

1 you're looking at total storage, it would have a rated
2 capacity based on minimum requirements of 500
3 connections.

4 JUDGE NORMAN: Five hundred?

5 A Five hundred.

6 Q (BY MR. CARLTON) And if the Lindsay Pure
7 Water system -- distribution system is entirely
8 constructed of six-inch lines, what capacity would
9 that system have?

10 A More than 250.

11 Q And if the well is capable of pumping
12 100 gallons per minute, what capacity would it have?

13 A Just arithmetic, the 167 customers based on
14 the six-tenths.

15 Q And if there's a pressure tank that's
16 2,000 gallons, what capacity would that have?

17 A A hundred connections.

18 Q And if the service pumps were able to
19 pump 420 gpm, how many connections would that make
20 them capable of serving?

21 A One pump or two pumps?

22 Q Two pumps.

23 A Are you going to run those pumps
24 simultaneously?

25 Q Let's assume they're running simultaneous.

1 A And each pump has got a rated capacity of?

2 Q 210 gpm.

3 A At what head?

4 Q Sixty.

5 A Sixty feet, sixty psi?

6 Q Psi.

7 A Sixty psi. And the 210 did you say, 210
8 each?

9 Q Yes.

10 A About 178 connections.

11 JUDGE NORMAN: And tell -- say for the
12 record what "psi" means.

13 A Pounds per square inch.

14 JUDGE NORMAN: Okay.

15 Q (BY MR. CARLTON) Now, assume that Lindsay
16 Pure Water Company is elevated -- storage tank is
17 actually a cylinder -- well, no, strike that; strike
18 that.

19 JUDGE NORMAN: So the .6 gallons per
20 minute is a constant requirement regardless of the
21 number of connections. Is that right? That's what it
22 sounds like.

23 A That is -- that is well supply.

24 JUDGE NORMAN: Okay.

25 A You look at well supply, you look at pressure

1 maintenance and you look at storage, and the well
2 supply minimum requirements of six-tenths of a gallon
3 a minute per connections that's connected to the
4 system.

5 JUDGE NORMAN: Regardless of the size of
6 the -- in other words, if you're serving 100
7 customers, that's the requirement. If you're serving
8 500 customers, that's the same requirement.

9 A For that number of customers. Now, if you
10 get to a smaller number of customers and it's -- you
11 know, you go to a gallon and a half, but it's an
12 extremely small number of customers.

13 JUDGE NORMAN: Okay.

14 A But for everything we're talking about here,
15 the six-tenths applies.

16 JUDGE NORMAN: Okay. I was just
17 wondering if there was any economy of scale. You
18 wouldn't expect 500 people to be taking a shower at
19 the same time, but it would be more likely that a
20 large percentage of 100 might be, you know, early in
21 the morning or something like that, but there's no
22 relaxation requirements that are good on that?

23 A Actually the six-tenths of a gallon per
24 connection is based on a typical max day for any given
25 connection, and that's based on historical data. And

1 obviously you'd want your well supply to meet your
2 maximum day.

3 JUDGE NORMAN: Right.

4 A And then you allow your storage facilities
5 and your booster pumps to meet peak hour demand, and
6 that's some of the probability that you're talking
7 about. The larger the system, the less number of
8 people are going to be using water simultaneously.
9 However, on a well supply basis or on a water supply
10 basis, you can pretty much count on they're going to
11 use it. You just don't know when during that time of
12 day.

13 JUDGE NORMAN: Okay. Okay.

14 MR. CARLTON: Judge, are you finished?

15 JUDGE NORMAN: Yeah, I'm finished. I
16 was just curious.

17 Q (BY MR. CARLTON) You mentioned what I
18 suppose would be rehabbing and putting back into
19 service the booster pumps and the booster station, I
20 believe, down in the town of Lindsay as a possible way
21 of -- to have pressure coming up from the town of
22 Lindsay to South Ridge?

23 A That's correct.

24 Q Okay. How much would it cost to just build a
25 new pump station with pressure tanks? Say a

1 2,000-gallon pressure tank and pumps, how much does
2 that cost to put that in?

3 A And I'm going to give you some ballpark
4 numbers based on experience. A 2,000-gallon pressure
5 tank, you might spend about 50 grand. On a pump
6 station, you might spend 150 to \$175,000, depending on
7 the type of building you put on that. And I'm
8 assuming you're talking about a standalone system. So
9 now you've got to look at ground storage to go along
10 with that.

11 Q How much is ground storage running?

12 A Ground storage is probably around two or two
13 and a half dollars a gallon. So you size your storage
14 on the 200 gallons per connection. So if you're going
15 to go with a 2,000-gallon pressure tank, that's 100
16 connections and you're talking about a 20,000-gallon
17 tank. So you're talking about another two and a half
18 times 20,000; so it's \$50,000.

19 Q Is the construction of the ground storage
20 tank, does that cost vary if you're going strictly
21 ground storage, you know, big, fat round storage
22 versus a cylinder?

23 A You know, it varies, but typically your
24 taller tanks are going to be much more expensive. The
25 standpipes, if that's what you're talking about, and

1 they typically look at standpipes being over 75 feet
2 tall or something like that. So if you're looking at
3 a standpipe, you typically end up with additional
4 foundation because it's so tall and this type of
5 thing, and those are typically a little more cost per
6 gallon to use a standpipe as opposed to a more uniform
7 ground storage tank, say 30 feet tall and 15 feet in
8 diameter.

9 Q What kind of price range on the standpipes
10 per gallon?

11 A I haven't priced one of those. We haven't
12 used them in a long time. I typically go elevated
13 storage now, but you could be looking at three or
14 three and a quarter, something like that. Again, I'm
15 giving you ranges.

16 Q Yeah. Are you familiar with the fact that
17 the TCEQ rules do not require a municipality to hold a
18 CCN in order to provide service?

19 A I am.

20 Q And so if there were applications for service
21 in the area outside Lindsay's CCN, they would not have
22 been prohibited from going ahead and extending service
23 to those areas now even though they don't have this
24 CCN approved?

25 A They could make that decision to do that, but

1 they would be putting the city at risk.

2 Q But they wouldn't be prohibited from doing
3 it?

4 A They would not be prohibited by law from
5 doing it.

6 MR. CARLTON: Can you give me just a
7 couple of minutes?

8 JUDGE NORMAN: Sure.

9 (Brief pause)

10 Q (BY MR. CARLTON) Let me ask you if Lindsay
11 were going to extend service to these customers shown
12 on KDM-6 south of Highway 82, would it -- would it be
13 accurate to say they would most likely extend that
14 service by primarily constructing water mains along
15 the existing roads?

16 A It's typically along existing roads, county
17 right of way, but more and more you may be paralleling
18 those roads, but you'd like to get private easements
19 to be able to do that, just from a cost standpoint.

20 Q And that's because you don't want to have to
21 relocate lines when the county builds a new road?

22 A That's starting to get more and more
23 prevalent.

24 Q Okay. So those lines would either be in the
25 county right of way or parallel the county right of

1 way to extend service?

2 A That's where you would typically like to do
3 it. You're going to have some property obviously,
4 depending on the need for service and where it is,
5 that you might have to require a private easement
6 across tracts to get there.

7 Q And so in order to determine the cost of the
8 distribution system necessary to provide that service,
9 you wouldn't necessarily be able to do it by the way
10 the crow flies, you'd want to follow some of those
11 county roads, existing roads to the general location
12 where the service would be needed?

13 A That's typically true. But again, when you
14 talk about extending service, what typically happens
15 on the extension of these services where you may have
16 one or two customers extend service, it's not unusual
17 at all when you start plotting some of those routes to
18 pick up five, six or seven customers or ten customers
19 just by virtue of the line being installed out there.

20 Q But the length of the line, regardless of how
21 many customers you divide it among, is going to
22 generally be determined by where those lines run?

23 A That's a possibility.

24 MR. CARLTON: I'm going to pass the
25 witness.

1 JUDGE NORMAN: Okay.

2 MR. CARLTON: Thank you.

3 THE WITNESS: Thank you.

4 JUDGE NORMAN: Go ahead.

5 REDIRECT EXAMINATION

6 BY MR. RODRIGUEZ:

7 Q Mr. Maroney, do you know what the difference
8 is between a water main and a distribution line?

9 A Those are typically synonymous terms.

10 Q Okay. Can you please explain for the Judge
11 why a city -- why a city would want to get a CCN
12 versus providing service to an area outside -- without
13 a CCN?

14 MR. CARLTON: Art, we can't hear you.

15 JUDGE NORMAN: Do you want to repeat the
16 question?

17 MR. RODRIGUEZ: Sure.

18 Q (BY MR. RODRIGUEZ) Can you explain,
19 Mr. Maroney, the reasons why a city would want to get
20 a CCN instead of operating in an area absent one?

21 A Sure. Let's assume that there is a city and
22 they decide to extend and serve people outside the
23 city limits, and their city limits, in fact, coincides
24 with their CCN, thereby expending funds if they're
25 city funds to extend out and let's say a mile. The

1 cost of extending that line a mile if the city -- if
2 the city, in fact, pays for it or maintains and
3 operates it, that could, in fact, be a stranded cost.
4 That's very similar to the concern with, I suppose,
5 Lindsay Pure Water is serving outside their CCN.

6 So there's additional security in having
7 a CCN. As long as you extend within your CCN, then,
8 number one, you've got the right to be there. And
9 number two is that cost that you -- that's expended is
10 part of your obligation to serve, and you will
11 maintain and operate that line in general in
12 accordance with your standards.

13 Somebody comes in and decides to --
14 you're outside your CCN and they decide that they want
15 to develop that area and they go and obviously can get
16 a CCN for that, then you've got some stranded costs,
17 and you're definitely putting the city or that entity
18 at risk when they're serving outside their CCN. So
19 it's additional security.

20 JUDGE NORMAN: Because you have -- if
21 you have it within your CCN, you have an exclusive
22 right. Is that right?

23 A You've got exclusive -- you've got exclusive
24 rights, and that's -- I obviously wasn't involved in
25 the formulation of that policy, but the policy that's

1 been talked about, I would surmise and the best I
2 could understand the reason that they were requiring
3 those applicants to pay for that outside the city
4 limits is because, in fact, that could become a --
5 could become a stranded cost. And that policy that's
6 being referred to was at a point in time when Lindsay
7 had no CCN outside their city limits. So if you want
8 to get service outside the city limits, you expend
9 your funds to do that.

10 Typically when you do get a CCN, then
11 that changes and there's a shared cost in that. Or in
12 the case of Lindsay or a municipality, there's
13 oftentimes grant funds available to extend those
14 lines. Therefore, not only does it not cost the City
15 of Lindsay any money, but it doesn't cost the
16 homeowner any money also. And that's part of -- you
17 can get that through ORCA and a number of grant funds
18 to be able to do this. So a municipality has lots of
19 options where a private water system does not have
20 those same financing options.

21 Q (BY MR. RODRIGUEZ) Mr. Maroney I'm going to
22 ask you to flip over to the attachment to Applicant's
23 Exhibit No. 3. It's Attachment KDM-5 of your prefiled
24 testimony and actually KDM-6, which is the property
25 owner map.

1 A Are we talking 3 and 6?

2 Q 5 and 6.

3 A Oh, sorry. All right.

4 Q Mr. Maroney, can you please explain to me why
5 it's significant that there's these requests for
6 service throughout the city's requested service
7 territory? What does that tell you as one that's an
8 expert in the CCN area?

9 A The requests for service or the interest in
10 service within a CCN area goes to the level of
11 planning that that entity that owns that CCN needs to
12 look to. So these facilities don't happen overnight.
13 So as they build this infrastructure, whether that
14 infrastructure be elevated storage, pump station,
15 meeting the minimum requirements of the TCEQ, then
16 it's important to know what the potential for service
17 is and where that -- where that need may arise in the
18 area of the CCN.

19 Q Is there some planning component then to --
20 MR. CARLTON: Objection, objection, Your
21 Honor. I'm not sure how we're within the scope of
22 cross on this line of questioning.

23 JUDGE NORMAN: I'm not requiring that on
24 this. You know, if it keeps going back and forth for
25 a while, like I did last time -- you get your turn

1 last.

2 MR. CARLTON: Right.

3 JUDGE NORMAN: And then I might impose
4 that, but right now I'm not requiring it.

5 MR. CARLTON: All right.

6 MR. RODRIGUEZ: Would you repeat my
7 question, Kim?

8 (Requested portion read)

9 Q (BY MR. RODRIGUEZ) What do these requests
10 for service then tell you about a city's necessity to
11 plan for a utility service?

12 A Well, what you're looking at, whether sewer
13 or water requests, is it gives you an indication of,
14 for example, where do you go to expand your system?
15 Where do you to get additional water supply and where
16 that additional water supply may be placed based on
17 the requests for service or the interest in that
18 service.

19 Q Mr. Maroney, there was an exhibit that was
20 introduced, LPWC-9. Can you grab that one? And also
21 flip over to your population projections that are in
22 Attachment KDM No. 8. Mr. Maroney, can you tell me
23 what a "building permit" is? Are you familiar with
24 that term?

25 A I am.

1 Q What is a "building permit"?

2 A When an individual or a commercial
3 establishment desires to construct any improvements on
4 their property, then they are typically required by
5 city ordinance to go get a building permit, and that's
6 typically issued by the city that has jurisdiction
7 over that area.

8 Q Is the building permit, in your
9 understanding, an authorization for someone to
10 begin construction of a home, or is it an
11 authorization for one to occupy a home?

12 A An building permit is one that typically is
13 taken out to construct a home.

14 Q Okay. So if one takes out a building permit
15 at a specific -- on a specific date, that doesn't
16 necessarily mean that they're going to occupy it the
17 day that it's pulled. Is that correct?

18 A That's correct.

19 Q Now, Mr. Maroney, we went and looked through
20 the difference between July 1, 2005 and July 1, 2006
21 in your KDM-8. Do you recall that?

22 A I do.

23 Q And Mr. Carlton asked you to count the number
24 of new permits -- building permits during that same
25 period -- during that same 12-month period of time.

1 Do you recall that?

2 A I do.

3 Q Now, Mr. Maroney, can you please tell me what
4 the connection might be, if any, between one seeking
5 to construct a new home and actual population during
6 that period of time?

7 A It would be difficult to draw that
8 relationship.

9 Q And why is that?

10 A The population that may move into that area
11 may be in existing facilities, for example. It may be
12 moving into homes that are already constructed. What
13 Mr. Carlton asked me to do basically was derive an
14 equivalent unit.

15 Q So let's take a look at APP0492, which is one
16 of the pages that Mr. Carlton asked you to take a look
17 at. Do you see on June 1, 2006 there was a new home
18 building permit?

19 A I do.

20 Q Can you make the assumption, Mr. Maroney,
21 that because a home was -- a permit was issued on
22 June 1, 2006 that that would equate to 2.5 people
23 being counted on July 1, one month later, 2006 in the
24 Census Bureau?

25 A I cannot.

1 Q Could you make that assumption for any of the
2 building permits that were -- that you and Mr. Carlton
3 counted?

4 A I could not.

5 Q Now, there was also -- do you recall a
6 discussion with Mr. Carlton regarding some certain
7 hypotheticals with respect to provision of water
8 service outside of the Lindsay Pure Water CCN area?

9 A I do.

10 Q Okay. Assume with me for a second,
11 Mr. Maroney, that Lindsay Pure Water was indeed
12 serving outside its requested -- it's certificated
13 service area.

14 A Okay.

15 Q What's the maximum distance that it could
16 provide that service?

17 A A quarter of a mile.

18 Q Okay. Would you agree with me, Mr. Maroney,
19 that based on the requested service territory for the
20 City of Lindsay that much of the territory being
21 requested is greater than one quarter mile outside of
22 Lindsay Pure Water's certificated service area?

23 A Are you asking me if the majority of the --
24 what is your question?

25 Q My question is, is the majority of the City

1 of Lindsay's requested service territory more than one
2 quarter mile from the Lindsay Pure Water certificated
3 service territory?

4 A Yes, sir.

5 Q Okay. So then if there is any impact on
6 Lindsay Pure Water based upon what they're legally
7 required to provide service to now, what would the
8 maximum impact be in a distance -- from a distance
9 point of view?

10 A A quarter of a mile.

11 Q Okay. If Lindsay Pure Water had a request
12 for service from -- I believe the Hellinger tract was
13 the one that you had testified to earlier, what would
14 the approximate distance be from the South Ridge of
15 Lindsay to the Hellinger tract?

16 A Approximately 7,000 feet.

17 Q Okay. Is that more or less than one quarter
18 mile from the certificated service area for the city
19 of -- I'm sorry -- Lindsay Pure Water's CCN area?

20 A That's considerably more than the quarter
21 mile.

22 Q What would Lindsay Pure Water need to do from
23 a CCN standpoint in order to provide service to the
24 Hellinger tract?

25 A They would need to extend their CCN.

1 Q Okay. So would they have to make application
2 for that?

3 A They would need to make application through
4 TCEQ to amend their existing certificate.

5 Q If the Hellingers made a request to Lindsay
6 Pure Water today saying "Provide me service tomorrow,
7 I'm ready," could Lindsay Pure Water legally provide
8 that service?

9 A They could not legally provide that service.

10 Q What could Lindsay --

11 JUDGE NORMAN: Just for the record, how
12 many feet is in a quarter mile?

13 A 1320 feet.

14 JUDGE NORMAN: Okay.

15 Q (BY MR. RODRIGUEZ) And you said it was
16 approximately what, 7,000?

17 A 7,000 feet.

18 Q What could Lindsay Pure Water do to ensure
19 that the customers that it's currently serving, if, in
20 fact, they are, what could they do to ensure that no
21 one else would provide service to those customers?

22 A They could make application to amend their
23 CCN.

24 Q Okay. To your knowledge, has Lindsay Pure
25 Water Company sought to do that?

1 A Not to my knowledge.

2 Q Mr. Maroney, how many water utilities do you
3 represent at any one time?

4 A It's hard to say, but I'd say at least ten.

5 Q Okay. And how many -- how many have you
6 represented over your career, would you say?

7 A Seventy-five to a hundred.

8 Q Okay. Are you generally familiar with the
9 line extension policies of many of those water
10 systems?

11 A I am.

12 Q Okay. Mr. Maroney, is it uncommon for a
13 water system to require the -- a service requester or
14 a service receiver actually to bear the cost of the
15 extension of service?

16 A No, sir.

17 Q Okay. Is it common for a --

18 JUDGE NORMAN: Did you say -- was your
19 question is it common, or is it uncommon?

20 MR. RODRIGUEZ: I'd have to go back and
21 listen to the question and answer. I'll ask it again.

22 JUDGE NORMAN: Okay.

23 Q (BY MR. RODRIGUEZ) Is it common for a water
24 system to require that the customer bear the cost of
25 line extensions for service to be provided to them?

1 A For service to be provided to those
2 customers, the customers typically pay for those line
3 extensions.

4 Q Would it be uncommon for the utility to not
5 charge a customer for a line extension?

6 A In the systems I deal with, it would be
7 uncommon.

8 Q Okay. Mr. Maroney, there was some discussion
9 with respect to Page 10 -- oh, I'm sorry -- 13 of your
10 testimony regarding the reliability of having a water
11 system by -- for the City of Lindsay. Do you remember
12 having that discussion with Mr. Carlton?

13 A I do.

14 Q Mr. Maroney, if you were to construct a
15 standalone system, would you have different
16 reliability issues than if you were looped into a
17 system like the City of Lindsay's?

18 A Possibly.

19 Q Can you describe that for me?

20 A If you construct a standalone system and that
21 standalone system is to serve a small number of
22 customers, then you would typically end up with a
23 pressure tank system, a hydropneumatic tank and
24 potentially a small ground storage tank then to serve
25 a limited number of customers. A standalone system

1 then would require typically just the one well.

2 And so that being the case, when you
3 lose the well, whether you lose power to the well or
4 whether you lose the well as it relates to a water
5 quality issue, for example, or whether you lose power
6 to the high service pumps to that station, you have a
7 loss of service, and the customer suffers.

8 Q Is cost the only consideration that one
9 should look at in operating the system to ensure
10 reliability?

11 A No, sir.

12 Q Okay. What are some of the other factors?

13 A Well, the other factors to look at would be
14 the service that's provided, the management redundancy
15 in the system. So when you look at -- you've got to
16 look at other things, the number of facilities, the
17 number of backup facilities you have, the number of
18 loop systems that you might have, then cost is a
19 factor, but there are other things to look that
20 relates to reliability.

21 MR. RODRIGUEZ: Your Honor, I pass the
22 witness.

23 JUDGE NORMAN: Mr. MacLeod?

24 MR. MacLEOD: I just want to clarify one
25 thing that came up in Mr. Carlton's cross-examination.

1 RECROSS-EXAMINATION

2 BY MR. MacLEOD:

3 Q He was asking you about Exhibit 8 to your
4 prefiled testimony, which is the growth for inside the
5 City of Lindsay -- or town of -- the City of Lindsay.
6 You gave an answer to a question. I can't remember
7 exactly what it was. I want to make sure that's what
8 you meant. You said -- I think it was something to
9 the effect that these do not reflect any growth
10 outside of the city. Did you mean to say that this
11 data is irrelevant for growth outside the city, or
12 could you explain that answer? I was just a little
13 unclear on that.

14 A Well, the issue here, at least the numbers
15 that are being -- that are being produced and compared
16 here from year to year are population within the city
17 limits.

18 Q Right -- and that's right. And you seemed to
19 indicate -- the answer that you gave could have
20 indicated you say this is irrelevant with respect to
21 growth outside the city limits. Is that what you --
22 is that what you said?

23 A No. I think any irrelevancy had to do with
24 trying to come up with an equivalent home to match
25 that particular population, assuming two and a half

1 people. So you could have -- I think the irrelevancy
2 is trying to compare building permits necessarily with
3 population growth.

4 Q It's not that important. I guess I'm just
5 not making it clear. Let me try one more time.

6 Does that data -- do you think that data
7 shows nothing in terms of any growth outside of the
8 city? Because you've already got a CCN inside the
9 estimate. You're asking for one outside the city.

10 A But all this is is some population growth,
11 and it just happens to be -- those numbers happen to
12 be within the city limits. Now, I'm not -- I don't
13 have any other populations that are -- that give me
14 anything outside the city limits, but I guess you
15 could make the assumption that if the City of Lindsay
16 is growing, there's got to be some spillover
17 population if you want to go with that, but I couldn't
18 tell you what percentage that might be.

19 Q Right. I was just trying to see -- I was
20 trying to clarify that answer, and I think that's as
21 clear as it's going to get.

22 MR. MacLEOD: Thank you.

23 JUDGE NORMAN: Okay. Mr. Carlton? And
24 I am going to limit redirect to recross. And then if
25 there's more recross, I'll limit that to redirect.

1 MR. CARLTON: Okay.

2 JUDGE NORMAN: All right. Go ahead.

3 RECROSS-EXAMINATION

4 BY MR. CARLTON:

5 Q Mr. Maroney, you were talking about other
6 factors that would be considered with respect to
7 reliability, and one of those was the type -- I guess
8 the quality of the service that's being provided.

9 A Uh-huh.

10 Q Is that right?

11 A Yes.

12 Q And does the town of Lindsay provide fire
13 flow throughout its system?

14 JUDGE NORMAN: Provide what?

15 MR. CARLTON: Fire flow throughout its
16 system.

17 A I haven't done an analysis on the fire flow
18 to know whether they provide that or not. Based on
19 the system map that I've seen and not done a detailed
20 hydraulic analysis understand, but they certainly have
21 the pressure maintenance facility to do it, and they
22 certainly have the line capacity with the tens, eights
23 and loop sixes to be able to provide that fire flow
24 capacity, but I could not specifically tell you they
25 do provide that fire capacity. But I will tell you

1 nor are they required by TCEQ to provide that fire
2 flow capacity.

3 Q (BY MR. CARLTON) I understand that, but
4 Lindsay Pure Water is not required to have two wells,
5 are they?

6 A That's correct, as to the number they have
7 sitting right here.

8 Q With respect to -- you also mentioned
9 management as another factor. Do you mean in terms of
10 operation of the system, how it's operated from day to
11 day?

12 A Yeah, and typically it's with all systems, is
13 the availability of the operators, the knowledge of
14 the operators, the preventative maintenance that's
15 done on the system; so sure.

16 Q So if Lindsay Pure Water Company and the City
17 of Lindsay have the same operator, that would be a
18 relatively neutral sort of comparison?

19 A I would sure think so.

20 Q And then you said loop systems are important
21 because obviously it allows if a line breaks in one
22 direction, you don't have cutoff of service
23 everywhere. And if Lindsay Pure Water has a loop
24 system as well, then that reliability would also be
25 sort of a neutral comparison to the town of Lindsay?

1 A It could be, yes, sir.

2 Q Now, if TCEQ only requires one well for these
3 small systems, when do they start requiring two wells?

4 JUDGE NORMAN: Is that true?

5 A You'll have to give me the definition of
6 "small," but --

7 Q (BY MR. CARLTON) Well, let me ask it this
8 way: When is a system required to go from one well to
9 two or more wells?

10 A I believe it's going to be more than 250.

11 Q More than 250 connections?

12 A Two hundred and fifty connections, but I'd
13 like to check that, if you don't mind.

14 Q Okay.

15 A For more than 250 connections.

16 Q Okay. And so based on the differentiation in
17 the agency's rules, they're not concerned about the
18 quality of service that a system with less than 250
19 connections is going to get if it only has one well,
20 are they? I mean, they're not believing that those
21 people are at risk of having poor water service if
22 they only have one well on a system of less than 250
23 connections?

24 A I think they're concerned regardless of how
25 many wells you've got as far as service goes, and you

1 typically have that in the standard operation of your
2 system, that you're required to provide continuous and
3 adequate service. I don't care how many wells you've
4 got.

5 Q But TCEQ has determined that a minimum
6 requirement for continuous and adequate service for
7 systems less than 250 connections is one well?

8 A Their minimum requirements is as set forth in
9 290.45, and those are, in fact, minimum requirements,
10 at times they require more than the minimum.

11 Q You also testified in response to some of
12 Mr. Rodriguez's questions that the city would go apply
13 for a CCN in order to protect its area from
14 encroachment. Are there other ways to protect your
15 service area from encroachment by others applying for
16 CCNs?

17 A That's probably the most prevalent way.

18 Q It's also possible to protest CCN
19 applications when they come in, isn't it?

20 A Yes, you can do that.

21 Q And if, in fact, there wasn't a need for
22 service that might justify your application for a CCN
23 at some point in time, then your only option might be
24 to protest another CCN rather than apply for one on
25 your own. Wouldn't that be correct?

1 A The operative word is that there is no need.

2 Q Correct. So --

3 A Correct.

4 MR. CARLTON: Pass the witness.

5 JUDGE NORMAN: Okay.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. RODRIGUEZ:

8 Q I guess flipping that around -- the last
9 question around, Mr. Maroney, if there is a need for
10 service, you could likewise go and seek a CCN for a
11 certain service territory, couldn't you?

12 A If you're convinced that you had the system
13 that could meet that need.

14 MR. RODRIGUEZ: I pass the witness, Your
15 Honor.

16 JUDGE NORMAN: Mr. MacLeod?

17 MR. MacLEOD: No questions.

18 JUDGE NORMAN: Mr. Carlton?

19 MR. CARLTON: No questions.

20 JUDGE NORMAN: Thank you, Mr. Maroney.

21 THE WITNESS: Thank you.

22 JUDGE NORMAN: Okay. We are done for
23 today.

24 MR. CARLTON: Can I ask a housekeeping
25 matter real quick?

1 JUDGE NORMAN: Sure.

2 MR. CARLTON: Did I offer and get
3 admitted Exhibits LPWC-10 and 11?

4 JUDGE NORMAN: Why don't you do it now.

5 MR. CARLTON: I'd like to offer those.

6 JUDGE NORMAN: All right. Any
7 objections to LPWC Exhibits 10 and 11?

8 (No response)

9 JUDGE NORMAN: No?

10 MR. MacLEOD: No.

11 JUDGE NORMAN: They're admitted.

12 MR. CARLTON: Thank you.

13 (Exhibit LPWC Nos. 10 and 11 admitted)

14 (Proceedings recessed at 5:26 p.m.)
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TRANSCRIPT OF PROCEEDINGS BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AUSTIN, TEXAS

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)

SOAH DOCKET NO.
582-06-2023

TCEQ DOCKET NO.
2006-0272-UCR

HEARING ON THE MERITS

WEDNESDAY, OCTOBER 8, 2008

BE IT REMEMBERED THAT AT approximately
9:00 a.m., on Wednesday, the 8th day of October 2008,
the above-entitled matter came on for hearing at the
State Office of Administrative Hearings, 300 West
15th Street, Hearing Room 402, Austin, Texas, before
JAMES W. NORMAN, Administrative Law Judge; and the
following proceedings were reported by Kim Pence, a
Certified Shorthand Reporter of:

Volume 2

Pages 274

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P R O C E E D I N G S

WEDNESDAY, OCTOBER 8, 2008

(9:00 a.m.)

JUDGE NORMAN: We're back on the record.

Before we go forward with any further testimony, I want to ask all the parties -- I want to ask you questions and get you to bring this out in your testimony, if you would. I know you're going to have rebuttal, Mr. Rodriguez.

I note that -- and I'm looking at the 2005 rules. I note that 291.102(c) says "The Commission may approve applications and grant or amend a certificate" and so on for a partial exercise of the right of privilege and so on. And I note that what you're supposed to look at in determining whether or not to grant an amended CCN is the need for additional service in the requested service area and the affect on any public utility of the same kind already serving the approximate area.

So what I want -- what I'd like to hear testimony on would be the need and the effect with regard to granting the CCN but excluding Mr. Myrick's CCN; or excluding Mr. Myrick's CCN and a quarter of a mile in addition from his CCN; or excluding his CCN and the acreage, the 42 acres that he owns as -- in

1 terms of those statutory or rule standards. And I'd
2 like the parties to address that.

3 I note that Mr. Myrick in his testimony
4 wants everything excluded south of Highway 82, and so
5 that might be something that can be addressed as well
6 in terms of what we're doing here today, but I'm
7 particularly interested in that.

8 MR. RODRIGUEZ: You said excluding the
9 CCN area?

10 JUDGE NORMAN: Yeah, the alternatives
11 would be just excluding the present CCN, Pure Water's
12 CCN area --

13 MR. RODRIGUEZ: Okay.

14 JUDGE NORMAN: -- excluding the CCN area
15 plus a quarter mile from the CCN area, or excluding
16 his 42 acres. I think it's 42. I read his testimony
17 again this morning. You-all can correct me if I'm
18 wrong on that. Or the last alternative is the one he
19 requests, and that is, excluding everything south of
20 Highway 82, in terms of the legal standards that I'm
21 to look at in addressing this. Okay?

22 Now, his CCN is excluded. I understand
23 that. That is not an alternative. That is already
24 excluded. I understand that. So really the
25 alternatives were the last three that I said.

1 MR. RODRIGUEZ: Now, do you want me to
2 recall Mr. Maroney to provide that information, or
3 would rebuttal be okay?

4 JUDGE NORMAN: Rebuttal is fine.

5 MR. RODRIGUEZ: Would rebuttal be okay?

6 JUDGE NORMAN: Yeah, that's fine.

7 MR. RODRIGUEZ: Okay. We can do it now
8 as part of our direct case.

9 JUDGE NORMAN: I'm going to allow you to
10 do it. You're going to have some rebuttable, you
11 believe, anyway, I think.

12 MR. RODRIGUEZ: Yes.

13 JUDGE NORMAN: I'm going to allow you to
14 do it then.

15 MR. RODRIGUEZ: Okay.

16 JUDGE NORMAN: Okay? All right.

17 Then let's go forward then, and
18 Mr. Stowe is on the stand. Correct?

19 MR. STOWE: Good morning, sir.

20 JUDGE NORMAN: And, Mr. Stowe, you have
21 been sworn?

22 MR. STOWE: That is correct, sir.

23 JUDGE NORMAN: And you're under oath.
24 Okay. Go ahead.

25

PRESENTATION ON BEHALF OF THE CITY OF LINDSAY

(CONTINUED)

JACK E. STOWE, JR.

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RODRIGUEZ:

Q Mr. Stowe, can you please introduce yourself to the Judge?

A Yes, my name is Jack E. Stowe, Jr. I am the president and owner of J. Stowe & Company.

Q Mr. Stowe, can you please detail for the Judge your educational and -- your educational background?

A Yes. I received an undergraduate degree from at the time North Texas State University, now the University of North Texas, in business with the emphasis in accounting. I attended postgraduate work at North Texas towards an MBA. During that period of time, I passed my CPA examine and was recruited by at the time Touche Ross, which is now merged with Deloitte Touche.

Upon joining Touche Ross, I immediately started off in their tax department. I worked through June of that year, which would have been 1975, I believe, and transferred into the consulting division

1 of Touche Ross in that year. The Dallas office of
2 Touche Ross at that time was the national regulatory
3 consulting group for the firm.

4 I spent nine years in the consulting
5 division with Touche Ross handling basically the
6 startup of the Public Utility Commission here in
7 Texas, all the way through all the filings before the
8 PUC and several before the -- at that time Texas Water
9 Commission.

10 I left, resigned from Touche Ross in
11 1984 to form a firm called Aries Resource --
12 actually -- I'm sorry -- 1984 and went as Chief
13 Financial Officer with International Investment
14 Advisers, which was predominantly a land investment
15 development company. And during my tenure there, we
16 started a construction company. I was responsible for
17 all financial aspects and investments of the firm
18 through my tenure there, which was about two years.

19 In 1986, I formed the firm Aries
20 Resource Management under a professional service
21 contract, which was with Pannel Kerr Forester to
22 establish a municipal consulting practice within their
23 Dallas office.

24 During that period of time, I recruited
25 a former client, Mr. Keith Reed, who was the chief

1 financial officer for the city of Arlington. He had
2 retired from that position, holding that position from
3 Arlington's population from 25,000 to just over
4 250,000 at the time of his retirement.

5 Keith came with me and worked through
6 the remainder of our professional service contract at
7 the Pannel Kerr Forester, at which time we both did
8 not renew our contracts, and we formed the firm Reed &
9 Stowe & Company. Reed & Stowe & Company was primarily
10 a municipal consulting firm specializing in utility
11 matters.

12 Reed & Stowe & Company in 1984 -- I mean
13 in 1994, 1995 timeframe, I believe, subject to check,
14 was acquired by at that time Metzler & Associates out
15 of Chicago. They were a publicly traded firm on the
16 New York Stock Exchange, later changed their name to
17 Navigant Consulting. While at Navigant Consulting,
18 I've served as one of the national directors of energy
19 and water consulting practices.

20 In, let's see, 1994 -- about 1997 --
21 these are subject to check. The dates kind of run
22 together, but somewhere in the latter '90s we were
23 successful in forming a new group called Reed, Stowe &
24 Yanke, LLC that reacquired the firm's practice from
25 Navigant Consulting, and we took the firm back private

1 at that time. Again, the firm specialized now at that
2 point in water, wastewater, energy, electric and gas
3 consulting as well as the environmental solid waste
4 consulting.

5 Then in 1990 -- or in the year 2003,
6 R.W. Beck, which is a national engineering consulting
7 firm, acquired Reed, Stowe & Yanke. Under that
8 purchase agreement, I was retained under a five year
9 employment contract which expired on February 29,
10 2008. And April 1, 2008, I left the firm R.W. Beck
11 and formed J. Stowe & Company. Again, this firm
12 specializes in water, wastewater and electric and gas
13 types of services.

14 An example would be currently we're
15 involved in the -- representing the Ratepayer
16 Coalition in the Texas-New Mexico Power rate
17 application before the PUC. I'm also retained by the
18 firm King and Spalding in the federal court case
19 involving Jefferson County, Alabama in their default
20 on their water and -- or their wastewater sewer bonds.

21 We're also doing feasibility and
22 economic studies for water supply, such as out of
23 Toledo Bend for the Dallas/Fort Worth Metroplex or out
24 of Oklahoma is another alternative that we're working
25 on. And we're also looking at the feasibility of

1 joint ownership pipelines coming out of East Texas to
2 the Dallas/Fort Worth Metroplex. This is the type of
3 work I do.

4 Q Mr. Stowe, with respect to the municipal
5 consulting on water and wastewater issues, it's not
6 limited to just financial consulting, is it?

7 A No, sir. It would encompass strategic
8 planning, economic feasibility. We also do quite a
9 bit of work in the CCN disputes involving evaluations.
10 We've worked extensively in 13.254 applications. We
11 recently assisted the city -- for a city in its 13.255
12 application, 13.254 application as well as the
13 expedited release associated with properties.

14 Q Do you have any experience with respect to
15 analyzing environmental impacts of CCNs on an area?

16 A My experience in analyzing the environmental
17 impacts is one of the economic impact associated with
18 environmental compliance and/or at times I've been
19 called upon to look at the -- what we would refer to
20 as externalities which encompasses environmental
21 issues associated with specific proposed projects.

22 I'm not a scientist. I do not testify
23 to be a scientist, but at the same time, I do have,
24 through my 35 years of experience -- having to address
25 environmental issues from a management perspective and

1 from a cost perspective.

2 Q Have you provided any of that type of
3 expertise in TCEQ-related matters?

4 A The current one that comes to mind right now
5 is that I am assisting -- I'm the program manager for
6 the WMARSS, which is the Waco Metropolitan Area
7 Regional Sanitary Sewer System, in support of its
8 permit application for a 1.5 wastewater treatment
9 plant. I was involved in getting -- I was responsible
10 for obtaining all the environmental assessment studies
11 that were required, presenting those in the
12 application.

13 I'm also working with legal and the
14 professionals in the field to make sure that our
15 design criteria is in compliance with the pending
16 draft permit requirements.

17 I have also been called to testify in
18 13.254 and 13.255 applications and have provided
19 testimony as far as the environmental impact of
20 different service providers.

21 Q And 13.254 and 13.255, you've mentioned that
22 several times. Those are Texas Water Code provisions?

23 A That's right, under Chapter 13 of the Texas
24 Water Code.

25 Q And those all come under the jurisdiction of

1 the Texas Commission on Environmental Quality. Is
2 that correct?

3 A That's correct.

4 Q Okay. Now, Mr. Stowe, you have your
5 testimony in front of you, which I believe is
6 marked --

7 JUDGE NORMAN: Let me ask a question,
8 and you may have covered this, Mr. Rodriguez. I was
9 looking at some of the legal standards, but I think,
10 you know, in our prehearing conference you talked
11 about the -- I think it was JES Attachment 8, and that
12 may not be needed anymore, the study to determine the
13 magnitude of and reasons for chronically
14 malfunctioning on-site sewage facility systems in
15 Texas. And you said that Mr. Stowe headed up that
16 study, I think.

17 MR. RODRIGUEZ: Yes, sir.

18 JUDGE NORMAN: You said it at a
19 prehearing conference. Of course the wastewater
20 system is now not part of this case.

21 Did you ask him questions about that
22 just now? I was looking at some of the legal
23 standards.

24 MR. RODRIGUEZ: Yeah, he just testified
25 regarding what his involvement has been with respect

1 to Texas Water Code Provision 254 and 255 on water
2 CCNs.

3 JUDGE NORMAN: Including that study that
4 you talked about?

5 MR. RODRIGUEZ: No, not specifically the
6 OSSF study because we are actually removing that from
7 his testimony. This actually went to your --

8 JUDGE NORMAN: Okay.

9 MR. RODRIGUEZ: -- granting me the
10 latitude to prove up his qualifications with respect
11 to what's on Page 16 of his testimony, which talks
12 about the water environmental impacts --

13 JUDGE NORMAN: Right.

14 MR. RODRIGUEZ: -- not the wastewater.

15 JUDGE NORMAN: Not that study?

16 MR. RODRIGUEZ: Although he did provide
17 testimony with respect to that, we're not offering the
18 wastewater study anymore.

19 JUDGE NORMAN: I know, not that study
20 anymore.

21 MR. RODRIGUEZ: Right.

22 JUDGE NORMAN: But did you head up that
23 study?

24 A I was president of the firm that performed
25 that study, and I was headquartered in Austin at the

1 time. The actual project manager on the project was
2 Scott Pasternack, but I was responsible for the
3 contents of the study, the approach for the study, and
4 I had final approval of the report before it went out.

5 JUDGE NORMAN: Okay.

6 A In fact, it was my input in the study that we
7 abandon the statistical approach that originally had
8 been considered in performing the study and go to the
9 survey, and I approved the survey questions that were
10 developed before they were presented to the market.

11 JUDGE NORMAN: Okay.

12 MR. RODRIGUEZ: Actually, at this point,
13 Your Honor, we're going to go through some changes --

14 JUDGE NORMAN: Sure.

15 MR. RODRIGUEZ: -- to Mr. Stowe's
16 testimony. I can either just --

17 JUDGE NORMAN: Just do what you did
18 yesterday. That's fine.

19 MR. RODRIGUEZ: Okay. I just want to go
20 through it real quick like here. Many of the changes
21 that were made were either to update new information
22 or with new information or to delete some of the sewer
23 testimony that was provided because of your ruling
24 with respect to the severance of the sewer
25 application.

1 Beginning on Page 14 --

2 JUDGE NORMAN: And it sounds like --
3 excuse me. I'm interrupting you again.

4 Mr. MacLeod, I did sever that out, but I
5 do also need to issue an order remanding that to the
6 Executive Director. Is that true?

7 MR. MacLEOD: Yeah, because once that's
8 done, then we can process it as an uncontested matter.

9 JUDGE NORMAN: All right. Then I will
10 do that unless I hear any objections to it.

11 (No response)

12 JUDGE NORMAN: Okay. Go ahead.

13 MR. RODRIGUEZ: Beginning on 14 and
14 bleeding onto Page 15, there's several deletions that
15 occur there with respect to the comparison of
16 wastewater rates utilizing the TML study as well as
17 the JES-D -- Schedule JES-D, which is referred to
18 first on Line 23 of Page 14. It's been updated
19 because the TML has come out with a 2008 study. So he
20 provides that comparison in JES-D.

21 On Page 16 you can see some deletion
22 on 17 and 18 based on Your Honor's previous rulings.

23 Beginning on 17 and going for many pages
24 to Page 22, all that testimony was struck or stricken
25 because it dealt with OSSF, or sewer matters, which is