

1 understand the distinction between those two types of
2 actions to be?

3 A Making application is a more formal process
4 than requesting.

5 Q And so making application for service has to
6 go before the city council?

7 A Making application would eventually -- would
8 come before council.

9 Q So you haven't seen any applications for
10 water service outside the city limits in your tenure
11 on the council?

12 A Correct.

13 Q And you're not aware of any during your
14 tenure on the planning and zoning commission?

15 A No, I'm not.

16 Q You also testified for Mr. Rodriguez that the
17 city's planning and zoning commission jurisdiction for
18 platting only extends to the ETJ. Do you remember
19 that?

20 A Uh-huh.

21 Q Who has the jurisdiction outside the ETJ over
22 plats?

23 A I would think the county.

24 Q Would any sort of water service requests,
25 even if it was outside the city's ETJ, have to come to

1 the city if they wanted service from the city?

2 A All right. A water request from -- service
3 from the city, would it have to come to the city?

4 Q If it was outside the city limits or ETJ.

5 A Well, I guess they could come make
6 application. Whether or not it would ever be granted
7 is a different issue.

8 Q From the tenor of your answer, I would assume
9 that it wouldn't be granted if that was the case.

10 MR. RODRIGUEZ: Objection, Your Honor.
11 He's putting words --

12 MR. CARLTON: I'm asking him to clarify.

13 MR. RODRIGUEZ: -- putting words in his
14 mouth and mischaracterizing his testimony.

15 JUDGE NORMAN: It's cross-examination.
16 I'll permit it.

17 A Well, if I misunderstood your question,
18 correct me. Someone that's outside of our CCN,
19 outside of our ETJ. Correct?

20 Q (BY MR. CARLTON) Right.

21 A Drives down to city hall and says I need --
22 "I would like to have water eight miles northwest of
23 here"?

24 Q Say four miles.

25 A Well, I'm saying eight.

1 Q Okay.

2 A Eight miles north of here. Yes, I guess they
3 could come in and ask for it, but I doubt that we
4 would take any real action on it. But there's a lot
5 of other -- you know, I guess there's hundreds of
6 circumstances that we need to look at first, but
7 anybody could come in and ask. I mean, I guess you
8 could ask if we'd bring it down to your house down
9 here. So my tenor, you know, I kind of doubt that
10 we'd do that.

11 Q So you explained for Mr. Rodriguez that the
12 number of letters that were still considered by the
13 city to be service requests was reduced to 41, and
14 that that calculation already excluded the duplicates
15 that we identified when I was cross-examining you
16 earlier. Correct?

17 A 41 plus the 13; 53 (sic). It would have been
18 53 being the total number would be pretty accurate.
19 We started with 55 this morning, and then it dropped
20 to 53, but when we started going back through here and
21 counting, we found what, four or five duplicates,
22 meaning there's at least five extra pieces of paper in
23 there that don't need to be there. And there were a
24 total of 63, did I say, minus five; 58. Minus the one
25 or two that are properties that might be in the

1 contested area or the overlap between Gainesville and
2 Lindsay's CCN, so down to 56 -- 55, 56.

3 Q How many of those remaining requests are
4 south of 82, do you know?

5 A Ooh, I don't know that.

6 Q Would you be able to determine that by taking
7 the requests and matching names to the area to the
8 south?

9 A I would think so.

10 Q Except I guess the only challenge there would
11 be in the case of somebody who owned properties both
12 north and south, we wouldn't know which property they
13 were requesting. Right?

14 A Well, I would assume they were requesting
15 both of them. And if one of them is already in the
16 CCN that's just granted to us, then the other one
17 would still be in an area that we're hoping to get.

18 MR. CARLTON: No further questions.
19 Pass the witness.

20 JUDGE NORMAN: Mr. Rodriguez?

21 FURTHER REDIRECT EXAMINATION

22 BY MR. RODRIGUEZ:

23 Q Just a few questions, Mr. Metzler. When does
24 the city council normally meet in regular session?

25 A Second Monday of each month.

1 Q Okay. Between September 30th and today, has
2 the city council had a city council meeting?

3 A No, sir.

4 MR. RODRIGUEZ: Pass the witness, Your
5 Honor.

6 JUDGE NORMAN: Mr. MacLeod?

7 MR. MacLEOD: No questions.

8 JUDGE NORMAN: Okay. Mr. Carlton?

9 MR. CARLTON: No questions.

10 JUDGE NORMAN: Thank you very much,
11 Mr. Metzler.

12 THE WITNESS: You're welcome.

13 MR. MacLEOD: Your Honor?

14 JUDGE NORMAN: Yes?

15 MR. MacLEOD: Could we take a quick
16 break?

17 JUDGE NORMAN: Sure. Let's make this
18 five minutes. Okay? Is that enough time for you?

19 MR. MacLEOD: That's enough.

20 JUDGE NORMAN: Okay.

21 (Recess: 3:09 p.m. to 3:15 p.m.)

22 JUDGE NORMAN: Okay. We're back on the
23 record. And, Mr. Maroney, you've been sworn?

24 MR. MARONEY: I have, sir.

25 JUDGE NORMAN: You're under oath.

1 MR. RODRIGUEZ: And, Your Honor, I'd
2 just like to go through some of the changes --

3 JUDGE NORMAN: Sure.

4 MR. RODRIGUEZ: -- that have already
5 been confirmed in the testimony before we get -- we
6 jump right in to it.

7 On Page 6, Line 5, there was some -- the
8 copy of the official water CCN map of the city was
9 changed as well as KDM-3 was replaced with the one
10 that was done -- that was issued on September 30th
11 that we've talked about before. And you can see the
12 two deletions on Lines 10 and 11 and 15 and 16 --

13 JUDGE NORMAN: Okay.

14 MR. RODRIGUEZ: -- because of the --
15 because of your previous order to sever the sewer CCN
16 application from it.

17 And on some of the language on
18 Line 10 -- I'm sorry; I'm sorry. I went through that
19 already.

20 On Page 6 at the bottom, there's also
21 some deletions with respect to -- and going on to the
22 top of Page 7, deletions with respect to the
23 wastewater system of the city.

24 Page 8, likewise some deletions based on
25 the sewer CCN for the city. And beginning on Line 14

1 some language was changed to conform to the new CCN
2 map that was approved by the Commission as well as
3 KDM-11 was added, which is the new proposed service
4 territory for the city because of the -- because of
5 the addition of the sewer CCN area.

6 Page 9 there were some deletions as well
7 with respect to the nunc pro tunc in the water CCN
8 area.

9 JUDGE NORMAN: Okay.

10 MR. RODRIGUEZ: Attachment KDM-7 was
11 removed, which is also discussed in that area.

12 On Page 12 beginning on Line 7 --

13 JUDGE NORMAN: I don't have a
14 replacement Page 12.

15 MR. MacLEOD: I don't either.

16 MR. CARLTON: I don't either.

17 MR. RODRIGUEZ: I'm sorry. Okay. I'm
18 sorry.

19 THE WITNESS: I didn't see anything.

20 MR. RODRIGUEZ: All right. It must have
21 been faulty notes on my part, Your Honor.

22 On 15 we've got some changes there with
23 respect to the sewer CCN, some deletions there. The
24 same thing on 16.

25 JUDGE NORMAN: Okay.

1 MR. RODRIGUEZ: And the same thing on 17
2 with respect to the -- to that sewer CCN.

3 And then if we go to Page 20, there's
4 also some deletions there.

5 So in all, the KDM-3 has been replaced.
6 KDM-6 has been replaced with a new map. Attachment
7 KDM-7 and Attachment KDM-10 were removed, and KDM-11
8 was added to his testimony.

9 MR. CARLTON: Art, can you go through
10 that list again of the exhibits? I was still marking
11 stuff.

12 MR. RODRIGUEZ: Sure. KDM-3 was
13 replaced. Do you have that?

14 MR. CARLTON: Yeah.

15 MR. RODRIGUEZ: KDM-6 was replaced,
16 KDM-7 and 10 were both removed, and KDM-11 was added
17 as the new requested service area map.

18 KERRY D. MARONEY,
19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. RODRIGUEZ:

22 Q Good afternoon, Mr. Maroney.

23 A Good afternoon.

24 Q Of course we've met. Can you introduce
25 yourself to the Judge, please?

1 A My name is Kerry Don Maroney.

2 Q Mr. Maroney, were you in the courtroom
3 earlier when Mr. Metzler testified?

4 A I was.

5 Q I'm going to ask you to turn to Page 14 of
6 your testimony, and did you hear testimony regarding
7 three additional connections for water and sewer?

8 A I did.

9 Q Okay. Do you have any changes to your
10 testimony there?

11 A On Line 4 of my testimony, I had stated that
12 "Lindsay currently has approximately 396 water
13 connections." That should go to "399."

14 In addition, I stated that "396 sewer
15 connections," and that should also go to "399."

16 And then on Line 7, I talk about
17 "approximately 470 additional homes without any
18 expansion." That should go to "467."

19 Q Anything in the next paragraph?

20 A Then also on Line 11, that "304 additional
21 customers" should be dropped by three to "301."

22 Q Okay. Now, I think we went through this
23 earlier where we attached KDM-10. Would it be okay to
24 strike the -- on Line 8 the sentence that begins with
25 "A copy" of that same page?

1 A Yes.

2 Q Okay. So we can strike that sentence?

3 A That's correct.

4 Q Now, with the corrections that I described as
5 well as the ones that you just made Mr. Maroney, if I
6 asked you the same questions today, would your answers
7 be the same?

8 A They would.

9 MR. RODRIGUEZ: Your Honor, at this
10 point, I move for admission of Lindsay Exhibit APP-3.

11 JUDGE NORMAN: Okay. Except for
12 objections already made and ruled on, any other
13 objections?

14 MR. MacLEOD: No, Your Honor.

15 MR. CARLTON: No, Your Honor.

16 JUDGE NORMAN: Okay. It's admitted,
17 subject to those objections and rulings.

18 (Exhibit APP No. 3 admitted)

19 Q (BY MR. RODRIGUEZ) Mr. Maroney, I believe at
20 this time the Judge would like a summary of your
21 testimony, please. You can provide that in a
22 narrative format.

23 A Okay. Your Honor, as you're aware, the City
24 of Lindsay currently holds both a water CCN
25 certificate and also a wastewater or a sewer CCN

1 certificate, the water being the 13025 and the sewer
2 being the 20927 numbers.

3 You're also aware on August 31, 2005
4 Lindsay did file to amend both certificates to include
5 an additional area, and the only protest to this
6 amendment was Lindsay Pure Water Company.

7 As documented in my prefiled testimony
8 dated June 9, 2008 and as amended today, I on behalf
9 of Lindsay rendered a professional opinion as to
10 Lindsay's ability to provide continuous and adequate
11 service to the requested service area.

12 Having reviewed the application, having
13 reviewed TCEQ compliance history in addition to
14 performing some evaluation and analysis of the city's
15 water and sewer facilities, I have determined that the
16 City of Lindsay does have excess capacity available in
17 the system.

18 And in addition to that, based on the
19 criteria to be considered when amending a CCN
20 application in accordance with 291.102(d)(1) through
21 (8), it's my opinion that the City of Lindsay does
22 have the managerial and technical capabilities to
23 provide continuous and adequate service to the
24 proposed area. And, therefore, it's my recommendation
25 and opinion that this amendment to the water CCN be

1 granted.

2 Q Mr. Maroney, you have -- you represent many
3 water utilities and sewer utilities throughout the
4 state. Is that correct?

5 A I do.

6 Q Now, are you familiar with the TCEQ rules on
7 granting or amending certificates of convenience and
8 necessity?

9 A I am.

10 Q Now, you have attached to your testimony,
11 which has been admitted, many different exhibits, that
12 you utilize in rendering your -- or do you utilize
13 those in rendering your professional expert opinion?

14 A I do.

15 Q Now, Mr. Maroney, is it -- are the documents
16 and the data that you used to formulate your opinion
17 the type that would be reasonably relied upon by other
18 experts in rendering opinions on certificates of
19 convenience and necessity?

20 A I believe so.

21 Q And you utilize that data to form your
22 opinions or make inferences based on CCNs. Is that
23 correct?

24 A That's correct.

25 MR. RODRIGUEZ: Okay. Your Honor, at

1 this point, I tender the witness for
2 cross-examination.

3 JUDGE NORMAN: Okay. Mr. MacLeod?

4 MR. MacLEOD: We don't have any
5 questions.

6 JUDGE NORMAN: Okay. Mr. Carlton?

7 MR. CARLTON: That was quick.

8 CROSS-EXAMINATION

9 BY MR. CARLTON:

10 Q Good afternoon, Mr. Maroney.

11 A Good afternoon, sir.

12 Q I have a couple of questions for you.

13 JUDGE NORMAN: Lawyers always say that.
14 I've heard that said many, many times, and I've never
15 heard it said truthfully actually, but that's not to
16 say --

17 MR. CARLTON: Define "couple."

18 JUDGE NORMAN: Right.

19 (Laughter)

20 Q (BY MR. CARLTON) If you would turn to
21 Page 14 of your testimony?

22 A Okay.

23 Q You indicate that Lindsay has three wells
24 from which it can provide service to approximately 301
25 additional customers. What is the well capacity of

1 each of those wells?

2 A The well capacity sometimes is hard to
3 determine. I'm going to assume that you're asking
4 about the pump capacity.

5 Q Yes, the current pump capacity for those
6 wells.

7 A Currently, as best I can determine, Well
8 No. 1 pumps about 120 gallons a minute, Well No. 2
9 about a hundred gallons a minute and then Well No. 3
10 about 200 gallons a minute for a total of
11 approximately 420 gallons a minute.

12 Q And what's the requirement for well capacity
13 per connection?

14 A It depends on the system, but in general
15 minimum well capacity for Lindsay, for example, is
16 six-tenths of a gallon a minute per connection.

17 Q And what circumstances might that be
18 different?

19 A There are times you can get a reduction based
20 on use filing an engineering report, but for the most
21 part, the requirement as set forth under the minimum
22 standard is six-tenths of a gallon a minute.

23 Q And where are those standards found?

24 A In Texas Administrative Code 290, I think
25 .45, but I'll be happy to look for you.

1 Q Okay. I'm going to -- I'm going to tell you
2 that you're correct. It is 290.45.

3 Now, when you evaluate system capacity,
4 do you use the standards that are set out in 290.45 in
5 order to determine what the minimum -- what number of
6 connections a system can meet and still satisfy the
7 minimum requirements?

8 A I do.

9 Q So in this case, you would take the 420 gpm
10 and divide it by the .6 to come up with a total number
11 of connections?

12 A That would be correct.

13 Q And how many connections would that be?

14 A About 700.

15 Q So then you would just subtract the number of
16 existing connections to figure out how many additional
17 connections they could serve?

18 A That's correct.

19 Q So in this case, we're subtracting the 399
20 from the 700, which is going to leave you -- help me
21 with my math.

22 A 301.

23 Q 301, okay. Now, are there other requirements
24 for -- minimum requirements for capacity of water
25 system facilities?

1 A There are, in fact, a number of them: Total
2 storage, pressure maintenance facilities, high service
3 pump capacity, distribution capacity, minimum
4 operating pressure based on a gallon and a half a
5 minute per connection throughout the distribution
6 system, maintaining a minimum of 35 psi. So, yeah,
7 there's a number of them. I don't know how much
8 detail you want me to go into, but I'm more than happy
9 to.

10 Q You're the expert. And all those are found
11 in 290.45. Correct?

12 A The distribution system may be in another
13 section that has to do with 1.5 gpm per connection and
14 maintaining a minimum of 35, but in 290 anyway.

15 Q Okay. Are there differences in requirements
16 for systems of different sizes?

17 A There are.

18 Q So in this instance with Lindsay having 399
19 connections, what category do they fall in?

20 A They'd fall in the category of more than 250
21 connections.

22 Q What are the other categories?

23 A I'd have to look, but below 250 is another
24 category. I could look to tell you.

25 Q Okay. Do you have a copy of the rules with

1 you?

2 A I think I do.

3 Q Would you mind getting those? And so would
4 you let us know where you are looking for this
5 information?

6 A I'm looking in Section 290.45 under Minimum
7 Water System Capacity Requirements and starting at (b)
8 Community water systems. "Groundwater supplies must
9 meet the following requirements: If fewer than 50
10 connections without ground storage, the system must
11 meet the following requirements; well capacity of
12 1.5." So it gives -- would you like me to go down
13 through there, or what do you want me to do?

14 MR. CARLTON: I think what we can do is
15 in order to avoid going through that, I just ask,
16 Judge, would you take official notice of 30 TAC
17 290.45?

18 JUDGE NORMAN: Any objections?

19 MR. MacLEOD: No.

20 JUDGE NORMAN: I do so. And are we
21 talking about -- has that rule been changed since the
22 filing of the application? Do we know? According to
23 Ms. Benter, it has not.

24 MR. RODRIGUEZ: The rules indicate that
25 it was last updated February of 2004.

1 JUDGE NORMAN: Okay.

2 MR. RODRIGUEZ: The historical date.

3 JUDGE NORMAN: Okay. Okay.

4 Q (BY MR. CARLTON) So did you -- were you
5 asked to make a determination of the sufficiency of
6 Lindsay's other facilities to serve additional
7 connections?

8 A I was.

9 Q And did you determine that they were able to
10 provide additional service?

11 A I was.

12 JUDGE NORMAN: You did. Right?

13 A I did.

14 JUDGE NORMAN: Right. Okay.

15 Q (BY MR. CARLTON) Do Lindsay's existing
16 facilities have capacity to serve the entire proposed
17 CCN area?

18 A The short answer to that is yes.

19 Q And are you assuming that there are -- the
20 service demands within that area are the equivalent of
21 the development that is there today?

22 A I don't understand your question.

23 Q When you say yes, that those facilities are
24 capable of serving the entire area, I assume -- and
25 correct me if I'm wrong -- I assume that you mean all

1 those facilities have sufficient capacity to provide
2 service to any request for service within that entire
3 area. Is that correct?

4 A That's not correct.

5 Q So is it really -- is your testimony actually
6 that those facilities could be expanded if needed to
7 provide service anywhere in the proposed CCN?

8 A My testimony is that, in fact, that the water
9 supply of which we just went through at the 301
10 additional connections is actually the most
11 restrictive portion of the existing system as far as
12 what TCEQ looks at on the minimum requirements. In
13 fact, when you look at pressure maintenance
14 facilities, they can go up --

15 Q So let me stop you for a second because I
16 think what my question -- what my question was, is
17 there sufficient capacity within the existing Lindsay
18 system to serve the entire requested area? And you
19 said yes -- the short answer was yes. But if the
20 limiting factor is the well pump capacity at 301
21 additional connections, is it your testimony that
22 there are only going to ever be 301 connections within
23 the entire proposed CCN area?

24 A I don't ultimately know what that -- what
25 that capacity is, but the facilities that we have in

1 place right now would be utilized to serve the entire
2 area as it relates to pressure maintenance, water
3 supply and storage facilities.

4 Q So if you would pull out -- I believe what's
5 attached to your testimony as KDM-6, and I'd like for
6 you to take a look at the southern end of that map. I
7 believe there's some property down off 1630 owned by
8 C. Hellinger. Do you see that property?

9 A I do.

10 Q Are the town of Lindsay's existing facilities
11 sufficient to provide service to that tract?

12 A They would be utilized to provide service to
13 that tract.

14 Q Okay. And what distribution improvements
15 would be necessary to provide service to that tract?

16 A That would have to be looked at in part of a
17 service plan to be able to -- the most efficient way
18 to provide service to that. However, the City of
19 Lindsay does have a six-inch waterline just north of
20 the Elm Fork of the Trinity River. That would be one
21 area that could be looked at to extend that line to
22 provide service to that area.

23 Q How far would that line extension be?

24 A Do you have a scale?

25 (Discussion off the record)

1 A It could be about 12,000 feet or so, 13,000,
2 somewhere in that neighborhood.

3 Q (BY MR. CARLTON) And so were you here for
4 the testimony of Mr. Metzler?

5 A Yes.

6 Q And we discussed Lindsay Pure Water Company
7 Exhibit 8, which is the city's policy for how they
8 extend service outside the city limits. Do you recall
9 that?

10 A Correct.

11 Q Do you recall that there's a six-inch minimum
12 line size in that ordinance?

13 A In that particular ordinance?

14 Q Yes.

15 A I heard the discussion about that.

16 Q Okay. So if we assume that that six-inch
17 minimum line size is correct, what would the cost to
18 construct a six-inch line from the Elm Fork of the
19 Trinity all the way to the Hellinger property be?

20 A Construction costs, something in the
21 neighborhood of 250,000.

22 Q And is that -- are you using a cost per
23 linear foot to make that calculation?

24 A Using about \$18 a foot, I believe.

25 Q Would the city's existing elevated storage

1 tank be sufficient to provide water service to the
2 Hellinger tract?

3 A It would provide a portion of it.

4 Q How would you provide the other portion?

5 A You might modify the pump station at Pump
6 Station No. 1 to provide additional pressure
7 maintenance. There's an existing pressure tank at
8 Pump Station No. 1 at the present time. Depending on
9 the elevation -- I don't know the elevation down here
10 for the Hellinger tract, but depending on what that
11 elevation was and the route that you took for that
12 line, that's the most direct shot, that route you took
13 for that line. The elevated storage would supply some
14 of that -- some of that capacity.

15 Q So you'd have to make improvements to the
16 booster station?

17 A That's a possibility.

18 Q Would it be possible to provide the service
19 without those improvements and without any other
20 elevated storage?

21 A I'd have to look at that and see.

22 Q What would you need to see in order to
23 determine that?

24 A I'd need to know what demand you had in
25 that from the Hellinger tract. I'd need to know what

1 demand you had between there and the river. I would
2 also need to know what the elevation is at the
3 Hellinger tract.

4 Q Have you reviewed the service requests that
5 are attached as Exhibit KDM-5 to your testimony?

6 A I have.

7 Q Do those provide you with any information
8 that would enable you to determine how much service
9 demand there would be along that route?

10 JUDGE NORMAN: That's KDM-10, I guess.
11 Is that right?

12 MR. CARLTON: No. It's actually KDM-5.
13 It's DLM-10.

14 JUDGE NORMAN: DLM-10, okay. Okay.

15 A Only that there's a location there in a
16 request and a need for service at that location or at
17 those locations, but no volumes or quantities are so
18 stated.

19 Q (BY MR. CARLTON) So you don't have a way to
20 determine, based on these letters, what the magnitude
21 of the need is?

22 A That's correct.

23 Q Is it possible that it would be less
24 expensive just to construct a new completely separate
25 standalone system to serve the Hellinger tract than

1 the Lindsay system?

2 A I'm sorry?

3 Q Is it possible that it would be less
4 expensive to construct a standalone system to serve
5 the Hellinger tract than it would be to extend the
6 Lindsay system?

7 A That's a possibility.

8 Q How would you -- would that determination on
9 whether to construct a standalone system or extend the
10 Lindsay existing system be based upon cost?

11 A I think that's one factor you could look at.
12 Another would be -- reliability would be another issue
13 to look at. Once again, it would depend on when --
14 let's say the Hellinger tract came in and, in fact,
15 made an application for service and enumerated and
16 quantified their demands. Then those decisions would
17 and could be made at that time based on an engineering
18 study or evaluation.

19 Q Are you aware of any specific requests for
20 service to be extended for any of the areas south of
21 Highway 82 and outside the City of Lindsay's existing
22 CCN?

23 A Well, as I note on KDM-6 and as I tie those
24 back to those letters for the requests for service and
25 the request to be included in their CCN, yes,

1 that's -- and they're so indicated and locations are
2 so indicated on KDM-6.

3 Q Let me restate the question or rephrase it
4 then so it's a little more clear. Perhaps I didn't
5 ask it well. Are you aware of any applications for
6 service where people have asked the town of Lindsay to
7 actually extend water service to their tract within a
8 given amount of time or with a certain quantity of
9 service for any areas south of state highway -- or
10 U.S. 82 and the existing CCN of Lindsay?

11 A No, sir, I am not.

12 Q Do you know what type of waterlines are
13 within the Lindsay water system?

14 A For the most part, PVC is my understanding.

15 Q Have you been asked to go out and inspect any
16 of the Lindsay system, or is this just based on your
17 communication with other folks?

18 A I made two site visit inspections to the
19 site.

20 Q Okay. What did you inspect? What did you
21 visit?

22 A I visited Well No. 3, Well No. 2, Pump
23 Station No. 2, Well No. 1 and Pump Station No. 1 and
24 an elevated tank site. And in addition to that, I
25 visited the wastewater treatment plant, visited with

1 Joe Geray, inspected and looked at some stockpile of
2 pipe that Lindsay typically uses for installation of
3 their waterlines.

4 Q So your opinion on the PVC is based upon your
5 seeing that pipe on hand?

6 A And discussions with Joe Geray.

7 JUDGE NORMAN: Let me ask you a
8 question. It was back a while ago. Was your
9 testimony regarding how much it would cost, \$250,000
10 to get to the Hellinger property, was that based on
11 six-inch pipe? Did you assume that?

12 A I believe the question that he had asked was
13 what would it cost to run six-inch pipe --

14 JUDGE NORMAN: Okay.

15 A -- from the existing Lindsay system to the
16 Hellinger property.

17 JUDGE NORMAN: Okay.

18 A And that six-inch pipe was PVC C-900 pipe.

19 JUDGE NORMAN: And that's about \$18 a
20 foot?

21 A That's about what I used.

22 JUDGE NORMAN: Uh-huh, okay.

23 Q (BY MR. CARLTON) Let me go back to that one.
24 You said it was 12,000 -- about 12,000 feet. How did
25 you measure that distance?

1 A I measured that distance down 3108, straight
2 shot down 3108 from about the north -- or the Elm Fork
3 of the Trinity River due south.

4 Q And does crossing the Elm Fork of the Trinity
5 present any additional impact on the costs?

6 A Very little.

7 Q But it does have an impact?

8 A It does have an impact.

9 Q And you were just contemplating construction
10 costs for the pipe, not easement acquisition or any
11 other sort of property acquisition necessary for the
12 waterline. Correct?

13 A I just gave you an estimated construction
14 cost.

15 Q You attached to your testimony as part of the
16 basis for your opinion Exhibit KDM-8. Was that
17 intended to show the growth in the town of Lindsay?

18 A Typically when I review and look at these
19 particular projects, I try to go back to the U.S.
20 Census Bureau and at least get an idea. And as you
21 know, the U.S. Census Bureau does population
22 projections, and the last census was 2,000. So I try
23 to look at, on a population basis, about where we are
24 in 2006, 2007, 2008. And so that just happened to be
25 from the U.S. Census Bureau the latest that they had.

1 So I look at that population, correct.

2 Q And you look at that in order to determine
3 what sort of growth you expect in the area?

4 A I do, from time to time.

5 Q And so from July 1, '05 through July 1, '06,
6 this U.S. Census Bureau data indicates that there
7 was -- the city grew from 957 to 1,003. Right?

8 A That's what it shows.

9 Q Okay. How many new homes would you estimate
10 that to be?

11 A I couldn't tell you.

12 Q What sort of population do you typically
13 estimate as the number of people per household?

14 A If you're looking at equivalent homes, you
15 use about two and a quarter, two and a half.

16 Q So if we took the 1,003 and subtracted
17 the 957, what is it, about 46, 46 new people? Divide
18 that by 2.5, how many homes is it?

19 A About 18.

20 Q About 18 homes in that one-year period.

21 So if you would pull out LPWC-9 -- I
22 don't know if it's out there. It's not one you've
23 looked at yet. Do you have it there in front of you?

24 A I do.

25 Q Would you turn to Page 491?

1 A Okay.

2 Q And how many building permits were issued for
3 new homes from July 1, 2005 through July 1, 2006?

4 A I'm sorry. Give me those dates again.

5 Q July 1, 2005 through July 1, 2006.

6 A I guess I don't see that on this -- on this
7 particular sheet.

8 JUDGE NORMAN: You have to use two
9 sheets to do that.

10 MR. CARLTON: You have to use two
11 sheets. I'm sorry. Use the following Page 492 as
12 well.

13 JUDGE NORMAN: Start in the middle
14 of 491.

15 A You want to go through July of '06?

16 Q (BY MR. CARLTON) Through July 1, '06, that's
17 correct.

18 A Looks like maybe 12.

19 Q Okay. And then based on your assumption of
20 2.5 people per house, that would be 30 -- 30 folks,
21 2.5 times 12?

22 A Correct.

23 Q So if we take that number and work off then
24 the 46, really most of the growth in Lindsay is
25 occurring because these new homes are being built in

1 Lindsay. Right?

2 A I think you could make that assumption.

3 Q Do you know whether the Census Bureau
4 information is just for the City of Lindsay city
5 limits, or is it for the surrounding area as well?

6 A It's my understanding it's the city limits.

7 Q So that growth information doesn't tell us
8 anything about the area outside the city limits?

9 A No, sir.

10 Q Would it be an indication of I guess a
11 limited amount of growth if there were no subdivisions
12 being created in the ETJ and surrounding areas in the
13 town -- in the areas surrounding the town of Lindsay?

14 A That would be an indicator.

15 Q Would you turn to Page 8 of your prefiled
16 testimony? In particular let's look at Line 21, your
17 statement "There is currently no other water service
18 provider in the proposed territory," and that's not an
19 accurate statement, is it?

20 JUDGE NORMAN: What line is that?

21 MR. CARLTON: Line 21, Page 8.

22 JUDGE NORMAN: Okay.

23 MR. RODRIGUEZ: With the update, Your
24 Honor, it's actually on Line 22.

25 JUDGE NORMAN: Okay.

1 MR. CARLTON: Oh, I see. There you go.

2 Line 22.

3 A I believe it is.

4 Q (BY MR. CARLTON) So you didn't go out and
5 attempt to verify whether Lindsay Pure Water Company
6 was providing service in the quarter mile outside its
7 existing CCN?

8 A I did not verify that much.

9 Q Would it surprise you if it is doing that?

10 A Would it surprise me?

11 Q If Lindsay Pure Water is providing service
12 within a quarter mile of its CCN?

13 A They may be.

14 Q There would be an impact on Lindsay Pure
15 Water if this CCN application is granted over the area
16 that Lindsay Pure Water is already serving, wouldn't
17 there?

18 A There would be a minimal impact.

19 Q Minimal. So do you know how many connections
20 Lindsay Pure Water is serving outside of its CCN?

21 A I do not.

22 MR. RODRIGUEZ: I object. The question
23 assumes facts not in evidence, Your Honor.

24 MR. CARLTON: Mr. Myrick is going to
25 testify in a little while.

1 JUDGE NORMAN: Well, you can ask him a
2 hypothetical if you want to.

3 Q (BY MR. CARLTON) So you're stating it would
4 be a minimal impact without any basis or understanding
5 for what actual impact it would have to Lindsay Pure
6 Water, aren't you?

7 A To the best of my knowledge, there has been
8 no CCN granted by TCEQ within the proposed service
9 area. Therefore, if there is service in that area,
10 it's not being done within a CCN.

11 Q But if this CCN is granted through the City
12 of Lindsay and Lindsay Pure Water Company is providing
13 service within that area, was is the impact to Lindsay
14 Pure Water?

15 A The impact would be whatever they're serving
16 in there would likely be in jeopardy.

17 Q So they would have to stop serving those
18 connections?

19 A Or they would -- they could actually serve as
20 contracted with Lindsay if they wanted to, to continue
21 that service within Lindsay's CCN.

22 Q But that would be subject to the discretion
23 of the town of Lindsay as to whether or not they would
24 enter into that agreement?

25 A It would be.

1 Q So the risks to Lindsay Pure Water Company is
2 that they would then have to terminate service to
3 however many connections there were within that
4 quarter mile?

5 A If they are serving there, that's the risk
6 you run serving outside your CCN.

7 Q Are you familiar with the water code
8 requirements for consideration of CCN amendment
9 applications?

10 A I am, as reflected in 291.

11 Q What's your understanding of where that is
12 reflected in 291?

13 A 291.102.

14 Q Can you turn to that section?

15 MR. RODRIGUEZ: Which version are we
16 turning to, Your Honor?

17 JUDGE NORMAN: Which version?

18 THE WITNESS: Can I get my book?

19 MR. RODRIGUEZ: Well, he had his book
20 out before.

21 THE WITNESS: No, that was my book.

22 MR. CARLTON: Oh, I'm sorry.

23 (Discussion off the record)

24 Q (BY MR. CARLTON) Let's start with the old
25 one.

1 A All right.

2 Q So 291.102(d), as it read prior to the filing
3 of this application, states that the Commission shall
4 consider "the effect of the granting of a certificate
5 on any retail public utility of the same kind already
6 serving the approximate area." Do you see that in
7 (d)(3)?

8 A I do.

9 Q And so is it -- would the effect of
10 eliminating those service connections from Lindsay
11 Pure Water Company's ability to serve be an impact
12 that the Commission has to consider in this case?

13 A They would.

14 Q And if that impact removed approximately
15 one-third of Lindsay's existing customers, would you
16 think that would be a significant impact?

17 A It could be.

18 Q Let's turn to the new rules, and would you
19 look at (d)(3) in the new rules and let me know
20 whether there is any difference in terms of what the
21 Commission has to consider the impact on the existing
22 retail public utility under those rules versus the old
23 rules?

24 A They're very similar.

25 JUDGE NORMAN: Very similar with regard

1 to retail -- other retail public utilities. Correct?

2 A As to the effect -- consideration of the
3 effect --

4 JUDGE NORMAN: Right.

5 A -- on the retail public entity --

6 JUDGE NORMAN: Okay.

7 A -- or service provider.

8 MR. CARLTON: There are differences, but
9 they are in other areas.

10 JUDGE NORMAN: Right.

11 A And I'm assuming you were specifically
12 talking about that area?

13 Q (BY MR. CARLTON) Yes, the retail public
14 utilities.

15 Do you have any opinion about what the
16 cost would be to drill a well in this area to
17 successfully get potable water?

18 A Somewhere in the neighborhood -- and I'm
19 going to give you a range because those vary
20 obviously -- somewhere in the neighborhood of 350,000,
21 \$400,000. Now, that assumption is a municipal-type
22 well and not an individual house well.

23 Q Sure, and a well sufficient for providing
24 service to a retail public utility system?

25 JUDGE NORMAN: Correct?

1 Q (BY MR. CARLTON) Would that be a way to
2 describe that?

3 JUDGE NORMAN: Is that right,
4 Mr. Maroney?

5 A I'm sorry. Yes, that's correct.

6 Q (BY MR. CARLTON) You testified on Page 10,
7 Lines 6, 7 and 8 about water wells becoming
8 inoperative. Do you see that testimony?

9 A I do.

10 Q Do you have any evidence that you're relying
11 upon to determine that there has been some sort of
12 frequency of water wells in the Lindsay area becoming
13 inoperative?

14 A I do.

15 Q And what is that?

16 A Water wells are typically susceptible to
17 storms and to lightning, and I've done a number of
18 wells in the Lindsay area as it relates to Callisburg,
19 as it relates to Woodbine Water Supply Corporation. I
20 have had in Cooke County south of Lindsay some wells
21 that get contaminated by saltwater injection wells.
22 So I have -- I have known of them becoming
23 inoperative, and they do become inoperative from time
24 to time.

25 Q You said Callisburg. Where is Callisburg?

1 A Callisburg is northeast, east of Gainesville
2 and north of 82.

3 Q So it's not particularly hydrologically
4 connected to the water in the Lindsay area?

5 A I'm sorry?

6 Q It's not hydrologically connected to the
7 water in the Lindsay area?

8 A That's not true.

9 Q Is it all part of the same aquifer?

10 A It is.

11 Q How far away is it?

12 A Seven or eight miles by the way the crow
13 flies.

14 Q So when you're talking about your experience
15 with wells in the Lindsay area, you're including a
16 pretty large radius around the town of Lindsay?

17 A I am.

18 JUDGE NORMAN: So just for the record,
19 seven or eight miles in a straight line. Is that
20 right?

21 A Yes, sir.

22 JUDGE NORMAN: Okay.

23 Q (BY MR. CARLTON) Would you turn to Page 12
24 of your testimony, Lines 20 and 21 and 22? You
25 indicate on those lines that "Lindsay Pure Water

1 Company does not have the legal authority to provide
2 water service in Lindsay's proposed service
3 territory." Do you see that?

4 A I do.

5 Q Are you familiar with the agency's rules that
6 allow utility companies to provide service within a
7 quarter mile of their existing CCN boundaries?

8 A I am.

9 Q So your statement that Lindsay doesn't have
10 legal authority to provide service isn't exactly
11 correct. What you probably meant to say is that
12 Lindsay doesn't have -- Lindsay Pure Water doesn't
13 have the CCN to provide service in that area?

14 A They don't have a CCN, and likely they did
15 not file the proper paperwork in doing so.

16 Q What do you mean?

17 A Simply -- simply deciding to serve a quarter
18 of a mile there's -- in addition to that, there's some
19 writing, a map to be submitted to the Executive
20 Director, and my assumption is -- and it's an
21 assumption -- that that wasn't done.

22 Q You also point out that Lindsay hasn't filed
23 an application to amend its current CCN. Is your
24 understanding that Lindsay has, in order to protect a
25 service area or an area in general from being

1 certificated that Lindsay has an obligation to file an
2 amendment to its CCN?

3 A Filing a CCN does, in fact, give additional
4 protection. It does give protection to Lindsay in
5 that it not only obligates them, but it also gives
6 them the right to serve a particular area.

7 Q But in protesting Lindsay's CCN application,
8 is Lindsay Pure Water obligated to file a competing
9 CCN amendment application?

10 A No.

11 Q Would you turn to Page 13 of your testimony?
12 And on Lines 8 through 18, you describe what you
13 consider to be a positive effect on the landowners in
14 the requested area. Do you see that?

15 A Yes, sir.

16 Q But you don't describe the fact that they
17 would have to bear the costs of extending Lindsay's
18 water system to serve their tracts, and that that cost
19 might be more than extending service from Lindsay Pure
20 Water Company, do you?

21 A I did not.

22 Q And, in fact, it would be a disadvantage to a
23 landowner if they were forced to extend service from
24 the town of Lindsay's system when they might be able
25 to get it less expensively from Lindsay Pure Water

1 Company's system?

2 A If cost is the only factor, that would be
3 true.

4 Q And I assume what you are also talking about
5 is reliability in terms of service, would be
6 another -- would be the other factor?

7 A Reliability would play a strong role in this,
8 yes, sir.

9 Q Do you have any information that suggests to
10 you that Lindsay Pure Water company's system has
11 failed or wells gone down or anything along those
12 lines that would make you believe it to be an
13 unreliable system?

14 A Only they're not held to the same standard.
15 As you noted earlier in the requirements, TCEQ
16 requirements, they're only required to have one well
17 at this time. Lindsay is required to have two or
18 more.

19 Q Okay. And that's because of the number of
20 connections. Correct?

21 A Will be the number of connections, correct.

22 Q Okay. And so even though Lindsay Pure Water
23 would be in compliance with TCEQ regulations under
24 minimum requirements, you would argue that they would
25 be a less reliable system because they have fewer

1 wells?

2 A That would be a factor.

3 Q Let's talk about the impact to the landowners
4 who are currently getting service from Lindsay Pure
5 Water Company if the CCN is granted to the town of
6 Lindsay. Okay? Those individuals would be forced to
7 obtain service from the town of Lindsay barring some
8 agreement. Correct?

9 A Ask that question again.

10 Q We have individuals that are receiving water
11 service from Lindsay Pure Water Company outside its
12 current CCN.

13 A (Nodded)

14 Q If this CCN is granted as applied for to the
15 town of Lindsay, those individuals would no longer be
16 able to receive service from Lindsay Pure Water absent
17 some agreement and would be forced to obtain service
18 from the town of Lindsay. Correct?

19 MR. RODRIGUEZ: I'll object to the
20 extent that he's assuming facts that aren't in
21 evidence, Your Honor.

22 JUDGE NORMAN: Well, make that
23 assumption. Assume that Lindsay Pure Water Company is
24 providing service to customers outside its CCN. Make
25 that assumption and then see if you can answer that

1 question.

2 A Under that -- under your assumption and the
3 assumption that Lindsay and Pure Water could not come
4 to some agreement and Lindsay was adamant that they
5 were going to require those people to get water from
6 Lindsay, in fact they could drill their own well, for
7 example. So there would be -- they would have an
8 alternative, either be supplied by Lindsay or drill
9 their own well or negotiate with -- you know, spur a
10 negotiation between Lindsay and Pure Water, but that
11 would be their options.

12 Q (BY MR. CARLTON) How big of a lot do you
13 need to drill a well?

14 A It depends, but are you talking about a house
15 well?

16 Q Yes.

17 A Large enough to get a rig in, maybe 30 by 30.

18 Q Are you familiar with whether any
19 restrictions exist in Cooke County on the size of lots
20 for water wells?

21 A I'm not familiar with that right now, no.

22 Q Are you familiar with any deed restrictions
23 that are in the South Ridge of Lindsay as far as
24 drilling water wells on these sites?

25 A I am not.

1 Q So absent some of those limitations that
2 might be imposed by Cooke County or the deed
3 restrictions themselves, somebody could drill a well
4 on their own lot, or they would have to pay to extend
5 service from the town of Lindsay. Correct?

6 A Or negotiate with Lindsay.

7 Q Assume with me that they have to extend
8 service from the town of Lindsay. What's going to be
9 the impact on that landowner? How much is that going
10 to cost for them to get service?

11 A Some of it depends on the action by the
12 council. As they look at if, in fact, they are
13 granted the CCN, then based on Mr. Metzler's
14 testimony, there's the potential for the city council
15 looking at this extension ordinance. And if it would
16 be typical for what I see in other cities, based on my
17 experience, there's a good possibility that the City
18 of Lindsay would share that cost, depending on, in
19 fact, what the demand is.

20 And so that water customer would, in
21 fact, pay only on the capacity required. For example,
22 if their capacity required a two-inch line, Lindsay
23 might put a six, and they'll pay the difference
24 between a two and a six. That remaining capacity
25 would remain with the City of Lindsay and then get

1 prorated out as customers tie on.

2 Q Well, let's assume that Lindsay sticks with
3 its ordinance and requires a six-inch line to be
4 constructed out there and paid for by the service
5 requester because that's what we have today, no
6 changes yet. How much would the construction of a
7 six-inch line cost to go from the north side of the
8 Elm Fork of the Trinity to the South Ridge of Lindsay
9 subdivision?

10 A That would be the \$18 a foot plus \$35,000 for
11 crossing the river plus whatever -- based on whatever
12 distance that is.

13 Q Now, you said there might also be some
14 pressure facilities that would be needed in order to
15 abut grade along this route. We're talking about the
16 same route that we were talking about with the
17 Hellinger property. Do you know what the elevation
18 difference is between the two systems?

19 A Well, it varies between the two systems
20 substantially.

21 (Exhibit LPWC Nos. 10 and 11 marked)

22 Q (BY MR. CARLTON) Do you have a copy of
23 what's been marked as LPWC-10 and LPWC-11?

24 A I do.

25 Q Would you take a look at 10 and see if you

1 could locate on that or find the approximate location
2 of the town of Lindsay's -- I guess would the booster
3 station be the appropriate place to set an elevation
4 for pressure?

5 A If that's what you want me to look for.

6 Q If you could find that?

7 A Okay.

8 Q Can you take -- I'll give you a green
9 highlighter. If you would mark on that map that
10 location?

11 A It would be their elevated storage tank,
12 which I believe is what you were asking for --

13 Q Okay.

14 A -- thereabouts.

15 JUDGE NORMAN: And where did you mark
16 again?

17 A I marked south of -- just south of 82, and
18 I'm not sure what that road is, 1199 or something,
19 that comes in there.

20 MR. CARLTON: Why don't we go off the
21 record real quick, and we'll mark all the exhibits.

22 JUDGE NORMAN: Okay.

23 (Discussion off the record)

24 Q (BY MR. CARLTON) All right. Mr. Maroney,
25 have you marked the location of the elevated storage

1 tank on LPWC-10?

2 A As best I could, yes, sir.

3 Q Okay. And that's identified by a green
4 highlight there within the area of the town of
5 Lindsay?

6 A Yes, sir.

7 Q Okay. What's the elevation at that location?

8 A Approximately 800.

9 Q How high is the elevated storage tank?

10 A A hundred and thirty-six feet.

11 Q So would you now take a look -- well, what's
12 the -- do you know what the system operating level is
13 for the water in that tank?

14 A It can vary, but typically they're anywhere
15 between overflow and five to six feet before pumps
16 come on.

17 Q Now, would you take a look at LPWC-11? So
18 can you find FM 3108 on that map?

19 A I can.

20 Q And it's in the northeast corner. Correct?

21 A It would be the northwest corner.

22 Q Excuse me, northwest. That's why you're the
23 engineer and I'm the lawyer.

24 If you'll follow 3108 down the map about
25 an inch and a half to the No. 844, do you see that

1 location?

2 A I'm sorry, an 844?

3 Q 844, there's an old farm road there.

4 JUDGE NORMAN: And you're looking in the
5 northwest quadrant?

6 MR. CARLTON: Yes, coming down 3108 from
7 the top of the map.

8 A I do.

9 Q (BY MR. CARLTON) Okay.

10 JUDGE NORMAN: Where is 3108?

11 MR. CARLTON: 3108, if you look at the
12 very top of the map, there's an arrow that says --
13 that points up and says "Lindsay .8 miles" right along
14 the northern edge of the map.

15 JUDGE NORMAN: I see it, okay. And
16 that's it. All right.

17 Q (BY MR. CARLTON) I'm going to represent to
18 you that that's the approximate location of the
19 northern boundary of the South Ridge of Lindsay
20 subdivision.

21 A I'm sorry. Could you repeat that?

22 Q I'm going to represent to you that that's the
23 approximate location of the north boundary of the
24 South Ridge at Lindsay subdivision. Okay?

25 A All right, sir.

1 Q What elevation is that at?

2 A If it's where I think you're talking about,
3 it's been designated as 844.

4 Q Okay. And would you follow 3108 south to
5 where it intersects with another road, and do you see
6 the numbers 877?

7 A I do.

8 Q I'm going to represent to you that's
9 approximately the south boundary of the South Ridge at
10 Lindsay subdivision, and what's the elevation there?

11 A 877.

12 Q So with the elevation of the South Ridge at
13 Lindsay subdivision and the elevation of the storage
14 tank in the town of Lindsay, would there be system
15 improvements necessary to provide additional elevated
16 storage or pumping to serve the South Ridge at Lindsay
17 subdivision?

18 A And "the south" being the "877"?

19 Q Right, correct. The South Ridge at Lindsay
20 subdivision stretches from the 844 to the 877.

21 A At the 877 elevation, there would be.

22 Q What sort of improvements would have to be
23 made?

24 A You would either modify -- as I previously
25 said you could -- a couple of things. You could

1 modify Pump Station No. 1 that's in the part that's
2 got -- not only does it pump to the elevated storage,
3 but it's also got an existing abandoned pressure tank
4 there that could be used then to repressure from Pump
5 Station No. 1 into this 877 elevation for a period of
6 time, depending on the demand.

7 Q And what would you anticipate the cost of
8 those improvements to be?

9 A If would be basically the line work,
10 converting the existing station -- one pump station to
11 serve two pressure plains with the existing ground
12 storage tanks already in place. And in addition to
13 that with the pressure tank already in place, maybe
14 another 25 or \$30,000 at Pump Station No. 1 and then
15 the additional line work as we've previously
16 described.

17 Q So given the 25 to \$30,000 of booster pump
18 work and the \$35,000 to get under the creek and then
19 the 100,000 or so for the construction of the six-inch
20 line, that distance of about a mile, we're talking
21 about 150 to \$200,000 worth of improvements to get
22 service from the town of Lindsay to a connection in
23 the South Ridge at Lindsay. Correct?

24 A Under the scenario you gave me, yes, sir.

25 Q What information would you need to know about

1 the Lindsay Pure Water Company system in order to
2 determine its capacity?

3 A I would need to -- need to know the line
4 sizes, distribution line sizes in general. I would
5 need to know the height of -- if you're using a
6 standpipe or an elevated storage, I'd need to know the
7 height of that, I'd need to know the diameter of that.
8 I'd need to know the pressure tank capacity. I'd need
9 to know -- if you're using a pressure tank, two ways
10 to do pressure maintenance, either elevated or
11 pressure tank. I'd need to know the pumps with the
12 pump curves that are being used for high service
13 pumps, assuming you're not sizing just the well and
14 elevated storage. I'd need to know the pump setting.
15 I'd need to know -- if you've got a meter on the well,
16 I'd need to know what that well can pump, the pump
17 capacity of that well. That would be the majority of
18 it.

19 Q So if Lindsay Pure Water Company has a
20 hundred thousand gallon storage tank on site, how many
21 connections would that serve?

22 A It depends on what you use it for.

23 Q If you're using it strictly for ground
24 storage, total storage.

25 A If you're using it solely for ground storage,