

## 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

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SOAH DOCKET NO.582-06-2023

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Page 111

1 Q (BY MR. RODRIGUEZ) I just have a couple of  
2 follow-up questions, and then I think I'll be done,  
3 Mr. Myrick. I appreciate your patience.

4 A Not a problem.

5 Q One thing I -- you've got your testimony  
6 right there that you prefiled. I'm going to ask you  
7 to go back to Page 6 on that, and it was the  
8 connection counts, and I think we discussed earlier  
9 that you didn't provide any of the -- you didn't  
10 perform any of the calculations that came up with the  
11 connection counts on that page. Do you remember that  
12 testimony?

13 A That's correct, yes.

14 Q Do you know, either through knowledge or  
15 training, how one would come up with those connection  
16 counts?

17 A I am sure that there are -- there is some  
18 documentation that is available that will give you how  
19 many gallons for each connection, and I'm sure that  
20 that was what was used, and that's what I would have  
21 to find to get through that calculation.

22 Q Have you ever performed a calculation that  
23 would allow you to arrive at any of these connection  
24 counts?

25 A No.

WEDNESDAY, AUGUST 27, 2008  
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SOAH DOCKET NO.582-06-2023

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

APPLICATION OF THE TOWN OF	)	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 E

## HEARING ON THE MERITS

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1 A Yes.

2 Q Okay. In applying for a new or an amended  
3 CCN application, are you familiar with the rules, the  
4 TCEQ rules, or state statutes with respect to granting  
5 CCNs?

6 A Maybe you need to refresh my memory.

7 Q As to whether you're familiar with them?

8 A No. What they are.

9 Q Okay. Are you familiar with them?

10 A I am familiar with them.

11 Q Okay. When was the last time you reviewed  
12 them?

13 A 2002.

14 Q Okay. Can you recount for me what your  
15 understanding is, any of the factors that are required  
16 for the TCEQ to review in granting a new or an amended  
17 CCN?

18 A Verbatim, no, I can't.

19 Q I'm asking what your understanding is.

20 A My understanding is that you would have to  
21 economically be able to supply the water; two, it  
22 would be -- need to be within your ability to service  
23 that water, that area with water; and you would have  
24 to have their blessing to do that.

25 Q The TCEQ's?

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1           A     TECQ's blessing to do that and would have to  
2 file a CCN to do that.

3           Q     Okay. Can you tell me what you have reviewed  
4 that would indicate to you that it would not be  
5 economical for the City of Lindsay to provide water  
6 service to its requested CCN area?

7           A     I have reviewed nothing that would tell me  
8 that they would or could not be -- economically  
9 provide that service.

10          Q     Okay.

11          A     I do know that it would be very expensive.

12          Q     Okay. And that's based on your experience  
13 with the telephone company?

14          A     That's right.

15          Q     Okay. Any other experience other than that?

16          A     No.

17          Q     Do you know how much it would cost to have  
18 a -- to bore under the creek for water -- to lay  
19 waterline.

20          A     My estimation was 250,000.

21          Q     Okay. And where did you come up with that  
22 estimate?

23          A     I -- that's just my estimate.

24          Q     Okay. Based on what?

25          A     Based on what I figured it would cost to do

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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

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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 F

## HEARING ON THE MERITS

SOAH DOCKET NO.582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

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1 Q And that's fair. Let me ask you this: Do  
2 you have any information that would lead you to  
3 believe that the City of Lindsay would be unable to  
4 provide service to the area that it has requested?

5 A No, I have nothing that would say that they  
6 would not be able to.

7 Q Okay. Have you reviewed the prefiled  
8 testimony that the City of Lindsay provided in this  
9 case?

10 A No.

11 Q Okay. Did you read Mr. Kerry Maroney's  
12 prefiled testimony?

13 A No.

14 Q Okay. Did you read Mr. Metzler's?

15 A No.

16 Q Mr. Jack Stowe's?

17 A No.

18 Q I think you refer in your testimony to  
19 Mr. Maroney, so I just assumed that you had read his  
20 testimony.

21 A Not to my knowledge.

22 Q Are you aware of any requests for service  
23 that the City of Lindsay received for -- requesting  
24 water and wastewater service from the City of Lindsay?

25 A Only mine.

WEDNESDAY, AUGUST 27, 2008  
DEPOSITION OF JAMES MYRICK

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## FACSIMILE COVER PAGE

September 12, 2008

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Re:

Comments: City of Lindsay's Objections to Testimony

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☐ Urgent      ☐ For Your Review      ☐ Reply ASAP      ☐ Please Comment  
☐ Original To Follow Via:    ☐ Hand Delivery    ☐ Federal Express    ☐ First Class Mail

**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 Response to the Town of Lindsay's Objections to the Prefiled Testimony and Exhibits of Jim Myrick.

*Generally overruled - a lot of knowledge and some expert testimony based on examining the Vol. 100*

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.

**COPY****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 28927 IN §  
 COOKE COUNTY, TEXAS §  
 APPLICATION NOS. 35096-C & 35097-C§ ADMINISTRATIVE HEARINGS

2008 SEP 26 PM 12:05

RECEIVED  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Lindsay Pure Water Company ("LPWC"), Protestant herein, and submits the following Responses to the Town of Lindsay's ("Lindsay") Objections to the Prefiled Testimony and Exhibits of Jim Myrick.

*His opinion based on his own perception.*

**Response to Objections to Testimony and Exhibits of Jim Myrick**

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

*Overruled*

**LINDSAY'S OBJECTION:** 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.

**LPWC'S RESPONSE:** The City of Lindsay's objections to Mr. Myrick's testimony are longer than the testimony itself. Mr. Myrick's testimony regarding why he formed LPWC is a personal recollection. Mr. Myrick does not recount statements made by others; rather, he explains why he had to create LPWC to serve his subdivision. Mr. Myrick's personal recollection is not hearsay.

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

*Overruled*

**LINDSAY'S OBJECTION:** 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 determine 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.

**LPWC'S RESPONSE:** The City of Lindsay is seeking to serve part of the subdivision that Mr. Myrick believed and understood was part of LPWC's service area. Until he began preparing for this matter, he did not know that a portion of an area he intended to serve and could serve was allegedly excluded from LPWC's CCN. He is stating his opinion of his service area as the owner of the water system.

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

*Sustained*

**LINDSAY'S OBJECTION:** Lindsay objects to and moves to strike this testimony as drawing a legal conclusion that the witness is not qualified to make. Mr. Myrick's 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. 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. 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. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

**LPWC'S RESPONSE:** As an owner of a water system, Mr. Myrick is uniquely qualified to testify regarding his service area. In the many years Mr. Myrick has owned LPWC, he has undoubtedly had to familiarize himself with certain TCEQ rules that may impact his system. The rule Mr. Myrick refers to is straightforward and does not require an expert to interpret. There has been no testimony to refute Mr. Myrick's correct assertion that LPWC may serve customers within ¼ mile of LPWC's CCN boundaries.

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.

*overruled*

**LINDSAY'S OBJECTION:** 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. 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. 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. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

**LPWC'S RESPONSE:** Because Mr. Myrick oversaw the design and construction of his own water system, it follows that he can testify regarding what areas he intended his water system to serve and the size of the system he built. In the testimony following this, he describes in detail the components of his system. The City of Lindsay does not object to this detailed testimony. Mr. Myrick's time and experience as the owner of LPWC makes him qualified to testify regarding initial design and future plans for expansion.

Regarding the testimony at lines 17-19, Mr. Myrick is doing a little multiplication. The testimony at lines 16-17 (to which there was no objection), establishes that one 10-horsepower pump would have a capacity of 210 gallons per minute. The following line merely states that the addition of another 10-horsepower pump would double that output. That is simple math, and a particular degree is not required to establish that fact.

5. Page 6, line 1 through line 17.

*overruled*

**LINDSAY'S OBJECTION:** 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. 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. 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. Mr. Myrick, in

deposition testimony, demonstrated that he is not an expert. 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." 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. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

**LPWC'S RESPONSE:** As an owner of LPWC, Mr. Myrick is well aware of his system's capacity, and he testifies in great detail about that capacity – both present and future. He has personally supervised the construction and operation of LPWC since its inception. He has first-hand knowledge of how his system works, including its capacity and its limitations, and that knowledge is evident through this testimony. Mr. Myrick does not have to be an expert to testify regarding a system he works with every day.

6. Page 7, line 16 through line 19.

*Overruled*  
**LINDSAY'S OBJECTION:** 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. 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. 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. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert. 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." 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. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

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

*overruled*

**LINDSAY'S OBJECTION:** 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 prefled 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. 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 service. 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. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert on CCN issues. He has demonstrated that he is not familiar with the CCN rules that apply to this proceeding. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

**LPWC'S RESPONSE:** Besides being an owner of LPWC, Mr. Myrick is a developer. He developed the subdivision that LPWC serves. He knows the area and knows there has not been any development in the area for many years. It is his opinion there was no need to expand his CCN in the absence of any development in his CCN area. The City of Lindsay may disagree, but given his experience in the area and with the water system for many years, it is a valid opinion nonetheless.

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

*how does he know what's on the Applicant's mind?*

**LINDSAY'S OBJECTION:** 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" and "Lindsay['s] hopes." 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 regard to their property. 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.

*Lay a foundation for the witness to show that he is qualified to testify as an expert regarding the requests for service received by Lindsay and his opinions regarding the adequacy of the requests for service.*

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 prefled 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. 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. 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. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.

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.

*2 ball of evidence*

**LPWC'S RESPONSE:** Besides being an owner of LPWC, Mr. Myrick is a developer. He developed the subdivision that LPWC serves. He knows the area and knows there has not been any development in the area for many years. He has served on the City Council, the county appraisal board, and is active in the community. After his research on the alleged requests for service, he found no actual plans for development anywhere in the area. It is his opinion that the alleged requests are essentially a sham. The City of Lindsay may disagree, but given his experience in the area and with the water system for many years, it is a valid opinion nonetheless.

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

*overrule lines 10-16*

**LINDSAY'S OBJECTION:** 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 determine 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.

*overrule lines 19-22*

**LPWC'S RESPONSE:** The City of Lindsay objected to page 9, lines 1-16 above. LPWC's response to that objection is incorporated herein. Regarding the testimony at lines 19-22, Mr. Myrick is testifying as to his personal actions as an owner of LPWC as well as his personal decision to not complete the CCN amendment process. This testimony supports his opinion as an owner of LPWC as to why there is no need to expand *any* CCN in the area at this time.

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

**LINDSAY'S OBJECTION:** 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. 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. 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. 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' Request for Disclosures. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert. This testimony should be stricken.

**LPWC'S RESPONSE:** Besides being an owner of LPWC, Mr. Myrick is a developer. He developed the subdivision that LPWC serves. He knows the area and knows there has not been any development in the area for many years. He has served on the City Council, the county appraisal board, and is active in the community. After his research on the alleged requests for service, he found no actual plans for development anywhere in the area. It is his opinion that the only growth is in areas already a part of either LPWC's or the City of Lindsay's CCNs. The City of Lindsay may disagree, but given his experience in the area and with the water system for many years, it is a valid opinion nonetheless.

**11. Page 11, line 1 through line 17** *overruled*

**LINDSAY'S OBJECTION:** 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. 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. 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' Request for Disclosures. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.

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.

**LPWC'S RESPONSE:** As a developer and as an owner of a water system, Mr. Myrick understands the cost of development and utility expansion. Mr. Myrick knows that it will cost more for a distant utility (the City of Lindsay) to serve potential new customers in the South Ridge of Lindsay than it would cost for a closer utility, basically a utility in their own neighborhood - LPWC, to serve them. Mr. Myrick has established his system's capacity and forthcoming upgrades, and it is clear LPWC is the closest in proximity to the additional potential phases of the South Ridge of Lindsay. Interestingly, the City of Lindsay makes no objection to Mr. Myrick's testimony that follows at page 11, line 18 - page 12, line 13, which discusses similar points.

Respectfully submitted,



**JOHN J. CARLTON**

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COMPANY**

**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 26<sup>th</sup> day of September, 2008, to the following:

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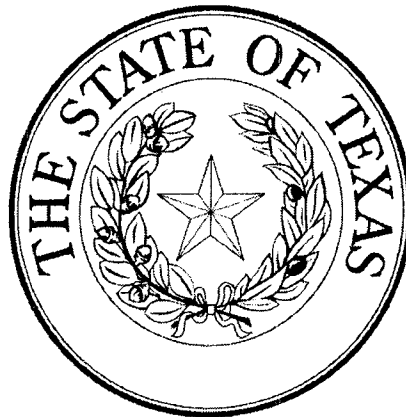
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JOHN J. CARLTON

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

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

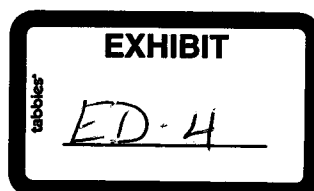


DIRECT TESTIMONY OF  
TAMMY LEE HOLGUIN-BENTER  
UTILITIES AND FINANCIAL REVIEW TEAM  
UTILITIES AND DISTRICTS SECTION  
WATER SUPPLY DIVISION  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
AUGUST 2008

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1   **Q.    Please state your name and business address.**

2   A.    Tammy Holguin-Benter, 12015 Park 35 Circle, Building F, Austin, Texas.

3   **Q.    By whom are you currently employed and how long have you been employed there?**

4   A.    I have been employed by the Texas Commission on Environmental Quality ("TCEQ" or  
5        "Commission") and its predecessor agency, the Texas Natural Resource Conservation  
6        Commission ("TNRCC"), since October 1999 in the Utilities and Financial Review Team  
7        until April 30, 2006. Thereafter, I became the Team Leader of the Utilities and Financial  
8        Review Team.

9   **Q.    Please describe your educational background and past work experience.**

10  A.    I graduated from Angelo State University with a Bachelor of Science in Economics and  
11        Biology with a supporting concentration in Mathematics. I also hold a Master of  
12        Business Administration from the University of the Incarnate Word. I was previously  
13        employed as the Executive Director of Keep San Antonio Beautiful (KSAB), a non-profit  
14        organization in San Antonio, Texas. While employed by KSAB, my responsibilities  
15        included business/financial development, program development, budget/ financial  
16        analysis, staff training/development, and board training and development. Prior to  
17        working for KSAB, I was employed as a Socioeconomic Analyst by Pacific Western  
18        Technologies, Ltd., where my responsibilities included conducting socioeconomic  
19        research/analysis and document writing/editing of Environmental Baseline Studies (EBS)  
20        and other environmental reports submitted under federal contract for publication. I've  
21        attached a copy of my current resume to my testimony (Exhibit TB-ED1).

22  **Q.    Please describe ~~current~~ your current work responsibilities.**

1 A. My current responsibilities include supervising a team of staff whose primary  
2 responsibility is to process applications related to obtaining or amending Certificates of  
3 Convenience and Necessity ("CCNs") and rate related applications or appeals.  
4 Furthermore, I am responsible for reviewing and processing CCN related applications;  
5 assisting with the negotiation of settlements; preparing and mentoring staff to provide  
6 expert testimony for contested hearings regarding investor-owned, nonprofit, and  
7 governmental water and sewer utilities; and for reviewing business plans or financial and  
8 managerial information. In addition to these responsibilities, I work closely with the  
9 Capacity Development Program; the Financial, Managerial and Technical (FMT)  
10 Contract Team of the TCEQ; and with the Water Utilities Database (WUD) Team.

11 **Q. How many separate CCN cases have been previously assigned to you?**

12 A. I have been assigned over 260 separate CCN related applications during my employment  
13 with the TCEQ.

14 **Q. Have you testified as an expert witness in contested matters before the State Office**  
15 **of Administrative Hearings ("SOAH")?**

16 A. Yes, in addition to filing prefiled testimony in numerous contested CCN and rate related  
17 matters, I have also provided live testimony before SOAH on these type of applications.

18 **Q. For which applications have you provided live testimony?**

19 A. I have testified in two hearings regarding contested CCN applications and in one hearing  
20 regarding a contested rate application. The applications were for the CCN application of  
21 City of Crandall, Texas, (SOAH Docket No. 582-00-1479); Petition Appealing Water  
22 Rates Established by Chisholm Trail Special Utility District (SOAH Docket No. 582-05-

0003) and the CCN application of the Town of Prosper (SOAH Docket No. 582-03-1994).

**Q. Are you familiar with the matter known as (SOAH) Docket No. 582-06-2023, TCEQ Docket No. 2006-0272-UCR?**

A. Yes, this is the matter regarding the contested applications (the “Applications”) filed by the Town of Lindsay (“Lindsay” or the “Applicant”) to amend its water and sewer CCNs in Cooke County.

**Q. Have you reviewed the Applications filed by Lindsay to amend water and sewer CCN Nos. 13025 and 20927 in Cooke County, all prefiled testimonies and the other information filed with the Commission in regard to this matter?**

A. Yes, I have.

**Q. What is the purpose of your testimony?**

A. I will present the Executive Director’s (“ED’s”) position as to Lindsay’s proposed amendments to water and sewer CCN Nos. 13025 and 20927.

**Q. Please explain the scope of your participation in the present proceeding.**

A. My participation regarding SOAH Docket No. 582-06-2023 can be summarized as follows:

A. I reviewed the Applications with respect to the criteria necessary to amend a water and/or sewer CCN found in the *Texas Water Code*, Section 13.241, and Title 30, *Texas Administrative Code*, Section 291.102, as they were applicable on August 31, 2005, the date the application was filed with the Commission.

B. I reviewed the most recent comprehensive compliance investigations and all

1 responses to any violations or deficiencies noted during the investigations for  
2 Lindsay's existing water and sewer systems.

3 C. I reviewed the information filed by all parties as part of formal discovery and all  
4 prefilled testimonies. I also reviewed supplemental prefilled testimony filed by Mr.  
5 Myrick and the transcript of his deposition for this matter. ~~filed for this~~  
6 proceeding.

7 D. I have presented herein a position on the Applications to amend water and sewer  
8 CCN Nos. 13025 and 20927 filed by Lindsay.

9 **CCN APPLICATION**

10 **Q. During your review of the information presented in Lindsay's Applications, what**  
11 **standards did you consider?**

12 A. I reviewed the information based on the eight (8) criteria in the *Texas Water Code*,  
13 Chapter 13, and the Commission's Rules, Chapter 291, for amending a water or sewer  
14 CCN, as they were applicable on August 31, 2005. This is the date Lindsay filed the  
15 Applications which are the subject of this proceeding.

16 **Q. What are the eight (8) criteria?**

17 A. They are as follows:

- 18 (1) the adequacy of service currently provided to the requested area;
- 19 (2) the need for additional service in the requested area;
- 20 (3) the effect of the granting of a certificate on the recipient of the certificate  
21 and on any retail public utility of the same kind already serving the  
22 proximate area;

- 1 (4) the ability of the applicant to provide adequate service;
- 2 (5) the feasibility of obtaining service from an adjacent retail public utility;
- 3 (6) the financial stability of the applicant, including, if applicable, the
- 4 adequacy of the applicant's debt-equity ratio;
- 5 (7) environmental integrity; and
- 6 (8) the probable improvement in service or lowering of cost to
- 7 consumers in that area.

8 **Q. What is Lindsay proposing to accomplish by filing the Applications?**

9 A. Lindsay proposes to amend water and sewer CCN Nos. 13025 and 20927 in Cooke

10 County. Lindsay is asking for the same water and sewer service areas in both

11 Applications.

12 **Q. Did anyone protest the Applications?**

13 A. Yes, the ED received written protests from Lindsay Pure Water Company ("Lindsay

14 Pure" or "Protestant") and various landowners owning property in the requested area.

15 During the preliminary hearing on this matter, the Applicant, the ED of the TCEQ, the

16 Office of the Public Interest Counsel (OPIC) and Lindsay Pure were admitted as parties.

17 **Q. Has Lindsay indicated why it is applying to amend its water and sewer CCNs?**

18 A. As noted on page 11 of the testimony of the Honorable Donald L. Metzler, Mayor Pro

19 Tempore of Lindsay, the Applicant has received requests for water and sewer service

20 from approximately ~~55~~ 53 property owners in the requested area. Copies of these written

21 requests for service were attached to Mr. Metzler's testimony as exhibits. Additionally,

22 on page 13 of his testimony, Mr. Metzler indicates that Lindsay is seeking the CCNs to



1 provide water and sewer service to the residents within its city limits, its extraterritorial  
2 jurisdiction ("ETJ"), and some additional area outside of its ETJ.

3 **Q. Is Lindsay required to have a CCN?**

4 A. No; as a municipally owned utility Lindsay is not required to possess a CCN to extend  
5 service to an area that is not already being lawfully served by another retail public utility.

6 **Q. What is the adequacy of the water and/or sewer service currently provided to the  
7 requested area?**

8 A. A small portion is currently certificated to the City of Gainesville ("Gainesville") for  
9 water and sewer service. I am unaware if Gainesville is actually providing service to or  
10 has water or sewer infrastructure in this portion. Other than that, there are no other retail  
11 water or sewer providers obligated to serve the requested area.

12 Property owners outside the area certificated to Gainesville for water and sewer  
13 service must utilize septic or on-site sewage facilities ("OSSF") as a means for sewer  
14 service since there are currently no other retail sewer providers in the area. Therefore,  
15 sewer service does not appear to be adequate.

16 As for retail water service, according to page 4 of the testimony of Mr. Jim  
17 Myrick, President of Lindsay Pure Water Company, Lindsay Pure is currently providing  
18 retail water service to existing homes in areas outside of its CCN. Although Lindsay  
19 Pure is meeting minimum requirements for water service, Mr. Myrick adds that these  
20 homes are within ¼ mile of the company's current water CCN boundary. Pursuant to  
21 Chapter 291 of the Commission's rules, a CCN holder may serve up to ¼ mile outside of  
22 its existing CCN boundary without first amending its CCN, unless there is another retail

1 service provider already lawfully serving the area. With regard to sewer service, Lindsay  
2 Pure does not provide retail sewer service at this time nor does it have a sewer CCN.

3 **Q. Is there a need for additional water and/or sewer service in the requested area?**

4 A. Yes; as previously stated in my testimony, Lindsay has received 53 ~~55~~ written requests  
5 for water and sewer service in the requested area. In addition to these requests, Mr. Kerry  
6 Maroney, P.E., an engineering consultant for Lindsay, explains on page 9 of his  
7 testimony that Lindsay's population increased between the years 2000 and 2006. This is  
8 further indicative of the need for service in the requested area.

9 Currently, except for the area already certificated to Gainesville, there is no retail  
10 sewer service provider in the proximate area. Therefore, residents in the remainder of the  
11 requested area must utilize septic or OSSF for sewer service.

12 The fact that there are customers currently receiving service in the area  
13 demonstrates a need for service. Lindsay Pure is currently providing retail water service  
14 to existing homes within ¼ mile of its current water CCN boundary. It should be noted,  
15 however, that Lindsay Pure has not filed an application to amend its water CCN to  
16 provide service to this area.

17 **Q. What is the effect of granting or amending the water and/or sewer certificates on the**  
18 **recipient of the certificates and on any retail public utility of the same kind**  
19 **already serving the proximate area?**

20 A. If Lindsay's water and/or sewer amendments are granted as requested, then its water  
21 and/or sewer CCN service areas would increase. Lindsay's customer base would  
22 increase as development in the area occurs. Lindsay in turn would be obligated to

1 provide retail water and/or sewer service to the area. Other retail public water or sewer  
2 utilities already serving the proximate area would not be able to lawfully expand into any  
3 of the areas within the proposed CCN territories.

4 Because Lindsay Pure has protested the referenced Applications, I will  
5 specifically discuss the impact to Lindsay Pure if Lindsay were awarded the water and/or  
6 sewer service amendments in its Applications. For the water service area, Lindsay Pure  
7 would not be able to lawfully expand its water service into any of the area granted to  
8 Lindsay as a result of this proceeding without filing an application to decertify.  
9 Furthermore, because Lindsay Pure is currently providing water service to customers  
10 outside its CCN area, it is in danger of losing these customers to Lindsay as a result of  
11 this proceeding. These customers would be affected as they would be required to switch  
12 water providers. As for the sewer service area, awarding the requested area would not  
13 effect Lindsay Pure since it does not provide retail sewer service. After reviewing Mr.  
14 Myrick's testimony, I did not find evidence that Lindsay Pure has any plans to provide  
15 retail sewer service in the near future.

16 A portion of Lindsay's requested area overlaps with Gainesville's existing water  
17 and sewer CCN service areas. Gainesville appears capable of adequately serving the  
18 area. Additionally, awarding this area to Lindsay may conflict with the Commission's  
19 policy on regionalization. I have attached a copy of the Commission's guidance  
20 document which discusses its regionalization policy as Exhibit TB-ED2.

21 **Q. Does Lindsay have the ability to adequately provide water service to the**  
22 **proposed area?**

1 A. Yes, as testified by Mr. Metzler on page 8 of his testimony, Lindsay currently has four  
2 contract certified groundwater operators. Furthermore, Mr. Maroney states on page 14 of  
3 his testimony that Lindsay is currently serving approximately 399 ~~396~~ water connections.  
4 Mr. Maroney adds that Lindsay has three existing water wells from which it can provide  
5 water service to its existing customers and approximately 301 ~~304~~ additional customers.  
6 In addition to this information, Mr. Maroney testifies that Lindsay has two 30,000 gallon  
7 ground storage tanks; two 40,000 gallon ground storage tanks; and one 150,000 gallon  
8 elevated storage tank.

9 **Q. Does Lindsay have the ability to adequately provide sewer service to the proposed**  
10 **area?**

11 A. Yes, as testified by Mr. Metzler on page 8 of his prefiled testimony, Lindsay currently  
12 employs four certified sewer operators under contract. Furthermore, as testified by Mr.  
13 Maroney on page 14 of his prefiled testimony, Lindsay is currently providing sewer  
14 service to approximately 399 ~~396~~ sewer customers. Mr. Maroney adds that Lindsay is  
15 permitted to discharge 0.066 MGD of treated wastewater and it has available capacity to  
16 provide sewer service to approximately 467 ~~470~~ additional homes without any  
17 expansions to its current wastewater treatment plant.

18 **Q. Is it feasible to obtain water and/or sewer service from an adjacent retail public**  
19 **utility?**

20 A. Yes, but only for portions of the area. Lindsay Pure, CCN No. 12858, and Myra Water  
21 System, CCN No. 12514, are existing retail water utilities located within a 2 mile radius  
22 of the proposed water amendment. Moreover, Gainesville, CCN Nos. 12957 and 20885,

1 is certificated to provide retail water and sewer service to a portion of the area requested  
2 by Lindsay in the pending applications. At this time, Myra Water System has not  
3 expressed an interest in serving the requested area.

4 Under 30 TAC, § 291.103(a)(1), Lindsay Pure can extend water service into  
5 territory if the point of ultimate use is contiguous to and within ¼ mile of its CCN  
6 boundary. To provide service beyond the ¼ mile, Lindsay Pure would have to amend its  
7 CCN. Although Lindsay Pure has expressed an interest in providing retail water service  
8 to the requested area, it has not filed an application to amend its CCN. Therefore, it does  
9 not appear feasible for current landowners or developers to obtain water service from  
10 Lindsay Pure for any of the area outside of the area it is currently serving.

11 As for Gainesville, it is already certificated to provide retail water and sewer  
12 service to a portion of the area requested by Lindsay in the pending Applications. Mr.  
13 Metzler's testimony included a copy of the Applications filed by Lindsay as an exhibit to  
14 his testimony. On the page labeled "App1002" of Lindsay's Applications, the Applicant  
15 responds to Question 2.D. by indicating that it has received a verbal agreement from  
16 Gainesville to allow Lindsay to be certificated to the area of overlap. Lindsay also  
17 indicates that it will supplement its Applications once the agreement with Gainesville for  
18 the areas of overlap is executed. As of the date of my prefiled testimony, I have not seen  
19 a written agreement between Gainesville and Lindsay for this area. Therefore, because it  
20 does not appear that an agreement between Gainesville and Lindsay has been executed, it  
21 is reasonably certain that it is feasible for current landowners and potential developers to  
22 obtain water and sewer service from Gainesville in the areas of overlap where Gainesville

1 is already certificated. Since Gainesville has not expressed an interest in serving the  
2 remainder of the area requested by Lindsay in its Applications, it does not appear feasible  
3 for Gainesville to serve the additional area requested by Lindsay.

4 **Q. Is Lindsay financially stable?**

5 A. Yes; it appears to be. As a municipality, Lindsay has the financial authority to issue  
6 bonds, apply for loans, levy taxes and utilize fees or other general city funds to support its  
7 infrastructure and service obligations. Mr. Jack Stowe, business and financial consultant  
8 for the Applicant, testified on page 6 of his prefiled testimony that "Lindsay has not  
9 issued any debt within its Governmental Funds; therefore, the debt-to-equity ratio is 0  
10 and the capital structure for the Governmental Funds is 100% equity."

11 **Q. Will the environmental integrity be affected by the granting of the water and/or**  
12 **sewer CCN amendments as requested by Lindsay in its Applications?**

13 A. Yes; the environmental integrity will be temporarily disturbed by the construction of  
14 water and sewer distribution lines and by the construction of additional pumping and  
15 storage facilities by whoever provides service to the area. There would also be a positive  
16 effect on the environment by having a centralized retail water and/or sewer service  
17 provider for the area. This is primarily because it would eliminate the need for  
18 landowners and developers to disturb the ground by drilling private water wells, as well  
19 as eliminate the need for landowners and developers to install OSSFs to serve  
20 development or property in the area.

21 **Q. Will granting Lindsay's water and sewer CCN amendments improve service or**  
22 **lower costs to consumers in the area?**

1 A. For the area not currently certificated to Gainesville for water and sewer service, and for  
2 the customers not already receiving water service from Lindsay Pure, the availability of  
3 retail water and sewer service in the additional area would be an improvement.  
4 Furthermore, since Lindsay is an adjacent retail water and sewer service provider already  
5 serving the adjacent area, Lindsay is promoting the Commission's policy on  
6 regionalization. Because the ED does not have original jurisdiction over the rates and  
7 service policies of municipalities, the ED is unable to determine whether the water or  
8 sewer rates will be lower to consumers in the area. However, economies of scale may  
9 ultimately lower the cost to consumers.

10 **LINDSAY PURE'S CURRENT SERVICE AREA**

11 **Q. Can you describe the water CCN currently held by Lindsay Pure Water Company?**

12 A. Yes, Lindsay Pure currently holds water CCN No. 12858 in Cooke County. The CCN  
13 was issued in 1998 and a copy of the certificate is attached to Mr. Myrick's testimony as  
14 Exhibit LPWC 6. As described by Mr. Myrick on page 4 of his prefiled testimony, the  
15 current CCN covers only what is known as Phase 1 of the South Ridge of Lindsay  
16 Subdivision and a portion of Phase 2.

17 **Q. Do you agree with Mr. Myrick's testimony that Lindsay Pure was awarded only a  
18 portion of the area it originally requested in error?**

19 A. No, I do not agree with Mr. Myrick's testimony. Mr. Myrick testifies on page 7 of his  
20 testimony that he does not believe there is a current need for service in the surrounding  
21 area. I believe the Commission granted Lindsay Pure the water CCN to the area where it  
22 was able to demonstrate a need for service only. Furthermore, as testified by Mr. Myrick

1 on page 1 of his testimony, he has been part owner and President of Lindsay Pure since it  
2 was created in 1997. Therefore, he had an opportunity to review the certificate, order,  
3 and map awarded in 1998 to Lindsay Pure, and to file either a Motion to Overturn (MTO)  
4 after the CCN was granted, or to file a CCN amendment application for the remaining  
5 area during the course of this proceeding. Moreover, although the Commission's rules  
6 allow Lindsay Pure to serve up to ¼ mile outside of its CCN service area, it is not  
7 protected from encroachment from other service providers.

### 8 **CONCLUSIONS AND RECOMMENDATIONS**

9 **Q. Have you drawn any conclusions based on your review of Lindsay's Applications,**  
10 **information presented to you during discovery by all parties, and the testimonies**  
11 **presented by all parties with respect to the Applications, which are the subject of**  
12 **this proceeding?**

13 A. Yes, I have drawn several conclusions. First, I have concluded that although there was a  
14 prior agreement reached between Lindsay Pure and Lindsay with respect to future service  
15 to the requested area, the agreement is outside the jurisdiction of the TCEQ. Therefore,  
16 the agreement will not be used in making my recommendations.

17 Second, as previously stated, although the Commission's rules allow Lindsay  
18 Pure to provide service up to ¼ mile outside of its CCN service area, it is not protected  
19 from encroachment from other providers. ~~By filing a CCN amendment application~~  
20 ~~during the course of this proceeding, Lindsay Pure may have protected its existing~~  
21 ~~customers from encroachment by another retail provider. However, Lindsay Pure did not~~  
22 ~~file such an application.~~



1                   ~~Third, although I believe Lindsay Pure may be able to demonstrate the financial,~~  
2                   ~~managerial, and technical capability to provide water service to a portion of the requested~~  
3                   ~~area, that application has not been filed with the Commission so it cannot be taken into~~  
4                   ~~consideration at this time.~~

5   **Q.    Do you have a recommendation on Lindsay's CCN Applications to amend water**  
6           **and sewer CCN Nos. 13025 and 20927 in Cooke County?**

7    A.    Yes, I do. I recommend that Lindsay's water CCN amendment Application be granted to  
8           all of the requested area except for the area of overlap with Gainesville's existing water  
9           CCN service and for the area for which Lindsay Pure is already providing service, where  
10          Lindsay Pure has facilities already in place, and any of the area in the South Ridge  
11          Subdivision. As for Lindsay's sewer CCN amendment Application, I recommend that it  
12          be granted for all of the requested area except for of the area of overlap with  
13          Gainesville's existing sewer CCN.

14   **Q.    Are granting of the water and/or sewer certificates necessary for the service,**  
15           **convenience, accommodation, and safety of the public?**

16    A.    Yes, it is my professional opinion that granting the certificates to serve the recommended  
17           water and sewer service areas are necessary for the service, convenience,  
18           accommodation, and safety of the public.

19   **Q.    Does the ED need additional information in order to grant the recommended water**  
20           **and sewer CCN service areas?**

21    A.    Yes, the ED would need, on separate water and sewer maps, four hard copies of maps  
22           showing the area and projectable digital data depicting the recommended area for both

1 the water and sewer service areas separately. This information would be needed in order  
2 to correctly illustrate the areas on the final maps. In turn, these maps would be submitted  
3 along with the final order for this proceeding.

4 **Q. Does this conclude your direct, prefiled testimony?**

5 A. Yes, it does; but I reserve the right to supplement this testimony during the course of the  
6 proceeding as new facts or other evidence is presented.



January 2003  
RG-357

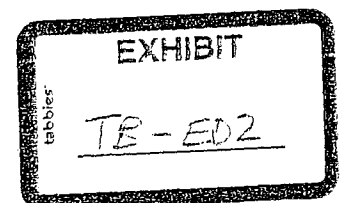
# The Feasibility of Regionalizing Water and Wastewater Utilities:

## A TCEQ Policy Statement

printed on  
recycled paper

Water Supply Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



# The Feasibility of Regionalizing Water and Wastewater Utilities:

A TCEQ Policy Statement

Prepared by  
Water Supply Division



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# Introduction

Building and operating a successful water or wastewater system is not easy. To comply with the state and federal requirements that ensure that drinking water is safe and wastewater is treated adequately, you must have—or have access to—these and other resources:

- for drinking water systems, an adequate and reliable source of water that either is or can be made safe for human consumption;
- the financial resources and technical ability to design and build a system that can provide service effectively and reliably;
- the financial resources and technical ability to operate and maintain the system so it operates safely for your workers, your customers, and, in the case of wastewater systems, the environment;
- the ability to read and understand the many, highly technical state and federal regulations associated with water and wastewater systems;
- the management skill to successfully operate a business that is critical to public welfare.

Recognizing the critical role these resources play in the success of a water system, Congress amended the Safe Drinking Water Act in 1996. Under these amendments, states must determine whether new community water systems are likely to be able to comply with regulatory requirements.

In 1997, the 75th Texas Legislature made similar amendments to Chapter 341 of the Texas Health and Safety Code and Chapter 13 of the Texas Water Code.

Along with other recent legislative changes—and wastewater regulations that were already on the books—these amendments establish a clear message: All new public water systems and any wastewater systems owned and operated by entities required to obtain a CCN must be capable of operating efficiently and effectively for the long term. In Texas, the Texas Commission on Environmental Quality (TCEQ, “we”) is responsible for reviewing and approving the design and operating plans of proposed water systems, and the Texas Water Development Board (TWDB) can assist growing areas with water resource planning.

This document states the TCEQ’s policy for evaluating applications for new systems to determine whether regionalization—the consolidation of the operations, physical systems, or both of two or more existing or proposed water or domestic wastewater systems—is a viable option for the



proposed new system. The goal of this policy is to achieve the best service to the consumer at rates that will ensure that the system is maintained for the long term.

In this policy, we also address the issue of when existing systems that are struggling to remain in compliance with state and federal regulations should consider the option of regionalization.

See Appendix B for details on the statutory authority for this policy.

## A Few Important Terms

Before discussing this policy further, we need to define some important terms. These simplified definitions are intended to help you understand these terms as we use them in this policy statement. However, the official definitions are as stated in the relevant statute or rule.

### Types of Systems

**system**—a physical plant plus the lines that connect it to the customer.

**public water system (PWS)**—any drinking water system that has the potential to serve at least 15 connections or that does serve at least 25 people for at least 60 days out of one year. For example, mobile home parks, truck stops, and restaurants that have their own water supply usually meet the minimum standard of being a PWS. For a PWS, the system comprises the source of the water, the water treatment plant, and the water lines that distribute water to the consumer.

**wastewater system**—For a wastewater system, the system comprises the sewer lines that collect the wastewater from the customer and carry it to the wastewater treatment facility as well as the treatment facility itself.

### Types of Service Providers

**retail public utility**—any city, county, district, utility (as defined below), or water supply corporation that charges a fee to directly provide water or sewer service to consumers. (*Note:* “Utility” might seem to be the broader term, but, as defined in the law, “retail public utility” actually includes “utility”: All “utilities” are “retail public utilities,” and not all “retail public utilities” meet the law’s narrower definition of “utility.”)

**utility**—a person, partnership, corporation, or “affected county” that charges a fee to directly provide water or sewer service to consumers. Also called “investor-owned utility,” “water” or “sewer utility,” or “public utility.” (See “Other Terms” below for a definition of “affected county.”)

**water supply corporation**—a nonprofit corporation organized under state law (Texas Water Code Chapter 67) to provide water or sewer service.

### Other Terms

**affected county**—a county within 50 miles of the international border.

**certificate of convenience and necessity (CCN)**—a TCEQ document that defines your water or sewer service area. Your system might not extend to the limits of this service area, but other utility service providers generally may not encroach upon your service area. If anyone in this area applies for service, you generally must serve them. You may use one or more systems to serve this area. An affected county, investor-owned utility, or water supply corporation must obtain a CCN, but a city, district, or other county does not need one. If your water system or systems cannot serve more than 15 connections, you may ask to be exempted from this requirement. See Title 30 Texas Administrative Code (30 TAC) Chapter 291 for more details about CCNs.

## What Is the Regionalization Policy?

Our policy is that regionalization is feasible unless one of these three exceptions applies:

- (1) No other systems are reasonably close to your planned system.
- (2) You have requested service from neighboring systems, and your request has been denied.
- (3) You can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted.

If you apply for a new certificate of convenience and necessity (CCN), then you must demonstrate that one of these three exceptions applies to your system. You must give our staff related information in sufficient detail for them to determine whether an exception applies. If you wish to construct or operate a new PWS, even if you are not required to obtain a CCN to operate, then you must still demonstrate that one of these three exceptions applies to your system and give our staff related information in sufficient detail for them to determine whether an exception applies.

## Why This Policy?

By encouraging the regionalization of water and wastewater systems, we hope to protect the health, safety, and welfare of Texans by ensuring a

long-term supply of safe water at affordable rates and by maintaining the quality of water in the state

The ultimate goal of regionalization is to provide timely and cost-effective solutions for achieving quality service. Drinking water and wastewater systems are facing an ever-increasing demand on their resources to stay in compliance with provisions of the federal Safe Drinking Water Act and federal Clean Water Act. The costs associated with compliance are higher per person as the system size decreases.

In applying this policy, we are ensuring a steady decrease in the number of Texans who are being served by systems that are unable to sustain the financial, managerial, and technical capabilities necessary to provide continuous and adequate service. And we are ensuring that fewer new systems will encounter the same financial, managerial, and technical problems being faced by existing weak systems.

Whenever the formation of a regional system is the least expensive long-term solution for providing quality service, we will require proponents of new systems to form a regional system instead. Only a system with adequate financial, managerial, and technical capacity can reliably provide good quality drinking water in sufficient quantities and basic sanitation service that meets regulatory standards.

### ***To Whom Does This Policy Apply?***

This policy applies to the following entities regulated by the TCEQ:

- owners and operators of new PWSs;
- applicants requesting approval for a new water or sewer CCN for a proposed facility, or for an existing facility if a CCN was required to be obtained before the system was constructed.

This guidance document will not change our administrative rule requirements and procedures relating to rate making, CCNs, and PWSs. Rather, this guidance document is advising all CCN applicants and owners or operators of proposed PWSs to take proactive measures to either form sound regional systems or demonstrate the ability to operate a viable, stand-alone utility system.

As a CCN applicant or an owner or operator of a proposed PWS, you must evaluate the availability of a regional system before you submit the actual CCN application, plans and specifications, and, if required, business plan. As part of determining whether regionalization is feasible, our staff will evaluate these materials.

This guidance document will not apply to wastewater systems that are not required to hold a CCN and do not apply for a CCN.

### ***Must Existing Systems Regionalize?***

Although the purpose of this regulatory guidance document is to provide guidance to new systems, a similar regionalization review will apply to the owners and operators of any existing PWS that:

- was constructed without the necessary approval,
- has a history of noncompliance, or
- is subject to a TCEQ enforcement action.

### ***What Will "Regionalization" Look Like?***

The structure and operation of any particular regional system will depend on the individual circumstances. Under this policy, regionalization can take any one of these forms:

- one owner and one large system serving several different communities or subdivisions;
- one owner and several isolated systems, each providing service to one or more communities or subdivisions;
- several owners, each with individual systems operated through a centrally coordinated operating system;
- several owners, each with an isolated system, all served by a central wholesale provider; or
- the existence of permanent emergency interconnections.

We do not presume that any particular ownership structure of a PWS is more appropriate to serve as a regional provider. Any retail public utility could serve as the regional provider if it can meet the necessary requirements under 30 TAC Chapters 290 and 291.

### ***How Does This Policy Outline Responsibilities?***

Based on state law and our rules, this policy calls for us, any person proposing a new system, and existing providers to fulfill specific responsibilities.

### ***What the TCEQ Must Do***

Through our programs in the Water Supply Division, we must ensure that PWSs supply safe drinking water in adequate amounts and are financially stable and technically sound. We must also promote the use of regional and areawide drinking water systems.

In meeting these responsibilities, we must review the engineering plans and specifications of all proposed PWSs. For any proposed PWS that is to

be privately owned, we must also review the system's business plan. For any water or wastewater system that must have a new CCN, we must review the application, review the system CCN maps, and consider the financial, managerial, and technical capabilities of the applicant.

### ***What You Must Do***

If you wish to build a new PWS or apply for a new CCN, then you must comply with our rules for these systems (30 TAC Chapters 290 and 291) and follow the guidance set out in this document.

Among other requirements, our rules state that you must obtain our approval of your engineering plans and specifications before you begin building your proposed PWS. For a privately owned PWS, you must also have our approval of your business plan before construction may begin.

### ***What Existing Providers Must Do***

Existing providers that hold CCNs must provide prompt responses to requests for service, treat all applicants equitably, charge application fees that are reasonable, and charge cost-based fees for providing service to the specific development receiving that service.

## ***Where Do I Begin?***

The first step in determining whether regionalization is feasible is to identify all the water or wastewater systems within the specified distance that state law considers to be "reasonably close"—that is, half a mile for a new PWS and 2 miles for new CCNs. The second step is to read our policy and see how it applies to you.

### ***Locate Nearby Systems***

First, you must identify and locate all neighboring systems. From our records, we can provide you with some information about nearby systems, *but it is your responsibility to make sure that this information is complete, accurate, and current.* You might have to do local research—perhaps even some fieldwork—to complete this task. Here are a few tips that can make your research more productive:

- First, contact us as described under "Finding Nearby Water Systems" below and "Finding Nearby Wastewater Systems" on page 7 to get the most recent information we have.
- Drive the area. Systems must have identification at all plant sites
- Look in the Yellow Pages under "Water Companies-Utility"

- Talk to the operators of any systems you discover to find out where they serve or who operates the nearest systems.
- Review our maps for CCN service areas and contact each system's owner or operator to find out the limit of its service area. Don't assume that the limit of the physical system is the same as the limit of the service area.
- Contact county offices to find out about subdivision plats on file. Each city should also have this information for areas inside that city's extraterritorial jurisdiction, or "ETJ."

### **Finding Nearby Water Systems**

You can obtain our most recent information on public water systems or utilities in one or more counties from the online Water Utilities Database (WUD). WUD contains data on public water systems, water and sewer utilities, and water districts.

You can use this database to search for an individual public water system, utility, or district. You can also do an "advanced search" to filter a list of entities from the database. To find WUD, go to the TCEQ Web site ([www.tceq.state.tx.us](http://www.tceq.state.tx.us)) and enter "WUD" in the "Search" box at the upper right of the home page. Online training is available for WUD. There are also some electronic maps showing CCN areas available on WUD and on the TCEQ's GIS Web page (from the home page, enter "GIS" in the "Search" box at upper right).

As an alternative to using WUD, you can contact our Information Resources Division as shown in Table 1 on page 9. The Information Resources Division can provide information such as public water system or utility name, contact person, and address. There may be a charge for obtaining a list of systems from the Information Resources Division.

After you have focused your search on the systems in one particular area, and if a map is not available on our Web site, contact our Utilities and Districts program (512/239-4691). Using our most recent maps, staff in this program can help you identify service areas and the service providers who operate in those areas.

For further information about water service providers, you should also review the regional water plan for your regional water planning area. Contact the Texas Water Development Board at 512/463-7847 or through its Web site ([www.twdb.state.tx.us](http://www.twdb.state.tx.us)) for a map of regional water planning areas and contact names for each of the regional water planning groups.

## Finding Nearby Wastewater Systems

Finding nearby wastewater systems is similar to finding nearby water systems, with one exception: You can narrow your search by contacting our Water Quality Assessment program first, as shown in Table 1 on page 9. (If you would like to get a list of *all* systems in one or more counties, go straight to Information Resources instead.)

With the name of the county in which you are proposing to build your system and a map of the area you plan to serve, our Water Quality Assessment program can locate the wastewater outfalls of nearby systems. (An outfall is the point where the system's treated wastewater is discharged into state waters.)

The advantage of locating outfalls is that you may be able to find a wastewater treatment plant that is accessible to your proposed development even if the system served by that plant is not nearby. If the plant has excess capacity, the service provider might allow you to connect your system to that plant or to an interceptor line feeding the plant.

However, once you have this information, keep these points in mind:

- The rules require you to contact systems whose *service areas* are within 2 miles of your proposed service area.
- Our Water Quality Assessment staff can tell you the position of the *outfall*, but they do not know the boundaries of the service area.
- Outfalls generally are located downstream of the systems themselves.

Our Water Quality Assessment staff can also tell you the water quality permit numbers for each plant. Once you know these permit numbers, our Information Resources Division can give you the mailing address of each permit holder. If you need more help, contact our Utilities and Districts program.

## Information Sources

As stated previously, you can obtain our most recent information on public water systems or utilities in one or more counties from the online Water Utilities Database (WUD). WUD contains data on public water systems, water and sewer utilities, and water districts, and can be accessed from the TCEQ Web site ([www.tceq.state.tx.us](http://www.tceq.state.tx.us)). If you prefer to make a written request for this information, see Table 1 on the facing page for contact information and the information you must include with your request.

For further information about water supply sources, you should also review the regional water plan for your regional water planning area. Contact the Texas Water Development Board at 512/463-7847 or through

Table 1. How to Get Information about Existing Systems from the TCEQ

*For public water systems ...*

To get this information:	Include this information in your request:	And send your request to:
A list of all water service providers in one or more counties (do this <i>first</i> )	The name of each county for which you want this information ( <i>be sure to indicate that you want a list of public water systems</i> )	TCEQ Information Resources, MC 197 PO Box 13087 Austin TX 78711-3087 fax: 512/239-0888 phone: 512/239-DATA (3282)
Water service area boundaries of systems that have CCNs ( <i>after</i> you have focused on a specific area or provider)	An accurate area map showing the location and approximate boundaries of your proposed development	TCEQ Utilities and Districts, MC 153 PO Box 13087 Austin TX 78711-3087 fax: 512/239-6972 phone: 512/239-4691

*For wastewater systems ...*

To get this information:	Include this information in your request:	And send your request to:
Locations of wastewater outfalls (and the permit number for each outfall) in a specific area	An accurate area map showing the location and approximate boundaries of your proposed development	TCEQ Water Quality Assessment, MC 150 PO Box 13087 Austin TX 78711-3087 fax: 512/239-4420 phone: 512/239-4671
The mailing address of a permit holder	The permit number for the corresponding outfall	TCEQ Information Resources, MC 197 PO Box 13087 Austin TX 78711-3087 fax: 512/239-0888 phone: 512/239-DATA (3282)
A list of all wastewater service providers in one or more counties	The name of each county for which you want this information ( <i>be sure to indicate that you want a list of wastewater systems</i> )	TCEQ Information Resources, MC 197 PO Box 13087 Austin TX 78711-3087 fax: 512/239-0888 phone: 512/239-DATA (3282)
Sewer service area boundaries of systems that have CCNs ( <i>after</i> you have focused on a specific area or provider)	An accurate area map showing the location and approximate boundaries of your proposed development	TCEQ Utilities and Districts, MC 153 PO Box 13087 Austin TX 78711-3087 fax: 512/239-6972 phone: 512/239-4691



its Web site ([www.twdb.state.tx.us](http://www.twdb.state.tx.us)) for a map of regional water planning areas and contact names for each of the regional water planning groups.

### *Start Reading This Policy*

If you plan to build a new PWS, start your reading with “New Public Water Systems” on the next page. If you also need a new CCN and the information in “New Public Water Systems” indicates that your water system qualifies for an exception to this regionalization policy, then you must continue your reading with “New Water and Wastewater CCNs” on page 15.

If you are applying for a new CCN to build a stand-alone sewer system only, start your reading with “New Water and Wastewater CCNs” on page 15.

# New Public Water Systems

If you plan to build a new PWS, you must evaluate the feasibility of regionalization before you submit your plans, specifications, and, if required, business plan to us. Our policy is that regionalization is feasible unless one of these three exceptions applies:

## *Do You Need a CCN, Too?*

If your proposed PWS will be owned privately or by a water supply corporation and you plan to charge your customers a fee for service, then you must also obtain a CCN

If you need to obtain a CCN, see "New Water and Wastewater CCNs" on page 15 after you have read this chapter.

- (1) There are no PWSs within one-half mile.
- (2) You have requested service, and your request has been denied.
- (3) You can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted.

To develop a new stand-alone system, you must consider these three exceptions in this order and then demonstrate that one of these exceptions applies to your system. To receive an exception from this policy, you must provide us the information identified in this chapter.

See Flowchart 1 on page 12 for an overview of this process.

## Exception 1: No public water systems within 0.5 mile

If there are existing PWSs within one-half mile of your service area, go to Exception 2 below.

If no PWSs exist within one-half mile of your service area, and you do not need a new CCN (see the box above and to the left), you may proceed to submit your plans, specifications, and, if required, business plan for a stand-alone system.

*Note:* If more than one existing system is within 0.5 mile of your proposed service area, we recommend that you consider establishing regional service with the existing system that will provide the best long-term viability

## Exception 2: Your request for service has been denied

Have you formally applied for service from these systems?

You must apply for service from the existing systems by submitting a formal "request for service" application and by paying any associated fees.