

1 CCN, but is within the South Ridge of Lindsay
2 development, is within a quarter mile of the CCN area?

3 A All of it.

4 JUDGE NORMAN: All of the -- excuse
5 me -- all of the South Ridge is within a quarter mile
6 of the CCN area?

7 A All of the lots with the point of origin
8 being where the water taps are --

9 JUDGE NORMAN: Taps, yeah.

10 A -- is within a quarter mile --

11 JUDGE NORMAN: Uh-huh.

12 A -- of the one lot or -- well, I obviously
13 have to have a CCN -- well, I guess I do. I would
14 think I would obviously have to have a CCN on my water
15 well lot.

16 JUDGE NORMAN: Okay.

17 A And I would also -- I know I have a CCN on
18 the first lot on the left in Phase II, and the depth
19 is 220 feet.

20 JUDGE NORMAN: So that's less than a
21 quarter mile.

22 A And the entire distance from my east to my
23 west boundary is 1766 feet at the south end, which
24 means that all of the lots of the 96 acres would be
25 within --

1 JUDGE NORMAN: A quarter mile.

2 A -- a quarter of a mile, sir.

3 JUDGE NORMAN: All right.

4 Q (BY MR. CARLTON) And when you refer to the
5 point of origin, you're referring to the location of
6 the meter?

7 A Yes, sir.

8 Q You also were asked some questions -- a
9 question about whether the issuance of a CCN makes it
10 easier for developers -- to sell land to developers.
11 Do you remember that question by Mr. MacLeod?

12 A Yes, sir.

13 Q And in this situation in the community of
14 Lindsay, would the issuance of a CCN, in your opinion,
15 make it more likely that the land would sell?

16 A The issuance of a CCN to the City of Lindsay?

17 Q To anyone.

18 A Well, having a CCN would mean that I could
19 furnish water to all of my lots, and it would
20 definitely help the sale of a lot because I could
21 furnish water to them.

22 Q If you had -- if you held the CCN?

23 A Yes, if I held the CCN.

24 Q If you were -- or if the town of Lindsay is
25 granted its CCN as it's requested, exclusive of the

1 area in South Ridge, what impact would that have on
2 the likelihood of the land surrounding or the land in
3 the area the town of Lindsay is seeking being sold?

4 A I would say it would be devastating.

5 Q And why is that?

6 JUDGE NORMAN: To whom? To you?

7 A If the City of Lindsay got a CCN and I were
8 not able to furnish water to my lots --

9 JUDGE NORMAN: That's not your question.

10 Q (BY MR. CARLTON) That wasn't my question.

11 A Oh, okay.

12 Q My question is, if the town of Lindsay
13 obtains its CCN --

14 A Yes.

15 Q -- as requested but does not get it for South
16 Ridge of Lindsay, what impact do you believe that
17 would have --

18 A Okay.

19 Q -- on the land that would then be subject to
20 that CCN being sold for development?

21 JUDGE NORMAN: It would be more likely,
22 wouldn't it?

23 A Well, it would depend, sir, on how much the
24 City of Lindsay -- how much they would charge to bring
25 the water to them.

1 JUDGE NORMAN: Okay. Yeah, sure.

2 A I mean, it's -- I, if I were going to take
3 water to any of my neighbors, could do it twice as
4 cheap as Lindsay or three times as cheap as Lindsay.

5 Q (BY MR. CARLTON) Would the current
6 landowners be more likely to sell as a result of the
7 CCN?

8 A No. The landowners are not going to sell
9 anyhow unless -- unless someone dies or the -- can I
10 go over that again?

11 JUDGE NORMAN: I think I understood it.

12 A Okay.

13 JUDGE NORMAN: I think I got it pretty
14 much. If there's something you need to add, that
15 would be just fine, but I think I understand your
16 point of view on that.

17 A The only way that it would sell is if the
18 heirs could not agree on a split of the land. And if
19 they could not agree on a split of the land, then they
20 would have to sell in order to cut up the money
21 because money is easier than land.

22 Q (BY MR. CARLTON) We talked about the -- and
23 you showed on ED-3 the lines that are currently in the
24 ground for Lindsay Pure Water Company.

25 A Yes, sir.

1 Q Now, those lines are also shown on ED-2.
2 Correct?

3 A Yes, sir.

4 Q What is the -- what improvements have you
5 made to the Lindsay system that will allow you to
6 serve Phase IV when it's constructed?

7 A When we initially platted Phase I, Phase I
8 was on the north end of South Ridge. My water well
9 lot, our water well lot, is on the south end on the
10 highest part of Phase II. Well, it's not part of
11 Phase II. It's on the south end of Phase II close to
12 the road.

13 I had to take the waterlines through
14 Phase II to Phase I and loop them back into Phase II.
15 When we started, we went about approximately 60
16 to 70 feet and put a valve -- a T and a valve and a
17 stub to go across the low waterway into Phase IV so we
18 could loop the entire system, and the system being
19 Phase I, II and III and IV. And, thereby, creating a
20 reliable -- I think is the word that Mr. Maroney used,
21 and that is the only way that I will be able to loop
22 Phase I, II and III with the water well is to go
23 through Phase IV. So completing the system is
24 imperative to have a reliable looped water system.

25 Q And what is the importance of Phase IV in

1 that effort?

2 A Phase IV is to the -- if you're at the water
3 well lot, Phase IV is to the southwest of my water
4 well lot. It is due south of Phase III. It's the
5 missing loop in order to have a reliable water system.
6 And the other part is -- Mr. Mahoney -- Maroney --

7 JUDGE NORMAN: Maroney.

8 A -- Maroney stated a reliable system was a
9 well capable of producing 100 gallons, storage,
10 pressure pumps, valves to isolate and a looped system.

11 JUDGE NORMAN: Okay.

12 A And I must say that I have built this system
13 and it has fire protection, fire flow, and I could
14 have gone with four-inch lines, but I chose to go with
15 six-inch lines because -- number one, because the
16 mayor of Lindsay at the time, Robert Walterscheid, and
17 a couple more friends advised me that's the way I
18 needed to go, and that's the reason that I spent more
19 money. And I may be wrong. I don't know. That's
20 where I -- that's how I did it.

21 And, yes, it is important that if
22 someone outside my CCN in the future, in the next ten
23 to fifteen years, if I live that long, to supply water
24 to them if -- if the need ever comes.

25

1 Q (BY MR. CARLTON) It is -- excuse me.

2 What is the importance to you of being
3 able to expand your CCN beyond the South Ridge of
4 Lindsay development?

5 A Then I could be even more reliable because I
6 could have a second well and have the reliability of
7 one well. I could have two wells. And if one went
8 dry, it would be looped and could supply water
9 wherever it is required.

10 Q Why can't you have two wells now?

11 A It's not economically feasible. \$400,000 for
12 a well, I don't have the connections to justify
13 another well.

14 Q And if the town of Lindsay is granted its CCN
15 as it's applied for it, how would that impact your
16 ability to expand your service beyond South Ridge?

17 A Well, if they were to expand -- I mean be
18 granted a CCN and somebody created a subdivision, of
19 which I don't think will happen in the next 20 years,
20 but that's just me thinking, they would have the legal
21 rights to sell water to whoever it is that put in the
22 subdivision, and I would not be able to take water to
23 them and expand my system, which would make it more
24 reliable.

25 Q How long has it taken for you to get to 26

1 homes on your hundred acres?

2 A Ten years. I might mention when we bought
3 and started South Ridge, there was one subdivision,
4 which was called Henry Street at the time, in the City
5 of Lindsay. And shortly after we opened our
6 subdivision up, there were five subdivisions within
7 the City of Lindsay that opened up in a year, year and
8 a half, two years.

9 JUDGE NORMAN: And I'm not sure what
10 the -- how that testimony is -- what is that intended
11 to show?

12 A I'm sorry. I didn't hear you, sir.

13 JUDGE NORMAN: Mr. Carlton, what is that
14 testimony intended to show, that five subdivisions
15 started up, you know, shortly after?

16 MR. CARLTON: Well, I think it goes to
17 where developments are occurring, which is already
18 within the town of Lindsay's existing CCN.

19 JUDGE NORMAN: Right. Okay.

20 MR. CARLTON: And South Ridge is the
21 only thing that's been outside.

22 JUDGE NORMAN: Okay. I see. Okay.

23 MR. CARLTON: I pass the witness.

24 JUDGE NORMAN: Okay. Mr. MacLeod?

25

RECROSS-EXAMINATION

BY MR. MacLEOD:

Q Mr. Myrick, I just wanted to clear a few things up. If we can get some terms explained, and then I'm going to ask a question.

The TCEQ when determining where the CCN -- where you're allowed to serve point of use of where the water is used, that's our main term. You had used the term "point of origin." Were you thinking of "point of use" when you were using the term "point of origin"?

A Yes, sir.

Q I just wanted to get that clear for the record.

And some people have argued that the meter location may be what the CCN should be, but that's not the TCEQ's position. I don't think it's ever been established, but it doesn't really matter because the meters and the point of use for your entire subdivision are all within a quarter mile of your CCN boundary. Is that right?

A That is correct.

Q I also wanted to clarify that Myrick Development Company owned the entire 96 or 100 acres from the beginning -- when you originally -- when that

1 property was originally purchased. Is that right?

2 A From its inception, yes, sir.

3 Q And the remaining unsold lots are still owned
4 by Myrick Development Company. Is that correct?

5 A That is correct.

6 Q And Myrick Development Company still owns all
7 the lots that don't have homes on them. Is that
8 right --

9 A No.

10 Q -- or not? So you have sold some lots that
11 don't have homes on them?

12 A Yes, sir.

13 Q I don't think -- I don't know if that's
14 relevant or we need to go into which ones those are.
15 So I just wanted to clarify.

16 A I have in my -- my restrictions that they
17 have to build within six months. It is not
18 enforceable.

19 MR. MacLEOD: Okay. Just a minute.

20 (Discussion of the record)

21 Q (BY MR. MacLEOD) Also, I wanted to say now
22 you have lines in place to serve all the lots whether
23 they have homes on them or not. Is that only in I, II
24 and III or also Phase IV?

25 A I have lines in all -- or taps, if you will,

1 lines going around to all of the lots in Phase I, II,
2 III and IV, with the exception of the three lots that
3 are in the floodplain in Phase II, which are in the
4 northwest corner of that hundred acres.

5 Q All right. Also, of all the letters that
6 were submitted as requests for service, I think -- was
7 that was DLM-10? I'm not sure, the requests for
8 service.

9 A Yes, sir.

10 Q None of those requests came from people that
11 live within the South Ridge of Lindsay subdivision, or
12 were any of them from that?

13 A No, sir, none of them did.

14 Q Also, there's some question about, you know,
15 you need to get approval from the TCEQ on certain
16 things like more distribution lines and also serving
17 people outside of your CCN but within the quarter
18 mile. First of all, on distribution lines, do you
19 know -- is the distribution system that is outside of
20 your CCN that the TCEQ states is your CCN, is that
21 less than 10 percent of your existing distribution
22 system or more than 10 percent, or do you know?

23 A I do not know.

24 Q All right. And also on serving customers
25 within the quarter mile but outside your CCN, you said

1 that you were working on that. Have you already
2 contacted the TCEQ on that, or you're planning to
3 contact the TCEQ on that?

4 A I have planned for my -- I contacted a lawyer
5 this morning about that, and we plan to rectify any
6 and all wrongs that I have committed.

7 MR. MacLEOD: Okay. Pass the witness.

8 THE WITNESS: Thank you, sir.

9 JUDGE NORMAN: Mr. Rodriguez?

10 RECROSS-EXAMINATION

11 BY MR. RODRIGUEZ:

12 Q Mr. Myrick, I'm going to get you to take a
13 look again at DLM-17 that's attached to Applicant's
14 Exhibit No. 2 and --

15 MS. WHITCEQE: Are you on DLM --

16 MR. RODRIGUEZ: 17. I'm sorry.

17 MR. CARLTON: 17.

18 MR. RODRIGUEZ: Did I say 10?

19 Q (BY MR. RODRIGUEZ) I'm also going to show
20 you ED-3 at the same time to show you what the City of
21 Lindsay's requested service territory is.

22 A Uh-huh.

23 Q Now, Mr. Myrick, you'd agree with me that
24 even if the City of Lindsay's requested service
25 territory was granted for all its requested area,

1 Lindsay Pure Water Company would still have an ability
2 to expand at east of 3108. Isn't that right?

3 A Yes, and I would encroach on the --

4 Q Isn't that the -- isn't there currently no
5 CCN between -- in a large area just east of 3108 for
6 water service?

7 A That is correct.

8 MR. RODRIGUEZ: I pass the witness, Your
9 Honor.

10 JUDGE NORMAN: Mr. Carlton? And this
11 is --

12 MR. CARLTON: Limited.

13 JUDGE NORMAN: Yeah. Well, I'm going to
14 give you another shot.

15 MR. CARLTON: Oh, okay.

16 JUDGE NORMAN: And then after that --

17 MR. CARLTON: I'll limit it.

18 JUDGE NORMAN: I'm sorry?

19 MR. CARLTON: I'll self-limit then.

20 JUDGE NORMAN: All right.

21 MR. CARLTON: Just a couple of
22 questions.

23 JUDGE NORMAN: Okay. A couple, huh?

24 (Laughter)

25

1 FURTHER REDIRECT EXAMINATION

2 BY MR. CARLTON:

3 Q Mr. Myrick, would you -- what would your
4 concerns be about extending your CCN to the east?5 A I suppose I would be out of the pan and into
6 the fire. The current sewer CCN is held by the city
7 of Gainesville. At the present time, they have the
8 same problem, "they" being the people to the east of
9 3108, being the majority of the land is owned by the
10 German descendents. There is 40 acres that's owned by
11 Howard Kohler that is not -- I don't think Howard
12 Kohler is German, but it's also not for sale. I've
13 already asked, but I don't mind the fight.14 I'm just simply saying I don't think the
15 TCEQ would -- I don't know what the TCEQ would do, but
16 it's -- there's not a need for service there, period.17 Q And you talked earlier in your testimony
18 about the status of Phase IV.

19 A Yes, sir.

20 Q When would you expect Phase IV to be
21 completed now that you've kind of pulled the trigger
22 on beginning the subdivision process?23 A I would anticipate early 2009, February or
24 March.

25 MR. CARLTON: Pass the witness.

1 JUDGE NORMAN: Okay.

2 MR. MacLEOD: No more questions.

3 MR. RODRIGUEZ: Nothing, Your Honor.

4 JUDGE NORMAN: Okay. Thank you very
5 much, Mr. Myrick.

6 THE WITNESS: Thank you, sir.

7 JUDGE NORMAN: All right.

8 MR. MacLEOD: Can we take a short break?

9 JUDGE NORMAN: Sure. Yeah.

10 (Recess: 2:55 p.m. to 3:03 p.m.)

11 (Exhibit ED No. 4 marked)

12 JUDGE NORMAN: Okay. Are we ready?

13 MR. MacLEOD: Yes, Your Honor.

14 JUDGE NORMAN: Go ahead.

15 PRESENTATION ON BEHALF OF THE EXECUTIVE DIRECTOR

16 (CONTINUED)

17 TAMMY HOLGUIN-BENTER,

18 having been previously sworn, continued to testify as
19 follows:

20 FURTHER REDIRECT EXAMINATION

21 BY MR. MacLEOD:

22 Q Could you state your name for the record,
23 please?

24 A Tammy Lee Holguin-Benter. I go by
25 Tammy Benter.

1 JUDGE NORMAN: And you've been sworn,
2 Ms. Benter, and you're under oath.

3 A Yes, I have.

4 JUDGE NORMAN: Okay.

5 Q (BY MR. MacLEOD) And you work for the TCEQ.
6 Right?

7 A That's correct.

8 Q And what is your position there?

9 A I'm the team leader of the utilities
10 financial review team in the Utilities and Districts
11 section.

12 Q I think we've already gone through your
13 qualifications when you were testifying earlier. So
14 I'm not going to revisit that.

15 A Okay.

16 Q What is the purpose of your direct testimony
17 in this case?

18 A To state the ED's opinion as to whether or
19 not the application that was filed by the town of
20 Lindsay should be granted for the water CCN.

21 Q Now, in your direct testimony, the
22 information that you relied on in forming your
23 opinions, giving your testimony, is it of the type
24 reasonably relied upon by experts in your field in
25 forming opinions or inferences on the subject of how

1 CCN applications are processed?

2 A Yes, sir, it is.

3 Q You've already been handed what has been
4 marked as ED-4. Is that the number we're at?

5 A Yes.

6 Q And could you identify what that is?

7 A Yes, it's a copy of my prefiled testimony and
8 the attached exhibit.

9 Q Now, before we go into specifically what's in
10 that and actually offering it for evidence -- well, no
11 let's go ahead.

12 MR. MacLEOD: Do you want the summary
13 before we offer it, Your Honor?

14 JUDGE NORMAN: Not necessarily.

15 MR. MacLEOD: Okay.

16 JUDGE NORMAN: You can just go on and
17 offer if you want to.

18 MR. MacLEOD: I go ahead and would offer
19 Exhibit ED-4.

20 JUDGE NORMAN: And are there any
21 objections other than the ones already noted and ruled
22 on?

23 MR. RODRIGUEZ: No, sir.

24 JUDGE NORMAN: No?

25 MR. CARLTON: Not other than the ones

1 you've already ruled on.

2 JUDGE NORMAN: Right. Okay. It's
3 admitted with those -- with that notation.

4 (Exhibit ED No. 4 admitted)

5 Q (BY MR. MacLEOD) Ms. Benter, I believe you
6 have some -- I don't know to do the revisions or not.
7 You have some revisions to that testimony. Is that
8 correct?

9 A Yes, I do.

10 Q Do you want to go through those?

11 A Sure. First of all, I'd like to state that
12 my testimony makes reference to specific page numbers
13 of other testimonies that I relied on to make my --
14 base my final recommendation on. And the page numbers
15 I referred to throughout my testimony, I based those
16 off of the original testimonies. And so that I
17 wouldn't muddy it up much, I'm not changing those page
18 numbers, but I am making some additional changes to
19 the contents.

20 JUDGE NORMAN: You're doing what?

21 A Making additional changes to the contents of
22 my testimony.

23 JUDGE NORMAN: Okay.

24 A On Page 1, Line 22, the question currently
25 reads "Please describe current your work

1 responsibilities," and I'd like it to read "Please
2 describe your current work responsibilities."

3 And if I go too fast, just let me know.
4 I can stop.

5 JUDGE NORMAN: Okay.

6 A Page 4, Line 4, between -- or after the words
7 "prefiled testimonies," I'd like to add a period. And
8 I'd also like to add a statement in there, "I also
9 reviewed supplemental prefiled filed by Mr. Myrick and
10 the transcript of his -- the transcripts of his
11 deposition for this matter."

12 JUDGE NORMAN: And the transcript --

13 A Yes, "of his deposition for this matter,"
14 period, and I'd like to strike the rest of that "filed
15 for this proceeding."

16 JUDGE NORMAN: Okay.

17 A On Page 5, Line 18, the number "55," I'd like
18 to change that to "53."

19 Page 7, Line 2, I'd also like to change
20 that number "55" to "53."

21 Page 8, Line 9, after the word "area --
22 "outside its CCN area," I'd like to add the word "it"
23 -- I-T -- "is in danger."

24 Page 9, Line 3, the number "396" near
25 the end of the line, I'd like to change it to "399,"

1 and on page -- same page, Line 5.

2 JUDGE NORMAN: Line 5? Okay.

3 A Yes. The number "304," I'd like to change to
4 "301." Line 14, the number "396," I'd like to change
5 that to "399." Line 16, the No. "470," I'd like to
6 change to "467."

7 Page 13, starting on Line 19 through
8 Line 22, I'd like to strike on Line 19 "by filing a
9 CCN amendment application" at the end of the sentence
10 or at the end of that line all the way through the end
11 of the page.

12 JUDGE NORMAN: "By filing" and strike it
13 all?

14 A Yes.

15 Page 14, I'd like to strike the entire
16 first paragraph, Lines 1 through 4.

17 Same page, on Page 14, Line 9,
18 between -- the line starts with "CCN service." Right
19 after the word "service" and before the period, I'd
20 like to add "and for the area for which Lindsay Pure
21 is already providing water service, where Lindsay Pure
22 has facilities already in place," --

23 JUDGE NORMAN: Hold on a second.
24 "Lindsay Pure already has" what?

25 A "Facilities already in place."

1 JUDGE NORMAN: Okay.

2 A "And any of the area in the South Ridge
3 subdivision."

4 JUDGE NORMAN: Okay. Give us a chance
5 to stop and read that because that's a change in
6 your -- a real substantive change in your testimony,
7 isn't it?

8 A Yes, it is.

9 JUDGE NORMAN: Okay.

10 (Brief pause)

11 JUDGE NORMAN: Okay.

12 A And that's all I have.

13 Q (BY MR. MacLEOD) So with those revisions and
14 corrections, is the testimony contained in ED-4 the
15 same that you would give if I had asked you those
16 questions contained in ED-4 today live? Is that
17 right?

18 A That's correct.

19 Q There was something that came out earlier
20 that I wanted to ask you just a few questions on, and
21 that is found in LPWC-8. And if you don't have a copy
22 of it, I can bring you a copy. And that was -- that
23 was the ordinance of Lindsay dealing with extensions
24 outside of the city.

25 A I have it here.

1 Q Now, if a CCN is granted that creates a duty
2 to provide continuous and adequate service -- no, a
3 CCN -- excuse me. Let me reword that.

4 If a CCN is created, that does create a
5 duty to provide continuous and adequate service that
6 is enforced by the TCEQ. Is that right?

7 A That's correct.

8 Q And there are certain items in LPWC-8 that
9 the TCEQ would -- rules for providing continuous and
10 adequate service that would override. Is that
11 correct?

12 A That's correct.

13 Q Do you want me to draw your attention to
14 which areas those are, or do you already have them
15 marked?

16 A I don't have them marked.

17 Q Okay. Could you take a look at (A)(2) under
18 Section 1 that provides "The city reserves the right
19 to furnish such customers" --

20 A Uh-huh.

21 Q -- "if deemed advisable, and to, at any time,
22 wholly or partially discontinue the utility service."
23 Could that happen if the city had a CCN, or would
24 they -- could they get an order requiring service from
25 the TCEQ?

1 JUDGE NORMAN: Tell me where it is
2 again.

3 MR. MacLEOD: This is on the first page,
4 1 of 4.

5 JUDGE NORMAN: All right.

6 MR. MacLEOD: Section 1(A)(2).

7 JUDGE NORMAN: Okay. All right. That's
8 something that would no longer be operative. Right?
9 Is that what you're saying?

10 MR. MacLEOD: Right.

11 JUDGE NORMAN: Okay. Right?

12 A That's correct.

13 Q (BY MR. MacLEOD) And (B) -- if you go to (B)
14 on the next page -- well, it's actually two more pages
15 down because I want to go to (B)(3).

16 A I don't see a (B).

17 JUDGE NORMAN: It's on Page 3 of 4.

18 A I see two (B)(2)s. Am I looking at the right
19 page?

20 Q (BY MR. MacLEOD) You are. There are two --
21 it appears there are two (B)(2)s.

22 A Okay. Okay. So it's the (3) starting with
23 "City Not Liable"?

24 Q Right.

25 A Okay.

1 Q Would that provision still be enforceable if
2 the CCN were put in place?

3 A If the CCN were put in place, that would not
4 be enforceable by --

5 Q Yes, go ahead and explain.

6 A Well, the TCEQ would require the city, if it
7 had a CCN for that area, to maintain that and provide
8 continuous and adequate service.

9 Q And what about No. (5) on that same page
10 where it says "City May Revoke Permission"?

11 A The city, again, would be required to provide
12 continuous and adequate service to those individuals
13 outside the city limits if it had a CCN for that area.

14 MR. MacLEOD: I'll pass the witness.

15 JUDGE NORMAN: And were you going to ask
16 her the questions that I wanted asked, that I asked to
17 be asked this morning, which were --

18 MR. MacLEOD: Oh, oh, the effect on --

19 JUDGE NORMAN: Right.

20 MR. MacLEOD: What would the effect
21 on -- let's see if I've got them right -- the question
22 right.

23 JUDGE NORMAN: Okay.

24 Q (BY MR. MacLEOD) What would the effect on
25 other utilities be if the CCN were granted but

1 excluded the area that was -- excuse me. I can't read
2 that unfortunately -- excluded the area that was in
3 Myrick's CCN and a quarter of a mile around that? Do
4 you have an opinion as to what the effect would be on
5 the --

6 JUDGE NORMAN: Other utilities.

7 Q (BY MR. MacLEOD) -- on the utility?

8 A Okay. I'm sorry. Myrick -- the current
9 application that we have in front of us does not ask
10 for area currently in Lindsay Pure's CCN. So you're
11 talking about all the area that the applicant asked
12 for. Is that what you're --

13 Q Right.

14 A Okay. If the applicant was awarded the
15 entire requested service area, there would be an
16 impact on utilities in that area. The area that
17 overlaps Gainesville would certainly be impacted if it
18 was awarded that area.

19 The area that -- I keep wanting to call
20 it Myrick Development -- Lindsay Pure currently has --
21 where they currently have connections would certainly
22 be impacted, which is that quarter mile outside of
23 Lindsay Pure's current CCN service area. Not only
24 would it leave stranded investments in some of the
25 additional area out there for Lindsay Pure, and by

1 "stranded investments" I mean facility lines that are
2 currently in place and not being utilized and also
3 additional pressure, storage capacities and things
4 from the current water system that Lindsay Pure has,
5 but it would also not -- Lindsay Pure would lose the
6 capability of additional revenues from some of those
7 connections that may come up later on in the future.
8 And also from the current customers that they're
9 serving in that quarter mile area if that area was
10 awarded to Lindsay.

11 Q And that's for the quarter mile outside.
12 Okay.

13 A Now, as for the Gainesville area, I'm not
14 sure if Gainesville has any investments as far as
15 facility lines or anything in the area, and I'm not
16 sure if they're currently serving in that area, but
17 they do have a CCN for it. And if they -- if Lindsay
18 was awarded a CCN area for that same area, then
19 Gainesville would lose the opportunity to provide
20 service in that area.

21 Q All right. And before I go to the second two
22 areas, I wanted to do one other thing, and that is,
23 the TCEQ couldn't approve decertifying Gainesville in
24 this -- for the area of the overlap, could they, in
25 this proceeding?

1 A No, that wasn't noticed. And so since we
2 didn't have a decertification noticed, we couldn't do
3 that with this proceeding.

4 Q Okay. I want to cover the other two options.
5 Now, if the CCN were granted and excluded all of the
6 property owned by Myrick Development Company, what
7 would be the impact on the surrounding utilities? It
8 would probably be similar to the quarter mile because
9 it's all within a quarter mile. In fact, the answer
10 might be the same.

11 A Right, right, it would be the same except
12 for -- I think it would remove an impact to Lindsay
13 Pure, but it would still leave the impact to
14 Gainesville.

15 Q And then finally, what would be the effect on
16 the utilities -- of the retail public utilities if all
17 of the area south of 82, as indicated on ED-3, were
18 excluded?

19 A Let me refer to the map. One second. I
20 don't --

21 MR. RODRIGUEZ: This is ED-3.

22 A Oh. You said ED-3?

23 Q (BY MR. MacLEOD) Yeah, ED-3. I believe that
24 line -- what color is it?

25 MR. RODRIGUEZ: The blue line.

1 Q (BY MR. MacLEOD) The blue line -- if all the
2 area south of the blue line were excluded from the
3 CCN.

4 A All of the area south of it?

5 Q Yeah.

6 JUDGE NORMAN: Of the blue line.

7 A South of the blue line. Ah, if all of the
8 area south of the blue line was excluded, what would
9 be the impact? I'm sorry, can you --

10 Q What would be the impact on the utilities --
11 the different retail public utilities associated with
12 this case?

13 A The different retail -- besides Lindsay, is
14 that what you're saying?

15 Q I suppose you can go ahead and say what would
16 happen to Lindsay, too.

17 A The impact -- if the town of Lindsay were not
18 awarded the area south of this blue line, which is 83,
19 Myrick -- I'm sorry -- Myrick Development or Lindsay
20 Pure -- because Myrick Development isn't the
21 utility -- Lindsay Pure would be -- would not be
22 impacted.

23 As for the town of Lindsay, it would be
24 impacted because they've actually got some -- they've
25 got quite a few requests for service in this area, and

1 they could as a city go ahead and provide service to
2 that area and go ahead and obviously put in some lines
3 and some infrastructure to serve those connections,
4 but they would not be able to protect their investment
5 with a CCN. And by that I mean if someone else came
6 in to request a CCN for that area, the city at that
7 point would have to protest the application and go
8 through a similar type proceeding at this point
9 because they don't already have a CCN for that area.

10 There's other things they could do.
11 They could also apply for a CCN, and then we would
12 have competing applications in-house. And again, we'd
13 be back in here on a similar matter if they couldn't
14 come to settlement.

15 Q And then I guess I forgot one more question
16 which I need to ask you, and that is, could you
17 summarize your testimony briefly?

18 A Yes. I'm just going to flip through my
19 testimony to refresh my memory.

20 Q That will be fine.

21 A I begin my testimony by giving a little bit
22 of my educational background and past work
23 experiences. I also discuss how many CCN applications
24 and rate applications I've reviewed and helped process
25 at TCEQ. I discuss the fact that I've testified in

1 other CCN-related matters and also in rate-related
2 matters at SOAH.

3 I discuss that the purpose of my
4 testimony is to present the ED's position as to
5 Lindsay's proposed amendments to its water
6 application.

7 I discuss the fact that I've reviewed
8 all the prefiled testimonies, all the exhibits, all
9 the discovery and all supplemental prefiled that has
10 been filed for this proceeding.

11 I've also reviewed the town of Lindsay's
12 application with respect to the eight criteria in the
13 old rules that were in effect on August 31, 2005,
14 which are the rules -- which is the date that the
15 applicant filed its application.

16 I discuss the fact that we received
17 several protests on this application, but Lindsay Pure
18 was the only one named as a party other than the ED
19 and OPIC at the preliminary hearing.

20 I discussed the fact that as a city, the
21 town of Lindsay is not required to have a CCN to
22 extend service to any area that's outside of its city
23 limits except for where there's currently a retail
24 public utility already serving.

25 I discuss my position as to whether or

1 not the town of Lindsay can meet the eight criteria
2 for amending a CCN, that position being that I believe
3 the town of Lindsay has the capability to provide
4 continuous and adequate service to the requested area,
5 and that the town of Lindsay should be awarded all of
6 the area that it requested in its water application
7 except for the portion in -- that overlaps the city of
8 Gainesville and the portion that overlaps the area
9 where Lindsay Pure is already serving, where it
10 currently has facilities already in place or any other
11 area in the South Ridge subdivision.

12 Q Is that a summary of all your testimony?

13 A Yes, it is.

14 MR. MacLEOD: Before I pass the witness,
15 can we go off the record for just a second?

16 JUDGE NORMAN: Yes.

17 (Discussion off the record)

18 MR. MacLEOD: All right. We can go back
19 on the record.

20 JUDGE NORMAN: Okay.

21 MR. MacLEOD: Pass the witness.

22 JUDGE NORMAN: Okay. And I don't know
23 who is the least friendly and the most unfriendly now.

24 (Laughter)

25 MR. STOWE: Do you want to flip a coin?

1 (Laughter)

2 JUDGE NORMAN: Yeah, right. Do you want
3 to go first, Mr. Rodriguez?

4 MR. RODRIGUEZ: That's fine.

5 FURTHER RECROSS-EXAMINATION

6 BY MR. RODRIGUEZ:

7 Q Ms. Benter, you've been in the courtroom at
8 least for the majority of the time the testimony has
9 been provided in this case. Is that right?

10 A That's correct.

11 Q And you --

12 MR. CARLTON: Art?

13 MR. RODRIGUEZ: I'm sorry. This is the
14 only hearing where people have accused me -- have not
15 been able to hear me. Generally that's not a problem.

16 MR. CARLTON: You're just too relaxed.

17 (Laughter)

18 MR. RODRIGUEZ: Do you-all need me to
19 repeat that last question?

20 MR. CARLTON: Please.

21 Q (BY MR. RODRIGUEZ) All right. Ms. Benter?

22 A Uh-huh?

23 Q You've been here in this proceeding to hear
24 the majority -- at least a majority of the evidence
25 that's been or testimony that's been provided. Is

1 that correct?

2 A That's correct.

3 Q And specifically you were here for the
4 testimony of Mr. Metzler yesterday?

5 A Yes, I was.

6 Q And do you understand him to be the mayor
7 pro-tem of the city?

8 A Yes, I do.

9 Q Now, there were some questions regarding LPWC
10 No. 8 and the operative nature of some of the
11 provisions in that -- in the ordinance that's
12 contained in that exhibit. Correct?

13 A That's correct.

14 Q Now, and you also understand that the City of
15 Lindsay, prior to it receiving -- at least the
16 testimony yesterday was that at least prior to
17 receiving the new CCN area on September 30, 2008 that
18 the city's water CCN and the city limits were
19 basically one and the same?

20 A Correct.

21 Q Okay. And you also understand that the city
22 has not even had a chance to have a city council
23 meeting since the September 30th issuance of the CCN?

24 A Yes, I do.

25 Q Okay. Now, with respect to the criteria that

1 are used, the eight criteria that you referenced that
2 you used to evaluate the city's CCN application, those
3 are -- there are eight factors. Is that right?

4 A That's correct.

5 Q And is there one that's more heavily weighted
6 than the others?

7 A Not necessarily. They --

8 Q The rules don't provide that. Right?

9 A They don't. You're right.

10 Q It just says these are factors to consider?

11 A Correct.

12 Q Okay. Now, Ms. Benter, if the CCN that the
13 city has requested in this proceeding is issued and
14 subsequent to the issuance of the CCN a customer has
15 issues with the certificate holder, town of Lindsay,
16 they have -- there's some customer service provisions
17 that they could avail themselves of at the Commission.
18 Is that right?

19 A That's correct.

20 Q And if they own more than 50 acres, they
21 might avail themselves of a decertification process?

22 A It would have to be -- it would have to be a
23 tract of land, meaning it could be -- and by that I
24 mean it has to be one tract, but it could be 50 -- I
25 mean it has to be a 50 or more acre tract. It can't

1 be a 30 acre tract here and a 20 acre tract there, and
2 I probably shouldn't do that. The record can't get
3 "here and there."

4 Q I understand.

5 JUDGE NORMAN: Contiguous, it would have
6 to be a contiguous tract?

7 A Yes, thank you.

8 Q (BY MR. RODRIGUEZ) All right. Now, let's go
9 through this because I think you and I went through
10 this yesterday morning.

11 A Okay.

12 Q But my understanding is we need to go through
13 it again if we want to get it considered a part of
14 this proceeding.

15 A Okay.

16 Q If a landowner was unhappy --

17 A Uh-huh.

18 Q -- with the service that was being provided
19 to them by the town of Lindsay, they could avail
20 themselves, regardless of their acreage size, of
21 decertification through an application pursuant to
22 13.254(a) of the Commission -- of the Texas Water
23 Code. Is that right?

24 A Of the old rules?

25 Q No, as presently constituted. Not the

1 Commission rules, the water code.

2 JUDGE NORMAN: He's talking about the
3 water code, not the rules.

4 A Okay. Of (a), yes.

5 Q (BY MR. RODRIGUEZ) Okay.

6 A And that would be of any size. The (a)
7 doesn't specify the 50. The (a)(1) does.

8 Q There's no tract limitation -- tract size
9 limitation?

10 A Correct.

11 Q Okay. And likewise, if you wanted to avail
12 yourself of the -- what's commonly referred to at the
13 Commission as the expedited release process, you need
14 to have a tract more than 50 acres --

15 A Uh-huh, but one owner.

16 Q -- not platted and not getting service. Is
17 that right?

18 A By one owner.

19 Q Right.

20 A And (a)(1) is correct. I just wanted to make
21 sure. Yes.

22 Q Okay. And even if -- but even if the
23 property owner was not seeking decertification but
24 still was unhappy with the utility, the certificate
25 holder, there's also other customer service rules that

1 are contained within the TCEQ rules for them to avail
2 themselves of. Is that right?

3 A That's right.

4 MR. RODRIGUEZ: Okay. I pass the
5 witness, Your Honor.

6 JUDGE NORMAN: Okay.

7 MR. CARLTON: I guess that's me.

8 FURTHER RECROSS-EXAMINATION

9 BY MR. CARLTON:

10 Q Good afternoon, Ms. Benter.

11 A Hi. I can barely hear you.

12 Q I'll scoot up.

13 A Okay.

14 Q I just have a couple of questions.

15 A By "a couple," do you mean just two?

16 JUDGE NORMAN: Everybody gets a couple
17 of questions.

18 (Laughter)

19 Q (BY MR. CARLTON) Let's take a look at
20 Exhibit ED-3. Do you have that in front of you?

21 A I do.

22 Q Okay. And you revised your testimony on
23 Page 14 to indicate that you were recommending that
24 the CCN not be granted for any other area in the South
25 Ridge subdivision.

1 A That's correct.

2 Q And I want to clarify that. When you say
3 "any other area in the South Ridge subdivision," you
4 mean the area that's outlined in red on ED-3. Is that
5 correct?

6 A I wasn't up here when you guys were marking
7 this. So I don't know what the red area box is
8 supposed to stand for.

9 Q Okay. Then let me clarify this way: You
10 were here for Mr. Myrick's testimony about the South
11 Ridge?

12 A Yes, I was.

13 Q Okay. And is it your understanding that the
14 South Ridge subdivision includes Phases I, II, III and
15 IV and the well site?

16 A That's correct.

17 Q Okay. Thank you. So when you refer to any
18 other area in the South Ridge subdivision, you mean
19 all four phases plus the well site?

20 A Yes.

21 Q Okay. Thank you. I want to talk a little
22 bit with you about 13.246 and --

23 A In the old rules or new rules?

24 Q Well, 13.246 is the Water Code provision, but
25 the rules would be in 291.102.

1 A Oh, I'm sorry.

2 Q And I'm happy to talk about it in the old
3 rules if you'd like --

4 A It doesn't matter.

5 Q -- for these purposes. I really don't think
6 it matters a whole lot.

7 A Okay.

8 Q Mr. Rodriguez talked with you about the
9 criteria that are set forth, and would you agree with
10 me that the criteria that are set forth in the
11 agency's rules mimic the criteria set forth in the
12 statute?

13 A It depends if we're talking about the old
14 rules -- old statute or the new statute.

15 Q The statute in effect and the rules in effect
16 at the time the application was filed.

17 A Let me get that book and refer to it. The
18 statute that was in effect at the time the application
19 was filed, yes. In the new one, no.

20 Q Correct. So let's -- I guess for ease of
21 talking about it then, let's look at 291.102 in the
22 old rules.

23 A The old rules, okay. Okay.

24 Q And (d)(2) is the criteria where it asked --
25 it directs the Commission to consider the need for

1 additional service in the requested area.

2 A Uh-huh.

3 Q And I believe that your testimony and opinion
4 has been that the letters that are a part of DLM-10
5 and KDM-5 are adequate, in your opinion, to satisfy
6 this requirement of showing need for additional
7 service?

8 A That's one of the items I looked at, yes.

9 Q Okay. And do those letters constitute, in
10 your opinion, evidence of need for additional service?

11 A Yes, they do.

12 Q Okay. I don't know if, but maybe you do, the
13 definition of "service" has changed from August 31,
14 2005 under the old rules to the new rules. Do you
15 know?

16 A I don't believe it has.

17 Q Okay. So would you agree with me that the
18 letters that are a part of DLM-10 and KDM-5 do not ask
19 the city to furnish water to those customers?

20 A Not today, right.

21 Q Okay. So they don't ask the city to
22 undertake any action to provide them with water
23 service at this point in time. Right?

24 A I don't recall all of them, but I'd have to
25 go back and look at them.

1 Q Can we get out DLM-10? It's in exhibit --
2 Applicant's Exhibit 2.

3 A Okay. Did you say DLM-10?

4 Q I believe so, and I think we can probably
5 just look at the first letter since they all read the
6 same, with two exceptions.

7 A They don't specifically say "I want service
8 today," but they say "I am interested in water and
9 sewer service to my property located southwest of
10 Lindsay, Texas." So that to me means that they're
11 seeking service.

12 Q They're interested in it?

13 A Uh-huh.

14 Q But they're not asking the city to perform
15 any act to necessarily provide them with service at
16 this point in time?

17 A Not -- not today, no.

18 Q And are they asking the city to commit any
19 facilities or lines at this point in time for their
20 property?

21 A No, they are not.

22 Q Are they asking the city to use any lines or
23 facilities at this time to serve their property?

24 A No.

25 Q So all they're really doing is saying to the

1 city, "Hey, we're interested in being in your CCN so
2 that at some undetermined point in the future we could
3 have water or wastewater service"?

4 A Yes, that's correct.

5 Q Would you agree with me that there is not at
6 the current time a need for the city to construct any
7 facilities or commit any of its facilities to provide
8 service to areas within the requested CCN?

9 A I can't agree to that.

10 Q And why not?

11 A Because I'm not sure if from -- I haven't
12 heard any testimony today, but I don't know for a fact
13 if -- or let me rephrase -- testimony today, but I
14 don't know if they've actually received applications
15 for service in this area between the time of the date
16 that all this information was filed and now or not.
17 And if they did have a request out in one of those
18 areas, then -- and an application of service from a
19 qualified applicant, then, yeah, I do believe they
20 would have need to do that.

21 Q But you've been here for the whole
22 proceeding. Right?

23 A Yes, I have.

24 Q And there has been none of that type of
25 evidence presented in this proceeding, has there?

1 A Not to my knowledge.

2 Q Why do you think need is an important
3 criteria for determining whether or not to grant a CCN
4 over a particular area?

5 A If we don't feel that there's a need based on
6 the evidence, if it's our opinion that there is not a
7 need out there, we don't blanketly grant CCNs for just
8 blank areas where we can't show a demonstration of a
9 need for service. And the reason that we don't is
10 because -- well, for one, you may have someone on the
11 outreach of the system that's seeking service at one
12 point, and that individual may need service. And
13 whoever is getting the CCN, if they're not capable of
14 providing that service within 180 days, then we don't
15 believe that that's providing continuous and adequate
16 service. So we wouldn't grant a CCN over just a
17 blanket area.

18 It also -- one of the other reasons is
19 because of the cost of having to run lines out to
20 specific areas in the far reaches of a system. It
21 costs -- I mean, it does cost quite a bit, and that's
22 another thing that the utility or whoever is applying
23 for the CCN will have to demonstrate. And so need is
24 not one of the only factors we look at, but it
25 certainly comingles with a lot of the other factors

1 that we look at. And so we wouldn't grant a CCN for
2 an area we didn't feel comfortable there wasn't a need
3 for.

4 Q And so -- and is that because if there's no
5 need then you don't want to burden the utility with
6 the obligation to extend service or burden the
7 landowner with the obligation to get service from the
8 utility?

9 A Both.

10 Q Okay. So on ED Exhibit 3 -- and I'll use
11 Mr. Rodriguez's example with the Angers -- how far
12 would service have to be extended to serve the Anger
13 property in the southwest corner of the requested area
14 from the town of Lindsay?

15 A Let me locate the Angers on here. How far
16 from its current CCN, or are you talking about from
17 its current facility lines? I don't know where the
18 facility lines are.

19 Q Let's go with CCN boundary because I don't
20 think we've had anything admitted that say exactly
21 where the facilities are.

22 A Right. I think yesterday we said about three
23 and a half to four miles, if I remember correctly.

24 Q And are you -- you're not an engineer.
25 Right?

1 A No, I'm not.

2 Q So you don't design system extensions and
3 those kinds of things?

4 A No, I don't.

5 Q Okay. So would you defer to Mr. Maroney's
6 testimony regarding the cost of extending those lines?

7 A Yes, I would.

8 Q And if that distance is approximately 25,000
9 linear feet --

10 A Uh-huh.

11 Q -- at a cost of, for math purposes, \$20 a
12 foot, even though I think Mr. Maroney's testimony
13 was 18 -- that would be approximately \$500,000 just to
14 extend the line to the Anger property?

15 A From the CCN's current --

16 Q Boundary.

17 A Yes.

18 Q Is that the kind of obligation that you're
19 comfortable imposing upon the city and on the
20 landowners in that area?

21 A The financial obligation?

22 Q Yes.

23 A I can't really say without looking at -- no,
24 it's not, but I can't really say without knowing
25 exactly where the lines are and where everything is

1 because that's not the only factor we would consider.

2 Q Let me ask you this question: We talked a
3 little bit about the expedited release process and
4 decertification. Assume with me that the Angers end
5 up in Lindsay's CCN and assume with me that it is
6 approximately \$500,000 to extend -- to build the line
7 to extend out to them, and they want to get out and
8 the town of Lindsay opposes it. And they come in and
9 say "Look, we need to get out because it's going to
10 cost us \$500,000 to extend service to our property,"
11 would the TCEQ allow them to be removed from the
12 city's CCN solely on the basis of the financial impact
13 on the Angers?

14 A They wouldn't qualify for an expedited
15 release if they don't have at least 50 acres or more.

16 Q Okay.

17 A And you specifically said expedited release,
18 but there's other methods they can use to ask for
19 decertification.

20 Q Okay. Well, assume with me that they have
21 50 acres -- this property has 50 acres, and I don't
22 know whether the Angers do or not but in that same
23 general area. Under expedited release, will TCEQ
24 decertify based solely upon financial impact to the
25 landowner?

1 A If they had an alternative service provider
2 that was capable of serving them, yes.

3 Q And would the same thing be true under the
4 other methods for release from the CCN?

5 A Yes.

6 Q Let's turn to 291.102(d)(3).

7 A Back to the old?

8 Q Old rules; yeah, we're just going to work on
9 the old rules here.

10 A Okay. 291.102(d)(3)?

11 Q (3).

12 A Okay.

13 Q "The effect of the granting of a certificate
14 on" -- and I'm going to skip the recipient because I
15 think we've talked about that plenty -- but also "on
16 any retail public utility of the same kind already
17 serving the proximate area."

18 A Uh-huh.

19 Q Now, is it your interpretation of that rule
20 that it has to be a utility that's serving an
21 overlapping area?

22 A No, not -- no. In fact, my testimony refers
23 to a couple of other ones. I think it was Myra. I'd
24 have to look at it. I don't remember, but it refers
25 to several other utilities in the approximate area,

1 not just overlapping.

2 Q Okay. So what we're looking at is utilities
3 that not necessarily have to overlap, but could be
4 adjacent to or just in the general area?

5 A Correct.

6 Q Okay. And why do you think that criteria is
7 important for consideration when the Commission
8 evaluates an application for a CCN?

9 A There's several reasons. For one, again,
10 stranded investments. We don't like to see
11 utilities -- investor-owned utilities have
12 different -- investor-owned utilities are a little bit
13 different than -- well, they're a lot different than
14 municipalities, like the town of Lindsay's, for
15 example, and Lindsay Pure.

16 Lindsay Pure, if it has investments out
17 there that the customers have already -- it all plays
18 into whether they get a contribution in aid of
19 construction, did the customers actually give -- you
20 know, put in those facilities at their own expense and
21 then give them to the utility. So it all plays into
22 the utility may be able to recover its cost. And we
23 don't want utilities out there to go certainly
24 bankrupt or anything. So we're trying to protect any
25 investments out there from being stranded or not being

1 used and utilities to go under. That's one reason.

2 Another reason is because we're trying
3 to ensure that the Commission's policy on
4 regionalization is -- that we take that into
5 consideration. And so with regionalization we want
6 utilities that -- we're trying to prevent new
7 utilities or new facilities and certainly wells or
8 other types of water infrastructure from just
9 blanketly going out there, and we trying to make sure
10 we've got utilities that can provide continuous and
11 adequate service providing out there. We don't want
12 to leave a utility with the -- I mean, we don't want
13 to make them incapable of providing service. So we
14 don't take that into consideration.

15 Q And those are the two, from your perspective,
16 those two things that you've talked about, one, the
17 stranded investments and then regionalization?

18 A Those are two of the factors, yeah.

19 Q Okay. Let me deal with regionalization real
20 quickly because you talked about something -- and I
21 agree with you -- the policy is in place in order to
22 prevent this proliferation of utility systems.

23 A Right.

24 Q And would you turn with me to Exhibit 2 to
25 your testimony, TB-ED-2, particularly on Page 4 and

1 particularly the statement about who the
2 regionalization policy applies to. Does the
3 regionalization policy apply to CCN amendments?

4 A It does not, but we do take the factors of
5 regionalization still under consideration for the
6 provision of continuous and adequate service.

7 Q Okay. And perhaps the reason it wouldn't
8 necessarily apply to CCN amendments is because you
9 already have those utilities in place and there is no
10 further proliferation caused by the issuance of a CCN.
11 Right?

12 A Not by the issuance of a CCN, but if for some
13 reason they had to, depending on population density or
14 density of development, and for whatever reason, if
15 they needed to put in a new system, we would certainly
16 consider that in the future.

17 So if we're going to grant a CCN for a
18 larger area, we're certainly going to take
19 regionalization into consideration being the utility
20 may have to come in and add additional plants later on
21 or drill any well or so forth.

22 Q Okay. So is it your understanding that the
23 town of Lindsay can serve the proposed CCN area
24 without drilling an additional well?

25 A They can serve up to another 300 and