

additional project costs. These costs would then be compared to the estimated projected value of the project at full buildout.

Impact on Sales

As the cost of regionalization increases, it is necessary to look at the impact on the development in an area. These costs may be passed on to existing customers and property owners through increases in lot prices, water and wastewater rates, ad valorem taxes, or all three.

Determining Projected Value of Development

The projected value of the development includes the estimated value at buildout of all lots, homes, commercial and industrial improvements, developed reserves, and undeveloped land, assuming the installation of a stand-alone system.

Use present-day unit values to determine the current value of all existing property and the value that will be added by future improvements to the property. The development should include all property to be served by the proposed new system.

Factor 2: Consider Affordability of Rates

The issue of rate affordability considers the consumers' ability to pay. Even if your rates are reasonable according to your costs, your customers won't be able to support the cost of the water if those cost-based rates are unaffordable. To propose an exception to regionalization due to unaffordable rates from the existing provider, you must meet *both* Criterion 1 and Criterion 2 discussed below. However, our staff may review additional factors in determining rate affordability.

Criterion 1: Rates resulting from regionalization are not affordable

To determine whether rates are unaffordable, we must calculate a "household cost factor" as set forth in a TWDB rule [31 TAC §371.24(b)]. If regionalization results in rates with a household cost factor greater than 1 percent for water service or a combined household cost factor greater than 2 percent for water and sewer service, then the rates resulting from regionalization may not be affordable.

The consumption level used in the rate calculation is based on per capita indoor water use.

The household cost factor (for areas charged for water service only) and the combined household cost factor (for areas charged for both water and sewer services) are calculated as follows:

Household cost factor (if charging for water services *only*)

If you are charging for water services only, follow these five steps to calculate the household cost factor:

1. Calculate the average monthly household usage:

average number of persons per household × 2,325 gallons = average monthly household usage

2. Calculate a monthly bill based on this usage and your rate structure.

3. Multiply this monthly bill by 12 to get the average yearly water bill.

4. Multiply the adjusted median household income (AMHI) for your area for 2000 by the Texas consumer price index (CPI) for last year. Divide this value by the Texas CPI for 2000 to get a current value for the AMHI:

$$\frac{(\text{AMHI for 2000}) \times (\text{last year's Texas CPI})}{\text{Texas CPI for 2000}} = \text{current AMHI}$$

5. Add the average yearly water bill to the average cost of any taxes, surcharges, or other fees you plan to use to subsidize your system. Divide this value by the current AMHI to get the household cost factor:

$$\frac{\text{average yearly water bill} + \text{average other fees}}{\text{current AMHI}} = \text{household cost factor}$$

Combined household cost factor (if charging for *both* water and sewer service)

If you are charging for both water and sewer service, follow these steps to calculate the household cost factor:

1. Calculate the average yearly water bill and the AMHI as shown under "Household cost factor" above.

2. Calculate the average monthly household usage:

average number of persons per household × 1,279 gallons = average monthly household usage

3. Calculate a monthly bill based on this usage and your rate structure.

4. Multiply this monthly bill by 12 to get the average yearly sewer bill.

5. Add the average yearly water bill to the average yearly sewer bill and any taxes, surcharges, and other fees you plan to use to subsidize your system. Divide this total by the AMHI of the area to be served:

$$\frac{\text{avg. yearly water bill} + \text{avg. yearly sewer bill} + \text{other fees}}{\text{current AMHI}} = \text{household cost factor}$$

Criterion 2: Rates of a stand-alone system would be lower than the (unaffordable) rates of a regionalized system

Under this criterion, you must calculate the rates that will be necessary to fully recover the costs of the proposed new water or sewer system. If the rates of the proposed system are higher than the current rates of the existing provider, we will presume that the rates of the existing provider are affordable. Under these circumstances, we will not consider your case to be an exception to this policy (even if the household cost factor shows the rates of the existing provider are unaffordable).

To demonstrate that this exception exists, you must show that the rates of the proposed new system are affordable *and* that the rates of the regionalized system are not affordable (see Criterion 1 on page 22).

Factor 3: Consider Capabilities of Existing System

An analysis of financial, managerial, and technical capabilities refers to whether the existing system has the financial resources to fund improvements that provide the service over the long term, the managerial resources to support operations and plan for emergencies, and the technical expertise to provide consistent service in compliance with our rules.

Here we list factors to consider in determining financial, managerial, and technical capabilities of the existing system. We will also consider other factors as appropriate.

Features That Can Indicate Financial Capability

- Rates are reviewed on a regular basis.
- Rate structure is appropriate to customer base.
- Debt coverage ratio is adequate.
- System is current on debt payments.
- All fees to regulatory agencies and laboratories paid on a timely basis.
- System has appropriate insurance coverage.
- Annual audit is conducted (if system is a public entity or water supply corporation).
- System has operating reserve accounts or access to funds as needed.

- System has adequate working capital ratio.
- System has a high rate of collection of customer accounts.
- System has written policies for collection and termination of service.
- Collection policies are enforced.
- System has low number of disconnects due to failure to pay bill.

Features That Can Indicate Managerial Capability

- System is aware of type of organization it is and has legal authority to operate.
- System has an operating budget.
- System has written operating policies.
- Customers have access to water system personnel at all times in case of emergency.
- Records are maintained and updated on a regular basis.
- Budget is used to determine rates.
- System has adequate water supply.
- System has written emergency plans.
- System has conveyable title to water-producing assets.
- Governing board is able to conduct meetings and make decisions (that is, a quorum is usually present, and there is a majority vote for most major operating decisions).
- Every connection is metered.
- Customers are billed on consistent billing cycles based on meter readings.
- System owners or board has current CCN (if required).
- System has an approved drought contingency plan.
- System has an employee handbook or policies.

Features That Can Indicate Technical Capability

- Licensed operator is on site or available to operate the system.
- All operators are licensed.
- Operators have the appropriate certifications for the size of the system.
- System staff can identify oldest piece of equipment and the most vulnerable part of the system.
- Process control and preventive maintenance are performed and documented.
- System calculates unaccounted-for water and does not have excessive amounts.
- System does not have a history of noncompliance with regulatory requirements.

Appendix B

Statutory and Regulatory Authority

This policy implements portions of Senate Bill 1 (1997) and is intended to assist our Utilities and Districts program staff and the regulated community with the implementation of the regionalization requirements in Title 30 Texas Administrative Code (30 TAC) Chapters 290 and 291. Regionalization was one of the key goals of Senate Bill 1 (1997) in order to optimize the use of existing financial, managerial, and technical resources. In addition, this policy is based on the following statutory provisions.

General Statutory Authority

The Texas Health and Safety Code, Chapter 341, Subchapter C, requires that public drinking water be free from deleterious matter and comply with the standards established by the TCEQ or the United States Environmental Protection Agency. The TCEQ may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

The Texas Water Code Chapter 13 establishes a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to ensure that rates, operations, and services are just and reasonable to the consumers and to the retail public utilities.

Specific Authority

Public Water Systems

Section 341.0315(a)–(d) of the Texas Health and Safety Code, relating to public drinking water supply system requirements, requires that:

- (a) To preserve the public health, safety, and welfare, the commission shall ensure that public drinking water supply systems:
 - (1) supply safe drinking water in adequate quantities;
 - (2) are financially stable; and
 - (3) are technically sound.
- (b) The commission shall encourage and promote the development and use of regional and areawide drinking water supply systems.
- (c) Each public drinking water supply system shall provide an adequate and safe drinking water supply. The supply must meet the requirements of Section 341.031 and commission rules.

- (d) The commission shall consider compliance history in determining issuance of new permits, renewal permits, and permit amendments for a public drinking water system.

Texas Health and Safety Code § 341.035 requires that before constructing a new system a person submit plans and specifications and, with certain exceptions, a business plan that demonstrates that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The TCEQ may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws and rules, in the form of a bond or as specified by the commission, unless the executive director finds that the business plan demonstrates adequate financial capability.

Title 30 TAC § 290.39 ensures that regionalization and area-wide options are fully considered; ensures the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations or changes; establishes minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices; and requires that minimum acceptable financial, managerial, technical and operating practices are specified to ensure that systems are properly operated to produce and distribute safe, potable water.

Water and Sewer CCNs

Texas Water Code § 13.241 requires that an applicant for a CCN demonstrate that it possesses the financial, managerial, and technical capability to provide continuous and adequate service and also requires that an applicant for a new CCN for a physically separate water or sewer system demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

Texas Water Code § 13.246 specifies the factors to be considered by the commission concerning CCN notice and hearing and CCN issuance or refusal.

Texas Water Code § 13.253 requires that a CCN holder located in an affected county that has not been able to provide continuous and adequate service obtain service from another consenting utility service provider. Title 30 TAC §291.102(a) provides that the TCEQ must ensure that an applicant possesses financial, managerial, and technical capability to provide continuous and adequate service.

Title 30 TAC § 291.102(b) requires that where a new CCN is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

Title 30 TAC § 291.102(c) requires that the TCEQ consider the following in considering whether to grant a CCN:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area;
- (3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity; and
- (8) the probable improvement in service or lowering of cost to consumers in that area

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SOAH DOCKET NO. 582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

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

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Lindsay Pure Water Company ("LPWC") and files its objections to the prefiled testimony and exhibits of the Executive Director ("ED") in the above-styled matter.

A.

Objections to the Prefiled Testimony of Tammy Lee Holguin-Benter.

LPWC makes the following objections to portions of Ms. Tammy Lee Holguin-Benter's prefiled testimony as well as the exhibits introduced through Ms. Holguin-Benter's testimony. LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. Page 5, line 15 "Has Lindsay indicated..." – line 22.

LPWC objects to the direct question at line 15 as calling for a hearsay answer. LPWC further objects to the testimony at lines 16-22 as hearsay. The witness recounts what Donald Meltzer said and that testimony is offered for the truth of the matter stated. The witness does not demonstrate first-hand knowledge in her testimony.

2. **Page 8, line 20 "Does Lindsay have the ability..." – page 9, line 8.** *overruled*

LPWC objects to the question posed as lines 20-21 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on Lindsay's ability to adequately provide water service based upon the capacity of the Lindsay's existing well capacity or the capacity of its storage tanks, pumps, distribution lines and other facilities. LPWC further objects to the testimony at lines 16-22 as hearsay. The witness recounts what Donald Meltzer said and that testimony is offered for the truth of the matter stated. The witness does not demonstrate first-hand knowledge of Lindsay's ability to adequately provide service in her testimony. In addition, the witness bases her opinion upon the unsupported opinion testimony of Kerry Maroney, which can not form the basis of her opinion. *OK*

3. **Page 9, line 9 "Does Lindsay have the ability..." – line 17.** *overruled*

LPWC objects to the question posed as lines 9-10 as calling for speculation on the part of this witness, and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on Lindsay's ability to adequately provide sewer service based upon the treatment capacity of an existing wastewater treatment plant or wastewater collection system. LPWC further objects to the testimony at lines 11-17 as hearsay. The witness recounts what Donald Meltzer and Kerry Maroney said and that testimony is offered for the truth of the matter stated. The witness does not demonstrate first-hand knowledge of Lindsay's ability to adequately provide sewer service in her testimony. In addition, the witness bases her opinion upon the unsupported opinion testimony of Kerry Maroney, which can not form the basis of her opinion. *OK*

4. **Page 10, lines 7-10, "Although Lindsay Pure... currently serving."** *overruled*

LPWC objects to this testimony as inadmissible. The testimony is based upon facts that are not in evidence and is contrary to the undisputed facts in the record. As stated in Mr. Myrick's testimony, Lindsay Pure Water company already provides service to numerous connections within ¼ mile of its existing CCN and intends to provide service to additional connections as homes are constructed within the South Ridge of Lindsay subdivision.

5. **Page 10, lines 14-18, "...the Applicant responds..." - "...the areas of overlap is executed."** *overruled*

LPWC objects to this testimony as hearsay. The witness recounts statements from the Application, and such statements are offered for the truth of the matter stated. The Application itself is the best evidence of what it says. *permitted*

6. **Page 11, lines 4-10, "...Mr. Jack Stowe...100% equity."** *OK*

LPWC objects to the question posed as line 4 as calling for speculation on the part of this witness, and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on the sufficiency of Lindsay's debt-equity ratio or ability to obtain loans, issue bonds, levy taxes or utilize fees or other funds to operate the utility system. LPWC further objects to this testimony as hearsay. The witness recounts testimony of Jack Stowe, and such testimony is offered for the truth of the matter stated. *overruled* *OK. as per [unclear]*

7. **Page 11, lines 11 - 20, "Will the environmental integrity.... development or property in the area."**

LPWC objects to the question posed at lines 11-12 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on environmental integrity and the *overruled* *from*

differences in impact between centralized wastewater service versus OSSF systems or between centralized water systems and individual water wells.

8. Page 11, line 21, "Will granting Lindsay's water..." – page 12, line 9, "...lower the cost to consumers."

LPWC objects to the question posed at lines 21-22 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on improved service with regard to centralized water and wastewater systems versus OSSF systems and individual water wells. In addition, the witness admits to having no knowledge of Lindsay's rates and is not qualified as an expert to testify regarding the potential lowering of cost through economies of scale.

Respectfully submitted,


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ATTORNEYS FOR THE CITY OF
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CERTIFICATE OF SERVICE**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent by Facsimile and/or First Class Mail on this 12th day of September, 2008, to the following:

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JOHN J. CARLTON

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

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

**LINDSAY PURE WATER COMPANY'S OBJECTIONS TO THE PREFILED
TESTIMONY AND EXHIBITS OF THE TOWN OF LINDSAY**

TO THE HONORABLE ADMINSTRATIVE LAW JUDGE:

COMES NOW, Lindsay Pure Water Company ("LPWC") and files its objections to the prefiled testimony and exhibits of the Town of Lindsay ("Lindsay") in the above-styled matter.

A.

Objections to the Prefiled Testimony of Donald L. Metzler.

LPWC makes the following objections to portions of Mr. Donald L. Metzler' prefiled testimony as well as the exhibits introduced through Mr. Metzler' testimony. LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. Exhibit DLM-2 (Page 3, lines 15-16)

LPWC objects to the admission of DLM-2 as irrelevant. The Applicant's status as a Type "A" General law city is irrelevant to the consideration of issuance of a CCN amendment by the TCEQ.

2. Exhibit DLM-5 (Page 4, lines 11-12)

LPWC objects to the admission of DLM-5 as hearsay and irrelevant. The Motion was drafted by Mr. Rodriquez, attorney for the Applicant, and contains numerous statements of fact

that are beyond the personal knowledge of Mr. Metzler. In addition, the correction of an error to an order in a previous docket by the TCEQ is irrelevant to the consideration of an application to amend a CCN.

3. Page 4, line 14, "On October 10, 2007..." – page 5, line 1, "...testimony as DLM-8."

LPWC objects to the testimony offered by Mr. Metzler as hearsay. Mr. Metzler is a fact witness and Mayor *Pro Tempore* for Lindsay. He is not employed by TCEQ, and has not been offered as a witness qualified to speak regarding past TCEQ actions affecting Lindsay. Mr. Metzler relies upon correspondence created by others, and testifies as to the content of that correspondence. The testimony is offered for the truth of the matters stated in the correspondence.

4. Exhibits DLM-6 (Page 4, Lines 16-17)

LPWC objects to the admission of DLM-6 as irrelevant and not properly authenticated. The correspondence relates to the notice of the correction of an error to an order in a previous docket. The only relevant issue is the actual boundary of the Applicant's existing CCN, which is not addressed by this letter. In addition, there is no signature on the document that might be evidence of the document's accuracy, completeness or authenticity.

5. Page 6, lines 20 – 21, "Yes, except as otherwise modified by ... witnesses."

LPWC objects to this testimony as hearsay. The witness is testifying regarding the entire content of the Application and the testimony of other witness. The testimony is offered for the truth of the matter stated, but the witness has no personal knowledge of the facts or opinions set forth in the Application and in the testimony presented by other witnesses.

6. Page 7, lines 14 – 18, "...stating that all...accepted for technical review."

LPWC objects to this testimony as hearsay. The witness is testifying regarding the content of correspondence created by TCEQ. The testimony is offered for the truth of the matter stated in the correspondence. Exhibit DLM-9 is the best evidence of its contents.

7. Page 8, lines 11-20, "Does Lindsay have....only one certified contract operator."

LPWC objects to the direct question as calling for speculation on the part of the witness and the response as speculation. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding Lindsay's technical ability to provide water and wastewater service.

8. Page 11, lines 10-12, "Approximately....Attachment DLM-10" and Exhibit DLM-10.

LPWC objects to this testimony and Exhibit DLM-10 as hearsay. DLM-10 contains copies of letters from various individuals. None of the individuals have been called to testify regarding their purported request for water or sewer service. The exhibit is offered to prove the truth of the matter stated.

9. Page 11, line 16, "The map shown...." – page 12, line 2, "....CCN application" and Exhibits DLM-11 and DLM-12.

LPWC objects to this testimony and Exhibits DLM-11 and DLM-12 as hearsay. The witness is testifying as to the content of maps he did not create. The maps themselves are hearsay as they were not created by this witness, nor are they offered or proven up by the individual who created them. The testimony and the maps are offered to prove the truth of the matters stated.

10. Page 12, lines 12-16, "I have attached....testimony as DLM-3" and Exhibit DLM-13.

LPWC objects to this testimony and Exhibit DLM-13 as hearsay. The witness is testifying as to the content of a map he did not create. The map itself is hearsay as it was not

created by this witness, nor is it offered or proven up by the individual who created it. The testimony and the map are offered to prove the truth of the matters stated.

11. Page 12, lines 18-23, "Is there a need....Proposed Service Territory."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether a need for service exists. This is ultimately a question for the trier of fact. Further, the witness relies upon a hearsay exhibit (DLM-10) in support of his speculation.

12. Page 14, lines 3-5, "Most municipalities.... residents of the ETJ."

LPWC objects to the response as speculative and hearsay. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding what "most municipalities" believe. The testimony is offered to prove the truth of the matter stated.

13. Page 16, lines 19-22, "Does Lindsay have....Proposed Service Territory."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether Lindsay has the ability to provide service.

14. Page 18, lines 16-19, "Does the City have....Yes."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or

experience, to testify regarding whether Lindsay has the financial resources to provide service. This is ultimately a question for the trier of fact.

15. Page 21, lines 11-17, "Will service to the proposed....being served by any provider."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether service by Lindsay would be an improvement to the proposed area. This is ultimately a question for the trier of fact.

16. Page 22, lines 5-8, "The City has properly....water or wastewater system."

LPWC objects to the response after, "Yes." as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether an operator is properly trained, whether the customers have received adequate service, and whether the financial position of the city is good or bad.

17. Page 22, lines 10-13, "If the certificate....Yes."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether issuing a CCN to Lindsay would best serve the public. This is ultimately a question for the trier of fact.

B.

Objections to the Prefiled Testimony of Kerry D. Maroney.

LPWC makes the following objections to portions of Mr. Kerry D. Maroney's prefiled testimony as well as the exhibits introduced through Mr. Maroney's testimony. LPWC moves to

strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. Page 6, lines 2-16 and Exhibits KDM-2 -- KDM-10.

The witness testifies regarding the various exhibits attached to his prefiled testimony, Exhibits KDM-2 through KDM-10. LPWC objects to all of these exhibits. Exhibits KDM-2, KDM-3, KDM-5, KDM-6, KDM-7, KDM-8, KDM-9 and KDM-10 are hearsay. KDM-2 is a Notice of Violation letter to which the witness is not a party and a response to the notice of violation to which the witness is not a party. KDM-3, KDM-6 and KDM-7 are maps the witness did not create. KDM-5 is the same exhibit as DLM-10, purported requests for service, and none of the individuals who wrote the letters contained in KDM-5 are offered as witnesses. KDM-8 is information apparently pulled from the internet, was not prepared by the witness and is neither certified as true and correct nor properly authenticated. KDM-9 is a study prepared by someone other than this witness. Only a portion of the study is attached as Exhibit KDM-9. KDM-10 is a TPDES permit document that is not certified as true and correct. All of these exhibits are offered for the truth of the matters contained within them and are hearsay.

2. Page 7, lines 6-7, "A copy of...Attachment KDM-2."

LPWC has objected to Exhibit KDM-2 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. This testimony and the exhibit are hearsay.

3. Page 8, lines 16-17, "An official CCN...Attachment KDM-3."

LPWC has objected to Exhibit KDM-3 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. The witness did not create the map to which he refers, and the map has not been offered or certified as true and correct or properly authenticated. This testimony and the exhibit are hearsay.

4. **Page 9, lines 10-19, "There is a need....Mr. Metzler."**

LPWC has objected to Exhibits KDM-5 (and the same documents in Exhibit DLM-10), KDM-6 and KDM-7 as hearsay. The witness refers to these exhibits as representing the truth of the matters stated therein. The witness did not create any of the documents contained in Exhibit KDM-5, nor did he create the maps which are Exhibits KDM-6 and KDM-7. This testimony and the exhibits are hearsay.

5. **Page 9, lines 21-22, "Lindsay had... Census Bureau."**

LPWC objects to this testimony as hearsay.

6. **Page 9, lines 22-23, "I have attached...Attachment KDM-8."**

LPWC has objected to Exhibit KDM-8 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. This testimony and the exhibit are hearsay.

7. **Page 10, Lines 4-5, "Additionally, there are... is needed."**

LPWC objects to this testimony as inadmissible. There is no evidence in the record of to support the environmental reasons on which the witness bases this opinion, as further explained in paragraphs 9 and 10 below.

8. **Page 10, lines 6-8, "Regarding water,....lose water service."**

LPWC objects to this testimony as inadmissible. There is no evidence in the record of well failures on which the witness bases this opinion.

9. **Page 10, lines 14-18, "This is important...adversely affected."**

LPWC objects to this testimony as inadmissible. There is no evidence in the record of failure of OSSF systems, impacts from discharge coming from a failed OSSF system or pollutant levels on which the witness bases this opinion. There is no evidence in the record of OSSF failures in the proposed service area.

10. Page 11, lines 9-16, "I have attached ... could be understated."

LPWC has objected to Exhibit KDM-9 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. The witness also attempts to cite a statement attributed to the EPA. This testimony and the exhibit are hearsay.

11. Page 12, lines 18-19, "and has no plans... service business."

LPWC objects to this testimony as hearsay.

12. Page 14, lines 6-11, "Lindsay currently....304 additional customers."

LPWC objects to this testimony as inadmissible. The witness gives opinions regarding Lindsay's capacity to serve additional sewer customers and Lindsay's water wells. There is no evidence in the record regarding how Lindsay would serve 470 additional homes, nor is there evidence in the record regarding the capacity of Lindsay's wells.

13. Page 14, lines 16-18, "Additionally, the City...as growth demands."

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay's capacity and ability to serve, yet provides no underlying evidence or calculations in the record for this conclusion.

14. Page 15, lines 17-19, "Additionally,....Proposed Service Territory."

LPWC objects to the testimony at lines 17-19, as the witness states that "Lindsay is not in danger of running out of water," yet provides no basis for that conclusion.

15. Page 16, lines 9-13, "Furthermore,....requested by Lindsay."

LPWC objects to this testimony as irrelevant and nonresponsive. There is no basis for this opinion. The witness is not qualified to determine whether LPWC made a good faith effort in any fact situation, and particularly not as to past performance under a settlement agreement.

16. Page 18, line 22, "and the needs for the foreseeable future."

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay's water supply for the future, but there is no evidence in the record to support this conclusion.

17. Page 18, lines 19-20, "Lindsay's most... is established."

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay's water supply quality, but there is no evidence in the record to support this conclusion.

18. Page 19, lines 14-16, "A number....Attachment KDM-5."

LPWC has previously objected to the documents contained in KDM-5 as hearsay and that objection is reurged here.

19. Page 19, lines 18-21, "The State has made...surface water contamination..."

LPWC objects to this testimony as inadmissible. There is no evidence in the record to support the witness' conclusions.

16. Page 20, lines 15-17, "With Lindsay's...Proposed Service Territory."

LPWC objects to this testimony as inadmissible. There is no evidence in the record to support the witness' conclusions.

C.

Objections to the Prefiled Testimony of Jack E. Stowe.

LPWC makes the following objections to portions of Mr. Jack E. Stowe's prefiled testimony as well as the exhibits introduced through Mr. Stowe's testimony. LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. **Page 12, line 22 "According to the Federal Reserve..." – page 13, line 3, "...subject to in the market" and Exhibit JES-6.**

LPWC objects to the testimony and Exhibit JES-6 as hearsay. Exhibit JES-6 is not certified as correct or authenticated and cannot be offered for the truth of the matter stated by the witness.

2. **Page 13, lines 15-16, "As illustrated...taxable value."**

LPWC objects to the testimony and Exhibit JES-7 as hearsay. Exhibit JES-7 is simply pulled from the internet, is not certified as correct or authenticated and cannot be offered for the truth of the matter stated by the witness.

3. **Page 16, lines 1-11, "In your opinion....water system development."**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of Lindsay's application. The witness is a financial expert.

4. **Page 16, lines 17-20, "However, ...well could be fixed."**

LPWC objects to the testimony regarding reliability of water service. The witness is not qualified to testify regarding reliability of water service. The witness is a financial expert.

5. **Page 17, lines 6-13, "In your opinion,....treatment facilities."**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of granting Lindsay's application to amend Lindsay's sewer CCN. The witness is a financial expert.

6. **Page 17, lines 15-21, "Mr. Stowe,evapotranspiration systems, etc."**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding an OSSF facility. The witness is a financial expert.

7. **Page 18, lines 1-6, "What impacts....can be adversely affected."**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of OSSF systems. The witness is a financial expert.

8. **Page 18, line 8, "Have you reviewed...." – page 19, line2, "could be understated" and Exhibit JES-8.**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding OSSF systems in this matter. The witness is a financial expert. Further, the witness references Exhibit JES-8, which is a partial copy of a report and does not contain information on Region IV. The report is hearsay and irrelevant as attached to the testimony. The report should not be used to prove the truth of the matters stated therein.

9. **Page 19, lines 4-14, "What will be....requested CCN area."**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental impacts of providing wastewater service. The witness is a financial expert.

10. **Page 19, line 21, "In a study...." – page 20, line 9, "\$10,000 to install" and Exhibits JES-9 and JES-10.**

LPWC objects to this testimony as irrelevant and objects to Exhibits JES-9 as hearsay and JES-10 as hearsay and irrelevant. The witness testifies regarding studies conducted by the Guadalupe Water Company and Harris County, which are not parties to this case, and which cover areas not at issue in this case. The testimony is irrelevant to this matter.

11. Page 20, lines 15-17, "As discussed above....approximately \$10,000."

LPWC objects to this testimony as irrelevant and objects to Exhibits JES-9 as hearsay and JES-10 as hearsay and irrelevant. The witness testifies regarding studies conducted by the Guadalupe Water Company and Harris County, which are not parties to this case, and which cover areas not at issue in this case. The testimony is irrelevant to this matter.

12. Page 21, lines 3-8, "According to....as high as \$760.20" and Exhibits JES-11 and JES-12.

LPWC objects to this testimony as irrelevant because it refers to information from the Agricultural Extension Service and the City of Austin, which are not parties to this case. LPWC further objects to the testimony as the witness is not qualified to testify regarding types of septic systems. The witness is a financial expert in this matter. Additionally, LPWC objects to Exhibits JES-11 and JES-12 as both hearsay and irrelevant. JES-11 is an article on Leaching Chambers and JES-12 is an article published by the City of Austin on the internet. Neither exhibit is certified and neither address the witness' financial testimony.

13. Page 22, lines 8-16. "The City would... revenue stream."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on development effects of centralized wastewater service. He is a financial expert for Lindsay.

14. Page 23, lines 1-7, "Mr. Stowe,....requested area."

LPWC objects to the direct question and the testimony in response to the question. The question requires the witness to speculate regarding environmental effects. The witness is not qualified to provide an expert opinion on environmental effects in this matter.

15. Page 23, lines 14-15, "It will also...OSSFs."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on environmental effects in this matter. He is a financial expert for Lindsay.

16. Page 24, line 17, "In your opinion....," – page 25, line 4, "Integrity of the requested area."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on environmental effects in this matter. He is a financial expert for Lindsay.

17. Page 25, lines 12-23, "As I previously.... OSSF requirements."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on development effects of centralized wastewater service, or the environmental effects and burdens of OSSF operations in this matter. He is a financial expert for Lindsay.

Respectfully submitted,



JOHN J. CARLTON

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**ATTORNEYS FOR LINDSAY PURE WATER
COMPANY**

CERTIFICATE OF SERVICE**CERTIFICATE OF SERVICE**

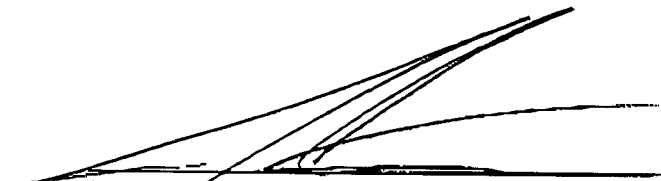
I hereby certify that a true and correct copy of the foregoing has been sent by Facsimile and/or First Class Mail on this 12th day of September, 2008, to the following:

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

ATTACHMENTS:

- Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Executive Director
- Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Town of Lindsay.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE (COLLECT), AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U. S. POSTAL SERVICE. THANK YOU.
252890-1 03/24/2008

§ 2001.081. RULES OF EVIDENCE. The rules of evidence as applied in a nonjury civil case in a district court of this state shall apply to a contested case except that evidence inadmissible under those rules may be admitted if the evidence is:

- (1) necessary to ascertain facts not reasonably susceptible of proof under those rules;
- (2) not precluded by statute; and
- (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

§ 2001.081. RULES OF EVIDENCE. The rules of evidence as applied in a nonjury civil case in a district court of this state shall apply to a contested case except that evidence inadmissible under those rules may be admitted if the evidence is:

- (1) necessary to ascertain facts not reasonably susceptible of proof under those rules;
- (2) not precluded by statute; and
- (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

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§ 2001.081. RULES OF EVIDENCE. The rules of evidence as applied in a nonjury civil case in a district court of this state shall apply to a contested case except that evidence inadmissible under those rules may be admitted if the evidence is:

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- (2) not precluded by statute; and
- (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

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Texas Administrative Code

Next Rule>>

TITLE 30

ENVIRONMENTAL QUALITY

PART 1

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 291

UTILITY REGULATIONS

SUBCHAPTER G

CERTIFICATES OF CONVENIENCE AND NECESSITY

RULE §291.102

Criteria for Considering and Granting Certificates or Amendments

(a) In determining whether to grant or amend a certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For water utility service, the commission shall ensure that the applicant is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and commission rules and has access to an adequate supply of water.

(2) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants, commission rules, and the Texas Water Code.

(b) Where a new certificate of convenience and necessity is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system;

(2) copies of written requests seeking to obtain service from each of the public drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring public drinking water supply system or sewer system;

(3) copies of written responses from each of the systems from which written requests for service were made or evidence that they failed to respond;

(4) a description of the type of service that a neighboring public drinking water supply system or sewer system is willing to provide and comparison with service the applicant is proposing;

(5) an analysis of all necessary costs for constructing, operating, and maintaining the new system for at least the first five years, including such items as taxes and insurance;

(6) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring public drinking water supply system or sewer system for at least the first five years.

(c) The commission may approve applications and grant or amend a certificate only after finding that the certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or

for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a certificate, the commission shall also consider:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including, but not limited to:
 - (A) whether any landowners, prospective landowners, tenants, or residents have requested service;
 - (B) economic needs;
 - (C) environmental needs;
 - (D) written application or requests for service; or
 - (E) reports or market studies demonstrating existing or anticipated growth in the area;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity;
- (8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and
- (9) the effect on the land to be included in the certificated area.

(e) The commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(f) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For purposes of this subsection, "economically distressed area" has

the meaning assigned in Texas Water Code, §15.001.

(g) For two or more retail public utilities that apply for a certificate of convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in Texas Water Code, §15.001, the executive director shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted using a standard form designed by the executive director and will include:

- (1) all criteria from subsections (a) - (f) of this section;
- (2) source water adequacy;
- (3) infrastructure adequacy;
- (4) technical knowledge of the applicant;
- (5) ownership accountability;
- (6) staffing and organization;
- (7) revenue sufficiency;
- (8) credit worthiness;
- (9) fiscal management and controls;
- (10) compliance history; and
- (11) planning reports or studies by the applicant to serve the proposed area.

(h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area.

(i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

Source Note: The provisions of this §291.102 adopted to be effective January 10, 1996, 21 TexReg

114; amended to be effective February 4, 1999, 24 TexReg 738; amended to be effective October 19, 2000, 25 TexReg 10367; amended to be effective January 5, 2006, 30 TexReg 8958

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§ 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL; FACTORS CONSIDERED. (a) If an application for a certificate of public convenience and necessity or for an amendment to a certificate is filed, the commission shall cause notice of the application to be given to affected parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person affected by the application may intervene at the hearing.

(a-1) Except as otherwise provided by this subsection, in addition to the notice required by Subsection (a), the commission shall require notice to be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:

- (1) Section 13.248 or 13.255; or
- (2) Chapter 65.

(b) The commission may grant applications and issue certificates and amendments to certificates only if the commission finds that a certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue a certificate or amendment as requested, or refuse to issue it, or issue it for the construction of only a portion of the contemplated system or facility or extension, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(c) Certificates of public convenience and necessity and amendments to certificates shall be granted on a nondiscriminatory basis after consideration by the commission of:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an

adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

(d) The commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance in a form and amount specified by the commission to ensure that continuous and adequate utility service is provided.

(e) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant:

(1) to extend service to any economically distressed areas located within the service areas certificated to the applicant; and

(2) to enforce the rules adopted under Section 16.343.

(f) If two or more retail public utilities or water supply or sewer service corporations apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area and otherwise meet the requirements for obtaining a new certificate, the commission shall grant the certificate to the retail public utility or water supply or sewer service corporation that is more capable financially, managerially, and technically of providing continuous and adequate service.

(g) In this section, "economically distressed area" has the meaning assigned by Section 15.001.

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area.

(i) A landowner is not entitled to make an election under Subsection (h) but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the commission regarding the application if the proposed service

area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

Added by Acts 1985, 69th Leg., ch. 795, § 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, § 15, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, § 24, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, § 6, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1010, § 6.08, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, § 31, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1145, § 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1430, § 2.09, eff. September 1, 2007.

30 TAC § 291.94

§ 291.94. Adequacy of Sewer Service

(a) Sufficiency of service. Each retail public utility shall plan, furnish, operate, and maintain collection, treatment, and disposal facilities to collect, treat and dispose of waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation. These facilities must be of sufficient size to meet the minimum design criteria for wastewater facilities of the commission for all normal demands for service and provide a reasonable reserve for emergencies. Unless specifically authorized in a written service agreement, a retail public utility is not required to receive, treat and dispose of waste with high BOD or TSS characteristics that cannot be reasonably processed, or storm water, run-off water, food or food scraps not previously processed by a grinder or similar garbage disposal unit, grease or oils, except as incidental waste in the process or wash water used in or resulting from food preparation by sewer utility customers engaged in the preparation and/or processing of food for domestic consumption or sale to the public. Grease and oils from grease traps or other grease and/or oil storage containers shall not be placed in the wastewater system.

(b) Sufficiency of treatment. Each retail public utility shall maintain and operate treatment facilities of adequate size and properly equipped to treat sewage and discharge the effluent at the quality required by the laws and regulations of the State of Texas.

(c) Maintenance of facilities.

(1) The retail public utility shall maintain its collection system and appurtenances to minimize blockages.

(2) If the utility retains ownership of receiving tanks located on the customer's property or other facilities and appurtenances, it is the utility's responsibility and liability to perform routine maintenance and repair.

Source: The provisions of this §291.94 adopted to be effective October 9, 1990, 15 TexReg 4019, amended to be effective January 10, 1996, 21 TexReg 114.

§ 291.95. Standards of Construction

In determining standard practice, the commission will be guided by the provisions of the American Water Works Association, and such other codes and standards that are generally accepted by the industry, except as modified by this commission, or municipal regulations within their jurisdiction. Each system shall construct, install, operate, and maintain its plant, structures, equipment, and lines in

COMMISSION ON ENVIRONMENTAL QUALITY
accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other retail public utilities insofar as practical.

Source: The provisions of this §291.95 adopted to be effective October 9, 1990, 15 TexReg 4019; amended to be effective January 10, 1996, 21 TexReg 114.

SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

§ 291.101. Certificate Required

(a) Unless otherwise specified, a utility, a utility operated by an affected county, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate that the present or future public convenience and necessity requires or will require that installation, operation, or extension. Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

(b) A person that is not a retail public utility or a utility or water supply corporation that is operating under provisions pursuant to the Texas Water Code, §13.242(c) may not construct facilities to provide water or sewer service to more than one service connection not on the property owned by the person and that are within the certificated service area of a retail public utility without first obtaining written consent from the retail public utility.

(c) A district may not provide services within an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district without the district's consent, unless the district has a valid certificate of convenience and necessity to provide services to that area.

Source: The provisions of this §291.101 adopted to be effective January 10, 1996, 21 TexReg 114; amended to be effective February 4, 1999, 24 TexReg 738

§ 291.102. Criteria for Considering and Granting Certificates or Amendments

(a) In determining whether to grant a new certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to

UTILITY REGULATIONS

provide continuous and adequate service.

(1) For water utility service, the commission shall ensure that the applicant is capable of providing drinking water that meets the requirements of Health and Safety Code, Chapter 341 and commission rules and has access to an adequate supply of water.

(2) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants, commission rules, and the Texas Water Code.

(b) Where a new certificate of convenience and necessity is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system;

(2) copies of written requests seeking to obtain service from each of the public drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring public drinking water supply system or sewer system;

(3) copies of written responses from each of the systems from which written requests for service were made or evidence that they failed to respond;

(4) a description of the type of service that a neighboring public drinking water supply system or sewer system is willing to provide and comparison with service the applicant is proposing;

(5) an analysis of all necessary costs for constructing, operating, and maintaining the new system for at least the first five years, including such items as taxes and insurance;

(6) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring public drinking water supply system or sewer system for at least the first five years.

(c) The commission may approve applications and grant or amend a certificate only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure

30 TAC § 291.102

that continuous and adequate service is provided.

(d) In considering whether to grant or amend a certificate, the commission shall also consider:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area;

(3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;

(4) the ability of the applicant to provide adequate service;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity; and

(8) the probable improvement in service or lowering of cost to consumers in that area.

(e) The commission may require an applicant utility to provide financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(f) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For purposes of this subsection, "economically distressed area" has the meaning assigned in Texas Water Code, §15.001.

(g) For two or more retail public utilities that apply for a certificate of convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in Texas Water Code, §15.001, the executive director shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted using a standard form designed by the executive director and will include:

30 TAC § 291.102

- (1) all criteria from subsections (a)—(f) of this section;
- (2) source water adequacy;
 - (3) infrastructure adequacy;
 - (4) technical knowledge of the applicant;
 - (5) ownership accountability;
 - (6) staffing and organization;
 - (7) revenue sufficiency;
 - (8) credit worthiness;
 - (9) fiscal management and controls;
 - (10) compliance history; and
 - (11) planning reports or studies by the applicant to serve the proposed area;

Source: The provisions of this §291.102 adopted to be effective January 10, 1996, 21 TexReg 114; amended to be effective February 4, 1999, 24 TexReg 738; amended to be effective October 19, 2000, 25 TexReg 10367.

§ 291.103. Certificates Not Required

(a) Extension of Service.

(1) Except for a utility or water supply or sewer service corporation which possesses a facilities only certificate of public convenience and necessity, a retail public utility is not required to secure a certificate of public convenience and necessity for:

(A) an extension into territory contiguous to that already served by it, if the point of ultimate use is within one quarter mile of the boundary of its certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility; or

(B) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity.

(2) Whenever an extension is made pursuant to paragraph (1)(A) of this subsection, the utility or water supply or sewer service corporation making the extension must inform the commission of the extension by submitting within 30 days of the date service is commenced, a copy of a map of the certificated area clearly showing the extension, accompanied by a written explanation of the extension.

(b) Construction of Facilities. A certificate is not required for the construction or upgrading of distribution facilities within the retail public utility's service area. The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be

COMMISSION ON ENVIRONMENTAL QUALITY
deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary to the service, accommodation, convenience, or safety of the public.

(c) Municipality Pursuant to the Texas Water Code §13.255. A municipality which has given notice under the Texas Water Code, §13.255 that it intends to provide retail water service to an area or customers not currently being served is not required to obtain a certificate prior to beginning to provide service if the municipality provides:

(1) a copy of the notice required pursuant to the Texas Water Code, §13.255; and

(2) a map showing the area affected under the Texas Water Code, §13.255 and the location of new connections in the area affected which the municipality proposes to serve.

(d) Utility or Water Supply Corporation With Less Than 15 Potential Connections.

(1) A utility or water supply corporation is exempt from the requirement to possess a certificate of convenience and necessity in order to provide retail water service if it:

(A) has less than 15 potential service connections;

(B) is not owned by or affiliated with a retail public utility or any other provider of potable water service;

(C) is not within the certificated area of another retail public utility; and

(D) is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.

(2) Utilities or water supply corporations with less than 15 potential connections currently operating under a certificate of convenience and necessity may request revocation of the certificate at any time.

(3) The executive director may revoke the current certificate of convenience and necessity upon written request by the exempt utility or water supply corporation.

(4) An exempted utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the executive director which shall not be more stringent than those in §§291.80-291.90 of this title.

(5) The exempted utility shall provide each future customer at the time service is requested and each current customer upon request with a copy of the exempt utility tariff.

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Texas Administrative Code

Next Rule>>

TITLE 30

ENVIRONMENTAL QUALITY

PART 1

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 291

UTILITY REGULATIONS

SUBCHAPTER G

CERTIFICATES OF CONVENIENCE AND NECESSITY

RULE §291.102

Criteria for Considering and Granting Certificates or Amendments

(a) In determining whether to grant or amend a certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For water utility service, the commission shall ensure that the applicant is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and commission rules and has access to an adequate supply of water.

(2) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants, commission rules, and the Texas Water Code.

(b) Where a new certificate of convenience and necessity is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system;

(2) copies of written requests seeking to obtain service from each of the public drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring public drinking water supply system or sewer system;

(3) copies of written responses from each of the systems from which written requests for service were made or evidence that they failed to respond;

(4) a description of the type of service that a neighboring public drinking water supply system or sewer system is willing to provide and comparison with service the applicant is proposing;

(5) an analysis of all necessary costs for constructing, operating, and maintaining the new system for at least the first five years, including such items as taxes and insurance;

(6) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring public drinking water supply system or sewer system for at least the first five years.

(c) The commission may approve applications and grant or amend a certificate only after finding that the certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or

for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a certificate, the commission shall also consider:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area, including, but not limited to:

(A) whether any landowners, prospective landowners, tenants, or residents have requested service;

(B) economic needs;

(C) environmental needs;

(D) written application or requests for service; or

(E) reports or market studies demonstrating existing or anticipated growth in the area;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

(e) The commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(f) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For purposes of this subsection, "economically distressed area" has

the meaning assigned in Texas Water Code, §15.001.

(g) For two or more retail public utilities that apply for a certificate of convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in Texas Water Code, §15.001, the executive director shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted using a standard form designed by the executive director and will include:

- (1) all criteria from subsections (a) - (f) of this section;
- (2) source water adequacy;
- (3) infrastructure adequacy;
- (4) technical knowledge of the applicant;
- (5) ownership accountability;
- (6) staffing and organization;
- (7) revenue sufficiency;
- (8) credit worthiness;
- (9) fiscal management and controls;
- (10) compliance history; and
- (11) planning reports or studies by the applicant to serve the proposed area.

(h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area.

(i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

Source Note: The provisions of this §291.102 adopted to be effective January 10, 1996, 21 TexReg

114; amended to be effective February 4, 1999, 24 TexReg 738; amended to be effective October 19, 2000, 25 TexReg 10367; amended to be effective January 5, 2006, 30 TexReg 8958

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July 7, 2008

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VIA HAND DELIVERY

James W. Norman
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street
Austin, Texas 78701

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

Dear Judge Norman:

Pursuant to Order No. 6, enclosed for filing is the Prefiled Direct Testimony and Exhibits of Jim Myrick for Lindsay Pure Water Company.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

ARMBRUST & BROWN, L.L.P.

John J. Carlton

Attorney for Lindsay Pure Water Company

Enclosure

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

JW

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FACSIMILE COVER PAGE

September 26, 2008

Please Deliver the Following page(s) to:

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

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Fax Number: (972) 680-0003

Client Number: 1140-00

From: Arturo D. Rodriguez, Jr.

Direct Phone: (512) 930-1317

Pages: 34 (Including Cover Sheet)

Re:

Comments: City of Lindsay's Responses to LPWC's Objections to Testimony

NOTICE: The following material is intended for the use of the individual or entity to which it is addressed. The material may contain information that is attorney-client privileged, or otherwise confidential and exempt from disclosure under law. If you are not the specified recipient, do not read this material. Any use, dissemination or copying of this material is strictly prohibited. If you have received this material in error, please notify us by telephone at the above number and return to us by U.S. Mail.

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

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

**CITY OF LINDSAY'S REPLY TO LINDSAY PURE WATER COMPANY'S
OBJECTIONS TO THE PREFILED TESTIMONY AND EXHIBITS OF
THE CITY OF LINDSAY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the City of Lindsay ("Lindsay" or "City") and files this, its Reply to Lindsay Pure Water Company's ("LPWC") Objections to the Prefiled Testimony and Exhibits of the City of Lindsay, in the above-styled matter. For the sake of expedieny and convenience, Lindsay has re-stated LPWC's objections and provided the City's response immediately following the objection. The objections are copied verbatim from LPWC's pleading and ordered and numbered in the same manner as provided by LPWC. The City reserves it right to respond to any additional objections that may be late filed by LPWC.

I. GENERAL RESPONSE

Many of LPWC's objections are spurious in nature and not founded on applicable legal theories and not supported by Texas Rules of Evidence. LPWC has chosen to ignore rules of evidence that allow expert witnesses to depend on hearsay evidence in order to formulate their opinions as well as the requirement of rules of evidence that records of a public office are in fact exceptions to the hearsay rules. As such, all of LPWC's hearsay objections should be overruled as a matter of law.

It is also important to point out to Your Honor that during the deposition of Mr. Jim Myrick, witness for LPWC, he states on the record that LPWC is not protesting the sewer application of Lindsay.¹ Yet despite that assertion, many, if not all, of LPWC's objections as they relate to Mr. Jack Stowe center on his testimony related to the sewer portion of Lindsay's application and the TCEQ regulatory guidelines with which Lindsay must show compliance. As such, LPWC's objections to Mr. Stowe's testimony should be overruled.

II. SPECIFIC OBJECTIONS

Objections to the Prefiled Testimony of Donald L. Metzler.

1. Exhibit DLM-2 (Page 3, lines 15-16)

LPWC objects to the admission of DLM-2 as irrelevant. The Applicant's status as a Type "A" General law city is irrelevant to the consideration of issuance of a CCN amendment by the TCEQ.

Overruled
RESPONSE: The City contends that the testimony provided and the Exhibit DLM-2 is relevant as TCEQ requires an applicant to provide information regarding the legal status of the applicant. Item 1.B. of the Commission's application form requires that the legal of the status of the applicant be identified.² As such, DLM-2 provides evidence of the City's legal status as a municipality. For these reasons, the objections to the testimony and related attachments should be overruled.

¹ See Oral Deposition of Jim Myrick, *Application of the City of Lindsay to Amend its Water and Sewer Certificate of Convenience and Necessity (CCN) Nos. 13025 and 20927 in Cooke County, Application Nos. 35096-C and 35097-C*, SOAH Docket No. 582-06-2023, TCEQ Docket No. 2006-0272-UCR at 41-42 (Aug. 27, 2008) [hereinafter "Myrick Deposition"], attached hereto as Exhibit A.

² See City of Lindsay Exhibit APP 1 at APP1001.

2. **Exhibit DLM-5 (Page 4, lines 11-12)**

LPWC objects to the admission of DLM-5 as hearsay and irrelevant. The Motion was drafted by Mr. Rodriguez, attorney for the Applicant, and contains numerous statements of fact that are beyond the personal knowledge of Mr. Metzler. In addition, the correction of an error to an order in a previous docket by the TCEQ is irrelevant to the consideration of an application to amend a CCN.

RESPONSE: The testimony on page 4, lines 11-12 and Exhibit DLM-5 are not hearsay.

Regarding the objected to portion of the testimony, it is not hearsay as it is within Mr. Metzler's personal knowledge that the City sought changes to its CCN since the last CCN was granted.

The objected to portion of the testimony is not hearsay as Mr. Metzler does not provide any hearsay testimony, just testimony regarding matters within his personal knowledge. Further, the identification of the documents is not hearsay and is not offered to prove the truth of the matter asserted. Thus, the testimony is not hearsay.

As Mayor *Pro Tempore*, Mr. Metzler is able to review the City's records and testify based on his review of the City's records. Further, the City has established that the testimony and referenced documents are excepted from the hearsay rules pursuant to TEX. R. EVID. 803 (8). As a public office, the testimony and exhibit establish that the information contained in the testimony and all of DLM-5 is records of a public office that sets forth the activities of the office (i.e. certificated provision of water and sewer services to potential customers of the City's water and sewer utility). A certified copy of the document contained in Exhibit DLM-5 will be produced for the record copy at the hearing. The certified document should remove any objection as to authentication pursuant to TEX. R. EVID. 902 (1). In the alternative, if Your Honor finds that it is hearsay, the testimony and exhibit are not offered to prove the truth of the matter asserted but to demonstrate the witness's belief that the City has sought changes to its water and/or sewer CCN since the last amendment was by the TCEQ.