

1 something connections, yes.

2 Q And is it your understanding -- how many
3 acres are in this area that they're requesting?

4 A I don't know. They've cut some out, and I
5 can't -- we went over that, and there wasn't an exact
6 acreage given.

7 Q Do you remember how many they had originally
8 applied for?

9 A I can go back to the application and look.
10 It was in their notice, but I don't remember off the
11 top of my head.

12 Q I'm going to say it was around 18,000.

13 A That's correct.

14 Q Okay. Do you think there would be in the
15 future only the 301 more connections within this
16 18,000 acres?

17 A I have no idea. It just depends on what type
18 of development goes out there.

19 Q How many connections does the town of Lindsay
20 currently serve? I think in your testimony you said
21 399.

22 A Yes, I amended my testimony based on
23 information given yesterday.

24 Q Would you take Exhibit DLM -- well, ED-2 --
25 ED-3 because it's the one we have out. The big map,

1 it's the same. It's been marked on.

2 A Yes, okay. Are you talking about ED-3?

3 Q ED-3.

4 A Okay.

5 Q The map that's been marked on.

6 A Uh-huh.

7 Q I believe in that map it shows -- can you
8 distinguish on that map the area that's within the
9 current city limits of Lindsay?

10 A They don't have the city limits marked on
11 here.

12 Q It's, I believe, really hard to see, but it's
13 a faint yellow line.

14 A And I can't -- I don't know if I'm -- I don't
15 think I'm colorblind, but I really don't see a yellow
16 line anywhere.

17 MR. CARLTON: May I approach?

18 JUDGE NORMAN: Sure.

19 A Oh, okay. I faintly see it. Yeah. Okay. I
20 do see the yellow line.

21 Q (BY MR. CARLTON) Given the size of the town
22 of Lindsay and the fact that there are 399 connections
23 within that area --

24 A Uh-huh.

25 Q -- would you anticipate that there would only

1 be 301 connections in the rest of the 18,000 acres
2 that were being applied for?

3 A Absolutely not.

4 Q So there would be additional facilities that
5 would need to be constructed, a well -- wells at least
6 in particular or maybe other connections to service
7 water treatment plants, in order to enable Lindsay to
8 serve the rest of this area?

9 A Maybe even ground water. I know you just
10 said surface, but possibly ground.

11 Q Wells or groundwater, but we would have
12 additional facilities that would have to be
13 constructed in order to accomplish that?

14 A Additional connections after the 300 and
15 something, yes.

16 Q Okay. What factors does TCEQ consider when
17 evaluating the impact on these retail public utilities
18 in the approximate area?

19 A I'm sorry. I thought I --

20 Q Well, you talked about it being important
21 because of the regionalization policy and -- oh, it
22 was the other one -- I can't remember. Give me the
23 two you --

24 A The recovery of costs by the utilities.

25 Q Recovery of costs. So is there any

1 importance given to the ability of a utility to expand
2 its service area over time and take advantage of
3 economies of scale and redundancy of systems by having
4 a larger system?

5 A I guess I'm not sure what -- I don't
6 understand your question.

7 Q Well, I guess my question really is, does the
8 TCEQ give any consideration to a retail public utility
9 in the approximate area having -- continuing to have
10 the ability to expand its system in order to create
11 economies of scale for that system, create redundancy
12 and equipment as a result of increased size of
13 facilities, multiple wells, is that considered when
14 you are evaluating the impact on a retail public
15 utility in the approximate area?

16 A No.

17 Q Could that possibly result in, over the long
18 term, a retail public utility no longer being a viable
19 operating entity?

20 A It's possible, yes. It's difficult for us to
21 take that into consideration if we don't have an
22 application from them in-house to actually look to see
23 what they currently have and what they're available to
24 serve.

25 Q If that kind of utility were to file an

1 application without any letters requesting service or
2 requesting inclusion in the CCN, how likely would it
3 be that that application be granted?

4 A We would certainly ask them for additional
5 information, and that additional information could be
6 "I'm the property owner. I want to serve my
7 property," and we would say okay.

8 Q But if that applicant doesn't own the
9 property that he's trying to seek to extend the CCN
10 into --

11 A Uh-huh.

12 Q -- what is the likelihood of that application
13 being approved?

14 A He would have to demonstrate a need for
15 service, and then we would approve it.

16 Q And is the way he would demonstrate the need
17 through those letters?

18 A Not -- in today's rules, there's different
19 ways of demonstrating need. There's the economic
20 need. I'd have to refer to them to give you the list
21 of them, but there's plenty of ways besides just
22 service requests to demonstrate a need for service.

23 Q Well, let's go to the new rules then because
24 that would be what would be necessary now if one was
25 filing an application. Correct?

1 A That's correct. Do you want me to give you
2 those now other than the --

3 Q Are you referring to the items listed under
4 two -- under (d)(2) now, (A) through (E)?

5 A Yes. And just for the record, I want to
6 clear up when we're referring to the old rules and the
7 new rules, I'm just referring to these two because
8 there's even a newer one than this that was adopted
9 August the 22nd, but none of this part has changed.

10 Q Right.

11 A Okay.

12 Q Okay. So clearly the letters we're talking
13 about would fall under (2)(A) and (2)(D)?

14 A Yes.

15 Q What's the difference between (2)(A) and
16 (2)(D)?

17 JUDGE NORMAN: Does someone have an
18 extra copy of the newer rules? I had it, but it's
19 under something.

20 MR. MacLEOD: We'll get it for you.

21 JUDGE NORMAN: I'm sorry?

22 MR. MacLEOD: We're getting that for
23 you. It will be just a minute.

24 JUDGE NORMAN: Okay. Sure, please.

25 Thank you.

1 A Could you repeat the question?

2 Q (BY MR. CARLTON) What's the difference
3 between 291.102(d)(2)(A) and (D)?

4 A (D) allows for a developer. A developer is
5 not necessarily the landowner or perspective
6 landowner. The developer may be someone hired or
7 someone that doesn't really own the property, but
8 they're developing a specific property. They don't
9 necessarily have to be a landowner.

10 Q What kind of authority would they have to
11 show to make those requests, or could they make a
12 request without having any authority to do that for
13 that particular piece of land?

14 A Well, it could be an affiliate of the
15 developer -- I'm sorry -- of the landowner, and we see
16 that quite often. Like, for example Mr. Myrick, if he
17 owned Myrick Development and we know he's an affiliate
18 of Myrick Development, Myrick Development said "I want
19 to develop this property," and gave that to Lindsay
20 Pure, okay, we would -- we would accept that.

21 Q But you wouldn't accept an application from a
22 developer over land that he didn't have some sort of
23 ability to control or speak for, would you?

24 A No.

25 Q Okay. Explain to me what economic needs are.

1 MR. RODRIGUEZ: Your Honor, I'll object
2 to this line of questioning as these aren't part of
3 the rules that are applicable in this case. I'm not
4 exactly sure why we need to go through the exercise
5 here.

6 JUDGE NORMAN: Why is it relevant?

7 MR. CARLTON: Well, I think what we
8 talked about earlier when we talked -- when we were
9 having our kind of admissibility discussion over these
10 letters and the need -- and I haven't gone through
11 that line of questioning for purposes of this part of
12 the record, but clearly the agency, and I believe
13 Ms. Benter, at that point in time testified that this
14 really ended up codifying agency policy as to how they
15 considered all these projects.

16 JUDGE NORMAN: Right.

17 MR. CARLTON: And so all I'm trying to
18 do is find out what this agency practice means, I mean
19 when we consider economic need and for purposes of
20 Lindsay's application, but also for purposes of a
21 future application. Because by granting a CCN to the
22 town of Lindsay, that precludes my client from filing
23 an application except to decertify and compete with
24 the town of Lindsay, which I would expect could be
25 problematic.

1 In addition, I think there's been some
2 question as to why my client didn't file an
3 application. And I want to make it clear there's no
4 need for a service in this area, and so I'm going to
5 that. I'm going to try to eliminate economic need,
6 landowner requests, environmental need. Let's just go
7 through those things.

8 JUDGE NORMAN: Okay. I'm going to
9 permit it.

10 MR. RODRIGUEZ: I'm sorry?

11 JUDGE NORMAN: I'm going to permit the
12 testimony. Go ahead.

13 Q (BY MR. CARLTON) Yeah, can you explain to me
14 what "economic needs" means in this section?

15 A Sure. Economic needs can be anything from --
16 let's use the stranded investment situation again.
17 Mr. Myrick -- I keep saying Mr. Myrick.

18 Lindsay Pure currently has facility
19 lines in some of those phases where they're already
20 serving some connections and customers or even beyond
21 that in that quarter-mile area. That's an economic
22 need for somebody -- like I know we don't have an
23 application from him, but the facility lines are an
24 economic need. Obviously they've already spent the
25 money to put it in there, and we would consider that

1 as one of the factors. It wouldn't be an overriding
2 factor and have weight over anything else, but that's
3 one of the types of factors that we consider.

4 Economically distressed areas, we
5 consider an economic need for that area in order -- I
6 mean, obviously they need water service in order to
7 live in that area, and so we would take that into
8 consideration as well instead of having to haul water
9 and that type of thing.

10 An economic need would also be, for
11 example, the hauling of water. If they're having to
12 haul water and there's a bunch of people already
13 living in that area, it certainly -- or it may be even
14 cheaper in the long run for them to have a central
15 retail water system than having to haul water and pay
16 for transportation costs of actually hauling all this
17 water in. That's another economic need that we look
18 at.

19 If a development in an area is growing
20 so much that it's bringing a lot of industrial type or
21 a lot of job growth and stuff like that in the area
22 and there's a new plant coming on, like in San
23 Antonio, for example, Sony or Toyota or whatever it
24 was that came out there, we would certainly consider
25 that.

1 Q Okay. In this proceeding in any of the
2 area -- and I'm going to limit it to the area south of
3 U.S. 82 and the town of Lindsay's existing CCN -- have
4 you seen any evidence of economic need for service?

5 A That wasn't one of the things I considered in
6 this application. We were still under the old 291.

7 Q I thought you had testified earlier that
8 these factors were a codification of agency practice?

9 A They're a part of what -- I mean, they are,
10 but that's not the only thing we considered to
11 demonstrate a need for service.

12 Q I understand. So --

13 JUDGE NORMAN: In any case, you didn't
14 look at it for this application?

15 A No, I didn't look at it for this application.

16 Q (BY MR. CARLTON) Have you seen anything
17 while being here at the hearing that would indicate to
18 you there is an economic need in this area, in the
19 area south of U.S. 82?

20 A No, not at this time.

21 Q Let's talk a little bit about environmental
22 needs.

23 A Uh-huh.

24 Q What does the agency consider when evaluating
25 environmental needs?

1 A Environmental needs, one of the things we
2 look at -- and I know we severed the sewer portion,
3 but I'm going to use that as an example.

4 Right now a lot of the development south
5 of the blue line here on Exhibit ED-3, a lot of that
6 area, from what I've heard, they use septic as a
7 method of -- or for their sewer. That's their method
8 of having a sewer system of some sort. It's not a
9 retail sewer system, but they do have septic systems.

10 All the punching of holes and the
11 proliferation of the ground due to all the punching of
12 holes to get each septic system in, that's one of the
13 things that we look at. That's one of the
14 environmental needs. We see or we view a centralized
15 sewer system to be better than 80 million holes in the
16 ground for all these different homes going in the
17 area. So that's one of the things we look at.

18 We look at different things like that,
19 disturbance of the earth while lines are being laid
20 and if there's going to be -- if there's dual
21 certification, which there isn't in this application,
22 I mean there is for the -- they've asked for the area
23 where Gainesville -- Lindsay has asked for the area
24 where Gainesville currently has a CCN. For that area,
25 we certainly look at, you know, the disturbance of the

1 earth twice, not only from Gainesville putting in
2 lines, but also the possibility of Lindsay putting in
3 lines. That's all an environmental need for us.

4 Q Based on what you've testified to --

5 A Uh-huh.

6 Q -- it doesn't sound to me that there are any
7 environmental needs that you've identified on the
8 water side of things for the areas south of U.S. 82.
9 Is that correct?

10 A I feel that there are some environmental
11 needs here.

12 Q For water?

13 A For the water, yes.

14 Q And what would those be on the south side of
15 U.S. 82?

16 A Lindsay currently has the capability of
17 serving some additional -- 300 and something
18 additional connections outside of what it's currently
19 certificated to, and they wouldn't have to drill
20 another well right now in order to do that.

21 Q Okay.

22 A Beyond that 301, they would have to. So the
23 environmental need there would be -- they don't have
24 to punch another hole in the ground or maybe two or
25 three to finally hit water if they're going to get

1 groundwater.

2 Q And so to the extent that Lindsay Pure Water
3 has additional well capacity to serve other
4 connections, they would also be able to fill that
5 environmental need?

6 A Absolutely.

7 Q Let's talk about (E) a little bit for reports
8 or market studies demonstrating anticipated growth.
9 Have you seen any evidence along those lines in this
10 proceeding?

11 A I have seen the census information that was
12 attached to -- I believe it was Mr. Metzler's
13 testimony, but I can't remember without referring to
14 it.

15 Q Okay. So apart from that U.S. Census Bureau
16 data, you've seen no other studies or anything
17 indicating growth or anticipated growth in the area?

18 A Well, I haven't seen any per se market
19 studies, but I have seen things that have told me that
20 there's -- I have seen a demonstration of the existing
21 growth in the area.

22 Q And that was through what?

23 A ED-3.

24 Q So you're considering growth in the area to
25 be demonstrated by the letters that were submitted?

1 A Not the letters. I'm talking about the map
2 in this case. I wasn't -- by looking at the map, you
3 can actually see the size of the properties roughly --

4 Q Okay.

5 A -- and the shape of the properties, and some
6 of them are quite large, and the owners' name is
7 there. And so you can say "Oh, well, obviously
8 there's growth." And these properties here look like
9 they all are seeking service from someone at some
10 point.

11 Q Okay. So your opinion on growth is based
12 upon the large tract size and the letters in
13 combination?

14 A More so the map than the letters.

15 Q Okay.

16 A And the reason I say that is because we may
17 have the letters, but it may just be -- I mean, it may
18 just be 13 RV lots. I don't know, or 53 or however
19 many. So they're smaller lots than some of these
20 bigger ones.

21 MR. CARLTON: Pass the witness.

22 JUDGE NORMAN: Okay. Mr. MacLeod?

23 FURTHER REDIRECT EXAMINATION

24 BY MR. MacLEOD:

25 Q I want you to take another look at ED-3.

1 A Okay.

2 Q If service were extended to the Angers'
3 property, which is the one that's furthest away from
4 the CCN boundary -- the current CCN boundary, give me
5 a rough number of how many other requests that line
6 would have to go by. You don't have to count them.
7 It's kind of obvious.

8 A Ten or twelve.

9 Q Now, if each -- if each of these requestors
10 had the same amount of success as Mr. Myrick has had
11 in 20 or so houses, wouldn't that spread that \$500,000
12 cost out a little bit?

13 A Absolutely.

14 Q Also, back to the factors. If we're talking
15 about 291.102(d), right above that is (c). (d) says
16 "the Commission shall also consider:" So the
17 Commission -- these are just examples of what might be
18 things that the Commission is supposed to consider.
19 Is that right?

20 A That's correct.

21 Q And what's the -- what's the overall test?

22 A The financial, managerial and technical
23 capability of the applicant to provide continuous and
24 adequate service to the requested area.

25 Q And would it also include necessary for the

1 service, accommodation, convenience and safety of
2 the --

3 A I was just about to say that.

4 Q Okay. Go ahead and say it.

5 A And the service, convenience and
6 accommodation and safety of the public.

7 Q Now, would one of those considerations be
8 increasing economic opportunities for the use of the
9 land by doing such things as eliminating the powers
10 that 8, the city ordinance, has for limiting requests
11 for out-of-city service?

12 A I'm sorry. You're going to have to repeat
13 that.

14 Q Okay. Would one of the considerations that
15 you took in -- when you were considering whether or
16 not we would recommend granting the CCN, would one of
17 those considerations be that those people owned that
18 property would now be able to get -- have more
19 opportunities for selling their land because they
20 could now be in a CCN?

21 A That's correct.

22 MR. MacLEOD: Pass the witness.

23 JUDGE NORMAN: Mr. Rodriguez?

24 FURTHER RECROSS-EXAMINATION

25 BY MR. RODRIGUEZ:

1 Q Ms. Benter, I'm going to ask you some
2 questions that were raised when Mr. Carlton was
3 cross-examining you.

4 A Okay.

5 Q I think you made the statement, Ms. Benter,
6 that you haven't seen or heard any testimony in your
7 time here regarding I believe both economic and
8 environmental needs.

9 A I don't remember what I said.

10 Q Okay. Well, I believe -- we can go back and
11 take a look at it, but did you review the prefiled
12 testimony that was filed by Mr. Stowe and Mr. Maroney?

13 A Yes, I did.

14 Q Okay. And in those testimonies, don't they
15 also evaluate the application of utilizing the new
16 factors?

17 A They do.

18 Q And don't they discuss those in that prefiled
19 testimony?

20 A They do, but again, I didn't consider them
21 because we were under the old.

22 Q So there is some testimony with respect to
23 that in this case?

24 A Yes, but I believe -- I'm sorry. When I
25 answered the question, Mr. Carlton was asking me

1 specifically about what did I hear today or yesterday.

2 Q Okay.

3 A But, yes, they do talk about the other
4 factors in Mr. Stowe's testimony and Mr. Myrick's --
5 I'm sorry, not Mr. Myrick's -- Meltzer's or Metzler's.

6 Q And in Mr. Maroney's as well?

7 A Mr. Maroney's, too, yes.

8 Q Now, is part of your evaluation of a CCN
9 application -- obviously there needs to be some
10 demonstration of a technical, managerial and financial
11 capability to provide continuous and adequate service.
12 Does the --

13 JUDGE NORMAN: Is that true?

14 A That's true.

15 Q (BY MR. RODRIGUEZ) And does that capability
16 require the applicant to demonstrate they have already
17 constructed all the facilities necessary to provide
18 every possible connection within the area that they're
19 requesting service to?

20 A No, it does not.

21 Q Okay. In this case -- and you evaluated the
22 City of Lindsay's application. Is that correct?

23 A Yes, I did.

24 Q And based on the evaluation and the testimony
25 that you've sat through here, you're comfortable with

1 the fact that the City of Lindsay has the capability
2 to provide service to its requested service area, with
3 the exception of the two areas that you talked about,
4 the South Ridge of Lindsay area and the city of
5 Gainesville overlap area. Is that right?

6 A That's correct.

7 Q Now, there was some questions with respect to
8 the definition of "service," and I believe the
9 regulatory definition and statutory definition are
10 almost identical. Would you agree with me on that?

11 A Give me a moment to review them.

12 Q Okay.

13 A They are almost identical.

14 Q Okay. Now, but even based on the definition
15 of "service" as contained in both the Water Code as
16 well as in Chapter 291, you're comfortable that the
17 requests for service that the city submitted are in
18 evidence in this case are indeed requests for service
19 for application of a new or an amended -- I'm sorry --
20 an amended CCN. Is that right?

21 A I believe that they demonstrate a need for
22 service, yes.

23 Q Now, let me ask you, there was some questions
24 from Mr. Carlton regarding economies of scale.

25 A Uh-huh.

1 Q Do you recall that testimony?

2 A I do.

3 Q Ms. Benter, I'm going to ask you to look at
4 ED No. 3 here --

5 A Okay.

6 Q -- just because it's the map that's right in
7 front of you.

8 A Okay.

9 Q And you'll agree with me, wouldn't you, that
10 it shows the City of Lindsay's existing water CCN
11 service territory as well as the city of Gainesville's
12 existing water CCN service territory. Right?

13 A That's correct.

14 Q Now, also there is an area that is between --
15 that's kind of actually bounded by the City of
16 Lindsay's existing, the City of Lindsay's proposed CCN
17 area and Gainesville's existing CCN area that is
18 uncertificated. Is that correct?

19 A That's correct.

20 Q Now, if Mr. Myrick or Lindsay Pure Water
21 Company sought to certificate that area because for
22 whatever reason they sought to do that, they could --
23 that's an area eligible for them to seek
24 certification, isn't it?

25 A The area that's not -- that is unrequested?

1 Q Yes, uncertificated.

2 A Yes, yes. Well, okay.

3 Q They'd have to make demonstrations to
4 actually receive it. I understand that, but they
5 could --

6 A Right, but when you said "uncertificated," I
7 still see this and that, because we're not done with
8 this proceeding, as uncertificated.

9 Q I understand that.

10 A Okay. Okay.

11 Q My question was specific to the area bounded
12 by --

13 A Okay.

14 Q -- by those three areas --

15 A Yes, okay.

16 Q -- that we discussed.

17 A Okay.

18 Q Now, in response to Lindsay Pure Water
19 Company's questioning, you used the term "qualified
20 applicant" during one of the responses. Can you tell
21 me what you mean by "qualified applicant"?

22 A I think -- I believe I was referring to an
23 application for service, for water or sewer utility
24 service. And what I mean by "qualified applicant" is
25 if someone can meet all the service requirements and

1 pay all the application fees and fees related to like
2 a tap fee or whatever they have to pay to get service
3 from a utility, then they would be considered a
4 qualified applicant, and then they would be eligible
5 for service.

6 Q Okay. Is there a difference in your mind
7 between a qualified applicant and a requester for
8 service?

9 A Absolutely.

10 Q Okay. Can you please tell me what that --

11 A A requestor for service at that point hasn't
12 demonstrated that they meet all the prerequisites to
13 obtain service. At that point, I'm not sure if
14 they've paid all the fees, if they've actually met all
15 the application or service requirements in order to --
16 like easements or whatever else is in the application
17 for service. At that point, I'm not aware whether
18 they've been able to meet those standards or not to be
19 able to get service.

20 Q And a CCN holder's obligation under the TCEQ
21 rules are -- only extend to existing customers and
22 qualified applicants. Is that right?

23 A Can you repeat that?

24 Q Yeah, the TCEQ rules regarding customer
25 service --

1 A Uh-huh.

2 Q -- or the provision of continuous and
3 adequate service I guess is a better way to
4 characterize it, extends only to existing customers as
5 well as qualified applicants?

6 A Correct.

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

9 JUDGE NORMAN: Mr. Carlton?

10 MR. CARLTON: No questions.

11 MR. MacLEOD: No more questions.

12 JUDGE NORMAN: Thank you very much.

13 We're going to take a little break.

14 (Discussion off the record)

15 (Proceedings recessed at 4:30 p.m.)

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TRANSCRIPT OF THE 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

THURSDAY, OCTOBER 9, 2008

BE IT REMEMBERED THAT AT approximately
8:30 a.m., on Thursday, the 9th 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 Lou Ray, a
Certified Shorthand Reporter of:

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Pages 512 - 601

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P R O C E E D I N G S

THURSDAY, OCTOBER 9, 2008

(8:30 a.m.)

JUDGE NORMAN: Okay. Let's go on the

record.

MR. RODRIGUEZ: Your Honor, at this time
the City of Lindsay recalls Jack Stowe.

JUDGE NORMAN: Okay. And, Mr. Stowe,
you're still under oath.

WITNESS STOWE: Yes, sir.

REBUTTAL PRESENTATION ON BEHALF OF

TOWN OF LINDSAY

JACK E. STOWE, JR.

having been previously duly sworn, testified as
follows:

DIRECT EXAMINATION

BY MR. RODRIGUEZ:

Q Mr. Stowe, were you in the courtroom
yesterday when you saw Mr. Myrick present his direct
testimony?

A Yes, I was.

Q And also when Ms. Benter was -- provided her
testimony as well?

A Yes, sir.

Q Let me ask you specifically with Mr. Myrick's

08:28 1 testimony, was there anything in his testimony that
2 caused you any concern with respect to the investment
3 that Lindsay Pure Water Company has made?

4 A Yes, sir.

08:29 5 Q Would you explain that for us?

6 A According to Mr. Myrick's testimony, he
7 testified that the infrastructure investment cost and,
8 to some extent, the start-up operating cost had been
9 consolidated, captured, into the cost of the lots that
08:29 10 were sold and the selling price of those lots. Myrick
11 Development -- the relationship between Myrick
12 Development and Lindsay Pure Water is one of an
13 affiliated company. And specifically within the Texas
14 Water Code under Chapter 13 there's specific rules and
08:29 15 regulations as to how affiliated transactions are to
16 be reviewed and determined whether reasonable or not.

17 In this particular case, if that
18 testimony is correct, then what we have by examining
19 the income tax statements that I looked at is that we
08:30 20 have the development company capturing the investment
21 cost of the infrastructure and recovering that
22 infrastructure cost through the sale of the lots and
23 reporting that revenue on the books of Myrick
24 Development. However, the infrastructure investment
08:30 25 cost is actually recorded on the books of Lindsay Pure

08:30 1 Water, and those costs are being depreciated and
2 recovered through rates.

3 So under the circumstances that were
4 presented in the testimony yesterday, the
08:30 5 infrastructure cost is actually being paid for by the
6 ratepayer twice, once through the sale of the lot and
7 the purchase of the lot, which incorporates the cost
8 of the infrastructure, and then in the payment of
9 rates that incorporates the cost of the infrastructure
08:30 10 through depreciation expense.

11 Q Mr. Stowe, you mentioned that you examined
12 income tax statements from Lindsay Pure Water?

13 A That is correct.

14 Q Now, yesterday there was admitted into
08:31 15 evidence an Applicant's Exhibit APP-7?

16 A That's my understanding, yes, sir.

17 Q And is this one of the documents that you
18 reviewed last night in preparation for your testimony
19 today?

08:31 20 A That's the 2007 tax return.

21 Q It's right up here. We can grab that for
22 you.

23 A Yes, sir, this is the tax return I reviewed.

24 Q And did you have an opportunity last night to
08:31 25 come to any conclusions about Lindsay Pure Water

08:32 1 Company's ability to provide service -- continue as an
2 adequate service based on your review of the income
3 tax statements?

4 A Yes, sir, I did.

08:32 5 MR. RODRIGUEZ: Okay. At this point,
6 Your Honor, we're going to hand out a document.

7 (Exhibit APP No. 8 marked)

8 Q (BY MR. RODRIGUEZ) Mr. Stowe, I'm handing you
9 what is being marked as Applicant's Exhibit No. 8 and
10 ask you if you recognize that document.

08:32 11 A Yes, sir. This is a sheet that denotes some
12 of the analysis -- a portion of the analysis that I
13 performed last night.

14 Q Okay. Can you please walk us through that
08:32 15 and, if you can, provide us where in the -- where you
16 drew these numbers from as well as you walk through
17 the analysis, I would appreciate it.

18 A Yes, sir. The first line item on Exhibit
19 APP-8 is the 1997 capital cost of 101,854. That
08:33 20 number is obtained from Exhibit APP-7, the last page
21 of that exhibit, which is a listing of the assets of
22 the investor-owned utility Lindsay Pure Water.

23 Q Let me just stop you right there. And by the
24 last page, it's the Bates page number LPWC00250. Is
08:33 25 that right?

08:33 1 A That's correct.

2 Q All right. Please continue.

08:33 3 A The \$101,854 is the calculation of the
4 original cost basis for the assets that were placed in
5 service according to this schedule on September 26th,
6 1997.

08:34 7 The next line is the 1997 organization
8 cost, which is shown on down on this schedule down
9 towards the bottom where it says "amortization." You
10 have the organization cost of 9/26/97 of 1687, and
11 then start-up cost of -- dated 9/26/97 of \$792.00 that
12 follows \$2,479 reflected on APP-8.

08:34 13 From that amount those two -- excuse me,
14 those two numbers on APP-8 total \$104,333, which
15 represents the capital investment for Lindsay Pure
16 Water at the date of origination as far as invested
17 capital.

08:35 18 So to determine where that invested
19 capital came from, I went to Exhibit APP-7 and Bates
20 stamp LPWC00238. Presented on this tax return is a
21 balance sheet. And specifically I'm looking at Line
22 22, capital stock of \$25,000, and also additional paid
23 in capital at that time of \$16,000. So there's a
24 total capital infusion, if you would -- original
25 capital infusion of \$41,000.

00:35 1 So if I take the \$41,000 from the
2 \$104,333 that we calculated, this indicates that there
3 must have been a loan made from Myrick Development
4 Corporation approximately of \$63,333.

08:35 5 Q And that's MDC was your shorthand --

6 A MDC is shorthand for Myrick Development
7 Corporation.

8 If I go to the capital additions through
9 2006, which again is reflected on APP-7, Bates code --
08:36 10 the last page, Bates code LPWC00250, and adding up the
11 capital compound investment -- infrastructure
12 investment taking place since 1997, when you add those
13 assets together that are listed there on pages --
14 excuse me, line items 7 through 14, we have a total
08:36 15 capital additions through 2006 of \$60,629.

16 During that same period of time now,
17 from 1997 to 2006, the company recorded on its books
18 depreciation in the amount of 73,973. This can be
19 found on APP-7, Bates number LPWC00238, Line 10B,
08:37 20 Column C. In other words, the company had recovered
21 investment costs and -- or also cash -- had recovered
22 \$13,344 more than what they had put in investment
23 during that period of time.

24 In addition, through the 1997 through
08:37 25 2006 time frame, the company incurred an operating

08:37 1 loss of approximately \$82,000. This can be found also
2 on APP-7, Bates number LPWC00238 at Line 24, Column B.
3 And the actual number shown in Column B is 82,211.

08:38 4 The total of these numbers that I've
5 just gone through is penciled in, I believe, on the
6 exhibit that you have on APP-8 at 131,989. And that
7 number represents 600 -- excuse me, the \$63,333 minus
8 the 13,344 in excess cash, plus the \$82,000 in
9 estimated -- or actual losses through 2006. That
08:38 10 131,989 that I calculated -- and these are a little
11 bit off, but not much -- compares to the MDC note --
12 or Myrick Development Corporation note -- of 131,669,
13 which is reflected in Column B, Line 18, "Other
14 Current Liabilities." And you'll see that it says
08:39 15 "See Statement 2" typed out to the side.

16 Statement 2 is reflected in APP-7, Bates
17 number LPWCO0247 as due to MDC, which is Myrick
18 Development Corporation. And you'll see the 131,669.
19 So basically at this point I have reconciled the note
08:39 20 outstanding to Myrick Development to the cash flows
21 that have taken place within the company.

22 Q And that analysis that you went through, what
23 does that suggest to you?

24 A Well, a couple of things. First I would
08:39 25 note, if you look at APP-7, LPWC0023 -- excuse me.

00238 -- the company at this juncture on
December 31st, 2007 had \$1949 in cash, had net assets
of \$88,509. Against that they had a note to Myrick
Development, which is a short-term note as it's listed
under current liabilities, of \$131,669. So basically
at this date of 2007 the company is insolvent.

JUDGE NORMAN: By the difference between
those two amounts. Is that right?

WITNESS STOWE: Exactly. They owe
\$131,669 and they only have \$90,000 in assets.

JUDGE NORMAN: Okay.

Q (BY MR. RODRIGUEZ) Mr. Stowe, in formulating
your opinion, is relying on an income tax statement as
contained in APP-7 a -- the type of statement that one
in your field would rely on in formulating the
opinions that you make?

A Yes. I would also add at this juncture, you
will see that there has been no relief of the assets
for -- reflective of any of the cost recapture
associated with the infrastructure that, if the
testimony of Mr. Myrick is correct, then those
revenues obviously are being recorded on Myrick
Development Company's books and not being reflected on
the books of its affiliated company Lindsay Pure
Water.

08:42 1 If Lindsay Pure Water were a stand-alone
2 utility without the affiliated relationship, these
3 cost recoveries would have been reflected as developer
4 contributions or contributions in aid of construction
08:42 5 and would have offset the cost of the facilities.

6 Q Now, Mr. Stowe, in reviewing APP-7, were
7 there any other issues that caused you concern about
8 Lindsay Pure Water Company?

9 A There is.

08:42 10 Q Please explain that to me.

11 A The analysis that I have just gone through
12 with you is analysis to reconcile the note that we
13 have outstanding -- or that Lindsay Pure Water has
14 outstanding to Myrick Development company. However,
08:43 15 if we do more of a cash-on-cash analysis, other
16 concerns are raised, which at this time I don't have
17 answers for and I really can't speculate. But to give
18 you an idea, if we look at LPWC --

19 MR. CARLTON: I'm going to object to
08:43 20 continued testimony. The witness has just stated that
21 the opinion he's about to give is speculation and that
22 it's not based upon a sufficient amount of facts for
23 him to give a definitive opinion about it.

24 JUDGE NORMAN: Okay.

08:43 25 MR. RODRIGUEZ: Actually, I don't think

08:43

1 that's what he said, Your Honor. I think what he said
2 was he didn't have an explanation for the numbers
3 that -- as to why the discrepancy he's about to
4 testify to exists, but he wants to bring out the
5 discrepancy, I believe, is what he said.

08:43

6 JUDGE NORMAN: Is that right?

7 WITNESS STOWE: That's right, sir.

8 JUDGE NORMAN: And so you're not
9 speculating?

08:43

10 WITNESS STOWE: No, sir. The numbers
11 I'm fixing to give are factual numbers obtained from
12 the tax return.

13 JUDGE NORMAN: And cause you concern?

14 WITNESS STOWE: That's correct, sir.

08:43

15 JUDGE NORMAN: As your expertise in
16 financial -- okay. I'm going to overrule the
17 objection.

18 MR. RODRIGUEZ: And actually, Your
19 Honor, at this point we will request admission of
20 Exhibit APP-8.

08:44

21 JUDGE NORMAN: Any objection?

22 MR. CARLTON: No objection.

23 JUDGE NORMAN: Excuse me, your name is
24 Mr. --

08:44

25 MR. SIANO: Siano.

08:44

1 JUDGE NORMAN: Siano?

2 MR. SIANO: Yes.

3 JUDGE NORMAN: Any objection?

4 MR. SIANO: No objection.

08:44

5 JUDGE NORMAN: It's admitted.

6 (Exhibit APP No. 8 admitted)

7 Q (BY MR. RODRIGUEZ) Mr. Stowe, I'm sorry, can
8 you please explain to me -- or you began your
9 additional concerns with respect to Lindsay Pure Water
10 Company.

08:44

11 A Yes, sir. According to the tax return --
12 again looking at APP-7, Lines 22 and 23, Column D, we
13 have --

14 JUDGE NORMAN: What page?

08:44

15 WITNESS STOWE: Excuse me, that's
16 LPWC00238.

17 JUDGE NORMAN: Okay.

18 A This tax return reflects that the company had
19 \$25,000 in origination stock and \$16,000 in paid in
20 capital, which is a total of \$41,000 in cash.

08:45

21 On this same document, same page, at
22 Line 18, we see that the company had a note to Myrick
23 Development Corporation which constitutes cash of
24 \$131,669. We also see that the company, through this
25 period of time, had recovered through a noncash

08:45

08:45 1 expense -- had recovered cash associated with
2 depreciation of \$73,973.

3 We also see --

4 JUDGE NORMAN: And where is that?

08:45 5 WITNESS STOWE: Excuse me, sir, that is
6 on Column C of Line --

7 JUDGE NORMAN: I see it.

8 WITNESS STOWE: -- 11B.

9 JUDGE NORMAN: Right. 10B?

08:45 10 WITNESS STOWE: 10B, yes, sir.

11 JUDGE NORMAN: All right.

12 A We also see on column -- on this same page
13 Column C at 13A that the company had recovered the
14 noncash amortization expense of the start-up cost of
08:46 15 \$2,479. When we totaled these four items, the total
16 cash that the company has generated is \$249,121.

17 If we go to APP-7, LPWC00250 is the
18 Bates stamp, we can see that the company had a total
19 invested capital in infrastructure of \$162,483. The
08:47 20 company also had the start-up cost of \$2,479.

21 At this juncture, the company had
22 experienced cash operating losses of \$5,759, which can
23 be calculated off of Exhibit APP-7, LPWC00238 Bates
24 number, by taking the \$82,000 -- \$82,211 loss on
08:47 25 Schedule D, Line 24, adjusting that number to remove

00:47 1 the noncash line items of amortization costs, which
2 again is Column C, 13B -- Line 13B, and Column C, Line
3 10B of \$73,973 of accumulated depreciation. This
4 results in a cash operating loss of \$5,759.

08:48 5 Also on the same exhibit at Line 1, we
6 see the company had cash on hand of \$1,949 in Column
7 D. Accounting for these uses of cash, contrasted
8 against the cash that was generated by the company of
9 \$249,121, there's \$76,452 of cash that's unaccounted
10 for.

08:48 11 Q (BY MR. RODRIGUEZ) Based on that analysis,
12 Mr. Stowe, does that provide you any concerns with
13 respect to Lindsay Pure Water's ability to provide
14 continuous and adequate service?

08:49 15 A It may or may not. I would have to see the
16 explanation for this discrepancy. However, the review
17 of the return does point out other concerns for me as
18 the ability to continue providing continuous and
19 adequate service. And that is, if I can refer you
20 back to --

21 MR. CARLTON: I'm going to object,
22 nonresponsive.

23 JUDGE NORMAN: Sustained.

08:49 24 Q (BY MR. RODRIGUEZ) Please explain your other
25 concerns, Mr. Stowe.

08:49 1 A If we go back to Exhibit APP-7, and again the
2 last page, which is Bates stamped LPWC00250, you'll
3 notice that for all the depreciable assets under life,
4 the company is depreciating their asset at 20 years
08:50 5 other than for the water tank, which is being
6 depreciated at 25 years. These are extremely
7 accelerated lives when compared to the TCEQ-approved
8 depreciation rates which range from 40 to 50 years for
9 these type of assets.

08:50 10 You'll also notice that the company,
11 under method column, the company is employing an
12 accelerated form of depreciation, which is fine for
13 tax return purposes, but it's not accepted under the
14 statutes and the rule of the Commission. And you can
08:50 15 see there by denotation they're using 150 DBHY. What
16 that means, that's the -- 150 percent of the declining
17 balance with a half-year convention. In other words,
18 they assume the asset went into service mid-year and
19 then you calculate your straight line depreciation and
08:50 20 then take 150 percent of that number to record your
21 depreciation expense. This is an accelerated method
22 of depreciation and would not be accepted in
23 ratemaking.

08:51 24 Therefore, my opinion is that based on
25 this tax return and the continuation of the loss of

08:51

08:51

08:52

08:52

08:52

08:52

1 funds by the company this particular year in 2007,
2 according to APP-7, 00235, a loss of \$12,201. An
3 affiliated transaction where capital cost recovery and
4 infrastructure cost recovery is being recorded
5 evidently on the books of an affiliated company and
6 not reflected within the utility company, a rate
7 structure that, by the witness's own testimony does
8 not know how it was developed, and the fact that that
9 rate, even though in the face of continuing mounting
10 losses, has not applied for a rate relief before this
11 Commission and these rates have not been reviewed in a
12 period of 10 years, a decade, it's actually my opinion
13 and it would be my recommendation if I could to --

14 MR. CARLTON: I'm going to object
15 because I'm going to anticipate what he's about to
16 say.

17 JUDGE NORMAN: Sustained.

18 Q (BY MR. RODRIGUEZ) Mr. Stowe, can you please
19 provide for us what your recommendation would be based
20 on your analysis?

21 JUDGE NORMAN: No.

22 MR. CARLTON: I'm going to object it's
23 irrelevant because we're in a CCN proceeding and his
24 recommendation as to what the agency ought to do with
25 respect to Lindsay Pure Water Company is irrelevant.

1 JUDGE NORMAN: Sustained.

2 Q (BY MR. RODRIGUEZ) Mr. Stowe, can you please
3 explain to us what a current liability is?

4 A Current liability is a liability that's due
5 within 12 months or less.

6 Q Now, if -- and I believe you referred to it
7 earlier on APP Exhibit 7, Bates page number LPWC00239
8 that Lindsay Pure Water Company has current -- 238,
9 excuse me -- that Lindsay Pure Water Company has
10 current liabilities of approximately \$132,000.

11 A 131,669.

12 Q What is your opinion, Mr. Stowe, about
13 Lindsay Pure Water Company's ability to meet its
14 current liabilities?

15 A It cannot.

16 Q And what do you base that on?

17 A The company is currently generating gross
18 revenues of \$14,254 approximately before operating
19 expenses.

20 Q How do you arrive at that figure?

21 A That again comes from APP-7 00235, Line 1,
22 also again restated on Line 3 and Line 6. That's the
23 gross revenues before any operating expenses and
24 before any depreciation expense. So as you can see on
25 Line 21, the company is losing \$12,201 annually.

08:54 1 There's no ability to repay the current liabilities.

08:55 2 Q Now, Mr. Stowe, I'm going to ask you with
3 respect to your analysis that you've performed, can
4 you please explain to us -- relate that back to us for
5 the City of Lindsay CCN application? How does your
6 analysis impact the effect of Lindsay Pure Water's --
7 I'm sorry, the City of Lindsay's application on other
8 retail public utilities, specifically Lindsay Pure
9 Water Company?

08:55 10 A It's my opinion that based on the evidence
11 and based on the testimony yesterday, the
12 infrastructure costs are being recovered through the
13 sale of lots; that to the extent that there's
14 infrastructure outside Lindsay Pure Water's CCN that
08:55 15 that cost and that investment is recaptured through
16 the sale of those lots, and currently those ratepayers
17 are being requested -- not only have they paid for it
18 in the cost of their lots, but also are paying for it
19 again in the rates that they're paying. So the impact
08:55 20 upon Lindsay Pure Water would be a denial of them
21 recovering their investment twice.

22 Q You heard Ms. Benter's testimony yesterday
23 about stranded investment?

24 A Yes, sir.

08:56 25 Q In your opinion, based on the testimony that