rule 194.2(f)** For any testifying expert:

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

**RESPONSE:**

The substance of Mr. Stowe's mental impressions and opinions are more fully developed in his prefiled testimony filed on June 9, 2008. The bases for his beliefs and opinions can be found in the prefiled testimony.

The substance of Mr. Maroney's mental impressions and opinions are more fully developed in his prefiled testimony filed on June 9, 2008. The bases for his beliefs and opinions can be found in the prefiled testimony.

The substance of Mr. Metzler's mental impressions and opinions are more fully developed in his prefiled testimony filed on June 9, 2008. The bases for his beliefs and opinions can be found in the prefiled testimony.

**Rule 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. Maroney, Mr. Stowe, and Mr. Metzler have reviewed the Application filed by the City of Lindsay, all discovery produced in this docket, all deposition transcripts recorded in this docket, and all pleadings provided in this docket. To the extent any party to this proceeding does not have these documents, copies will be made available by appointment, at the offices of Russell & Rodriguez, LLP located at 1633 Williams Drive,

Building 2, Suite 200, Georgetown, Texas. Please contact Arturo D. Rodriguez, Jr. at (512) 930-1317 to arrange an appointment.

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. 00791551

**ATTORNEY FOR THE CITY OF LINDSAY**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> 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:

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Austin, Texas 78701  
Fax: 512/435-2360

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Office of Public Interest Counsel  
TCEQ - MC 103  
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Mr. Brian MacLeod, Attorney  
Mr. Christiaan Siano  
Environmental Law Division  
TCEQ - MC 173  
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Texas Commission on Environmental Quality  
P.O. Box 13087  
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ARTURO D. RODRIGUEZ, JR.

TX/CO  
ON 9/26/08 3:29 PM  
CHIEF CLERK'S OFFICE

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FACSIMILE COVER PAGE

September 26, 2008

Please Deliver the Following page(s) to:

Mr. John Carlton, Attorney  
Mr. Blas Coy, Attorney  
Mr. Brian MacLeod  
TCEQ Chief Clerk

Fax Number: (512) 435-2360  
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Client Number: 1140-00

From: Arturo D. Rodriguez, Jr.

Direct Phone: (512) 930-1317

Pages: 6 (Including Cover Sheet)

Re:

Comments: City of Lindsay's 3<sup>rd</sup> Supplement to RFDs

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Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2008 SEP 26 PM 4:30

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHIEF CLERKS OFFICE

*Protecting Texas by Reducing and Preventing Pollution*

September 26, 2008

Honorable James Norman  
State Office of Administrative Hearings  
Administrative Law Judge  
300 West 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701

Re: Town of Lindsay; SOAH Docket No. 582-06-2023; TCEQ Docket No. 2006-0272-UCR

Dear Judge Norman:

Enclosed please find the Executive Director's Response to Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Executive Director. Should you have any questions or concerns, please do not hesitate to contact me at (512) 239-0750.

Sincerely,

A handwritten signature in black ink, appearing to read "B. MacLeod".

Brian MacLeod  
Staff Attorney  
Environmental Law Division

Enclosure

cc: Mailing list

## **II. THE EXECUTIVE DIRECTOR'S WITNESS IN THIS CASE IS AN EXPERT WITNESS**

Rule 702 of the Texas Rules of Evidence provides the test for qualifying a witness as an expert. It provides as follows: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of opinion or otherwise."

The ED's witness testified on page 1, line 4-8 of her prefiled testimony that she has worked for the Commission for nine years on the utilities and financial review team, and that she had been a team leader of that team for over two years. She is testifying to her interpretation of the Commission's own regulations and how they apply to this particular case. If the team leader for the team that executes those regulations for the Commission is not an expert on how the CCN factors are to be applied, it would be difficult to imagine who would be. This same witness faced an identical attack on her qualifications in the town of Prosper case (SOAH Docket No. 582-03-1994). In that case the very same ALJ hearing this case found that this witness is qualified as an expert and can give testimony as to the CCN factors as an expert witness. A copy of the relevant pages of the transcript of that hearing are attached hereto. As Mr. Russell (attorney involved in the Prosper case) pointed out in that hearing, the objection is a "basic attack on the Commission's ability to appoint people to interpret and apply its own regulations." (Page 906 lines 19-20 of the attachment).

Furthermore, the ED's witness testified in her prefiled testimony that she has a bachelor of science degree in economics and biology and a master's degree in business administration. She also testified that two former employment positions gave her experience in business financial analysis and in conducting socioeconomic research and analysis and in drafting Environmental Baseline Studies



admissible in evidence.

**Objection 2**-- The description of the location of the testimony doesn't match with the allegations of what was testified to at the citations given in the objection. As such, the objection should be overruled. However, the pages and lines referred to only recount what size storage tanks Lindsay has and the locations of existing retail water utilities. These are facts routinely used by experts without doing personal observations in CCN cases. Experts do not go into the field and actually test the capacity of storage tanks nor do they go out and survey the land to determine the distance to neighboring utilities with a surveying team. If necessary, at the pretrial hearing, the ED's witness can give testimony to support this obvious fact. Here, again, her reliance on testimony of other witnesses is objected to. However, experts may rely on testimony of other witnesses in drawing inferences and giving opinions.

**Objection 3**-- The question is specifically aimed at the adequacy of ability to provide sewer service and is sufficiently specific to overcome a speculation objection. Furthermore, an objection that the testimony calls for an answer on an ultimate fact is not sustainable under Texas Rule of Evidence 704. The answer is not long and rambling and the reason underlying a speculation objection doesn't apply to prefiled testimony. The question is already asked and answered in the prefiled testimony. There should be no fear that a witness could go on at length and be allowed to give a narrative to a jury. There is no jury. And if the testimony is long and rambling and includes a narrative rather than an answer to the direct question, the objection should be targeted at that portion of the testimony rather than at the question itself, as there is no way to interrupt the answer when it has already been prefiled. The answer is short and direct. The policies underlying objections to questions calling for speculation don't apply here. Furthermore, as argued above, experts can testify based on matters that

attachment. As for the portion of the objection stating that the question calls for speculation, the ED refers the court to the discussion above.

**Objection 8**— As for the “question calls for speculation” objection, the ED refers the court to the argument given above; *to wit*, the question has sufficient focus, the answer is not long and rambling, and the concepts behind such an objection (cutting off the witness before they start to ramble) are particularly inapplicable to prefiled testimony. If the answer did create the problems such an objection is meant to solve, then the non-responsive or rambling portions of the testimony should be the focus of the objection when the evidence is prefiled. Again, the objection is more of a rebuttal than a statement on the admissibility of the evidence. Furthermore, the witness is eminently qualified to testify on the effects of economies of scale because she is the team leader for the agency that makes such determinations. Moreover, she has a degree in economics, and an MBA.

#### **IV. ANY PROBLEMS WITH THE TESTIMONY OF THE ED’S WITNESS GOES TO THE WEIGHT, NOT THE ADMISSIBILITY OF HER TESTIMONY**

Because the trier of fact in this case is an ALJ, there is no jury to protect from being swayed by hearsay evidence. The ALJ as trier of fact, will give the testimony the weight it deserves. To the extent that the facts underlying an expert’s testimony are questionable, Texas Courts have held that the “weakness of facts in support of an expert’s opinion generally goes to the weight of the testimony rather than its admissibility.” *LMC Complete Auto, Inc. v. Burke*, 229 S.W.3d 469, 478 Tex. App.—Houston [1<sup>st</sup>. Dist.] 2007, pet denied.

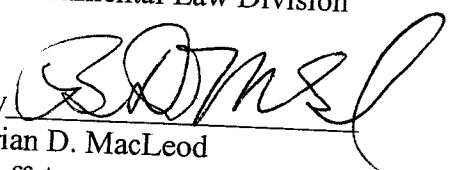
#### **IV. IF THE BASIS OF HER TESTIMONY IS INSUFFICIENT, SUCH INSUFFICIENCY NEEDS TO BE ESTABLISHED BY A VOIR DIRE EXAMINATION RATHER THAN A**

Section 2001.081 of the Texas Government Code provides that evidence that would not be admissible under the Texas Rules of Evidence is still admissible in an administrative hearing if necessary to ascertain facts not reasonably susceptible of proof under those rules if not precluded by statute and a type on which reasonably prudent person commonly relies on in the conduct of personal affairs. For the reasons stated in this response, the ED believes that these criteria are met.

**WHEREFORE PREMISES CONSIDERED**, the ED requests that the objection to the ED's prefiled testimony be overruled.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Environmental Law Division

By   
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**SOAH Docket Nos. 582-06-1641**  
**TCEQ Docket Nos. 2006-0044-UCR**

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1           A     Yes, it is.

2           Q     And can you please describe for the Court your  
3 training with respect to regionalization.

4           A     Certainly. I played a role in the -- although  
5 that was done by the -- the actual document was done by  
6 our Publications section or division of the Commission,  
7 that information was gathered and supplied, and draft  
8 form of that came from the Enforcement Division.

9                     I was on a committee with the Enforcement  
10 Division to develop that document and trained on that  
11 document, and I actually provide training on the  
12 document myself to date to additional staff people with  
13 regards to what actually feasibility means -- or I'm  
14 sorry -- the environmental -- I can't even think  
15 anymore. Let me turn to it.

16                    What the feasibility of regionalization  
17 actually means or how we're supposed to treat it with  
18 regards to water and wastewater.

19                    CLARIFYING EXAMINATION

20           BY JUDGE NORMAN:

21           Q     What does "regionalization" mean?

22           A     Regionalization means we've got three factors  
23 that we need to consider when we're looking at  
24 regionalization. And regionalization may take many  
25 forms. And I try to -- and I train staff in my section

1       separate little lines, you have a big one.

2           A     That's correct.

3           Q     Is that what it means?

4           A     Yes.

5           Q     Okay. Excuse me. But go ahead with your  
6       testimony.

7           A     Okay. And --

8           Q     My understanding was so simple that you just  
9       passed it over.

10          A     That's basically it. That's where I was  
11       driving, that you could be combining management sources,  
12       it could become any of that. That's a form of  
13       regionalization.

14                   JUDGE NORMAN: Okay.

15                   MR. RODRIGUEZ: What does regionalization  
16       pol- --

17                   JUDGE NORMAN: Yes. Go ahead.

18                   MR. NEWSOM: At some point I would like to  
19       have an opportunity --

20                   JUDGE NORMAN: Please. Please go ahead.  
21       Your turn.

22                   MR. NEWSOM: Okay.

23                   MR. KIRSHBAUM: Your Honor, can I have a  
24       procedural clarification?

25                   JUDGE NORMAN: Yes.

1 test for the offering of expert conclusions of the  
2 nature that there is no impact on environmental quality  
3 or environmental integrity, and I think that's what the  
4 exercise here is attempting to do.

5 JUDGE NORMAN: I think your point is good.  
6 I'm not sure -- and I just don't recall. I wondered  
7 before -- and that is whether or not there has to be an  
8 initial objection or a Robinson/Daubert analysis is  
9 waived.

10 And I think the case is going both ways as  
11 I recall, and I may be wrong on that. But as I recall,  
12 there wasn't an original Robinson/Daubert objection to  
13 that testimony, and I think that's a very good point.  
14 We can have a Robinson/Daubert hearing the rest of the  
15 afternoon.

16 MR. KIRSHBAUM: That's certainly what this  
17 has turned into, Your Honor.

18 MR. RUSSELL: Your Honor, this is even a  
19 more basic attack on the Commission's ability to appoint  
20 people to interpret and apply its own regulations.

21 MR. NEWSOM: I don't have a problem with  
22 that, Your Honor.

23 MR. RUSSELL: It's a very fundamental  
24 attack on the Commission itself, far beyond a normal  
25 Robinson or Daubert objection. And I think if it's

1       contrary to the evidence in this record.

2                       We have the testimony that said, "Well,  
3       regionalization is great because we can utilize  
4       infrastructure that's already in place." The testimony  
5       in this case has already been that there is no  
6       infrastructure in the service area, that a wastewater  
7       plant that is proposed to provide service to this area  
8       has not been designed, much less built. But the other  
9       direction of wastewater infrastructure is, there has not  
10      been a line that has been designed or built to take it  
11      to the Wilson Creek plant.

12                     I'm very confused as to just exactly what  
13      kind of assessment the witness has actually done. I'm  
14      not trying to make this in any way a personal attack,  
15      but I am just extremely concerned that we have testimony  
16      being directed at specific issues that are statutory and  
17      regulatory criteria that, (A) there's not qualifications  
18      to and (B), there's not a foundation that would apply  
19      any type of expertise or qualifications to any  
20      assessment performed in this case. That's what I've got  
21      a problem with.

22                     JUDGE NORMAN: Now, Under 702, she can be  
23      qualified by knowledge, skill, experience, training.

24                     MR. RUSSELL: Your Honor, let me make this  
25      once again. This is not a general environmental impact



1       any different than what the status is. I mean, it's the  
2       same words.

3                   MR. RUSSELL: And the Commission, the  
4       Texas Commission on Environmental Quality is empowered  
5       to be the implementing agency by the Texas Legislature  
6       of the statute of the Texas Water Code. If there is a  
7       collateral attack on the Commission's rules in this  
8       proceeding, it will be disallowed by the courts in this  
9       state to the extent that's an issue.

10                   This is the Commission's regulations that  
11       have been adopted, been in place for a long period of  
12       time, long past Administrative Procedures Act attack on  
13       these regulations. It's how the Commission is  
14       implementing its own regulations. This is just a  
15       Statutory implementation -- this is the Commission's  
16       implementation of the statutes.

17                   So what she -- the only thing she really  
18       needs to be qualified to do is to implement the  
19       Commission's regulations. And if this is a basic  
20       challenge as to how Commission employees implement their  
21       regulations and there should be a higher standard in  
22       their review, then at that point I would suggest that  
23       this is an issue that the Commission itself should be  
24       involved in.

25                   MR. NEWSOM: Your Honor, I think that's

1 the qualifications of the witness to offer expert  
2 testimony as to the nature of the environmental  
3 integrity impacts. That's all that it's been directed  
4 at.

5 And to the extent -- if the Court wants to  
6 take it into consideration, you know, and look at the  
7 testimony and give it whatever weight, I mean, that's  
8 fine. But I can't allow for my client to just simply  
9 accept or waive the idea that -- receiving expert  
10 testimony on a matter that the witness would not  
11 otherwise appear to be qualified for.

12 I mean, normally in those type of  
13 instances, there is some kind of -- I mean, let me just  
14 give you an example. To do an assessment or to opine on  
15 the impacts associated with land disturbance, one would  
16 think that they would have some specialized training in  
17 how to categorize those impacts. We haven't heard of  
18 that specialized training on categorizing the nature of  
19 impacts.

20 We would also expect that there would be  
21 some evaluation pursuant to that type of qualification,  
22 some evaluation of the volume of materials taken out,  
23 the depth at which they would be taken out, what would  
24 happen to those materials once they're taken out, what  
25 precautions are going to be utilized to prevent them

1 as this. And it appears to me to be a different  
2 standard than we would have in other situations.

3 JUDGE NORMAN: There are two -- there is  
4 an issue that you brought up.

5 So you have made your point. Is that  
6 right?

7 MR. NEWSOM: I think so, Your Honor.

8 JUDGE NORMAN: Have you made yours?

9 MR. RODRIGUEZ: Yes.

10 JUDGE NORMAN: Have you made yours?

11 MR. KIRSHBAUM: I just want to agree with  
12 Mr. Russell, that, you know, her specialized knowledge  
13 and training are in applying Commission rules and  
14 informing Your Honor and the Commission how the  
15 Executive Director and his staff apply these rules in  
16 reviewing CCN applications. And one of the criteria  
17 they look at is environmental integrity, and she's  
18 explained how they look at it.

19 JUDGE NORMAN: Let me ask you one other  
20 question. You looked -- in determining environmental  
21 integrity, did you look at this application more on its  
22 own to determine whether it's qualified or did you look  
23 at it in determining whether some other application  
24 would be more qualified in this particular case?

25 A I looked at this application and whether it

1 already made, any objections?

2 MR. RODRIGUEZ: No objections.

3 JUDGE NORMAN: Including your --

4 MR. NEWSOM: Yes, I understood that.

5 JUDGE NORMAN: It's admitted.

6 (Executive Director Exhibit Nos. 5, 6 and  
7 7 admitted)

8 MR. KIRSHBAUM: I would like to offer  
9 Tammy Benter for cross-examination by the other parties  
10 in this case.

11 WITNESS BENTER: Can I take a quick break  
12 to go get my Powerade?

13 JUDGE NORMAN: Please.

14 WITNESS BENTER: Thanks.

15 MR. NEWSOM: Can we take about 10 minutes,  
16 Your Honor?

17 JUDGE NORMAN: Yes.

18 (Off the record: 2:21 p.m. to 2:34 p.m.)

19 CROSS-EXAMINATION

20 BY MR. NEWSOM:

21 Q Ms. Benter, good afternoon. I hope you're  
22 feeling better than you were yesterday. You're sounding  
23 like you're feeling a lot better.

24 A Yes.

25 Q Let me just ask you the same way I started

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*Aloma J. Kennedy*  
Aloma J. Kennedy  
Certified Shorthand Reporter  
CSR No. 494 - Expires 12/31/06

Kennedy Reporting Service, Inc.  
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Austin, Texas 78701

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

APPLICATION OF THE TOWN OF  
LINDSAY TO AMEND A WATER  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY (CCN) NO. 13025 IN COOKE  
COUNTY; APPLICATION NO. 35096-C;  
and APPLICATION TO AMEND A  
SEWER CERTIFICATE OF  
CONVENIENCE AND NECESSITY (CCN)  
NO. 20927 IN COOKE COUNTY, TEXAS;  
APPLCIATION NO. 35097-C

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BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

CHIEF CLERK'S OFFICE

2008 SEP 25 PM 3:15

ON  
DOCKET  
TAL

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

All of Lindsay Pure Water Company's objections are based on the same faulty premise, namely, that the Executive Director's witness is not an expert and therefore cannot give opinions (speculate) based on hearsay and facts not in evidence. If the ED's witness is an expert, then all of her testimony is admissible.

**I. EXPERT WITNESSES CAN GIVE OPINION TESTIMONY AND DRAW INFERENCES  
BASED ON HEARSAY**

Rule 703 of Texas Rules of Evidence reads as follows: "The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing. If of a type reasonable relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence."



Protecting Texas  
by Reducing and  
Preventing Pollution

# FAX TRANSMITTAL

DATE September 26, 2008 NUMBER OF PAGES *(including this cover sheet):* 30

TO: Name Mailing list  
Organization \_\_\_\_\_  
FAX Number \_\_\_\_\_

FROM: **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

Name Brian MacLeod  
Division/Region Environmental Law  
Telephone Number (512) 239-0600  
FAX Number (512) 239-0600

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY  
CHIEF CLERKS OFFICE  
2008 SEP 26 PM 3:15

**NOTES:**

Town of Lindsay, SOAH Docket No. 582-06-1641; TCEQ Docket No. 2006-0044-UCR

Attached is the Executive Director's Response to Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Executive Director.

Should you have any questions or concerns, please do not hesitate to contact me at (512) 239-0750.

Sincerely,

Brian MacLeod

Honorable Norman	(512) 475-4194
Docket Clerk	(512) 239-3111
Blas Coy	(512) 239-6177
Arturo Rodriguez, Jr.	(866) 929-1141
John J. Carlton	(512) 435-2160

**ARMBRUST & BROWN, L.L.P.**

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JOHN CARLTON  
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jcarlton@abnustin.com

September 26, 2008

**VIA HAND DELIVERY**

James W. Norman  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> 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 J. Carlton  
Attorney for Lindsay Pure Water Company

Enclosure

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

CHIEF CLERKS OFFICE

2008 SEP 26 PM 1:20

TEXAS  
COMMISSION  
ON  
QUALITY



SOAH DOCKET NO. 582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

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

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

CHIEF CLERK'S OFFICE

2008 SEP 25 PM 1:20

TEXAS  
JAMES  
ON  
JUL 1  
JUL 1

**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 ADMINSTRATIVE 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

**ARMBRUST & BROWN, L.L.P.**

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Austin, Texas 78701-2744

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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<sup>th</sup> day of September, 2008, to the following:

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JOHN J. CARLTON

2008 SEP 26 PM 1:20  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY

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**FACSIMILE COVER PAGE**

Date: September 26, 2008

TEXAS  
COMMISSION ON  
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QUALITY  
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Blas J. Coy, Jr.	Office of Public Interest Counsel	(512) 239-6377	(512) 239-6363
Docket Clerk	Texas Commission on Environmental Quality	(512) 239-3311	(512) 239-3311

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

From: John J. Carlton	Telephone No.: (512) 435-2375
Client/Matter No.: 52515.0101	Total No. of Pages Sent: 11

**REMARKS:**

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

**RE:** SOAH Docket No. 582-06-0203; TCEQ Docket No. 2006-0272-UCR; *Application of the Town of Lindsay to Amend Water and Sewer Certificates of Convenience and Necessity (CCN) Nos. 13025 and 20927 in Cooke County, Texas*; Application Nos. 35096-C & 35097-C**ATTACHMENTS:** Lindsay Pure Water Company's Response to the Town of Lindsay's Objections to the Prefiled Testimony and Exhibits of Jim Myrick.

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

252890-1 03/24/2008

**ARMBRUST & BROWN, L.L.P.**

ATTORNEYS AND COUNSELORS

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September 26, 2008

**VIA FACSIMILE: (866) 929-1641**

Arturo D. Rodriguez, Jr.  
Russell & Rodriguez, L.L.P.  
1633 Williams Drive  
Building 2, Suite 200  
Georgetown, TX 78628

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 Arturo:

Enclosed are the documents which I have labeled LPWC00308-00320 that Mr. Myrick agreed to produce at his deposition.

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

Sincerely,

**ARMBRUST & BROWN, L.L.P.**

John J. Carlton

Enclosures

cc: Blas J. Coy, Jr. - OPIC  
Brian MacLeod - TCEQ  
TCEQ Docket Clerk

CHIEF CLERKS OFFICE

200 929 1641

TEXAS  
COMMISSION  
ON  
JUDICIAL  
ADMINISTRATION

Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
*Protecting Texas by Reducing and Preventing Pollution*  
August 29, 2006

0490044  
LINDSAY PURE WATER CO SOUTH RIDGE  
JIM MYRICK, PRESIDENT  
PO BOX 5  
LINDSAY, TX 762500000

Re: TCEQ Public Drinking Water Recognition Program

Dear JIM MYRICK:

We recently implemented a program to recognize public water systems (PWS) for the effort, dedication, and contribution they have made to the state and to protecting the public health of Texas citizens. Currently, we are recognizing PWS for the outstanding performance they demonstrated for calendar year 2005.

Six individual recognition categories are available for each PWS listed in the TCEQ Water Utilities Database: Small Water Systems Security Program, Substantial Source Water Protection Program Implementation, Optimization Program, Total Coliform Rule Program (TCRP), Innovative or Proactive System, and Outstanding Public Drinking Water System. Each nominated water system was evaluated for specific category criteria.

The purpose of the award is to recognize those water systems showing initiative to exceed minimum acceptable TCEQ standards; focus public attention on importance of water system enhancement activities; serve as an example to other water systems; and recognize those water systems that have voluntarily taken the extra steps to protect their public drinking water. We have posted names of all the PWS receiving recognition awards for 2005 at our TCEQ Agency web site [www.tceq.state.tx.us/goto/pdwawards](http://www.tceq.state.tx.us/goto/pdwawards).

Congratulations on your selection as an award winner in one of the above categories. Enclosed is your recognition award certificate for 2005.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rick Henderson".

Rick Henderson, Section Manager  
Public Drinking Water Section  
Water Supply Division

BH:DT:ac

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

LPWC 00308

SEP 25 08 09:53a

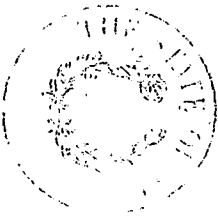
## Texas Commission on Environmental Quality


### *Total Coliform Rule Program Award 2005*

# LINDSAY PURE WATER CO SOUTH RIDGE

*has fulfilled the requirements to receive the Total Coliform Rule Program Award for 2005  
and is hereby recognized for the effort, dedication, and contribution it has made to the  
state and citizens of Texas in protecting public health.*

PWS ID Number: 0490044  
Date Issued: August 15, 2006



  
Buck Henderson, Manager  
Public Drinking Water Section

**SOUTHRIDGE OF LINDSAY/MYRICK DEVELOPMENT**

**P.O. BOX 5  
LINDSAY, TEXAS 76250**

August 20, 1998

TNRCC  
Region 4  
1101 E. Arkansas Lane  
Arlington, TX 76010-6499

RE: Lindsay Pure water Company #0490044

Dear Sir:

Your August 10, 1998 letter listed a number of violations for the Lindsay Pure Water Company. We are taking the following actions:

1. Sections 290.3 and 290.13 - Water chemical Analysis - A sample is being taken each month. No additional treatment has been indicated.
2. Section 290.6 (a) - A sample of water is being taken and submitted each month.
3. Section 290.6 (a) (1) - We will develop a sample siting plan, and will modify it as needed.
4. Section 290.41 (c) (3) (0) - The well unit is enclosed in a locked, ventilated well house. We are in the process of paving the project and putting in an all weather road to the well house. After contractor's completion of the all weather road, we will put up an intruder resistant fence. We estimate the completion date to be in November 1998.
5. Section 290.38 - See comments on (4) above regarding fencing the well area.
6. Section 290.46 (w) - We have posted a eligible sign in plain view of the public which meets TNRCC requirements.

We appreciate the help and advice provided by TNRCC and the professionalism shown by Mr. Scott Jordan, P.E., during his inspection of the facilities.  
If you need any additional information, please call us at (940) 665-0977.

Sincerely Yours,

  
Jim Myrick  
President

enclosure: Lab Analysis

LPWC 00310

RES:60 80 82 dec

Robert J. Huston, *Chairman*  
R. J. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*

March 1, 2000

Jim Myrick, President  
Lindsay Pure Water Company  
P.O. Box 5  
Lindsay, Texas 76250

Re: Compliance Evaluation Inspection at:  
South Ridge Estates, Cooke County, Texas  
PWS ID # 0490044

Dear Mr. Myrick:

This correspondence is written to acknowledge receipt of your corrective action documentation submitted February 24, 2000 for the alleged violations noted during the inspection conducted on December 13, 1999. The corrective action documentation contained in your response appears to be adequate to address the problems documented during the inspection. No further submittal from you is required concerning this investigation.

The Texas Natural Resource Conservation Commission appreciates your assistance in this matter and your compliance efforts to ensure protection of the State's environment. If you or members of your staff have any questions regarding these matters, please feel free to contact Ms. Paula Spears in the Arlington Region Office at 817/469-6750.

Sincerely,

A handwritten signature in black ink, appearing to read "Sid Slocum".

*For* Sid Slocum  
Manager, Water Section  
Arlington Regional Office

JS/pas

REPLY TO: REGION 4 • 1101 E. ARKANSAS LANE • ARLINGTON, TEXAS 76010-6499 • 817/469-6750 • FAX 817/795-2519

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: [www.tnrcc.state.tx.us](http://www.tnrcc.state.tx.us)

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Robert J. Huston, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*

December 29, 1999

**Certified Letter # Z 494 627 757**  
**Return Receipt Requested**

Jim Myrick, President  
Lindsay Pure Water Company  
P.O. Box 5  
Lindsay, Texas 76250

Re: Notice of Violation for the Compliance Evaluation Inspection at  
South Ridge Estates, Cooke County, Texas  
ID # 0490044

Dear Mr. Myrick:

On December 13, 1999, Paula Spears of the Texas Natural Resource Conservation Commission (TNRCC) Region Office conducted an inspection of the above-referenced facility to evaluate compliance with applicable public water supply requirements. During the inspection, certain outstanding alleged violations were identified for which a written reply is needed. Enclosed is a summary which lists the inspection findings. Please submit a written response to this office addressing each of the outstanding alleged violations and provide documentation by March 1, 2000 demonstrating that compliance has been achieved.

REPLY TO: REGION 4 • 1101 E. ARKANSAS LANE • ARLINGTON, TEXAS 76010-6499 • 817/469-6750 • FAX 817/795-2519  
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South Ridge Estates, ID # 0490044

page 2

December 29, 1999

The TNRCC recognizes that the great majority of the regulated community wants to prevent pollution and to comply with environmental laws. The TNRCC looks forward to working with you to resolve these matters. If you complete the necessary corrective action and resolve the outstanding alleged violations in a timely manner, we will not pursue further action for the alleged violations at this time. However, please note that if you fail to adequately respond, the TNRCC will consider exercising the enforcement powers granted by the Legislature to carry out its mission to protect human health and the environment.

If you or members of your staff have any questions regarding these matters, please feel free to contact Ms. Paula Spears in our Arlington Region Office at 817/469-6750.

Sincerely,



*For* Sid Slocum  
Manager, Water Section  
Arlington Regional Office

SS/pas

Enclosures - Summary of Inspection Findings  
Brochure entitled "*Obtaining TNRCC Rules*"  
Brochure entitled "*The TNRCC Has Inspected Your Business*"

cc: TNRCC-Austin

# SUMMARY OF INSPECTION FINDINGS

Entity: South Ridge Estates	TNRCC ID: 0490044	Inspection Date: 12/13/1999
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OUTSTANDING ALLEGED VIOLATIONS			
No.	Requirement(s) Cited	Description of Alleged Violation Corrective Action Recommendation, and Compliance Documentation	Compliance Due Date
1	(§290.46(p)(2))  (§290.46(p))	<p>Failure to annually inspect pressure tank and maintain record of inspection for review.</p> <p>The pressure tanks(s) must be inspected annually to determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and that the tank remains in a watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.</p> <p>The results of these inspections must be recorded and maintained for at least five years. The records must be available for review by Commission staff during annual sanitary surveys of the system.</p> <p>Compliance Documentation: Provide a copy of the pressure tank inspection report</p>	March 1, 2000
2	(§290.38)	<p>Failure to provide an intruder-resistant fence around the pump station.</p> <p>The pump station must be protected by an intruder-resistant fence. The fence must be at least six feet high and constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.</p> <p>Compliance Documentation: Provide photo of fence installed around the pump station</p>	March 1, 2000

LINDSAY PURE WATER COMPANY

P. O. BOX 5

LINDSAY, TEXAS 76250

February 24, 2000

Ms. Paula Spears  
Texas Natural Resource Conservation Commission  
Region 4  
1101 E. Arkansas Lane  
Arlington, Texas 76010-6750

ID # 0490044

Dear Ms. Spears:

This letter is in response to the compliance inspection of the Lindsay Pure Water Company.

Findings: Item 1, Failure to annually inspect pressure tank and maintain record of inspection for review.

The pressure tank has been inspected and a copy of the inspection report was provided to you

Findings: Item 2, Failure to provide an intruder-resistant fence around the pump station.

Construction of the intruder-resistant has been completed. Photos of the fence are enclosed.

If you need any additional information, please let us know.

Sincerely yours,

Jim Myrick, President

Enclosure: Photos

Robert J. Huston, *Chairman*  
R. F. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



**TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**  
*Protecting Texas by Reducing and Preventing Pollution*

July 16, 2001

**CERTIFIED MAIL 700 0520 0024 2609 9550**  
**RETURN RECEIPT REQUESTED**

Jim Myrick, President  
Lindsay Pure Water Co-South Ridge  
PO Box 5  
Lindsay, TX 76250

Re: Compliance Evaluation Investigation at:  
Lindsay Pure Water Co-South Ridge, PO Box 5, Lindsay, Cooke County, Texas  
TNRCC ID No.: 0490044

Dear Mr. Myrick:

On June 25, 2001, Mr. Kenn Kretz of the Texas Natural Resource Conservation Commission (TNRCC) Arlington Region Office conducted an investigation of the above-referenced facility to evaluate compliance with applicable requirements for public water supply systems. Enclosed is a summary which lists the investigation findings. During the investigation, certain outstanding alleged violations were identified for which compliance documentation is required. Please submit to this office by January 12, 2002 a written description of corrective action taken and the required documentation demonstrating that compliance has been achieved for each of the outstanding alleged violations.

In the listing of alleged violations, we have cited applicable requirements, including TNRCC rules. If you would like to obtain a copy of the applicable TNRCC rules, you may contact any of the sources listed in the enclosed brochure entitled "Obtaining TNRCC Rules."

REPLY TO: REGION 4 • 1101 E. ARKANSAS LANE • ARLINGTON, TEXAS 76010-6499 • 817/469-6750 • FAX 817/795-2519

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: [www.tnrcc.state.tx.us](http://www.tnrcc.state.tx.us)

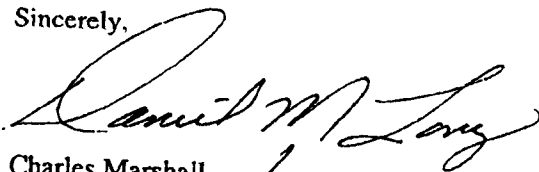
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Mr. Jim Myrick  
Page 2  
July 16, 2001

Re: Compliance Evaluation Investigation at:  
Lindsay Pure Water Co-South Ridge, Cooke County, Texas  
TNRCC ID No.: ID # 0490044

The Texas Natural Resource Conservation Commission appreciates your assistance in this matter. Please note that the Legislature has granted TNRCC enforcement powers which we may exercise to ensure compliance with environmental regulatory requirements. We anticipate that you will resolve the alleged violations as required in order to protect the State's environment. If you or members of your staff have any questions, please feel free to contact Mr. Kenn Kretz in the Arlington Region Office at Phone #(817)588-5857.

Sincerely,



Charles Marshall  
Team Leader, Public Water Supply Section  
Arlington Region Office

CM/kk

Enclosures: Summary of Investigation Findings  
Brochure entitled "Obtaining TNRCC Rules"  
Pamphlet entitled "The TNRCC Has Inspected Your Business What Does This Mean To You?"

cc: TNRCC -Austin

## SUMMARY OF INVESTIGATION FINDINGS

Regulated Entity Name:	Lindsay Pure Water Co-South Ridge	TNRCC ID:	0490044	Investigation Date:	06/25/2001
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## OUTSTANDING ALLEGED VIOLATIONS

No.	Requirement(s) Cited	Description of Alleged Violation, Corrective Action Recommendation, and Compliance Documentation	Compliance Due Date
1	§29C.46(m)(1)(B)	Failure to inspect the pressure tank annually, to determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and that the tank remains in a watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.  Compliance Documentation: Please submit a copy of the pressure tank inspection	January 12, 2002

## ALLEGED NONCOMPLIANCES NOTED AND RESOLVED

No.	Requirement(s) Cited	Description of Alleged Noncompliance, Corrective Action Taken, and Compliance Documentation

## AREAS OF CONCERN

No.	

(Rev. 9/1/00 - For NOV)

LPWC 00318

Robert J. Huston, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Kathleen Hartnett White, *Commissioner*  
Margaret Hoffman, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
*Protecting Texas by Reducing and Preventing Pollution*

August 22, 2003

Jim Myrick, President  
Lindsay Pure Water Company South Ridge  
PO Box 5  
Lindsay, TX 76250

Re: Compliance Evaluation Investigation at:  
Lindsay Pure Water Company South Ridge, Cooke County, Texas  
TCEQ ID No.: 0490044

Dear Mr. Myrick:

On July 25, 2003, Joe Martinez of the Texas Commission on Environmental Quality (TCEQ) DFW Region Office conducted an investigation of the above-referenced facility to evaluate compliance with applicable requirements for public water systems. No violations were documented during the investigation.

The TCEQ appreciates your assistance in this matter and your compliance efforts to ensure protection of the State's environment. If you or members of your staff have any questions regarding these matters, please feel free to contact Mr. Joe Martinez in the DFW Region Office at Phone # (817) 588-5803.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Marshall".

Charles Marshall  
Team Leader, Public Water Supply Section  
DFW Region Office

CM/jrm

REPLY TO: REGION 4 • 2301 GRAVEL DR • FORT WORTH, TEXAS 76118-6951 • 817/588-5800 • FAX 817/588-5700  
P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

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LINDSAY PURE WATER CO SOUTH RIDGE

Investigation # 145464

, COOKE COUNTY,

Investigation Date: 07/25/2003

Additional ID(s): 0490044

No Violations Associated with this Investigation

### AREAS OF CONCERN

#### Description

Other violations noted during the investigation? (If non-compliant then describe violation in the comment section.)

Other violations noted during the investigation? (If non-compliant then describe violation in the comment section.)

#### Additional Comments

The operator should begin taking monthly bacteriological samples according to the sample siting plan for the system. Sample sites should also be rotated in order for samples to be representative of the distribution.

The area in and around the pump station should be maintained regularly and kept free of all debris, that is not directly associated with the operation and maintenance of the water system.



**ARMBRUST & BROWN, L.L.P.**  
ATTORNEYS AND COUNSELORS100 CONGRESS AVENUE, SUITE 1300  
AUSTIN, TEXAS 78701-2744  
512-435-2300

FACSIMILE 512-435-2360

**FACSIMILE COVER PAGE**

Date: September 26, 2008

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

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

From: John J. Carlton	Telephone No.: (512) 435-2375
Client/Matter No.: 52515.0101	Total No. of Pages Sent: 15

**REMARKS:**

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

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

**ATTACHMENTS:** LPWC 00308-00320

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

252890-1 03/24/2008

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

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

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**BEFORE THE STATE OFFICE****OF****ADMINISTRATIVE HEARING**

250  
CHIEF CLERK'S OFFICE  
SEP 26 2008 PM 1:38

ON  
COUNTY  
TEXAS  
COMMISSIONER  
JULIA

**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.