

1 A Yes, it is.

2 Q And can you please describe for the Court your  
3 training with respect to regionalization.

4 A Certainly. I played a role in the -- although  
5 that was done by the -- the actual document was done by  
6 our Publications section or division of the Commission,  
7 that information was gathered and supplied, and draft  
8 form of that came from the Enforcement Division.

9 I was on a committee with the Enforcement  
10 Division to develop that document and trained on that  
11 document, and I actually provide training on the  
12 document myself to date to additional staff people with  
13 regards to what actually feasibility means -- or I'm  
14 sorry -- the environmental -- I can't even think  
15 anymore. Let me turn to it.

16 What the feasibility of regionalization  
17 actually means or how we're supposed to treat it with  
18 regards to water and wastewater.

19 CLARIFYING EXAMINATION

20 BY JUDGE NORMAN:

21 Q What does "regionalization" mean?

22 A Regionalization means we've got three factors  
23 that we need to consider when we're looking at  
24 regionalization. And regionalization may take many  
25 forms. And I try to -- and I train staff in my section

1 on -- I'm one of the trainers that will train staff on  
2 what information to look at in determining whether  
3 something is a regional system or not. And a regional  
4 system -- and we look at three things. We look at  
5 whether there are no other systems, whether no other  
6 systems are reasonably close to the planned system, if  
7 you requested service from neighboring utilities and how  
8 their request was treated or denied or perhaps accepted,  
9 and also whether an applicant can successfully  
10 demonstrate that an exception based on cost, affordable  
11 rates, or financial, managerial or technical  
12 capabilities of the existing system should be granted.  
13 We look at those three factors.

14 There's many forms regionalization can  
15 take. It can be an interim contract or a contract  
16 between a provider to get wholesale service. It can be  
17 in the form of regionalized managerial where they share  
18 a management company, two systems share a management  
19 company.

20 Q Well, does regionalization -- excuse me. I'm  
21 interrupting here and I -- excuse me. But I thought --  
22 I had the idea that it meant combining forces.

23 A It does.

24 Q I thought that's what it meant, that  
25 regionalization means instead of having a lot of

1 separate little lines, you have a big one.

2 A That's correct.

3 Q Is that what it means?

4 A Yes.

5 Q Okay. Excuse me. But go ahead with your  
6 testimony.

7 A Okay. And --

8 Q My understanding was so simple that you just  
9 passed it over.

10 A That's basically it. That's where I was  
11 driving, that you could be combining management sources,  
12 it could become any of that. That's a form of  
13 regionalization.

14 JUDGE NORMAN: Okay.

15 MR. RODRIGUEZ: What does regionalization  
16 pol- --

17 JUDGE NORMAN: Yes. Go ahead.

18 MR. NEWSOM: At some point I would like to  
19 have an opportunity --

20 JUDGE NORMAN: Please. Please go ahead.  
21 Your turn.

22 MR. NEWSOM: Okay.

23 MR. KIRSHBAUM: Your Honor, can I have a  
24 procedural clarification?

25 JUDGE NORMAN: Yes.

1 MR. KIRSHBAUM: I believe in 2003,  
2 Ms. Benter filed her original testimony about  
3 environmental integrity, and I believe there was a  
4 deadline for objections to that testimony back then.  
5 And I don't believe -- either there was no objection  
6 filed or it was overruled. But the testimony that was  
7 specifically objected to in her supplemental direct  
8 testimony just says there are no changes that she would  
9 like to make to that recommendation at this time.

10 So to the extent that that original  
11 testimony has already been admitted into the record, I  
12 don't see the problem. I mean, I think she's qualified,  
13 first of all. But second of all, I think she's just  
14 clarifying that there are no changes she would like to  
15 make to that recommendation.

16 MR. NEWSOM: Your Honor, she --

17 MR. KIRSHBAUM: But she is certainly  
18 qualified to make that testimony.

19 MR. NEWSOM: -- she is certainly  
20 testifying to a great many things. Whether or not she's  
21 qualified to testify to those great many things is the  
22 issue before the Court. And all we're attempting to do  
23 through voir dire is to try to determine just, you know,  
24 whether or not what she did she had qualifications to  
25 perform and if what she did satisfies any fundamental

1 test for the offering of expert conclusions of the  
2 nature that there is no impact on environmental quality  
3 or environmental integrity, and I think that's what the  
4 exercise here is attempting to do.

5 JUDGE NORMAN: I think your point is good.  
6 I'm not sure -- and I just don't recall. I wondered  
7 before -- and that is whether or not there has to be an  
8 initial objection or a Robinson/Daubert analysis is  
9 waived.

10 And I think the case is going both ways as  
11 I recall, and I may be wrong on that. But as I recall,  
12 there wasn't an original Robinson/Daubert objection to  
13 that testimony, and I think that's a very good point.  
14 We can have a Robinson/Daubert hearing the rest of the  
15 afternoon.

16 MR. KIRSHBAUM: That's certainly what this  
17 has turned into, Your Honor.

18 MR. RUSSELL: Your Honor, this is even a  
19 more basic attack on the Commission's ability to appoint  
20 people to interpret and apply its own regulations.

21 MR. NEWSOM: I don't have a problem with  
22 that, Your Honor.

23 MR. RUSSELL: It's a very fundamental  
24 attack on the Commission itself, far beyond a normal  
25 Robinson or Daubert objection. And I think if it's

1 going to go like this, we would like the opportunity --  
2 and I think the Attorney General probably would like the  
3 opportunity to brief what the standard should be on  
4 these types of proceedings if the attack is on the  
5 people that the Commission has appointed in supervisory  
6 positions to implement these regulations.

7 MR. NEWSOM: I think that's unfair. The  
8 attack is not on anybody. The attack is not on  
9 Ms. Benter. The question is, what we have is a witness  
10 offering opinion testimony, and that opinion testimony  
11 over time with judicial history is required to meet  
12 certain standards.

13 And we have not taken -- we're not  
14 objecting to Ms. Benter talking about those financial  
15 matters over which she clearly has expertise. But when  
16 we're talking about environmental matters and impacts on  
17 environmental matters, she is not an engineer. She is  
18 not a health scientist. She doesn't have those kind of  
19 qualifications.

20 And to the extent that she is offering  
21 testimony as to the lack of any kind of environmental  
22 impact, I think it's essential to explore what it is  
23 that she's done. I've been very confused by her  
24 testimony here. First, the service area is at a higher  
25 elevation than the wastewater plants, when that's

1 contrary to the evidence in this record.

2 We have the testimony that said, "Well,  
3 regionalization is great because we can utilize  
4 infrastructure that's already in place." The testimony  
5 in this case has already been that there is no  
6 infrastructure in the service area, that a wastewater  
7 plant that is proposed to provide service to this area  
8 has not been designed, much less built. But the other  
9 direction of wastewater infrastructure is, there has not  
10 been a line that has been designed or built to take it  
11 to the Wilson Creek plant.

12 I'm very confused as to just exactly what  
13 kind of assessment the witness has actually done. I'm  
14 not trying to make this in any way a personal attack,  
15 but I am just extremely concerned that we have testimony  
16 being directed at specific issues that are statutory and  
17 regulatory criteria that, (A) there's not qualifications  
18 to and (B), there's not a foundation that would apply  
19 any type of expertise or qualifications to any  
20 assessment performed in this case. That's what I've got  
21 a problem with.

22 JUDGE NORMAN: Now, Under 702, she can be  
23 qualified by knowledge, skill, experience, training.

24 MR. RUSSELL: Your Honor, let me make this  
25 once again. This is not a general environmental impact

1 statement we're talking about. It's not an ASTM  
2 standard. It's not what you would normally expect an  
3 environmental engineer to come in and testify to in a  
4 major case.

5 What this is, is the Commission's own  
6 regulations. Those eight points are the Commission's  
7 regulations. They adopted those regulations. They  
8 train their people how they want their own regulations  
9 interpreted.

10 So she has tried to explain to us over and  
11 over what environmental integrity means in the  
12 Commission's policy and opinion and how it's interpreted  
13 in reviewing these applications. And we're getting way  
14 off, it seems to me, into an overall environmental  
15 impact statement that would require significantly more  
16 qualifications, and I would not deny that. I mean, that  
17 would probably require engineering training in  
18 environmental engineering.

19 But once again, we're getting back to the  
20 Commission's own regulations, how they're interpreted by  
21 the Commission itself in the form of its employees who  
22 implement these regulations. And I think that's a  
23 fundamentally different thing than an overall  
24 environmental impact statement.

25 MR. NEWSOM: Well, the regulations aren't



1 any different than what the status is. I mean, it's the  
2 same words.

3 MR. RUSSELL: And the Commission, the  
4 Texas Commission on Environmental Quality is empowered  
5 to be the implementing agency by the Texas Legislature  
6 of the statute of the Texas Water Code. If there is a  
7 collateral attack on the Commission's rules in this  
8 proceeding, it will be disallowed by the courts in this  
9 state to the extent that's an issue.

10 This is the Commission's regulations that  
11 have been adopted, been in place for a long period of  
12 time, long past Administrative Procedures Act attack on  
13 these regulations. It's how the Commission is  
14 implementing its own regulations. This is just a  
15 Statutory implementation -- this is the Commission's  
16 implementation of the statutes.

17 So what she -- the only thing she really  
18 needs to be qualified to do is to implement the  
19 Commission's regulations. And if this is a basic  
20 challenge as to how Commission employees implement their  
21 regulations and there should be a higher standard in  
22 their review, then at that point I would suggest that  
23 this is an issue that the Commission itself should be  
24 involved in.

25 MR. NEWSOM: Your Honor, I think that's

1     distorting what's at issue. You know, there's not a  
2     collateral attack on any rule. The question -- the  
3     question is where a witness is offering expert testimony  
4     on the impact on environmental integrity, it's not a  
5     matter of what the Commission's rules require to be  
6     implemented. The question is whether or not a witness  
7     has the qualifications to address matters relating to  
8     that inquiry.

9                 JUDGE NORMAN: How long are your  
10     questions? How many questions do you have?

11                MS. RUSSELL: Your Honor, I'll just say  
12     what we would ask at this point, if the issue is going  
13     to be this fundamental, we would ask for certification  
14     of this question to the Commission because I believe  
15     this is a very fundamental important question.

16                I don't want to go there. You know, I  
17     thought we were going to get through with this whole  
18     proceeding today. I've never run into this sort of  
19     thing before. But this is a fundamental question. So  
20     if that's where we're headed, I wanted to give you a  
21     heads-up of where we would be headed, too.

22                MR. NEWSOM: Well, I mean, I don't know  
23     what the question that Mr. Russell may be referring to.  
24     I think that the question that has been bothering me --  
25     and it appears to have been bothering the Court -- is

1 the qualifications of the witness to offer expert  
2 testimony as to the nature of the environmental  
3 integrity impacts. That's all that it's been directed  
4 at.

5 And to the extent -- if the Court wants to  
6 take it into consideration, you know, and look at the  
7 testimony and give it whatever weight, I mean, that's  
8 fine. But I can't allow for my client to just simply  
9 accept or waive the idea that -- receiving expert  
10 testimony on a matter that the witness would not  
11 otherwise appear to be qualified for.

12 I mean, normally in those type of  
13 instances, there is some kind of -- I mean, let me just  
14 give you an example. To do an assessment or to opine on  
15 the impacts associated with land disturbance, one would  
16 think that they would have some specialized training in  
17 how to categorize those impacts. We haven't heard of  
18 that specialized training on categorizing the nature of  
19 impacts.

20 We would also expect that there would be  
21 some evaluation pursuant to that type of qualification,  
22 some evaluation of the volume of materials taken out,  
23 the depth at which they would be taken out, what would  
24 happen to those materials once they're taken out, what  
25 precautions are going to be utilized to prevent them

1 from entering into a watercourse and waterway. We have  
2 the testimony that there is no impact without any of  
3 that assessment being conducted.

4 JUDGE NORMAN: Let me ask you this, Ms. --  
5 Bentner or Benter?

6 A Benter.

7 JUDGE NORMAN: Benter. Did you perform  
8 the analysis that you have been trained to perform in  
9 this case?

10 A Yes, I did.

11 JUDGE NORMAN: Okay. But I'm still going  
12 to let -- how long are your questions?

13 MR. NEWSOM: Your Honor, I think we've  
14 made our point.

15 JUDGE NORMAN: Okay.

16 MR. NEWSOM: And I do not want to be here  
17 all afternoon. I do not know what question Mr. Russell  
18 may be referring to as certifying.

19 MR. RUSSELL: The question I would ask to  
20 be certified to the Commission is the ability of the  
21 Commission-appointed person to interpret and apply the  
22 Commission's own regulations. And in this context,  
23 environmental integrity is whatever the Commission means  
24 it to be to apply the Commission's regulations in  
25 reviewing a CCN and then to testify in a proceeding such

1 from entering into a watercourse and waterway. We have  
2 the testimony that there is no impact without any of  
3 that assessment being conducted.

4 JUDGE NORMAN: Let me ask you this, Ms. --  
5 Bentner or Benter?

6 A Benter.

7 JUDGE NORMAN: Benter. Did you perform  
8 the analysis that you have been trained to perform in  
9 this case?

10 A Yes, I did.

11 JUDGE NORMAN: Okay. But I'm still going  
12 to let -- how long are your questions?

13 MR. NEWSOM: Your Honor, I think we've  
14 made our point.

15 JUDGE NORMAN: Okay.

16 MR. NEWSOM: And I do not want to be here  
17 all afternoon. I do not know what question Mr. Russell  
18 may be referring to as certifying.

19 MR. RUSSELL: The question I would ask to  
20 be certified to the Commission is the ability of the  
21 Commission-appointed person to interpret and apply the  
22 Commission's own regulations. And in this context,  
23 environmental integrity is whatever the Commission means  
24 it to be to apply the Commission's regulations in  
25 reviewing a CCN and then to testify in a proceeding such

1 as this. And it appears to me to be a different  
2 standard than we would have in other situations.

3 JUDGE NORMAN: There are two -- there is  
4 an issue that you brought up.

5 So you have made your point. Is that  
6 right?

7 MR. NEWSOM: I think so, Your Honor.

8 JUDGE NORMAN: Have you made yours?

9 MR. RODRIGUEZ: Yes.

10 JUDGE NORMAN: Have you made yours?

11 MR. KIRSHBAUM: I just want to agree with  
12 Mr. Russell, that, you know, her specialized knowledge  
13 and training are in applying Commission rules and  
14 informing Your Honor and the Commission how the  
15 Executive Director and his staff apply these rules in  
16 reviewing CCN applications. And one of the criteria  
17 they look at is environmental integrity, and she's  
18 explained how they look at it.

19 JUDGE NORMAN: Let me ask you one other  
20 question. You looked -- in determining environmental  
21 integrity, did you look at this application more on its  
22 own to determine whether it's qualified or did you look  
23 at it in determining whether some other application  
24 would be more qualified in this particular case?

25 A I looked at this application and whether it

1 would be qualified because we're not required to look at  
2 better -- we just meet the criteria, not determining if  
3 one is better than the other --

4 Q Okay.

5 A -- unless it's an area that is an economically  
6 distressed area, then we're required to make that  
7 determination.

8 JUDGE NORMAN: I see. Overruled.

9 A Rule-based, yes.

10 JUDGE NORMAN: No. I said "overruled."

11 A Oh, okay.

12 MR. RUSSELL: Thank you, Your Honor.

13 MR. RODRIGUEZ: Thank you, Your Honor.

14 JUDGE NORMAN: Do you still want it  
15 certified?

16 MR. RUSSELL: No, Your Honor.

17 JUDGE NORMAN: Okay.

18 MS. RUSSELL: I believe your ruling took  
19 care of -- and I did not ask for it to be certified. I  
20 tried to give the Court where I would be headed if we  
21 were really going to get into this in depth. Thank you,  
22 Your Honor.

23 MR. KIRSHBAUM: Your Honor, I would like  
24 to reoffer Exhibits ED-5, ED-6 and ED-7.

25 JUDGE NORMAN: Except for the objections

1 already made, any objections?

2 MR. RODRIGUEZ: No objections.

3 JUDGE NORMAN: Including your --

4 MR. NEWSOM: Yes, I understood that.

5 JUDGE NORMAN: It's admitted.

6 (Executive Director Exhibit Nos. 5, 6 and  
7 7 admitted)

8 MR. KIRSHBAUM: I would like to offer  
9 Tammy Benter for cross-examination by the other parties  
10 in this case.

11 WITNESS BENTER: Can I take a quick break  
12 to go get my Powerade?

13 JUDGE NORMAN: Please.

14 WITNESS BENTER: Thanks.

15 MR. NEWSOM: Can we take about 10 minutes,  
16 Your Honor?

17 JUDGE NORMAN: Yes.

18 (Off the record: 2:21 p.m. to 2:34 p.m.)

19 CROSS-EXAMINATION

20 BY MR. NEWSOM:

21 Q Ms. Benter, good afternoon. I hope you're  
22 feeling better than you were yesterday. You're sounding  
23 like you're feeling a lot better.

24 A Yes.

25 Q Let me just ask you the same way I started



1130

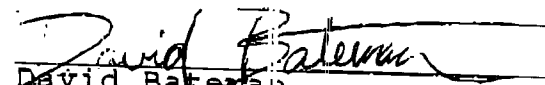
## C E R T I F I C A T E

STATE OF TEXAS )  
COUNTY OF TRAVIS )

We, David Bateman and Aloma J. Kennedy,  
Certified Shorthand Reporters in and for the State of  
Texas, do hereby certify that the above-mentioned matter  
occurred as hereinbefore set out.

WE FURTHER CERTIFY THAT the proceedings of  
such were reported by us or under our supervision, later  
reduced to typewritten form under our supervision and  
control and that the foregoing pages are a full, true,  
and correct transcription of the original notes.

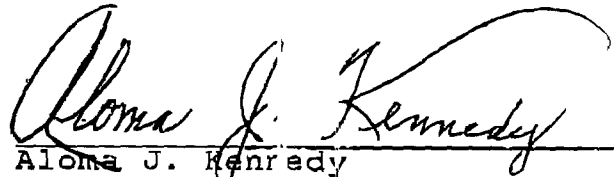
IN WITNESS WHEREOF, we have hereunto set  
our hand and seal this 31st day of December 2004.

  
David Bateman  
Certified Shorthand Reporter  
CSR No. 7578 - Expires 12/31/05

Kennedy Reporting Service, Inc.  
Firm Certification No. 276  
1801 Lavaca Street, Suite 115  
Austin, Texas 78701

1131

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



Aloma J. Kennedy  
Certified Shorthand Reporter  
CSR No. 494 - Expires 12/31/06

Kennedy Reporting Service, Inc.  
Firm Certification No. 276  
1801 Lavaca Street, Suite 115  
Austin, Texas 78701



Protecting Texas  
by Reducing and  
Preventing Pollution

# FAX TRANSMITTAL

DATE September 26, 2008

NUMBER OF PAGES (including this cover sheet):

30

TO: Name Mailing list  
Organization \_\_\_\_\_  
FAX Number \_\_\_\_\_

FROM: **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

Name Brian MacLeod  
Division/Region Environmental Law  
Telephone Number (512) 239-0600  
FAX Number (512) 239-0600

## NOTES:

Town of Lindsay, SOAH Docket No. 582-06-1641; TCEQ Docket No. 2006-0044-UCR

Attached is the Executive Director's Response to Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Executive Director.

Should you have any questions or concerns, please do not hesitate to contact me at (512) 239-0750

Sincerely,

Brian MacLeod

Honorable Norman	(512) 475-4994
Docket Clerk	(512) 239-3011
Blas Coy	(512) 239-6077
Arturo Rodriguez, Jr.	(866) 929-1041
John J. Carlton	(512) 435-2860

5N

**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 OBJECTIONS TO THE PREFILED TESTIMONY  
AND EXHIBITS OF MR. JIM MYRICK**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the City of Lindsay ("Lindsay" or "City") and files these objections to the Prefiled Testimony and Exhibits of Mr. Jim Myrick ("Mr. Myrick"), filed on behalf of Lindsay Pure Water Company ("LPWC") in the above-styled matter. Additionally, Lindsay seeks to preserve its right to file objections to any other testimony or exhibits that might be late-filed by Mr. Myrick.

**I. BACKGROUND**

The City of Lindsay filed its Application to amend its water and sewer certificate of convenience and necessity ("CCN") on August 31, 2005. The Parties abated the case for over a year for settlement negotiations that did not result in a settlement. As such, the City's Application has been on file and pending in front of the Texas Commission on Environmental Quality ("TCEQ") and the State Office of Administrative Hearings ("SOAH").

**II. OBJECTIONS**

Much of Mr. Myrick's testimony consists of irrelevant testimony that does nothing to refute the City's application as well as hearsay statements with no exception to the hearsay rule being presented. Mr. Myrick also attempts to testify as an expert on behalf of LPWC but

throughout the deposition of Mr. Myrick it was very clear that Mr. Myrick is nothing more than a fact witness with little to no knowledge of the technical issues necessary to provide evidence to refute the City's ability to provide continuous and adequate service to the entirety of the requested area. LPWC recognizes that Mr. Myrick is not an expert in any field as LPWC never designates any experts to testify on its behalf.

### III. SPECIFIC OBJECTIONS

#### Direct Testimony of Jim Myrick, filed on July 7, 2008

Lindsay makes the following objections to specific portions of Mr. Jim Myrick's Direct testimony and moves to strike each portion of the referenced testimony and/or exhibits.

##### 1. Page 3, lines 10-12.

*Myrick's testimony is hearsay without foundation*

Lindsay objects to and moves to strike this testimony as hearsay without providing an exception to the hearsay rule. Mr. Myrick attempts to testify regarding statements allegedly made by Lindsay without providing any foundation for whom made the statement, whether the statement was authorized, or whether the person making the statement was an agent of Lindsay. The statements are merely recitations of out of court statements allegedly made by Lindsay to prove the truth of the matter asserted. As such, the testimony violates TEX. R. EVID. 802 and should be stricken.

##### 2. Page 4, line 5-11.

*Myrick's testimony is irrelevant*

Lindsay objects to and moves to strike this testimony as irrelevant based on TEX. R. EVID. 401 and 402. The testimony proffered by Mr. Myrick is wholly irrelevant insofar as the Application of Lindsay is being considered. What may or may not have occurred in a prior CCN application filed by LPWC does not provide the trier of fact with evidence that will be admissible at trial to determining if the City of Lindsay has the economic, managerial, and technical capability to provide continuous and adequate service to the entirety of the area being

requested by Lindsay in its Application. Furthermore, no proof has been proffered to substantiate any of the claims being made by Mr. Myrick. The testimony should be stricken.

3. Page 4, line 15 beginning with "Consequently,..." and ending on line 16 with "...Commission's rules."

*Sustained*  
*Leah*  
*08/25/08*

Lindsay objects to and moves to strike this testimony as drawing a legal conclusion that the witness is not qualified to make. Mr. Myrick attempts to testify as an expert regarding the Commission's rules. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter.<sup>1</sup> Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding.<sup>2</sup> At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures.<sup>3</sup> Mr. Myrick, in deposition testimony, demonstrated that

<sup>1</sup> TEX. R. EVID. 702; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993); and *E. I. du Pont Nemours and Company v. C. R. Robinson*, 923 S.W.2d 549 (Tex. 1995).

<sup>2</sup> TEX. R. EVID. 702.

<sup>3</sup> See Lindsay Pure Water Company's Response to the City of Lindsay's Request for Disclosure, *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 (Oct. 2, 2006) [hereinafter "LPWC RFD Responses"], attached hereto as Exhibit A.

he is not an expert.<sup>4</sup> Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken

4. Page 5, line 2 through line 5 ending with "...to serve other areas." and lines 17 beginning with "With two 10-horsepower..." through line 19.

*as summary testimony*  
Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding the design, capacity, and future upgrades of the Lindsay PWC system. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter.<sup>5</sup> Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding.<sup>6</sup> At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has

<sup>4</sup> 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 15, 20, 29, and 35 (Aug. 27, 2008) [hereinafter "Myrick Deposition"], attached hereto as Exhibit B.

<sup>5</sup> TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

<sup>6</sup> TEX. R. EVID. 702.

been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures.<sup>7</sup> Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.<sup>8</sup> Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

5. Page 6, line 1 through line 17.

Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding the design, capacity, future upgrades of the Lindsay PWC system. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter.<sup>9</sup> Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding.<sup>10</sup> At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of LPWC in any of its responses or supplemental responses to the

<sup>7</sup> See LPWC RFD, *supra* note 3.

See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

10 TEX. R. EVID. 702.



Parties' Requests for Disclosures.<sup>11</sup> Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.<sup>12</sup> In fact, Mr. Myrick stated in his deposition testimony that he provided "raw data" to his attorney and then his "attorney helped me with those numbers."<sup>13</sup> He has demonstrated that he cannot calculate capacity for water systems nor has the ability to testify on capacity issues. The testimony proffered by Mr. Myrick is not even testimony prepared by him. Mr. Myrick stated repeatedly in his deposition testimony that he has not performed any calculations for the LPWC system.<sup>14</sup> Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

**6. Page 7, line 16 through line 19.**

Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding the design, capacity, future upgrades of the Lindsay PWC system. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter.<sup>15</sup> Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues regarding capacity.<sup>16</sup> At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized

<sup>11</sup> See LPWC RFD, *supra* note 3.

<sup>12</sup> See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

<sup>13</sup> See Myrick Deposition at 87-90, attached hereto as Exhibit C, *supra* note 4.

<sup>14</sup> See Myrick Deposition at 87, 89-90, and 111, attached hereto as Exhibit D, *supra* note 4.

<sup>15</sup> TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

<sup>16</sup> TEX. R. EVID. 702.

knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures.<sup>17</sup> Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.<sup>18</sup> In fact, Mr. Myrick stated in his deposition testimony that he provided "raw data" to his attorney and then his "attorney helped me with those numbers."<sup>19</sup> He has demonstrated that he cannot calculate capacity for water systems nor has the ability to testify on capacity issues. Mr. Myrick stated repeatedly in his deposition testimony that he has not performed any calculations for the LPWC system.<sup>20</sup> Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

**7. Page 7, line 20 through page 8, line 6.**

Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding the CCN rules related to the need for service. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter.<sup>21</sup> Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues regarding need for

<sup>17</sup> See LPWC RFD Responses, *supra* note 3.

<sup>18</sup> See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

<sup>19</sup> See Myrick Deposition at 87-90, *supra* note 13.

<sup>20</sup> See Myrick Deposition at 87, 89-90, and 111, *supra* note 14.

<sup>21</sup> TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

service.<sup>22</sup> At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures.<sup>23</sup> Mr. Myrick, in deposition testimony, demonstrated that he is not an expert on CCN issues.<sup>24</sup> He has demonstrated that he is not familiar with the CCN rules that apply to this proceeding.<sup>25</sup> Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

**8. Page 8, line 17 through page 9 line 16.**

Lindsay objects to and moves to strike this testimony as the witnesses speculates on why Lindsay proffered the testimony and based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify about the "requestors" "plans for development"<sup>26</sup> and "Lindsay['s] hopes."<sup>27</sup> Mr. Myrick, despite his service on the City Council of Lindsay a decade ago and his living in the area, cannot possibly know what the requestors' intent may be with regarding to their property.

<sup>22</sup> TEX. R. EVID. 702.

<sup>23</sup> See LPWC RFD Responses, *supra* note 3.

<sup>24</sup> See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

<sup>25</sup> See Myrick Deposition at 93-94, attached hereto as Exhibit E, *supra* note 4.

<sup>26</sup> See Myrick Direct Testimony at 8, l. 18.

<sup>27</sup> See *id.* at l. 21-23.

Likewise, Mr. Myrick has no knowledge as to Lindsay's "hope" with regard to its intent to secure a CCN amendment. Mr. Myrick's testimony is inadmissible speculation, conjecture, and opinion testimony under TEX. R. EVID. 602, 701, and 702. Mr. Myrick cannot possibly have personal knowledge regarding the actions or intentions of the City. Mr. Myrick does not work for the City, he is not on the City Council, and he is in no way connected with the day to day operations of the City. Mr. Myrick cannot have personal knowledge of any actions taken by or intentions of the City. Therefore, the testimony should be stricken.

Likewise, Mr. Myrick attempts to testify as an expert regarding the requests for service received by Lindsay and his opinions regarding the adequacy of the requests for service. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter.<sup>28</sup> Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding.<sup>29</sup> At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC

---

<sup>28</sup> TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

<sup>29</sup> TEX. R. EVID. 702.

in any of its responses or supplemental responses to the Parties' Requests for Disclosures.<sup>30</sup> Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.<sup>31</sup>

Additionally, the testimony regarding what Mr. Myrick believes regarding the City's intentions in obtaining a CCN amendment is inadmissible speculation, conjecture, and opinion testimony under TEX. R. EVID. 602, 701, and 702. Mr. Myrick cannot possibly have personal knowledge regarding the actions or intentions of the City. Mr. Myrick does not work for the City, he is not on the City Council, and he is in no way connected with the day to day operations of the City. Mr. Myrick cannot have personal knowledge of any actions taken by or intentions of the City. Therefore, the testimony should be stricken.

**9. Page 9, line 1 through line 22.**

Lindsay objects to and moves to strike this testimony as irrelevant based on TEX. R. EVID. 401 and 402. The testimony proffered by Mr. Myrick is wholly irrelevant insofar as the Application of Lindsay is being considered. The reasons behind Lindsay PWC not filing a CCN amendment when it had allegedly received requests for service does not provide the trier of fact with evidence that will be admissible at trial to determining if the City of Lindsay has the economic, managerial, and technical capability to provide continuous and adequate service to the entirety of the area being requested by Lindsay in its Application. Furthermore, no proof has been proffered to substantiate any of the claims being made by Mr. Myrick. The testimony should be stricken.

---

<sup>30</sup> See LPWC RFD Responses, *supra* note 3.

<sup>31</sup> See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

**10. Page 10, line 1 through line 12.**

Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding population growth. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter or any other subject matter relevant to this proceeding.<sup>32</sup> Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC, as well as a developer, but he is not an expert on any of the issues relevant to this proceeding.<sup>33</sup> In fact, Mr. Myrick in his deposition testimony stated that he had not even read Mr. Maroney's testimony; therefore his opinion on this testimony cannot be relied upon.<sup>34</sup> At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures.<sup>35</sup> Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.<sup>36</sup> This testimony should be stricken.

<sup>32</sup> TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

<sup>33</sup> TEX. R. EVID. 702.

<sup>34</sup> See Myrick Deposition at 96, l. 11-13, attached hereto as Exhibit F, *supra* note 4.

<sup>35</sup> See LPWC RFD Responses, *supra* note 3.

<sup>36</sup> See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

11. Page 11, line 1 through line 17.

Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding the impact on the land within the South Ridge of Lindsay Subdivision if the City's CCN amendment was granted. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter.<sup>37</sup> Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding.<sup>38</sup> At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures.<sup>39</sup> Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.<sup>40</sup>

As LPWC recognizes that Mr. Myrick is not an expert on any issue relevant to this proceeding, the testimony proffered may only be viewed as speculation as to what may transpire.

<sup>37</sup> TEX. R. EVID. 702; *Daubert*, 509 U.S. 579; and *Du Pont*, 923 S.W.2d 549.

<sup>38</sup> TEX. R. EVID. 702.

<sup>39</sup> See LPWC RFD Responses, *supra* note 3.

<sup>40</sup> See Myrick Deposition at 15, 20, 29, and 35, *supra* note 4.

As LPWC recognizes that Mr. Myrick is not an expert on any issue relevant to this proceeding, the testimony proffered may only be viewed as speculation as to what may transpire. As it is pure speculation, conjecture, and opinion testimony, it is inadmissible under TEX. R. EVID. 602, 701, and 702. This testimony should be stricken

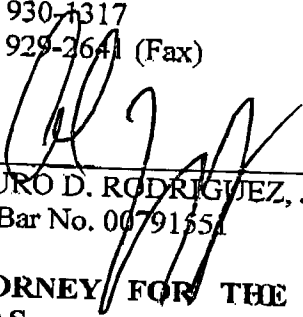
#### IV. CONCLUSION

Based on the foregoing, the City of Lindsay respectfully requests that Your Honor sustain these objections, strike the testimony and exhibits and exclude the references discussed above. Lindsay also respectfully requests any further relief to which it has shown itself to be justly entitled.

Respectfully submitted,

**RUSSELL & RODRIGUEZ, L.L.P.**

1633 Williams Drive  
Building 2, Suite 200  
Georgetown, Texas 78628  
(512) 930-4317  
(866) 929-2641 (Fax)

  
ARTURO D. RODRIGUEZ, JR.  
State Bar No. 00791551

**ATTORNEY FOR THE CITY OF LINDSAY,  
TEXAS**



## CERTIFICATE OF SERVICE

I hereby certify that on this 12<sup>th</sup> day of September, 2008, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following counsel or party representatives of record:

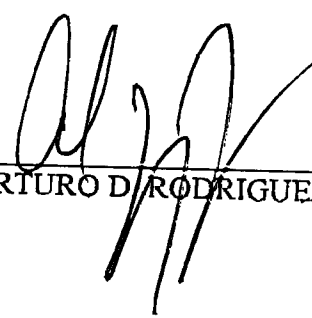
Mr. James W. Norman  
Administrative Law Judge  
300 West 15<sup>th</sup> Street  
Austin, Texas 78701  
Fax: 475-4994

Mr. Brian MacLeod, Attorney  
Environmental Law Division  
TCEQ - MC 173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: 239-0606

John Carlton  
Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701  
Fax: 435-2360

Mr. Blas Coy, Attorney  
Office of Public Interest Counsel  
TCEQ - MC 103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: 239-6377

Docket Clerk  
Office of the Chief Clerk - MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: 239-3311

  
\_\_\_\_\_  
ARTURO D. RODRIGUEZ, JR.

Oct-02-06 03:06pm From:ARMBRUST TOWN, L.L.P.

5124352360

T-372 P.03/09 F-503

**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	§	
(CCN) NOS. 13025 AND 20927 IN	§	OF
COOKE COUNTY, TEXAS	§	
APPLICATION NOS. 35096-C & 35097-C	§	ADMINISTRATIVE HEARINGS

**LINDSAY PURE WATER COMPANY'S RESPONSE TO THE CITY OF LINDSAY'S  
REQUEST FOR DISCLOSURE AND FIRST SET OF REQUESTS FOR PRODUCTION**

TO: The City of Lindsay, by and through its attorney of record, Arturo D. Rodriguez, Jr. of Russell & Rodriguez, L.L.P., 102 West Morrow Street, Suite 103, Georgetown, Texas 78626.

COMES NOW, Lindsay Pure Water Company, Protestant herein, and files its Response to the City of Lindsay's Request for Disclosure and First Set of Requests for Production.

**REQUEST FOR DISCLOSURE**

**REQUEST FOR DISCLOSURE 194.2(c):** The legal theories and, in general, the factual bases of the responding party's claims or defenses.

**RESPONSE:** Lindsay Pure Water Company and the City of Lindsay reached a service area settlement in 2002. That settlement addressed portions of the area requested in the Town of Lindsay's current application and Lindsay Pure Water Company believed that all service area matters were addressed by the settlement agreement.

**REQUEST FOR DISCLOSURE 194.2(d):** The amount and any method of calculating economic damages.

**RESPONSE:** Lindsay Pure Water Company is not seeking monetary damages at this time.

**REQUEST FOR DISCLOSURE 194.2(e):** The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

**RESPONSE:**

Joe O'Dell, Lindsay Pure Water Company, P.O. Box 1338, Gainesville, Texas 76241. Mr. O'Dell may be contacted through Lindsay Pure Water Company's attorney, John J. Carlton, at 435-2308. Mr. O'Dell has knowledge of the Town of Lindsay's CCN application.

John Carlton, Armbrust & Brown, L.L.P., 100 Congress, Suite 1300, Austin, Texas 78701, 435-2308. Mr. Carlton has knowledge of facts provided by his client and obtained through discovery from other parties, as well as knowledge regarding reasonable and necessary attorney's fees and costs for water and wastewater rate cases.

252793-1 08/30/2006

1

Exhibit A

09/15/08 MON 08:52 [TX/RX NO 5824]

Oct-02-08 03:06pm From: ARMORUST OWN, L.L.P.

5124352360

T-372 P.04/09 F-503

**REQUEST FOR DISCLOSURE 194.2(f):** For any testifying expert:

- 1) The expert's name, address, and telephone number.

**RESPONSE:** No testifying expert has been retained at this time.**REQUEST FOR DISCLOSURE 194.2(f):** For any testifying expert:

- 2) The subject matter on which the expert will testify.

**RESPONSE:** A testifying expert for Lindsay Pure Water Company will testify regarding the application filed by the City of Lindsay, including any financial issues raised by the application. When a testifying expert is retained, this response will be supplemented.**REQUEST FOR DISCLOSURE 194.2(f):** For any testifying expert:

- 3) The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by you, employed by you, or otherwise subject to your control, documents reflecting such information.

**RESPONSE:** None at this time.**REQUEST FOR DISCLOSURE 194.2(f):** For any testifying expert:

- 4) If the expert is retained by, employed by, or otherwise subject to the control of the responding party:
  - (a) All documents, tangible things, reports, models or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
  - (b) The expert's current resume and bibliography.

**RESPONSE:** None at this time.**REQUEST FOR DISCLOSURE 194.2(i):** Any witness statements described in Rule 192.3(h).**RESPONSE:** None known at this time.

Oct-02-06 03:07pm From-ARMBRUST BROWN, L.L.P.

5124352360

T-372 P.08/08 F-503

**REQUEST FOR PRODUCTION NO. 16:** Produce any and all documents purporting to give you authority to participate in this proceeding.

**RESPONSE:** To the extent they exist, such documents will be produced.

**REQUEST FOR PRODUCTION NO. 17:** Produce any and all documents between you and the Texas Commission on Environmental Quality purporting to give you authority to provide water in the area requested in Lindsay's Application.

**RESPONSE:** Responsive documents will be produced.

**REQUEST FOR PRODUCTION NO. 18:** Produce a copy of your current CCN.

**RESPONSE:** Responsive documents will be produced.

**REQUEST FOR PRODUCTION NO. 19:** Produce any and all documents related to any loans sought or received by you from the United States Department of Agriculture Rural Development Agency or any other federal agency.

**RESPONSE:** To the extent they exist, responsive documents will be produced.

**REQUEST FOR PRODUCTION NO. 20:** Produce any and all documents related to any grants sought or received by you from the United States Department of Agriculture Rural Development Agency or any other federal agency.

**RESPONSE:** To the extent they exist, responsive documents will be produced.

**REQUEST FOR PRODUCTION NO. 21:** Produce any and all documents related to receiving or purchasing water from any entity or person.

**RESPONSE:** To the extent they exist, responsive documents will be produced.

Respectfully submitted,

*John J. Carlton / JJC*  
JOHN J. CARLTON

State Bar No. 03817600

ARMBRUST & BROWN, L.L.P.

100 Congress Avenue, Suite 1300

Austin, Texas 78701-2744

(512) 435-2300 - Telephone

(512) 436-2360 - Telecopy

ATTORNEYS FOR LINDSAY PURE  
WATER COMPANY

Oct-02-06 09:07pm From-ARMBRUST, L.L.P.

5124352360

T-372 P.09/09 F-503

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Lindsay Pure Water Company's Response to City of Lindsay's Request for Disclosure and First Set of Requests for Production has been sent by Facsimile and/or First Class Mail on this 2<sup>nd</sup> day of October, 2006, to the following:

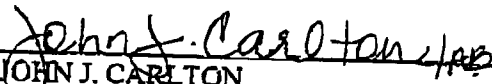
Arturo D. Rodriguez, Jr.  
Russell & Rodriguez, L.L.P.  
102 West Morrow Street, Suite 103  
Georgetown, Texas 78626  
Phone: (512) 930-1317  
Facsimile: (512) 930-7742

Blas J. Coy, Jr.  
Office of Public Interest Counsel  
TCEQ - MC 103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-6363  
Facsimile: (512) 239-6377

Brian MacLeod, Attorney  
TCEQ - MC-175  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-0750  
Facsimile: (512) 239-0606

Christiaan Siano, Attorney  
TCEQ - MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-0600  
Facsimile: (512) 239-0606

Docket Clerk  
Office of the Chief Clerk - MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-3300  
Facsimile: (512) 239-3311

  
JOHN J. CARLTON

252793-1 08/30/2006

7

HEARING ON THE MERITS  
SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCF

TRANSCRIPT OF PROCEEDINGS BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
AUSTIN, TEXAS

APPLICATION OF THE TOWN OF	)	SOAH DOCKET NO.
LINDSAY TO AMEND WATER AND	)	582-06-2023
SEWER CERTIFICATES OF	)	
CONVENIENCE AND NECESSITY	)	
(CCN) NOS. 13025 AND 20927 IN	)	
COOKE COUNTY, TEXAS	)	TCEQ DOCKET NO.
APPLICATION NOS. 35096-C & 35097-C)	)	2006-0272-UCR

ORAL DEPOSITION  
JAMES MYRICK  
WEDNESDAY, AUGUST 27, 2008

ORAL DEPOSITION OF JAMES MYRICK,  
produced as a witness at the instance of the City of  
Lindsay and duly sworn, was taken in the above-styled  
and numbered cause on Wednesday, August 27, 2008, from  
9:55 a.m. to 1:06 p.m., before Kim Pence, Certified  
Shorthand Reporter in and for the State of Texas,  
reported by machine shorthand at the offices of  
Armbrust & Brown, L.L.P., 100 Congress Avenue, Suite  
1300, Austin, Texas 78701, pursuant to the Texas Rules  
of Civil Procedure and the provisions stated on the  
record or attached hereto.

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

Exhibit B

HEARING ON THE MERITS  
SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCI

Page 15

1 A No.

2 Q Okay. Do you hold any licenses or  
3 certifications issued by any agency of the state of  
4 Texas?

5 A Driver's license. No. I am on the tax  
6 appraisal board, and obviously, you have to have  
7 continuing ed there. That would be the --

8 Q Okay. Can you tell me who operates Lindsay  
9 Pure Water Company?

10 A Yes. Charles Young.

11 Q Okay. And who is he?

12 A He operates Lindsay Pure Water Company. He  
13 is a hired employee that takes care of all of the  
14 required sampling, form filling. He does everything  
15 that needs to be done to comply with the TECQ (sic).

16 Q Okay. And does he hold an operator's  
17 license?

18 A Yes, he does.

19 Q What level?

20 A I do not know. I had given that --

21 Q Okay.

22 A -- in some -- some document somewhere you  
23 have, has that number in it.

24 Q Charles Young is an employee of Lindsay Pure  
25 Water, or is he a contractor?

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

HEARING ON THE MERITS  
SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UC

Page 20

1 stipulated by the TNRCC.

2 Q Okay. So he comes to your system  
3 approximately once a week?

4 A I think -- yes.

5 Q Does he do any system planning for Lindsay  
6 Pure Water?

7 A Describe "planning."

8 Q Well, adding any new infrastructure, adding  
9 any new taps, any --

10 A He advises me --

11 Q -- any planning at all.

12 A He advises me as to what I need to do.

13 Q He advises you on what you need to do with  
14 respect to what?

15 A The water company.

16 Q Okay.

17 A As far as meeting the specifications and  
18 requirements of the TECQ.

19 Q Does he provide advice on new infrastructure  
20 that's needed?

21 A No.

22 Q Okay. Who would give you that advice?

23 A I would hire an engineer.

24 Q Do you have an engineer?

25 A Not on the payroll, no, sir.

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK



HEARING ON THE MERITS  
SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCF

Page 29

1 Q Okay. And I think we established earlier  
2 that he's not really an employee, he's just a  
3 contractor. Is that correct?

4 A That's correct.

5 Q A vendor of services?

6 A Yes, sir.

7 Q Does Lindsay Pure Water have any employees?

8 A No.

9 Q Do you draw any salary from Lindsay Pure  
10 Water?

11 A No.

12 Q Are you paid any dividends?

13 A No.

14 Q Are you paid anything from Lindsay Pure  
15 Water?

16 A No.

17 Q Okay. How are decisions made at Lindsay Pure  
18 Water? Who makes them?

19 A I make minor decisions.

20 Q Okay.

21 A If there are any major decisions, the  
22 corporation owners make the decisions.

23 Q Do you decide then what is a major decision  
24 or a minor decision?

25 A I guess it is based on monetary values.

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

HEARING ON THE MERITS  
SOAH DOCKET NO.582-06-2023 TCEQ DOCKET NO. 2006-0272-UCF

Page 35

1 A No. I was in Austin.

2 Q Okay. So who does that in your absence then?

3 A No one. Charles Young does. He knew I was  
4 going to be gone, but I don't know -- he would  
5 normally do it. I don't know that he did it.

6 Q And do you hold an operator's license from  
7 the TCEQ?

8 A No, I do not.

9 Q Have you ever had an operator's license from  
10 the TCEQ?

11 A No, sir, I have not.

12 Q Do you know how Lindsay Pure Water Company is  
13 treated by the TCEQ, whether it's an investor-owned  
14 utility, a water supply corporation, some other --

15 A It's a --

16 Q -- some other type of utility?

17 A It is an investor.

18 Q Investor-owned utility?

19 A Yes.

20 Q Okay. And do you-all have an authorized  
21 tariff to be operating --

22 A Yes, we do.

23 Q -- under?

24 A You have it.

25 Q Okay. When was the last time that tariff was

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

HEARING ON THE MERITS  
SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCF

TRANSCRIPT OF PROCEEDINGS BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
AUSTIN, TEXAS

APPLICATION OF THE TOWN OF	)	SOAH DOCKET NO.
LINDSAY TO AMEND WATER AND	)	582-06-2023
SEWER CERTIFICATES OF	)	
CONVENIENCE AND NECESSITY	)	
(CCN) NOS. 13025 AND 20927 IN	)	
COOKE COUNTY, TEXAS	)	TCEQ DOCKET NO.
APPLICATION NOS. 35096-C & 35097-C)	)	2006-0272-UCR

ORAL DEPOSITION  
JAMES MYRICK  
WEDNESDAY, AUGUST 27, 2008

ORAL DEPOSITION OF JAMES MYRICK,  
produced as a witness at the instance of the City of  
Lindsay and duly sworn, was taken in the above-styled  
and numbered cause on Wednesday, August 27, 2008, from  
9:55 a.m. to 1:06 p.m., before Kim Pence, Certified  
Shorthand Reporter in and for the State of Texas,  
reported by machine shorthand at the offices of  
Armbrust & Brown, L.L.P., 100 Congress Avenue, Suite  
1300, Austin, Texas 78701, pursuant to the Texas Rules  
of Civil Procedure and the provisions stated on the  
record or attached hereto.

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

Exhibit C

HEARING ON THE MERITS  
SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UC

Page 87

1 of 12, Lines 3 through 17, you discuss your ability to  
2 provide service --

3 A Yes, sir.

4 Q -- and the capacity that Lindsay Pure Water  
5 has. Correct?

6 A Yes, sir.

7 Q Did you prepare those numbers?

8 A I did.

9 Q Okay. And was this information that you  
10 prepared, or was this information that someone  
11 prepared for you?

12 A I gave the raw data, which was the amount of  
13 storage, the amount of capacity the down-hole well  
14 would pump and the capacity of the pressure pumps.

15 Q Let me see this. Okay. Yes, sir.

16 A And I believe my attorney helped me with  
17 those numbers.

18 Q Okay. Did an engineer at all help you with  
19 the -- coming up with the connection counts or the  
20 capacity of the system?

21 A No.

22 Q Okay. Did Mr. Young help you with  
23 determining what the capacity of the system is?

24 A No.

25 Q Okay. You provided raw data, and with

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

HEARING ON THE MERITS  
SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCF

Page 88

1 respect to the raw capacity, that is indicated on  
2 Page 5. Is that correct?

3 A Yes.

4 Q And I'm moving on to Page 6.

5 A Okay.

6 Q Did you perform any calculations to come up  
7 with any of the connection capacities that are  
8 reflected in your testimony from Lines 3 through 17?

9 A I did some calculations on pump capacity, and  
10 I visited with -- the reason that we went from 206  
11 to 155 connections and 420 to 210 because I was using  
12 raw head pressure, I believe, or raw pump pressure,  
13 and it has to be divided by 2.3.

14 And I was corrected by my water -- the  
15 gentleman that does my well service, replace the pump,  
16 and has drilled water wells for me, and I consulted  
17 with him as to whether I was correct or not, and he  
18 told me the errors of my way.

19 Q Okay. And you indicated that you did the  
20 pump capacity, and what was the other calculation that  
21 you performed?

22 A I was in -- I am in the process and have  
23 completed the change-out of the high volume to a -- to  
24 the high pressure to the high-volume pump, and I was  
25 under the impression that it would do 420.

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

## HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCF

Page 89

1 Q Okay.

2 A And I bought the pump from him and asked him,  
3 you know, what will it do? And he said, well, you've  
4 got to divide by 2.3 to end up getting the -- I said,  
5 well, then I'm twice -- I'm two times -- I have  
6 misstated the connections by 50 percent.

7 Q Where did you -- what calculations did you  
8 perform to come up with a figure of 500 connections of  
9 storage tank capacity that was reflected on Line 4?

10 A You mean 100 connections on Line 4?

11 Q Storage tank capacity of 500 connections.

12 A Ah. I believe my attorney and I came up with  
13 that.

14 Q Okay. Did you perform any calculations to  
15 come up with that figure?

16 A No.

17 Q The current pump capacity of 155 connections  
18 that's reflected on Line 5?

19 A Yes.

20 Q And then the 210 that are reflected on Line 6  
21 of Page 6?

22 A Yes.

23 Q Did you perform any calculations to come up  
24 with that -- those connection counts?

25 A No.

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

## HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCF

Page 90

1 Q On Line No. 7, you have 250 connections. It  
2 would be the capacity for the distribution lines. Is  
3 that an accurate paraphrasing of that testimony?

4 A That's correct.

5 Q What calculations did you perform to come up  
6 with the 250 connections?

7 A I did not.

8 Q Okay. How about on Line 8, the 168  
9 connections for the 100-gallon-per-minute well  
10 capacity, what calculations did you perform to come up  
11 with those figures?

12 A I gave the raw data to my attorney, and  
13 evidently there is -- he got those numbers from  
14 whatever is standard.

15 Q Okay. Would that be the same for all the  
16 other connection counts that you're --

17 A Yes.

18 Q -- that are described in that?

19 A That is correct.

20 Q You didn't perform any calculations to come  
21 up with those. Is that correct?

22 A No.

23 Q What did you utilize to determine that the  
24 data that was provided back to you, the connection  
25 counts, were accurate?

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

HEARING ON THE MERITS  
SOAH DOCKET NO.582-06-2023 TCEQ DOCKET NO. 2006-0272-UCF

TRANSCRIPT OF PROCEEDINGS BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
AUSTIN, TEXAS

APPLICATION OF THE TOWN OF	)	SOAH DOCKET NO.
LINDSAY TO AMEND WATER AND	)	582-06-2023
SEWER CERTIFICATES OF	)	
CONVENIENCE AND NECESSITY	)	
(CCN) NOS. 13025 AND 20927 IN	)	
COOKE COUNTY, TEXAS	)	TCEQ DOCKET NO.
APPLICATION NOS. 35096-C & 35097-C)	)	2006-0272-UCR

ORAL DEPOSITION  
JAMES MYRICK  
WEDNESDAY, AUGUST 27, 2008

ORAL DEPOSITION OF JAMES MYRICK,  
produced as a witness at the instance of the City of  
Lindsay and duly sworn, was taken in the above-styled  
and numbered cause on Wednesday, August 27, 2008, from  
9:55 a.m. to 1:06 p.m., before Kim Pence, Certified  
Shorthand Reporter in and for the State of Texas,  
reported by machine shorthand at the offices of  
Armbrust & Brown, L.L.P., 100 Congress Avenue, Suite  
1300, Austin, Texas 78701, pursuant to the Texas Rules  
of Civil Procedure and the provisions stated on the  
record or attached hereto.

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

Exhibit D



## HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCF

Page 87

1 of 12, Lines 3 through 17, you discuss your ability to  
2 provide service --

3 A Yes, sir.

4 Q -- and the capacity that Lindsay Pure Water  
5 has. Correct?

6 A Yes, sir.

7 Q Did you prepare those numbers?

8 A I did.

9 Q Okay. And was this information that you  
10 prepared, or was this information that someone  
11 prepared for you?

12 A I gave the raw data, which was the amount of  
13 storage, the amount of capacity the down-hole well  
14 would pump and the capacity of the pressure pumps.

15 Q Let me see this. Okay. Yes, sir.

16 A And I believe my attorney helped me with  
17 those numbers.

18 Q Okay. Did an engineer at all help you with  
19 the -- coming up with the connection counts or the  
20 capacity of the system?

21 A No.

22 Q Okay. Did Mr. Young help you with  
23 determining what the capacity of the system is?

24 A No.

25 Q Okay. You provided raw data, and with

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

## HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCF

Page 89

1 Q Okay.

2 A And I bought the pump from him and asked him,  
3 you know, what will it do? And he said, well, you've  
4 got to divide by 2.3 to end up getting the -- I said,  
5 well, then I'm twice -- I'm two times -- I have  
6 misstated the connections by 50 percent.

7 Q Where did you -- what calculations did you  
8 perform to come up with a figure of 500 connections of  
9 storage tank capacity that was reflected on Line 4?

10 A You mean 100 connections on Line 4?

11 Q Storage tank capacity of 500 connections.

12 A Ah. I believe my attorney and I came up with  
13 that.

14 Q Okay. Did you perform any calculations to  
15 come up with that figure?

16 A No.

17 Q The current pump capacity of 155 connections  
18 that's reflected on Line 5?

19 A Yes.

20 Q And then the 210 that are reflected on Line 6  
21 of Page 6?

22 A Yes.

23 Q Did you perform any calculations to come up  
24 with that -- those connection counts?

25 A No.

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK