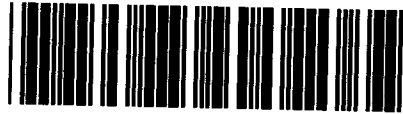


Control Number: 43945



Item Number: 23

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
Legislature, Regular Session, transferred the functions  
relating to the economic regulation of water and sewer  
utilities from the TCEQ to the PUC effective  
September 1, 2014

43945

## HEARING ON THE MERITS

SOAH DKT. NO. 582-06-2023

TCEQ DKT. NO. 2006-0272-UCR

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

PUBLIC UTILITY COMMISSION  
FILING CLERK

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

## HEARING ON THE MERITS

TUESDAY, OCTOBER 7, 2008

BE IT REMEMBERED THAT AT approximately

9:00 a.m., on Tuesday, the 7th day of October 2008,  
 the above-entitled matter came on for hearing at the  
 State Office of Administrative Hearings, 300 West  
 15th Street, Hearing Room 402, Austin, Texas, before  
 JAMES W. NORMAN, Administrative Law Judge; and the  
 following proceedings were reported by Kim Pence, a  
 Certified Shorthand Reporter of:

Volume 1

Pages 1 - 273

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**CONDENSED TRANSCRIPT*****Kennedy Reporting Service, Inc.****1801 Lavaca, Suite 115**Austin, Texas 78701**512.474.2233 - phone**512.474.6704 - fax**Kennedyrpt@aol.com*

October 7, 2008

VOLUME 1

23

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

October 7, 2008  
VOLUME 1

# HEARING ON THE MERITS

SOAH DKT. NO. 582-06-2023

TCEQ DKT. NO. 2006-0272-UCR

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## EXHIBIT INDEX

		MARKED	RECEIVED
LINDSAY PURE WATER COMPANY			
8 Ordinance 0805-3, City of Lindsay	44	141	
9 Building Permits 2002-208 for the City of Lindsay	160	162	
10 Map	238	273	
11 Map	238	273	

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1	APPEARANCES	1	JUDGE NORMAN: Okay. So I am going to
2		2	recall the case as the -- the style of the case as the
3	FOR THE CITY OF LINDSAY:	3	Application of the City of Lindsay to Amend Water
4	Mr. Arturo D. Rodriguez, Jr.	4	Certificate of Convenience and Necessity, CCN No.
5	RUSSELL & RODRIGUEZ, L.L.P.	5	13025 in Cooke County, Texas, Application No. 35096-C.
6	1633 Williams Drive	6	My name is James Norman. I'm the
7	Building 2, Suite 200	7	Administrative Law Judge in the case. Today's date is
8	Georgetown, Texas 78628	8	October 7, 2008. At this time, I'd ask the parties to
9	Telephone: 512.930.1317 - Fax: 866.929.1641	9	identify themselves, beginning with the applicant.
10		10	MR. RODRIGUEZ: Your Honor, my name is
11	FOR THE LINDSAY PURE WATER COMPANY:	11	Art Rodriguez. I'm the attorney for the City of
12	Mr. John J. Carlton	12	Lindsay. I'm joined today by Betsy Fletman, who is
13	ARMBRUST & BROWN	13	our city secretary --
14	100 Congress Avenue, Suite 1300	14	JUDGE NORMAN: Okay.
15	Austin, Texas 78701-2744	15	MR. RODRIGUEZ: -- and her husband;
16	Telephone: 512.435.2308 - Fax: 512.435.2360	16	Mr. Metzler, Mayor Pro-Tem of the city; as well as
17		17	Jack Stowe and Kerry Maroney, who are both experts
18	FOR THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON	18	testifying on the city's behalf.
19	ENVIRONMENTAL QUALITY:	19	JUDGE NORMAN: Okay. Thank you. And
20	Mr. Brian MacLeod	20	for the protestant?
21	Mr. Christiaan Siano	21	MR. CARLTON: John Carlton on behalf of
22	Staff Attorney, Environmental Law Division	22	Lindsay Pure Water Company, and I have with me Mr. Jim
23	12100 Park 35 Circle, Building A	23	Myrick.
24	MC-173, Post Office Box 13087	24	JUDGE NORMAN: Okay. Okay. Good. And
25	Austin, Texas 78711-3087	25	for the Executive Director?
	Telephone: 512.239-0750 - Fax: 512.239.0606		
Page 3		Page 5	
1	PROCEEDINGS	1	MR. MacLEOD: I'm Brian MacLeod for
2	TUESDAY, OCTOBER 7, 2008	2	the Executive Director, and with me is Tammy
3	(9:00 a.m.)	3	Holgurn-Benter and Second Chair Attorney,
4	(Exhibit APP Nos. 1 through 4 marked)	4	Christiaan Siano.
5	JUDGE NORMAN: This is State Office of	5	JUDGE NORMAN: Okay. Good. Thank you
6	Administrative Hearings Docket 582-06-2023, the same	6	very much.
7	being TCEQ Docket No. 2006-0272-UCR, the Application	7	Mr. Rodriguez, would you like to
8	of the Town of Lindsay. I think sometimes it's now	8	proceed?
9	called the City of Lindsay, is it not?	9	MR. RODRIGUEZ: Yes, Your Honor,
10	MR. RODRIGUEZ: Yes, sir.	10	actually --
11	JUDGE NORMAN: Which is correct?	11	JUDGE NORMAN: Excuse me. I'm going to
12	MR. RODRIGUEZ: City of Lindsay.	12	interrupt you.
13	JUDGE NORMAN: City of Lindsay -- the	13	Everyone who is going to testify, please
14	City of Lindsay to Amend Water and Sewer Certificate	14	stand and raise your right hand.
15	of Convenience and Necessity, CCN Nos. 13025 and 20927	15	(Witnesses present sworn)
16	in Cooke County, Texas, Application Nos. 35096-C and	16	JUDGE NORMAN: Okay. Go ahead,
17	35097-C.	17	Mr. Rodriguez.
18	I issued an order yesterday that severed	18	MR. RODRIGUEZ: Actually, Your Honor,
19	out the sewer CCN application, and so that would be --	19	we've got a couple of housekeeping --
20	would that be CCN 20927?	20	JUDGE NORMAN: All right.
21	MR. RODRIGUEZ: Yes.	21	MR. RODRIGUEZ: -- things that we'd like
22	JUDGE NORMAN: And Application No.	22	to get done first.
23	35097-C?	23	JUDGE NORMAN: Sure.
24	MR. RODRIGUEZ: I believe it is -- 97 is	24	MR. RODRIGUEZ: Because of the -- I've
25	the sewer one, yes.	25	got the updated TCEQ rules.

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<p>1 JUDGE NORMAN: Okay.</p> <p>2 MR. RODRIGUEZ: Because of the date of</p> <p>3 this application, I think we ought to recognize that</p> <p>4 this case is governed by the TCEQ rules that appeared</p> <p>5 in a previous iteration of this book.</p> <p>6 JUDGE NORMAN: Right. Does everybody</p> <p>7 agree to that, that the previous TCEQ rules apply to</p> <p>8 this application?</p> <p>9 MR. MacLEOD: Yes.</p> <p>10 MR. RODRIGUEZ: Now, what I'd like is</p> <p>11 the --</p> <p>12 JUDGE NORMAN: And did you say -- what</p> <p>13 did you say?</p> <p>14 MR. CARLTON: I didn't say anything yet.</p> <p>15 JUDGE NORMAN: Okay.</p> <p>16 (Laughter)</p> <p>17 MR. CARLTON: I will agree that the</p> <p>18 application was filed prior to the effective date of</p> <p>19 the statutory changes that Art is taking about.</p> <p>20 JUDGE NORMAN: And do you -- I'd like --</p> <p>21 and do you have a position at this time on which set</p> <p>22 of rules apply?</p> <p>23 MR. CARLTON: I haven't taken a formal</p> <p>24 position one way or the other on that yet.</p> <p>25 JUDGE NORMAN: Uh-huh.</p>	<p>1 Mr. Maroney's testimony.</p> <p>2 JUDGE NORMAN: Right.</p> <p>3 MR. RODRIGUEZ: And you had requested, I</p> <p>4 guess, some clarification with respect to basically</p> <p>5 how you're going to -- how you're going to handle</p> <p>6 those.</p> <p>7 JUDGE NORMAN: Well, I had given you an</p> <p>8 opportunity to come in and make an argument, either</p> <p>9 under the rules, the statute or under 2001.081 to lay</p> <p>10 a foundation.</p> <p>11 MR. RODRIGUEZ: And I think that -- and</p> <p>12 we'll work through all of that, Your Honor.</p> <p>13 JUDGE NORMAN: Okay.</p> <p>14 MR. RODRIGUEZ: So I think we can</p> <p>15 probably just handle that through argument at this</p> <p>16 point.</p> <p>17 If you look at -- if you look at</p> <p>18 291.102(d) as it's currently constituted, after the</p> <p>19 January 6, 2006 rule changes --</p> <p>20 JUDGE NORMAN: Right.</p> <p>21 MR. RODRIGUEZ: -- as well as the Texas</p> <p>22 Water Code 13.246(c)(3) --</p> <p>23 JUDGE NORMAN: Okay.</p> <p>24 MR. RODRIGUEZ: -- both of them</p> <p>25 specifically provide for requests for service or allow</p>
Page 7	Page 9
<p>1 MR. CARLTON: But the issue is -- I</p> <p>2 think those rules apply, but I think the subsequently</p> <p>3 adopted rules could give us some guidance as to policy</p> <p>4 as to how this ought to be considered, but not</p> <p>5 necessarily be the rules that are applicable.</p> <p>6 JUDGE NORMAN: Okay.</p> <p>7 MR. MacLEOD: We would agree with that</p> <p>8 position, yes.</p> <p>9 JUDGE NORMAN: Okay.</p> <p>10 MR. RODRIGUEZ: So, Your Honor, I'd just</p> <p>11 like you to take administrative notice of 291.102 as</p> <p>12 it existed the date this application was filed.</p> <p>13 JUDGE NORMAN: Any objection?</p> <p>14 (No response)</p> <p>15 JUDGE NORMAN: I do so.</p> <p>16 MR. RODRIGUEZ: Okay. Secondly, Your</p> <p>17 Honor, I think there was some -- and with respect to</p> <p>18 policy on how this is -- how this proceeding should</p> <p>19 take -- how we should take a look at some of the 291</p> <p>20 rules --</p> <p>21 JUDGE NORMAN: Uh-huh.</p> <p>22 MR. RODRIGUEZ: -- with respect to this</p> <p>23 proceeding. I think there was some discussion last</p> <p>24 week with respect to the 55 service requests that were</p> <p>25 attached to both Mr. Metzler's testimony as well as</p>	<p>1 requests for service to be considered in a CCN</p> <p>2 application.</p> <p>3 JUDGE NORMAN: And that's (d) what?</p> <p>4 MR. RODRIGUEZ: 291.102(d), actually</p> <p>5 (2).</p> <p>6 JUDGE NORMAN: All right. The need for</p> <p>7 additional service in the requested area?</p> <p>8 MR. RODRIGUEZ: Yes. And actually</p> <p>9 (2)(a) and (2)(d), both of those.</p> <p>10 JUDGE NORMAN: (2)(a) and (2)(b) also?</p> <p>11 MR. RODRIGUEZ: (d) as in "dog."</p> <p>12 JUDGE NORMAN: Uh-huh.</p> <p>13 MR. RODRIGUEZ: And it includes whether</p> <p>14 any landowners have requested service. And then (d),</p> <p>15 written application or written requests for service.</p> <p>16 So both the TCEQ -- the TCEQ rules themselves</p> <p>17 contemplate that written requests for service are</p> <p>18 what's needed.</p> <p>19 MR. CARLTON: Art, point me to those</p> <p>20 sections again. I'm sorry, I missed one.</p> <p>21 MR. RODRIGUEZ: 291(d) as in "dog"</p> <p>22 (1) -- I mean (2)(a) and (2)(d) as in "dog."</p> <p>23 MR. CARLTON: Okay. That's where I'm</p> <p>24 confused because you just handed out 291.102.</p> <p>25 MR. RODRIGUEZ: I'm talking about the</p>

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<p>1 rules as they currently are constituted.</p> <p>2 MR. CARLTON: As they currently exist,</p> <p>3 okay.</p> <p>4 JUDGE NORMAN: Okay.</p> <p>5 MR. RODRIGUEZ: I'm handing those out.</p> <p>6 MR. CARLTON: That's where I was not</p> <p>7 following. My apologies.</p> <p>8 MR. RODRIGUEZ: Have you found those</p> <p>9 sections, Judge?</p> <p>10 JUDGE NORMAN: I have.</p> <p>11 MR. RODRIGUEZ: Okay. Secondly, what</p> <p>12 Faith has just handed out is a certified copy of a</p> <p>13 November -- September 21, 2005 letter actually from</p> <p>14 the agency to the city. And if you flip to Page 2 of</p> <p>15 that letter, in the second paragraph of that, it says</p> <p>16 "In addition of the notice requirements, the following</p> <p>17 information is also necessary to proceed with your</p> <p>18 applications." If you look to Section (b), it says</p> <p>19 "Provide copies of service of application(s) and/or</p> <p>20 written request(s) from all landowner(s) seeking to</p> <p>21 obtain water and/or sewer service in the requested</p> <p>22 area."</p> <p>23 JUDGE NORMAN: Okay.</p> <p>24 MR. RODRIGUEZ: Not only do the agency</p> <p>25 rules now -- if Mr. Carlton is right in that the new</p>	<p>1 statutory criteria, you have to have a service</p> <p>2 request. These letters really say, "You know what,</p> <p>3 I'm interested in water service at some point in the</p> <p>4 future," but they don't request service. They don't</p> <p>5 request service now. They don't specify the time in</p> <p>6 which they request the service. They don't specify</p> <p>7 the manner in which service is requested to be</p> <p>8 provided.</p> <p>9 And so to be able to take these letters</p> <p>10 on their face without cross-examining witnesses or</p> <p>11 having those declarants available for testimony</p> <p>12 doesn't really provide you with much of anything in</p> <p>13 terms of helping evaluate the facts.</p> <p>14 So clearly they're hearsay. The</p> <p>15 question we're talking about is, is there some valid</p> <p>16 exception. Mr. Rodriguez would point you to the</p> <p>17 statute and the rules that say you need to attach</p> <p>18 service requests. I agree you need to attach service</p> <p>19 requests. In this instance, we don't have any.</p> <p>20 There are only two letters in this</p> <p>21 packet, in this exhibit, that are worded differently</p> <p>22 from the very first one you've just looked at. One of</p> <p>23 them just adds the phrase "Oh, I've got five lots."</p> <p>24 The other one is -- it's Bates No. 0413 and just says</p> <p>25 "Hey, we're willing to be included." It doesn't</p>
Page 11	Page 13
<p>1 rules are supposed to provide guidance as to how this</p> <p>2 case is supposed to take place, then obviously written</p> <p>3 requests for service are both contemplated in the</p> <p>4 rules, also in the statute, the new statute that was</p> <p>5 adopted after House Bill 2876.</p> <p>6 So I think from both those -- from both</p> <p>7 those standpoints, the written requests for service</p> <p>8 should be allowed in for all purposes as it meets both</p> <p>9 regulatory and statutory requirements.</p> <p>10 JUDGE NORMAN: Okay. And, Mr. Carlton?</p> <p>11 MR. CARLTON: A couple of things, Your</p> <p>12 Honor. Let's take a look at the exhibit, which is --</p> <p>13 JUDGE NORMAN: Okay.</p> <p>14 MR. CARLTON: -- being offered.</p> <p>15 JUDGE NORMAN: It's 5, isn't it? I</p> <p>16 forget.</p> <p>17 MR. CARLTON: If I can find it here. It</p> <p>18 is DLM-10. Let's work off that copy. Mr. Maroney has</p> <p>19 got it attached to his testimony later as well. And</p> <p>20 I'm just going to take a look at the first page, which</p> <p>21 is the first letter.</p> <p>22 JUDGE NORMAN: Okay.</p> <p>23 MR. CARLTON: And the reason this is</p> <p>24 really important in terms of hearsay is these letters</p> <p>25 don't request service. And in order to meet the</p>	<p>1 request service.</p> <p>2 So I think we fall short of that</p> <p>3 statutory that's required for the application, service</p> <p>4 requests should be included. It's not there, and</p> <p>5 there's no way to really evaluate what these mean. So</p> <p>6 we'd point that out to you.</p> <p>7 Also, I think the evidence is going to</p> <p>8 show you that Lindsay has an ordinance that they</p> <p>9 adopted in August of 2005 prior to filing the</p> <p>10 application that has a process for how you request</p> <p>11 service when you live outside the city limits. These</p> <p>12 letters don't meet that process. They don't meet that</p> <p>13 standard.</p> <p>14 The other issue is that there's also</p> <p>15 some statutory guidance in the new rules that were</p> <p>16 passed on -- it's expedited release from a CCN, but</p> <p>17 all we're starting is the process where we begin and</p> <p>18 we create the CCN that might ultimately require a</p> <p>19 release. But that process says when you request</p> <p>20 service of a city, you have to -- or of a provider,</p> <p>21 you have to do the time, the manner and place that you</p> <p>22 need service. These don't do that. They don't have</p> <p>23 any information along those lines.</p> <p>24 I'll go to what the Executive Director's</p> <p>25 attorney brought up in the prehearing as well, which</p>

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1 was are these operative words or operative facts. I  
2 don't think they are. Number one, because they don't  
3 operate to do anything. They don't operate to request  
4 service we're talking about. But number two, even if  
5 they did request service, the cases on operative facts  
6 really are more of contracts, offering and acceptance,  
7 "Did I say I accept?" It doesn't matter whether it's  
8 true or not, but "Did I say I accept?" That's an  
9 operative fact. Okay?

10 Criminal cases, "Did I say I did it?"  
11 It doesn't matter whether it's true or not. I  
12 admitted that I did it. That's not the case here with  
13 these particular letters. The truth of what these  
14 letters say is important. It's not just the fact that  
15 they were -- that they were sent in.

16 So I think that we have hearsay here. I  
17 think it's questionable as to the usefulness of this  
18 information in your -- in your process, and I think  
19 that this information could have been proved in  
20 another way. There could be affidavits filed that say  
21 "I request service. I need this many LUEs of service.  
22 I need it at this time." Let's move forward. Could  
23 have had a witness, "I need service." It wasn't done.  
24 I don't think they should come in.

25 JUDGE NORMAN: Okay. Go ahead.

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1 MR. MacLEOD: I believe that while these  
2 may not rise to the level of an offer and acceptance  
3 on a contract, they are -- they are not being  
4 offered -- they aren't actually assertions. The  
5 effect on the hearer is what's important. These  
6 aren't statements that somebody is manifesting a  
7 belief in. They don't rise to the level of being an  
8 application, but they do rise to the level of  
9 something that the ED has always considered to be  
10 something that would show a need for service.

11 And I think the fact that they tend --  
12 they look like they're exact copies of each other and  
13 that they aren't really clear -- clearly stating "I  
14 want service" and what date goes to the weight rather  
15 than the admissibility of the evidence.

16 So I think that -- and I think that the  
17 new statute just -- the new rule, excuse me, and  
18 statute dealing with whether or not we consider --  
19 specifically the statute and the rule start stating  
20 that requests for service are important criteria in  
21 determining whether or not a CCN will be issued.

22 I think that those new rules are just  
23 codifying long-standing agency practice. Sure there  
24 may be an argument that these are -- I mean these may  
25 not have enough weight to show a lot of interest, but

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1 I think the main thing it shows is somebody's made a  
2 statement that they wanted service. Whether or not --  
3 you know, anything beyond that I think would be an  
4 attempt to try to impeach whether or not these  
5 statements were authentic. And I think all we have to  
6 do is prove they're authentic, and it shows people  
7 stated that they wanted service. The statement you  
8 don't really need "Were you lying when you said that?"  
9 You don't need to cross-examine someone on something  
10 like that. If somebody says they want service, you  
11 can act on it. If somebody says they want to buy your  
12 car, you drive your car over there and have them look  
13 at it, you know. It isn't like "Well, I need to  
14 cross-examine them to see if they lie about this sort  
15 of stuff a lot."

16 It certainly doesn't rise to the level  
17 of your textbook example of operative words, but I  
18 think that the main thing is it's not assertive  
19 behavior. The effect on the hearer is what's  
20 important. Therefore, I think it's outside of  
21 hearsay. And to the extent it might be close, I think  
22 it goes to the weight and not the admissibility.

23 Furthermore, I think under 2001.081 of  
24 the Texas Government Code, this is the type of  
25 information somebody would normally rely on in

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1 determining whether or not somebody was interested in  
2 getting service. If somebody says "I'm interested in  
3 getting service," you'd normally believe that they  
4 weren't just joking.

5 And secondly, I think that it's not  
6 susceptible to proof easily in other ways because  
7 these people live, you know, about -- probably  
8 220 miles from here, you know. And if we -- if we put  
9 them in the form of an affidavit, they'd still be  
10 hearsay. Putting a jurat in hand doesn't make a  
11 person suddenly subject to cross-examination. They'd  
12 have to be here and subject to cross-examination. For  
13 them to get 55 people to come 220 miles, I think  
14 that's not reasonably possible.

15 So our position is that they should be  
16 admissible in evidence. However, their weight may be  
17 in question.

18 JUDGE NORMAN: Okay. Mr. Rodriguez?

19 MR. RODRIGUEZ: Yeah, and I agree with  
20 the Executive Director, and I'm glad he made the point  
21 I was about --

22 JUDGE NORMAN: But not with Mr. Carlton.  
23 Right?

24 MR. RODRIGUEZ: That's right.

25 JUDGE NORMAN: Okay.

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1 MR. CARLTON: Surprising.  
2 JUDGE NORMAN: Okay.  
3 MR. RODRIGUEZ: The objection, as I  
4 understand it, is that there's a hearsay objection to  
5 these and --  
6 JUDGE NORMAN: Well, there's also a  
7 relevance objection.  
8 MR. RODRIGUEZ: Well, I didn't -- I  
9 didn't hear the relevancy.  
10 JUDGE NORMAN: Is that right?  
11 MR. RODRIGUEZ: I didn't hear the  
12 relevancy objection.  
13 JUDGE NORMAN: I mean, he didn't say  
14 those records.  
15 MR. CARLTON: There's an aspect of this  
16 that Mr. MacLeod brought up that we hadn't talked  
17 about because we didn't get to it, which is, you know,  
18 once we get to are these hearsay, the statements in  
19 and of themselves, if we get over that hurdle, we  
20 still have the problem, as he put it, authentication  
21 under 803(6) and the affidavit that's supposed to be  
22 filed to authenticate those. We haven't argued that  
23 yet, and I'd like to reserve the ability to do so if  
24 we need to.  
25 JUDGE NORMAN: All right.

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1 MR. RODRIGUEZ: And I'm getting to the  
2 base hearsay argument, Your Honor. Regardless of  
3 whether they're affidavits or not, they would still  
4 be -- if that's the case, they would still be hearsay.  
5 I don't know exactly how we get over that because  
6 these would still be out-of-court statements.  
7 The one thing -- what I think is  
8 operative here is that whether -- there's a difference  
9 between a request for service and being a qualified  
10 applicant, not only in the rules, but in the statutes  
11 as well.  
12 I think the ordinance -- and I'm not  
13 sure exactly the specific ordinance that Mr. Carlton  
14 is referring to, but the ordinance that I'm familiar  
15 with I believe provides -- it talks about for those  
16 that are outside the city to be -- it provides terms  
17 for them to be qualified applicants. It's not a  
18 process for them to even request service, but it's a  
19 process for them to become qualified to get service  
20 from the city. It's an important distinction there.  
21 The one thing -- now, the language  
22 that's in here in the approximately 55 landowner  
23 requests, when we can -- there's nothing in the  
24 statute, there's nothing in the rules, there's nothing  
25 in policy decisions that I've actually seen where it's

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1 a prescribed language that's needed in there to  
2 basically say "I request service." If you look at the  
3 hearing rules and you look at the notice that goes  
4 out, there's actually specific language that the TCEQ  
5 requires for you to do certain things. If you want a  
6 contested case hearing, it's very specific. You need  
7 to write the words "I request a contested case hearing  
8 on this."  
9 There's nothing in these rules that  
10 would indicate that there has to be prescriptive  
11 language to them in order for them to be requests for  
12 service. Not only has the -- and in reviewing  
13 Ms. Benter's testimony and Mr. Maroney's testimony,  
14 both people that practice in this area often, both  
15 rely on this type of information to determine that  
16 service requests have been made.  
17 We've been in other CCN applications --  
18 CCN hearings, Your Honor, where other staff members  
19 said the same thing, that the terms "request for  
20 service" are not operative to determine that one is  
21 a -- one is a service request. And if we want to --  
22 if we want to debate the ability for this to be a  
23 request for service, that's fine, and I think it  
24 goes -- it does go to the weight, not the  
25 admissibility of the evidence, to take a look at

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1 these.  
2 Mr. Metzler, Mr. Maroney, both see  
3 these, and it has a certain effect to them as to what  
4 they are, and the same thing with -- same thing with  
5 Ms. Benter. I don't think it actually obviates the  
6 need to consider them at all because I think it -- I  
7 think there is a necessity to take a look at this.

8 Obviously both sides are going to argue  
9 as to what they actually mean with respect to what  
10 requirement does it meet, but that doesn't -- that  
11 doesn't necessarily mean that we need to ignore the  
12 statute because the statute is clear. The new rules  
13 that, according to Mr. Carlton, should provide some  
14 guidance to us in this case actually provide the  
15 statement "written requests for service."

16 So, Your Honor, that's what these are,  
17 and nowhere in here does it say that the requests need  
18 to be -- have affidavits according to them. There's  
19 actually a certification in here that these were  
20 actually taken from the city records from the city  
21 secretary, and that's the very first -- the very first  
22 page of DLM-10, that they are true and correct copies  
23 taken from city records.

24 JUDGE NORMAN: Okay. You know what I'm  
25 going to do is I'm going to hold off on ruling on

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1 this, and I'm going to allow you to establish further  
2 foundation under 2001.081.  
3 MR. RODRIGUEZ: Okay.  
4 JUDGE NORMAN: And I'll also hear  
5 testimony from you, Mr. MacLeod --  
6 MR. MacLEOD: Yes.  
7 JUDGE NORMAN: -- that that -- you know,  
8 with regard to what you asserted just a moment ago on  
9 what the Commission relies on. Okay?  
10 MR. MacLEOD: Yes, sir. Thank you, Your  
11 Honor.  
12 JUDGE NORMAN: Yes, go ahead.  
13 MR. CARLTON: And, Your Honor, that  
14 presents a particular problem as we move forward in  
15 that I certainly don't want to open the door for the  
16 evidence that -- this hearsay evidence to come in by  
17 virtue of how I cross-examine and what I do with  
18 Ms. Benter going at the tail end of the process. If  
19 you're going to hold off ruling on the admissibility  
20 of this information, then I've lost my opportunity in  
21 case you rule that it should come in --  
22 JUDGE NORMAN: Right.  
23 MR. CARLTON: -- to deal with that. So  
24 I'm concerned with --  
25 JUDGE NORMAN: Well, you know what, we

1 point I don't know whether we want to -- if you want  
2 to go ahead and --  
3 JUDGE NORMAN: Yeah, you can go ahead  
4 and get in his exhibit if you want to.  
5 MR. RODRIGUEZ: Okay. Everything, both  
6 his prefiled testimony and --  
7 JUDGE NORMAN: Right.  
8 MR. RODRIGUEZ: -- the testimony  
9 regarding the 55 letters?  
10 JUDGE NORMAN: Yes.  
11 MR. RODRIGUEZ: Okay.  
12 JUDGE NORMAN: You can go and it will  
13 be -- you know if it comes in, it will be subject to  
14 previous rulings and objections.  
15 MR. RODRIGUEZ: Okay.  
16 JUDGE NORMAN: Everybody should  
17 understand that. Go ahead.  
18 MR. RODRIGUEZ: All right. Then  
19 actually let me -- if I could do some additional house  
20 cleaning then --  
21 JUDGE NORMAN: Sure, go ahead.  
22 MR. RODRIGUEZ: -- before we call him as  
23 a witness, Your Honor.  
24 Because of your ruling yesterday with  
25 respect to remanding the sewer CCN application back to

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1 might just take that up first. This is obviously very  
2 important. I mean, this is key. We might just take  
3 up that testimony first and -- to see whether or not  
4 this comes in. If you want to call a witness?  
5 MR. RODRIGUEZ: Okay. Your Honor, at  
6 this point, we'll call Mr. Metzler to the stand.  
7 JUDGE NORMAN: Okay. Good morning,  
8 Mr. Metzler.  
9 THE WITNESS: Good morning, Judge.  
10 JUDGE NORMAN: And you have been sworn?  
11 THE WITNESS: Yes, sir.  
12 JUDGE NORMAN: You're under oath.  
13 PRESENTATION ON BEHALF OF THE CITY OF LINDSAY  
14 DONALD L. METZLER,  
15 having been first duly sworn, testified as follows:  
16 DIRECT EXAMINATION  
17 BY MR. RODRIGUEZ:  
18 Q Good morning, Mr. Metzler.  
19 A Good morning.  
20 Q Of course you and I have met before. Can you  
21 please introduce yourself to the Judge?  
22 A My name is Donald L. Metzler, and I'm Mayor  
23 Pro-Tem of the City of Lindsay.  
24 Q Mr. Metzler, in front of you --  
25 MR. RODRIGUEZ: And, Your Honor, at this

1 the Executive Director, it caused us to have to make  
2 certain changes to the testimonies.  
3 JUDGE NORMAN: Right.  
4 MR. RODRIGUEZ: And at this point, not  
5 only Mr. Metzler's testimony, but also that of  
6 Mr. Maroney and Mr. Stowe. So I'd like to just take  
7 about ten minutes to go through all of those --  
8 JUDGE NORMAN: Absolutely.  
9 MR. RODRIGUEZ: -- with you-all, if I  
10 could.  
11 JUDGE NORMAN: Okay.  
12 MR. RODRIGUEZ: And all the replacement  
13 pages have been provided to the parties already --  
14 JUDGE NORMAN: All right.  
15 MR. RODRIGUEZ: -- as well as the record  
16 copy and the appeal copy has been -- has been provided  
17 to the --  
18 JUDGE NORMAN: Now, are these -- what  
19 you've provided, are they full copies of these  
20 witnesses' testimony?  
21 MR. RODRIGUEZ: No, sir.  
22 JUDGE NORMAN: They're just pages?  
23 MR. RODRIGUEZ: They're just replacement  
24 pages.  
25 JUDGE NORMAN: I see. Okay.

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1 MR. RODRIGUEZ: So if you go to Page 4	1 that.
2 of Mr. Metzler's testimony, there's been some language	2 JUDGE NORMAN: All right.
3 added to reflect that the water CCN has been changed	3 MR. RODRIGUEZ: DLM-4 was conformed to
4 by virtue of the September 30, 2008 change in the	4 include the certification of that water CCN map, which
5 water testimony. As well as you can see on Page 4 and	5 you discussed earlier.
6 4A, much has been removed because that all dealt with	6 We removed DLM-5 through 8. Those dealt
7 nunc pro tunc, and all that kind of stuff.	7 with all the nunc pro tunc. Those have been removed
8 JUDGE NORMAN: Right, okay.	8 because of the -- because we've got the new map now.
9 MR. RODRIGUEZ: So all that on the page	9 DLM-11, which is the map with all the
10 went away.	10 service requests on it --
11 On Page 5 and on Page 6 testimony	11 JUDGE NORMAN: Okay.
12 regarding the wastewater system was removed, Lines 19	12 MR. RODRIGUEZ: -- has been updated to
13 through 21 on Page 5 as well as 1 through 4 on Page 6.	13 show our current water service territory map.
14 The next change was on Page 8 at the	14 DLM-12 was removed entirely.
15 very end on Line 20 to just add some language that	15 DLM-13, which shows the city's water CCN
16 the city is training an employee to become a	16 requested service territory with the city limits and
17 wastewater -- I mean, a licensed operator.	17 ETJ has been relaced to reflect the change from
18 On Page 10, Lines 7 through 13 were	18 October --
19 changed to reflect the change in the water CCN	19 JUDGE NORMAN: Right.
20 territory in our requested service territory for water	20 MR. RODRIGUEZ: -- September 30th.
21 and which caused the remainder of Page 10 to go on to	21 I believe I talked about 16 already, and
22 what's now Page 10A --	22 DLM-17 is a new map. This is the map that was issued
23 JUDGE NORMAN: Okay.	23 by the Commission on September 30th to show the city's
24 MR. RODRIGUEZ: -- of that testimony.	24 current water CCN map.
25 On Page 11, we've got certain testimony	25 JUDGE NORMAN: Okay.
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1 redacted because of -- because of both the sewer issue	1 MR. RODRIGUEZ: So those are the changes
2 as well as the water CCN issue.	2 that have been -- that have been made to Mr. Metzler's
3 On Page 14, Lines 3 through 5, there was	3 testimony.
4 some testimony that was removed because of --	4 JUDGE NORMAN: All right.
5 voluntarily removed pursuant to some objections --	5 MR. RODRIGUEZ: Do you want to do
6 JUDGE NORMAN: Yes, I remember that.	6 Mr. Maroney's at this point, or do you want to wait
7 MR. RODRIGUEZ: -- we had had.	7 until he gets on the stand?
8 On Page 6 -- or Line 6 of that same	8 JUDGE NORMAN: Oh, let's wait for him --
9 page, "out future planning area" was changed to "our	9 MR. RODRIGUEZ: Okay.
10 future planning area."	10 JUDGE NORMAN: -- you know, until
11 JUDGE NORMAN: Okay.	11 he's -- rather than getting Mr. Metzler off the stand,
12 MR. RODRIGUEZ: That was just a	12 making him walk over there and have to walk back.
13 typographical change on that.	13 MR. RODRIGUEZ: Okay.
14 On Page 16, Lines 6 and 7, there were --	14 Q (BY MR. RODRIGUEZ) Good morning,
15 the water and sewer customer numbers were updated on	15 Mr. Metzler.
16 that.	16 A Good morning.
17 On Exhibit DLM-16 -- DLM-16 we	17 JUDGE NORMAN: Before you go, and I'm
18 circulated to the parties, the brand new, beginning	18 going to tell this to all parties, in determining
19 October 1, 2008, water and sewer rates for the city.	19 admissibility, I'm going to direct your attention to
20 JUDGE NORMAN: Okay.	20 Rule 104 of the Texas Rules of Evidence. In
21 MR. RODRIGUEZ: That's to provide the	21 determining questions of admissibility generally,
22 most current information to everyone, which does	22 104(b) says "In making its determination, the Court is
23 reflect an increase in rates.	23 not bound by the rules of evidence except with respect
24 And on Page 22, Lines 10 through 13,	24 to privileges." So I'm going to permit hearsay
25 that was removed pursuant to Your Honor's ruling on	25 testimony from everybody or -- in order to make my

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1 determination under 2001.081. Okay?  
 2 MR. CARLTON: So are we specifically  
 3 dealing with the service request issue now?  
 4 JUDGE NORMAN: We're going to, I think,  
 5 pretty soon. And then you have -- later on you have  
 6 testimony that you need to prove up, too, as you  
 7 recall.  
 8 MR. CARLTON: Sure.  
 9 JUDGE NORMAN: And in making my  
 10 determination -- again, in making my determination on  
 11 admissibility, I'm not going to be limited by the  
 12 rules of evidence except with regard to privilege.  
 13 Okay?  
 14 All right. Thank you. Go ahead.  
 15 Q (BY MR. RODRIGUEZ) Good morning,  
 16 Mr. Metzler.  
 17 A Good morning.  
 18 Q I believe we got on the record who you are.  
 19 Right? I already asked you that?  
 20 JUDGE NORMAN: Yes.  
 21 A Yes.  
 22 Q (BY MR. RODRIGUEZ) I'm not sure exactly  
 23 where I was at this point that we went through the  
 24 exercises of going through your changes to your  
 25 testimony.

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1 You've got something that's in front of  
 2 you that's marked Lindsay Exhibit APP-2?  
 3 MR. CARLTON: Can you pull your mic  
 4 closer, Art?  
 5 Q (BY MR. RODRIGUEZ) Do you recognize that  
 6 document, Mr. Metzler?  
 7 A Yes.  
 8 Q Can you identify it for me, please?  
 9 A It's my -- my pretrial testimony.  
 10 Q And, Mr. Metzler, you just heard me go  
 11 through several changes to that -- to that testimony,  
 12 and do you agree with those changes?  
 13 A Yes, I do.  
 14 Q Now, if I ask you the questions that are in  
 15 Metzler -- or Applicant's Exhibit APP-2 now as revised  
 16 by my statements earlier, would your answers today be  
 17 the same?  
 18 A Yes, they would.  
 19 Q Okay. And, Mr. Metzler, can you please  
 20 identify for me Lindsay Exhibit APP-1? It's this  
 21 document right here.  
 22 A Our application.  
 23 MR. RODRIGUEZ: Okay. At this time,  
 24 Your Honor, we offer Lindsay Exhibits APP-1 and 2.  
 25 JUDGE NORMAN: And I know there've

1 already been objections, and those are noted and  
 2 preserved.  
 3 MR. CARLTON: Thank you.  
 4 JUDGE NORMAN: And any other objections?  
 5 MR. CARLTON: None apart from what we've  
 6 already discussed.  
 7 JUDGE NORMAN: All right. Okay.  
 8 Mr. MacLeod?  
 9 MR. MacLEOD: No objections.  
 10 JUDGE NORMAN: They're admitted on that  
 11 basis.  
 12 (Exhibit APP Nos. 1 and 2 admitted)  
 13 MR. RODRIGUEZ: At this point, Your  
 14 Honor, do you want the 2001.081 testimony, or do you  
 15 want him to provide his narrative to you?  
 16 JUDGE NORMAN: I'd rather get that out  
 17 of the way. Yeah, we're going to get that out of the  
 18 way, the .081 testimony, from your witnesses and from  
 19 the staff's witnesses.  
 20 MR. RODRIGUEZ: Okay.  
 21 JUDGE NORMAN: And then we're going  
 22 to -- I'm going to rule on that, and then we're going  
 23 to -- then we're going to go forward with the hearing.  
 24 Okay?  
 25 Q (BY MR. RODRIGUEZ) Mr. Metzler, I'm going to

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1 ask you in your testimony, APP-2, Exhibit APP-2, to  
 2 turn to DLM-10, Exhibit DLM-10. And I'm going to ask  
 3 you if you can -- if you'll identify those  
 4 documents -- can identify those documents for me.  
 5 A They are the letters that the City of Lindsay  
 6 received in 2005 concerning the water and sewer  
 7 service.  
 8 Q Okay. Mr. Metzler, let me ask you this:  
 9 You've heard today that there have been some  
 10 objections to the testimony based on hearsay, that  
 11 Mr. Myrick's or Lindsay Pure Water's attorney wouldn't  
 12 have the opportunity to cross-examine these folks.  
 13 Can you please detail for me -- would it be reasonable  
 14 to bring all these 55 people to Austin to provide  
 15 testimony that they are requesting service from the  
 16 city?  
 17 A It would seem to me to be a little  
 18 unreasonable to bring all 55. Several of these people  
 19 are 80 plus years old, one or two of them have been in  
 20 and out of rest homes, rehabilitation homes for  
 21 physical ailments over the past few years. One or two  
 22 of them --  
 23 MR. CARLTON: Objection.  
 24 JUDGE NORMAN: Okay.  
 25 MR. CARLTON: I don't think there's been

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1 a foundation laid as to this witness' personal  
2 knowledge regarding what really is 22 requests for  
3 service and the people that wrote those requests for  
4 service. And he's testifying about why they can't be  
5 here.  
6 JUDGE NORMAN: Right.  
7 MR. CARLTON: Does he know them? Does  
8 he have information about each of them that allows him  
9 that personal knowledge to testify about that?  
10 JUDGE NORMAN: Well, I'm going to let  
11 you cross. And again, I'm going to let in hearsay.  
12 I'm going to let in hearsay evidence.  
13 MR. CARLTON: I understand, but I have  
14 to preserve the objection.  
15 JUDGE NORMAN: I understand, and  
16 before -- in fact, I'm going to let you -- before I  
17 make my ruling, I'm going to let you take him.  
18 MR. CARLTON: Thank you.  
19 JUDGE NORMAN: All right. Go ahead.  
20 Q (BY MR. RODRIGUEZ) Mr. Metzler, have you  
21 reviewed the requests that are contained in DLM-10?  
22 A Yes, I have.  
23 Q Do you have -- do you personally know many of  
24 those people?  
25 A I do.

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1 Q Okay. Now, can you please detail for me  
2 exactly why you believe it would be unreasonable to  
3 have these people come to Austin to testify that these  
4 are their signatures and that they are requesting  
5 service?  
6 A There's one of them in here from a Vincent  
7 Zimmerer who is right at 90 years old and has been in  
8 poor health for several years, and I believe a trip to  
9 Austin would be pretty difficult for him. There's one  
10 in here from Ms. Marsha Dill. If I'm not mistaken,  
11 she has several young children, and it might be  
12 difficult for her to get down here. There's one in  
13 here from Frances Zimmerer, who is 90 something years  
14 old, that a trip to Austin may be a little difficult.  
15 Q Okay. Also, what type of expense would be  
16 related to bring some -- bring these people down to  
17 Austin for testimony, Mr. Metzler?  
18 A Well, we would be required to put them up in  
19 a hotel for one or two nights, meals, transportation  
20 expenses. I don't know if the city would be looking  
21 at chartering a bus to bring them all down here or  
22 expecting all of them to drive down here on their own.  
23 Q Mr. Metzler, you serve as the Mayor Pro-Tem  
24 for the City of Lindsay. Is that correct?  
25 A Yes, I do.

1 Q Now, in making decisions based on -- policy  
2 decisions for the city, is this the type of  
3 information that you would rely upon, what's contained  
4 in DLM-10, to make a policy decision for the city?  
5 A It would be one piece of information we would  
6 use, yes.  
7 Q Okay. Do you think that it's reasonable  
8 and prudent for you to take these letters into  
9 consideration in determining whether you've got --  
10 whether you need to expand your CCN?  
11 A Yes, I do.  
12 Q Mr. Metzler, with respect to having these  
13 people come in and testify or provide testimony, in  
14 your opinion as a policymaker for the City of Lindsay,  
15 are these -- are the service requests that are  
16 contained in DLM-10 the type of information that you  
17 need in order to determine whether you need to proceed  
18 with this application or not?  
19 A Yes, it is.  
20 Q And is there other mechanisms that are both  
21 cost-effective and -- well, that are cost-effective or  
22 other reasonable areas to be able to provide this  
23 proof short of providing these letters?  
24 A Well, other than the persons attending a city  
25 council meeting requesting service, I can't imagine

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1 what that would be. So they either provide us -- show  
2 an interest, you know, written or showing up at city  
3 council and asking how soon or when something could  
4 happen for them.  
5 MR. RODRIGUEZ: Your Honor, I guess on  
6 this limited issue I would tender him for  
7 cross-examine with respect to that.  
8 JUDGE NORMAN: Okay. And I think  
9 probably -- I'll hear what you-all have to say, but I  
10 think given the Executive Director's position on the  
11 application, it probably would be best to let him go  
12 second, and then you can cross.  
13 MR. CARLTON: Thank you.  
14 JUDGE NORMAN: Okay. Go ahead.  
15 CROSS-EXAMINATION  
16 BY MR. MacLEOD:  
17 Q I just had one area I had some concern about,  
18 and that is that on recovering the costs if you had to  
19 bring the 55 people down here, would you recover those  
20 costs from general funds, or would you recover them in  
21 the water rates?  
22 A Well, since this is tied to the water and  
23 sewer program, right now I would assume we would look  
24 at recovering it from that point, but that would be a  
25 council decision, and we could look at spreading it

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1 out over both the general and the water and sewer  
2 funds.

3 MR. MacLEOD: I don't have any other  
4 questions.

5 JUDGE NORMAN: I'm sorry?

6 MR. MacLEOD: I don't have any other  
7 questions.

8 JUDGE NORMAN: Okay. Mr. Carlton?

9 CROSS-EXAMINATION

10 BY MR. CARLTON:

11 Q Good morning. Mr. Metzler?

12 A Metzler.

13 Q Okay. I want to make sure I get it right.

14 A Good morning.

15 Q I don't want to mess it up.

16 Have you ever participated in a hearing  
17 like this before?

18 A No, sir.

19 Q So you don't really know what the rules are  
20 for how you call witnesses and how people are  
21 available and all those kinds of things, do you?

22 A No, I really don't.

23 Q Okay. So you're not aware that witnesses  
24 that have trouble traveling could be called by  
25 telephone to testify?

1 A In 2005, I was not.

2 Q Okay. Were you on the planning and zoning  
3 commission at the time this application was prepared?

4 A I had just started my first term on P&Z.

5 Q And when did your term start in?

6 A 2005.

7 Q In 2005. A particular month?

8 A June.

9 Q June of 2005? Okay. And this application  
10 was filed August 31, 2005. Right?

11 A Yes.

12 Q Okay. One day before the rules changed to  
13 implement the new statutes?

14 (No response)

15 Q (BY MR. CARLTON) Okay. Nevermind.

16 And have you looked at all of these  
17 letters?

18 A Yes, sir.

19 Q Are any of them dated before August 31, 2005?

20 A No.

21 Q Okay. So the city filed its application  
22 without having these letters in its possession.

23 Correct?

24 A I would have to assume that.

25 Q Okay. But you don't know why the city

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1 A No, I wasn't.

2 Q Okay. So that would be another way to prove  
3 up this evidence, wouldn't it?

4 A I would think so.

5 Q Okay. And then you mentioned that one  
6 example -- do you follow sports in Lindsay?

7 A To some degree, yes.

8 Q Everybody kind of follows high school. Are  
9 you familiar the team went to the state playoffs?

10 A Yes.

11 Q You know Ms. Dill attended that game. Right?

12 A No, I don't know that.

13 Q Okay.

14 A I didn't go myself.

15 Q Okay. All right.

16 JUDGE NORMAN: Was that in football?

17 MR. MYRICK: Basketball.

18 JUDGE NORMAN: Basketball.

19 MR. CARLTON: State Championship in 1A.

20 JUDGE NORMAN: All right.

21 MR. CARLTON: Just on the record,

22 Lindsay, congratulations.

23 (Laughter)

24 Q (BY MR. CARLTON) Were you on the city  
25 council at the time this application was prepared?

1 filed -- or whether the city filed its application  
2 without the letters?

3 A No, I do not know that.

4 Q Okay. Do you know how the letters were  
5 prepared?

6 A No, I do not.

7 Q Do you have any idea why they all are  
8 duplicates of each other except for the names and  
9 addresses?

10 A No, I do not.

11 Q Okay. Do you know whether these individuals  
12 separately prepared these letters?

13 A No, I do not.

14 Q So did the city make these letters?

15 A I don't know. I didn't have -- I wasn't a  
16 party to obtaining these letters. So I have no idea  
17 how that process worked.

18 Q Okay. So you can't give me any information  
19 as to how these letters were prepared or why they were  
20 prepared?

21 A No, I can't.

22 Q Okay. When you testified that you felt these  
23 were reasonable to rely upon, that was your opinion.

24 Correct?

25 A Yes.

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1 Q Okay. So you're not speaking for the city  
2 council here today?  
3 A I am speaking for the city council. Whether  
4 or not these are reliable people, I would think even  
5 our city council would agree that they're reliable  
6 people.  
7 Q Okay. But the city council hasn't authorized  
8 you to speak on their behalf as to the truth of these  
9 letters or the reliability of them, have they?  
10 A Well, I guess they haven't formally voted to  
11 send me down here if that's the question you're  
12 asking.  
13 Q And that's the way the council takes action.  
14 Correct?  
15 A To -- yes, we would vote on something. I'm  
16 down here -- the mayor couldn't be here, and so I'm  
17 here in his place.  
18 Q Would you agree with me that these letters  
19 don't request service at any particular time?  
20 A I would have to agree to that.  
21 Q Would you agree with me these letters don't  
22 request any certain amount or quantity of service?  
23 A Well, I don't -- "quantity" meaning?  
24 Q Do any of these letters say how many homes  
25 are going to be served?

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1 A No, no, they don't, other than the one that  
2 talks about having five lots, but I'm assuming there's  
3 no homes on those five lots right now.  
4 Q And I assume the city hasn't taken any steps  
5 to begin to provide service to these folks, have they?  
6 A Not at this time.  
7 Q And are you familiar with the rule that the  
8 city is not required to have a CCN to provide service  
9 out anywhere?  
10 A Well, I am aware of that, yes.  
11 Q Okay. All right. Has the city received any  
12 requests for service, let's say, since you've been on  
13 city council where the city has actually extended  
14 water service outside the city limits?  
15 A No.  
16 Q Were you familiar with the circumstances of  
17 the adoption of Ordinance 0805-3, which is attached to  
18 Mr. Stowe's testimony regarding utility service  
19 outside the city? Are you familiar with the adoption  
20 of that ordinance in August of '05?  
21 A No.  
22 MR. CARLTON: Your Honor, if I could  
23 have just a minute, please?  
24 JUDGE NORMAN: Sure.  
25 (Brief pause)

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1 (Exhibit LPWC No. 8 marked)  
2 Q (BY MR. CARLTON) Would you take a look at  
3 that document that's in front of you? Can you tell me  
4 what that is?  
5 A It's a city ordinance --  
6 Q Okay.  
7 A -- passed by the City of Lindsay.  
8 Q And that ordinance was passed in August of  
9 '05. Correct?  
10 A Yes.  
11 Q And were you on the city council at that  
12 time?  
13 A No, sir.  
14 Q Were you on the planning and zoning  
15 commission then?  
16 A Yes.  
17 Q Did the planning and zoning commission have  
18 any involvement in advising the council about how the  
19 city should serve properties outside the city limits?  
20 A In my one or two months prior to this being  
21 passed, I don't recall that being a part of our  
22 agenda.  
23 Q Okay. Would you look in Section 1,  
24 Paragraph (A), and would you agree with me that that  
25 paragraph requires that somebody who wants utility

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1 service from Lindsay requires them to file a petition  
2 for annexation if they want to get service?  
3 A Yes.  
4 MR. RODRIGUEZ: Your Honor, I'm going to  
5 object to the question as to the relevancy of this.  
6 This ordinance that he's examining the witness about  
7 actually provides -- it's a process to actually  
8 receive service where all these -- what we're talking  
9 about DLM-10 are requests for service. This is a  
10 process for you to become a qualified applicant for  
11 service. It's not to request service from the city.  
12 So I'd object to the relevancy of the question.  
13 JUDGE NORMAN: I'm going to overrule it,  
14 but I note your argument on that, and it may well be  
15 accurate, but I'm going to allow as much evidence as I  
16 reasonably can on this. Go ahead.  
17 Q (BY MR. CARLTON) So the beginning of that  
18 paragraph, in fact, says that any person desiring  
19 utility services furnished by the city for property  
20 outside the city limits shall prior to getting that  
21 service file a petition for annexation. Correct?  
22 A Yes.  
23 MR. RODRIGUEZ: Your Honor, just please  
24 note my running objection on that.  
25 JUDGE NORMAN: Certainly; certainly.

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1 Q (BY MR. CARLTON) If you would turn to the  
2 second page, Section (B) and in particular Subsection  
3 (1) there it has, in caps, WATER.

4 A WATER.

5 Q It basically states that anybody that desires  
6 to use water has to make an application to the public  
7 works department. Correct?

8 A Correct.

9 Q And in that application, they have to state  
10 the exact location of the premises to be served and  
11 the purposes for which water is going to be provided.  
12 Right?

13 A Yes.

14 Q Okay. None of these letters do either of  
15 those things, do they? The letters don't state the  
16 exact location?

17 A The letters have a location on them.

18 Q Okay.

19 A Don't they? I mean, they have the address  
20 listed right below their name. Is that not the  
21 location?

22 Q I don't know. You tell me. I'm relying upon  
23 you for these letters and the information about the  
24 letters.

25 A That would be the location, the address

1 copies of written requests for service?

2 A I have a hard time doing that. Not having  
3 been involved in any of the discussion in 2005  
4 concerning these, I don't know what prompted these  
5 letters.

6 Q Okay. Who would be the person at the city  
7 most likely to know how these letters were prepared?

8 A The mayor would have probably -- would be one  
9 person you could go to, Mr. Swinggi.

10 Q So he would be able to testify about these  
11 letters?

12 A I would think so.

13 Q Would the city secretary?

14 A She was employed at that time. I would think  
15 she could.

16 Q Neither of them are here now, are they?

17 A One of them is.

18 Q Who is here?

19 A The city secretary.

20 Q Okay.

21 A Ms. Fleitman.

22 MR. CARLTON: Your Honor, I'm just  
23 taking a minute --

24 JUDGE NORMAN: Sure.

25 MR. CARLTON: -- to make sure I don't

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1 listed below the name of these people.

2 Q Okay. Does it --

3 A Now, the intent, it doesn't say whether it's  
4 going to be used for their home or agriculture.

5 Q It also states that they have to agree to pay  
6 all the city's rates and charges, doesn't it?

7 A Yes.

8 Q And the letters don't have any sort of  
9 agreement in that respect, do they?

10 A No, they do not.

11 Q Do the letters specify a timeframe in which  
12 they request service?

13 A At some point in the future.

14 Q And do the level -- do the letters request or  
15 state anything as far as how service -- they'd like  
16 for service to be provided to them?

17 A No, they do not.

18 Q And we've already discussed that they don't  
19 talk about how much service, how many homes or  
20 anything other than the one that has five lots?

21 A Other than the one address listed on each  
22 application, no, they do not.

23 Q Would you agree with me that these letters  
24 were probably prepared in response to a request by the  
25 agency that Mr. Rodriguez referred to to provide

1 have anything else.

2 (Brief pause)

3 MR. CARLTON: I'll pass the witness.

4 JUDGE NORMAN: Anything further,

5 Mr. Rodriguez?

6 REDIRECT EXAMINATION

7 BY MR. RODRIGUEZ:

8 Q Mr. Metzler, I think we established you're  
9 the mayor pro-tem for the city. Did you review city  
10 records in -- well, let me ask it this way: Is  
11 DLM-10, which is the 55 requests for -- letter  
12 requests for service, taken from the city records?

13 MR. CARLTON: Art?

14 JUDGE NORMAN: DLM-10, is it taken from  
15 the city records?

16 A Yes, it is.

17 Q (BY MR. RODRIGUEZ) And does the city  
18 understand these to be requests for service for both  
19 water and sewer service for that matter?

20 A Yes, we do.

21 Q And those requests for service are being made  
22 to the City of Lindsay. Is that accurate?

23 A Yes.

24 Q Let me also -- let me ask you to turn to  
25 Lindsay Pure Water Exhibit 8, which I believe is City

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<p>1 Ordinance 0805-3 because there were some questions on</p> <p>2 that. Go to Page 2 of that. I believe there were</p> <p>3 some questions with respect to Subsection (B)(1)</p> <p>4 WATER.</p> <p>5 A Yes.</p> <p>6 Q Do you remember that testimony?</p> <p>7 A Yes.</p> <p>8 Q What are the words right after "WATER" in</p> <p>9 that section?</p> <p>10 A "Application; construction and materials</p> <p>11 required."</p> <p>12 Q Do you see anything in this ordinance,</p> <p>13 Mr. Metzler, that provides a process for someone to</p> <p>14 request service from the city, or does this only</p> <p>15 require one to -- a process for how they apply for</p> <p>16 service from the city?</p> <p>17 MR. CARLTON: Objection; leading.</p> <p>18 A There --</p> <p>19 JUDGE NORMAN: I'm going to sustain the</p> <p>20 objection, the second part of it. The first part of</p> <p>21 it is, do you see anywhere --</p> <p>22 MR. RODRIGUEZ: Do you see anywhere --</p> <p>23 I'll rephrase, Your Honor.</p> <p>24 JUDGE NORMAN: Okay.</p> <p>25 Q (BY MR. RODRIGUEZ) Mr. Metzler, how do you</p>	<p>1 A Okay.</p> <p>2 Q Can you please tell me in there where it</p> <p>3 provides that a request -- actually are requests for</p> <p>4 service even mentioned in that subsection?</p> <p>5 A It's not.</p> <p>6 Q And --</p> <p>7 JUDGE NORMAN: In (d) -- and what is it?</p> <p>8 MR. RODRIGUEZ: In (d)(2), (A) and</p> <p>9 Subsection (D).</p> <p>10 JUDGE NORMAN: It is in there?</p> <p>11 MR. RODRIGUEZ: Yeah, requests for</p> <p>12 service are in there.</p> <p>13 Q (BY MR. RODRIGUEZ) Is that correct?</p> <p>14 A Yes.</p> <p>15 Q Okay. Now, can you please tell me,</p> <p>16 Mr. Metzler, where in there it talks about needing a</p> <p>17 requirement that you need to have a certain amount of</p> <p>18 service demand in your request for service?</p> <p>19 A I don't see it in those two statements.</p> <p>20 Q Is there anything in there that would require</p> <p>21 a timeline to provide service in order for it to be a</p> <p>22 valid service request?</p> <p>23 A I don't see that.</p> <p>24 Q Is there anything in those sections that we</p> <p>25 just read that provides a detailed step or process</p>
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<p>1 characterize (B)(1) with respect to someone requesting</p> <p>2 service?</p> <p>3 A Well, they would make some kind of a written</p> <p>4 application to the public works department asking for</p> <p>5 a water service.</p> <p>6 Q So they would need to do that if they were</p> <p>7 seeking to apply for service. Correct?</p> <p>8 A Yes.</p> <p>9 Q Is there a process in there for one to</p> <p>10 request service from the city?</p> <p>11 A No.</p> <p>12 Q So at least your understanding, Mr. Metzler,</p> <p>13 is that this ordinance speaks to the application for</p> <p>14 service?</p> <p>15 A Yes.</p> <p>16 Q Okay. Now, Mr. Metzler, there were some</p> <p>17 questions with respect to the quantity of service and</p> <p>18 the amount of service that was provided. I'm going to</p> <p>19 ask you to read 291.102 as it's currently constituted</p> <p>20 from the city's -- from the TCEQ rules and ask you to</p> <p>21 read Subsection (d)(2) of 291.102.</p> <p>22 A The need --</p> <p>23 Q And read it to yourself.</p> <p>24 A Okay.</p> <p>25 Q I don't need you to read it into the record.</p>	<p>1 that one needs to go through in order to make a</p> <p>2 request for service?</p> <p>3 A No.</p> <p>4 MR. RODRIGUEZ: I pass the witness, Your</p> <p>5 Honor.</p> <p>6 JUDGE NORMAN: Mr. MacLeod?</p> <p>7 RE-CROSS-EXAMINATION</p> <p>8 BY MR. MACLEOD:</p> <p>9 Q Mr. Metzler, these requests for service</p> <p>10 requests, they're all coming from I think the city of</p> <p>11 Gainesville and the City of Lindsay -- is that</p> <p>12 correct -- that's where these requestors are located?</p> <p>13 A They would be located south, west and north</p> <p>14 of Lindsay with mailing addresses that would probably</p> <p>15 be Gainesville and Lindsay.</p> <p>16 Q And did you travel here from Lindsay today or</p> <p>17 yesterday?</p> <p>18 A Yesterday.</p> <p>19 Q Did you fly, or did you drive?</p> <p>20 A I drove.</p> <p>21 Q How far did you drive?</p> <p>22 A Two hundred and fifty miles.</p> <p>23 Q And how long did it take you to do that?</p> <p>24 A Four hours and five minutes.</p> <p>25 JUDGE NORMAN: That's pretty precise.</p>

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1 Q (BY MR. MacLEOD) And I was also -- on the  
2 applications for service question -- no, I'm going to  
3 hold off on that.  
4 Now, there was some reference in the  
5 earlier cross-examination to the fact that you weren't  
6 aware that this could be -- that they could testify by  
7 telephone. I suppose you probably aren't also aware  
8 that the SOAH Rules 155.45 require a motion to be  
9 acted on in order to have participation by telephone.  
10 You're not aware of that either, are you?  
11 A No.  
12 Q But you are aware that if motions are  
13 prepared, you have to pay an attorney to do that  
14 motion, aren't you?  
15 A Yes.  
16 Q Now, you also are aware of what telephone  
17 conferences are like. I'm guessing you --  
18 A I have.  
19 Q -- participated in -- have you ever done a  
20 telephone conference with 55 people?  
21 A No, I have not.  
22 Q Do you think that that would be a reasonable,  
23 fairly easy thing to do, to have a telephone  
24 conference with 55 people?  
25 A Probably not reasonable. I don't know how

1 Q Could you even take an application from these  
2 people at this time?  
3 A Well, from some of them closer to the city  
4 limits, yes, we could.  
5 MR. MacLEOD: Pass the witness.  
6 JUDGE NORMAN: Mr. Carlton?  
7 MR. CARLTON: I don't have any  
8 questions.  
9 JUDGE NORMAN: Okay. Okay. And you  
10 wanted to get Mr. Maroney -- is that right -- to  
11 testify on this matter? Is that right?  
12 MR. RODRIGUEZ: No, sir.  
13 JUDGE NORMAN: Okay.  
14 MR. RODRIGUEZ: Mr. Metzler as far as  
15 the limited issue --  
16 JUDGE NORMAN: Okay.  
17 MR. RODRIGUEZ: -- of the letters are  
18 concerned.  
19 JUDGE NORMAN: And this is I think -- I  
20 think Mr. Myrick has, you know, asserted in his  
21 testimony that this is not needed, has he not?  
22 MR. CARLTON: True, yes.  
23 JUDGE NORMAN: And he's also asserted  
24 that that's why he did not -- he himself did not file  
25 a CCN application. Is that true?

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1 easy it is with today's technology. Three to five  
2 would probably be more reasonable.  
3 Q Have you ever had difficulty reaching people  
4 if you were trying to reach them in order, like trying  
5 to call somebody next and they're not there?  
6 A Yes, I have.  
7 Q Have you ever had phone calls dropped from  
8 telephone conferences?  
9 A Yes.  
10 Q Is that with how many people have they been  
11 dropped? Were there 55 people in that conference?  
12 A No. Five.  
13 Q Have you ever done a telephone conference  
14 with 55 people?  
15 A No, I have not.  
16 Q What's the most people you've ever had in a  
17 telephone conference?  
18 A Five.  
19 Q Do you currently have where these requests  
20 are coming from? Let me restart again because I want  
21 the record to be clear.  
22 In the areas where these requests have  
23 come from, do you have lines in those areas ready to  
24 serve? Could you serve those people right now or not?  
25 A No, we couldn't.

1 MR. CARLTON: Yes.  
2 JUDGE NORMAN: So this is a key issue.  
3 MR. CARLTON: And it's also important to  
4 Ms. Benter's testimony because she asserts that one of  
5 the reasons she's recommending the CCN be granted is  
6 because we didn't file a competing CCN application --  
7 JUDGE NORMAN: Right.  
8 MR. CARLTON: -- even though I don't  
9 know of any requirement in the rules to do so.  
10 JUDGE NORMAN: Right. So I'm spending a  
11 lot of time on this is what I'm saying because it's a  
12 very important issue.  
13 The city secretary is here?  
14 MR. RODRIGUEZ: She's here, yes, sir.  
15 JUDGE NORMAN: Is there anyone here that  
16 was named on these -- any of these 55 people here in  
17 the room?  
18 MR. RODRIGUEZ: Not that I know of, Your  
19 Honor.  
20 JUDGE NORMAN: Okay. All right.  
21 Anybody who wants to call the city secretary I'm going  
22 to permit them to do it, you know, before I rule on  
23 this.  
24 But now, Mr. MacLeod, I want to hear  
25 testimony from Ms. Benter if you want to provide that.

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1 MR. MacLEOD: Yes, we will. So I go  
2 ahead and call Ms. Tammy Benter.  
3 JUDGE NORMAN: And she'll take your  
4 place over there, Mr. Metzler.  
5 You've been sworn, Ms. Benter?  
6 THE WITNESS: Yes, I have.  
7 JUDGE NORMAN: Okay.  
8 PRESENTATION ON BEHALF OF THE EXECUTIVE DIRECTOR  
9 TAMMY HOLGUIN-BENTER,  
10 having been first duly sworn, testified as follows:  
11 DIRECT EXAMINATION  
12 BY MR. MacLEOD:  
13 Q Could you state your name for the record,  
14 please?  
15 A Tammy Lee Holguin-Benter. I go by  
16 Tammy Benter.  
17 Q And where do you work?  
18 A TCEQ, Water Supply Division, Utilities and  
19 Districts section on the financial review team.  
20 Q And what's your current position there?  
21 A I am the team leader of the financial review  
22 team.  
23 Q And how long have you been working at the  
24 TCEQ?  
25 A Ten years.

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1 Q And what's your educational background?  
2 A My undergraduate is economics and biology.  
3 It's a bachelor of science, and my masters is a  
4 masters of business administration.  
5 Q Now, in working with the TCEQ, do you deal  
6 with CCN applications?  
7 A Yes, on a daily basis.  
8 Q Do you deal with TCEQ and ED, Executive  
9 Director, policy on how TCEQ CCN applications are  
10 processed?  
11 A Yes.  
12 Q And could you give me an estimate as to how  
13 many CCN applications you've reviewed? Would it be  
14 hundreds?  
15 A Yeah.  
16 Q Thousands?  
17 A Yeah, we process 200 -- I think last year it  
18 was 285 or somewhere through there, about 260, 250 a  
19 year, and all of those come across my desk initially  
20 when I make the assignment and then reviewing them  
21 before they're actually granted.  
22 Q So how well acquainted are you with the  
23 practices of the Commission and the Executive Director  
24 policy for determining whether or not there is a need  
25 for service?

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1 A I'm extremely aware of the policies.  
2 Q And how long has the agency relied on  
3 requests for service as a factor determining whether  
4 there is a need for service?  
5 A Since I've been at the agency, the need for  
6 service has been one of the criteria, and we've always  
7 relied on applications or letters for service.  
8 Q And why do we rely on them?  
9 A Because it's showing -- to us it shows a  
10 need. It demonstrates that there are individuals  
11 living out in the requested area that are actually  
12 seeking service at some point.  
13 Q Do experts in your field, in particular those  
14 who determine whether the requirement for a need for  
15 service for the issuance of a CCN are met, do those  
16 experts reasonably rely on requests for service and  
17 form opinions on the subjects of whether there is a  
18 need for service?  
19 A Yes, we do.  
20 Q Now, the new rules and the new statute, which  
21 we've all stipulated aren't the ones that apply to  
22 this, do specifically state that requests for service  
23 are to be considered in determining whether there's a  
24 need for service. Is that right?  
25 A That's correct. It's one of the subparts.

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1 Q Was that the agency's practice before these  
2 rules were put into effect?  
3 A Yes, it was.  
4 Q So they're just codifying agency practice?  
5 A Correct.  
6 Q Is there a test for what a request for  
7 service is when the agency is considering requests for  
8 service?  
9 A No, not -- not really. The new rules have  
10 specific -- they break it down further. So there's  
11 different ways of demonstrating a need for service in  
12 the new rules.  
13 Now, if I understand this application,  
14 we're not looking at it under the new rules, but the  
15 new rules do allow applications for service and  
16 environmental need and economic need and different  
17 things that you can, you know, specify in order to  
18 demonstrate a need.  
19 JUDGE NORMAN: But the old rules require  
20 a request for service. Is that right?  
21 A Correct, or a need for service.  
22 JUDGE NORMAN: Or a need for service?  
23 A Yes.  
24 JUDGE NORMAN: A need for service?  
25 A I'd have to look at the old rules.

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1 JUDGE NORMAN: Why don't you do that.  
2 MR. RODRIGUEZ: It's right in front of  
3 you.  
4 A It says "Copies of written requests seeking  
5 to obtain service from each of the public" -- wait,  
6 that's the wrong one. I'm looking at the wrong one.  
7 MR. MacLEOD: That's the new rule.  
8 A Oh, okay, here it is. "The need for  
9 additional service in the requested area."  
10 JUDGE NORMAN: Just simply the need for  
11 requested service --  
12 A Uh-huh.  
13 JUDGE NORMAN: -- in the requested area?  
14 MR. MacLEOD: And that was -- sorry.  
15 JUDGE NORMAN: Okay. Go ahead.  
16 Q (BY MR. MacLEOD) That was the old rule, the  
17 rule that this was brought under. Is that right?  
18 A Yes, that's correct.  
19 Q But I believe your testimony was that even  
20 under the old rule the agency practice, in your ten  
21 years of working there, has been that requests for  
22 service are a part of how that need is shown. Is that  
23 correct?  
24 A Yes, that's correct.  
25 Q And that's information experts in your field

1 of service that you're asking for. For example, if  
2 you're trying to do a development and you're putting  
3 in dense population -- or you're putting in a dense  
4 development and you're seeking fire flow, and you're  
5 in a CCN and that CCN holder cannot provide fire flow,  
6 then they cannot provide the level or manner that  
7 you're seeking, so you can ask to be released  
8 expeditedly from the CCN if you have an alternate  
9 service provider.  
10 Q So the criteria for determining whether or  
11 not someone should have expedited release would be a  
12 lot different than the criteria for a need for service  
13 in issuing a CCN. Is that correct?  
14 A That's correct.  
15 Q What does the agency consider when they're  
16 looking at a request for service? What are we looking  
17 for? Are we looking for -- do we require that it show  
18 a date? How much specificity are we looking for? Is  
19 there any test? I'm just wondering what we're really  
20 looking for in those.  
21 A The application does ask -- there's a  
22 specific -- I can't even talk today -- place in the  
23 application that says "Have you received any requests  
24 for service, written, verbal," and you can check the  
25 box, and then we ask for extra detail.

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1 rely on in making their determinations. Is that  
2 correct?  
3 A That's correct.  
4 JUDGE NORMAN: Now, when you say "need  
5 for service," is that an indispensable part of the  
6 need for service under the old rules, that someone  
7 wants it?  
8 A Yes.  
9 JUDGE NORMAN: All right.  
10 Q (BY MR. MacLEOD) Now, there was some  
11 reference to the expedited release rule. That's not  
12 the same as request for service, is it?  
13 A No, it's not.  
14 Q On that they've got to have -- don't they  
15 have to be requesting nonstandard service in order  
16 to -- no?  
17 A No, not necessarily. They have to request  
18 service from the entity that covers your CCN. The  
19 expedited release, you already have to be in someone's  
20 CCN in order to request to be released from it. And  
21 once you -- for that type of application, you have to  
22 ask or seek service from the utility which you're in  
23 the CCN of, and you also have to seek service from --  
24 and they have to be able to respond to you.  
25 You have to request the level and manner

1 One thing that we do typically ask for  
2 are written applications for service, letters for  
3 service where someone has actually written showing  
4 their name, address and basically just something  
5 saying, "Hey, I'm wanting service from you," or "I  
6 want to be in the CCN."  
7 And then we also look at maybe planned  
8 plat maps, things of that nature. We also look at  
9 growth studies. We look at population densities and  
10 other information submitted by the applicant.  
11 Q And that's for need, not service in general?  
12 A Correct.  
13 Q But need for service when we're looking at  
14 the requests, I believe you said that we have been  
15 requesting -- we've been asking applicants to give us  
16 their requests for service even before the new rules  
17 came into effect. Is that correct?  
18 A Yes, that's correct.  
19 Q And you've been doing that ever since you  
20 started working with the agency?  
21 A Yes.  
22 Q And I don't want to mess up my exhibit  
23 numbering, but did you take a look at the letter?  
24 Maybe Mr. Rodriguez may want to enter this into  
25 evidence later. Did you take a look at the letter

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1 that was sent to the applicant by our agency that he  
2 handed out?  
3 A Yes, I have it here in front of me.  
4 Q What's the date on that letter?  
5 A September 21, 2005.  
6 Q And this is dealing with this very  
7 application. Is that right?  
8 A That's right.  
9 Q And this application is under the old rules.  
10 Is that right?  
11 A That's correct.  
12 Q And this letter requests, as you said -- I'm  
13 not going to use the word "request" because I don't  
14 want to confuse -- asks that requests for service be  
15 provided?  
16 A Yes, it does.  
17 Q And I just want to kind of make sure we've  
18 got this. A request for service -- I heard you say  
19 you're looking for an address and some statement that  
20 somebody wants service. Is that right?  
21 A Right, either they want service or sometimes  
22 they just say "I want to be in the CCN." We assume  
23 that as being -- that obviously there's a need for  
24 service out there if this individual is saying "I want  
25 to be in this service area."

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1 Q Now, I want to -- I want to try to be as open  
2 about this as I can. Requests for service by  
3 themselves is not -- that's just one fact. That by  
4 itself won't establish a need for service all by  
5 itself, will it?  
6 A It can.  
7 Q It can, but not as a matter of law. I'm  
8 wondering is that true? I don't know. Tell me. A  
9 request for service -- if somebody sends in one  
10 request for service, that means they automatically get  
11 the CCN?  
12 A No, not necessarily.  
13 Q So it's just a bunch of -- you weigh this  
14 evidence --  
15 A Right.  
16 Q -- along with a bunch of other stuff?  
17 A Right. And it depends. If we have one  
18 request for service and we have an applicant that's  
19 asking for a thousand acres to be added to their CCN,  
20 and we have a request for service from a developer or  
21 the landowner of the whole thousand-acre tract, that  
22 might be sufficient for us. It all depends.  
23 Q Now -- and again, I'm trying to be as open  
24 and candid as we can with this. You just re-examined  
25 all of the -- what we're calling requests for service.

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1 Is that right?  
2 A That's correct.  
3 Q And did you notice that -- we have been  
4 saying 55, but you want to change that number because  
5 of that examination?  
6 A Yes.  
7 Q Do you want to explain that?  
8 A Yes. I went through all the letters to make  
9 sure there weren't any duplicates, and initially I had  
10 taken some out. Then I went back and I went through  
11 them and just double-checked, and there were one --  
12 there were two letters. One of them I think it was  
13 like a P.O. Box -- I can't remember -- and it had like  
14 maybe a spouse name, and then there was a subsequent  
15 letter that had the same spouse name. Or it had -- it  
16 had a male and a female name, same last name, same  
17 address, and so I took one of them out, didn't count  
18 that one.  
19 And then there was another one that had  
20 the same last name. One I think was a P.O. Box. I  
21 don't know, I'd have to go back and look, but it had  
22 the same number, so I took -- phone number, so I took  
23 that one out.  
24 Q So we may be changing that in your prefilled  
25 when we offer it -- I don't want to get into that

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1 now -- to 53 from 55?  
2 A Yes.  
3 Q And finally, these 53 requests with two of  
4 them possibly being duplicates, two requests from the  
5 same household, do we -- does the agency -- would the  
6 agency consider these to be requests for service?  
7 A Yes.  
8 MR. MacLEOD: Pass the witness.  
9 JUDGE NORMAN: Okay. Mr. Rodriguez?  
10 CROSS-EXAMINATION  
11 BY MR. RODRIGUEZ:  
12 Q Ms. Benter, it's been offered into evidence  
13 already, but I'm going to take you to what's been  
14 offered as Applicant's Exhibit No. 1 and ask if you  
15 recognize that as the City of Lindsay's application  
16 for a CCN?  
17 A Yes, I do.  
18 Q Now, the date on that is what?  
19 A October 7, 2008 -- oh, nevermind. I'm  
20 sorry -- August 31, 2005.  
21 Q Okay. Now, you would agree with me, wouldn't  
22 you, Ms. Benter, that that application was filed prior  
23 to the new -- what we've been calling the new CCN  
24 rules?  
25 A Yes.

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1 Q And so that application was actually the  
2 Commission-approved application under the old rules?  
3 A Yes.  
4 Q The pre-House Bill 2876 rules?  
5 A Yes, that's correct.  
6 Q Now, I'm going to ask you to go to the second  
7 page of that -- I'm sorry -- it would be the third  
8 page of that, APP -- Bates Page APP002 -- 1002.  
9 Excuse me.  
10 A Okay.  
11 Q Now, would you agree with me that even under  
12 the old rules, Ms. Benter, in kind of following up on  
13 the questions that you provided on direct examination,  
14 under Subsection (2)(B) there, there is a provision  
15 there for service requests, isn't there?  
16 A Yes.  
17 Q And so even under the old rules, it was  
18 important enough for the Commission, even at that  
19 time, asked whether there were verbal or written  
20 requests for service?  
21 A That's correct.  
22 Q And so it wasn't even necessarily that  
23 you-all were limited to written requests back when  
24 this application was filed?  
25 A That's correct.

1 service requests to people that don't want it. Is  
2 that right?  
3 A That's correct.  
4 Q And it's an important planning tool for  
5 utilities to be able to also determine where their  
6 service is going to be in the future?  
7 A That's correct.  
8 Q Is that one of the considerations or why you  
9 look at need for service as a factor in determining  
10 whether a CCN should be granted?  
11 A No, we don't really consider it as a planning  
12 tool. I mean, we don't take planning into  
13 consideration. We just take the fact that we've got  
14 different forms of requests for service as a factor.  
15 Q And so the -- in looking at the 55 or 53  
16 requests, however you want to count them, it's  
17 important not only that they say "I'm requesting  
18 service," or "I'm interested in service," but it's  
19 also important that they say they wish to be included  
20 in the CCN. Is that right?  
21 A Yes.  
22 Q Okay.  
23 A That's right.  
24 Q Ms. Benter, you've been with the Commission  
25 for ten years approximately?

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1 Q There were -- verbal was -- I don't want to  
2 say as good, but it was a factor that you-all looked  
3 at?  
4 A Yes, it's one of the factors.  
5 Q Okay. Now, in Subsection 2, Location  
6 Information, would you agree with me that there isn't  
7 anything else in there that would -- that discusses  
8 population projections?  
9 A That's correct.  
10 Q And there's nothing in there that talks about  
11 master plans? I think those were two of the things  
12 that you discussed as far as need for service goes.  
13 A No, there's nothing in here that does.  
14 Q Okay. And you determined that -- or you  
15 stated that requests for service was a factor to  
16 consider, a factor used in determining need?  
17 A That's correct.  
18 Q And those other factors, although they are  
19 important, were not important enough to make it into  
20 the Commission-approved application. Is that right?  
21 A Not at this time, yes.  
22 Q Okay. Now, would you agree with me,  
23 Ms. Benter, that with respect to requests for service  
24 that that is -- not only is it important for a CCN  
25 because it's important to the Commission to not grant

1 A (Nodded)  
2 Q Do you know --  
3 JUDGE NORMAN: Yes? Yes?  
4 A Yes. October 15th will be ten years.  
5 JUDGE NORMAN: Okay.  
6 Q (BY MR. RODRIGUEZ) Ms. Benter, do you know  
7 the difference between making a request for service  
8 and being a qualified applicant for service?  
9 A Yes.  
10 Q Okay. It's actually two very --  
11 A It's two --  
12 Q -- two distinctly different --  
13 A That's correct.  
14 Q -- terms. Is that correct?  
15 A We view them as two different -- totally  
16 different things, yes.  
17 Q Okay. To be a qualified applicant under the  
18 CCN rules would then obligate the CCN holder to  
19 provide service if they met the qualifications.  
20 Correct?  
21 A That's correct.  
22 Q Whereas if you were just requesting service,  
23 there's no incumbent requirement to provide service  
24 under the CCN rules. Is that right?  
25 A That's correct, unless you meet the service

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1 requirements.	1 Q Specifically for municipalities?
2 Q Right, unless you become a qualified	2 A Correct.
3 applicant?	3 MR. RODRIGUEZ: Actually, Your Honor, I
4 A Correct.	4 didn't offer it earlier because it was just basically
5 Q Okay. Now, Ms. Benter, is there anything in	5 an argument that we were making previously when I
6 the TCEQ rules, either the old rules or the new	6 actually brought this out, but I would at this point
7 rules or even in the water code, pre- or post-House	7 seek to enter that into evidence.
8 Bill 2876 that stipulates that a request for service	8 JUDGE NORMAN: As?
9 indicate a level of service that's being demanded?	9 MR. RODRIGUEZ: APP Exhibit 5.
10 A No, there's not.	10 (Exhibit APP No. 5 marked)
11 Q Is there anything in the rules or the statute	11 JUDGE NORMAN: APP Exhibit 5, all right.
12 that requires a timeframe in which service needs to be	12 Any objection to that?
13 provided?	13 (No response)
14 A I would need my rule book, but we	14 MR. MacLEOD: None from the ED.
15 typically -- if someone is a qualified applicant	15 JUDGE NORMAN: It's admitted.
16 and -- if they make application, they're a qualified	16 (Exhibit APP No. 5 admitted)
17 applicant --	17 JUDGE NORMAN: And I'd like for you to
18 Q I'm not even talking about qualified	18 before the hearing is over to get me a copy of that so
19 applicants. I'm talking about requests for service.	19 I'll have that. You may have it now.
20 Is there anything in either the statutory or the	20 MR. RODRIGUEZ: We'll get you one now.
21 statutes or the regulations that provide that in order	21 JUDGE NORMAN: All right. Okay. Go
22 to make a request for service you have to make a	22 ahead.
23 demand for service within any certain period of time?	23 MR. RODRIGUEZ: I pass the witness, Your
24 A No, there's not.	24 Honor.
25 Q Now, the letter, the November 2005 letter I	25 JUDGE NORMAN: Okay. Mr. Carlton?
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1 believe that --	1 CROSS-EXAMINATION
2 A September 21?	2 BY MR. CARLTON:
3 Q September 21. Excuse me.	3 Q Good morning, Ms. Benter.
4 A Okay.	4 A Good morning.
5 Q -- 2005 letter that's in front of you, you	5 Q Do you have the application over there in
6 recognize that as a document from the TCEQ. Correct?	6 front of you?
7 A Yes.	7 A Yes, I do.
8 Q And that was your predecessor that signed it?	8 Q It's APP-1.
9 A Yes. It was Michelle Abrams.	9 A I do.
10 Q And you hold that position now. Is that	10 Q Would you turn to page -- well, we can do it
11 correct?	11 a number of ways. Page 7 of 17 may be the way you're
12 A That's correct.	12 most familiar with, but it's Bates labeled APP-1002.
13 Q And is there anything in that letter that	13 A Okay.
14 Ms. Abrams was requesting that you don't typically	14 Q And I'm going to point you to Location
15 request of applicants with respect to requests for	15 Information, 2B.
16 service today?	16 A Okay.
17 A Yes. Page 2, (e) --	17 Q And the applicant in this case said that they
18 Q Uh-huh.	18 had received requests for service. Correct?
19 A -- landowners consent for all proposed area	19 A Yes, they did.
20 located outside the area, that's something that we	20 Q But that they were all verbal?
21 don't --	21 A That's correct.
22 Q That you don't do anymore?	22 Q Okay. And so underneath the answer to
23 A We don't, yeah.	23 written or verbal, there's a requirement that there be
24 Q Okay.	24 a list of the names, addresses, phone numbers of the
25 A We don't require that.	25 people who are requesting service. Correct?

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1 A There is a requirement. Otherwise it says  
2 "If no, please justify the need for service in the  
3 proposed area." So they can do it one of two ways.  
4 Q Okay. Did they do either of those things in  
5 this application when it was filed?  
6 A Not when it was filed.  
7 Q Okay. So the letters that you received you  
8 received after you provided Applicant's Exhibit 5?  
9 A Which is the September 21 letter?  
10 Q Yes.  
11 A Yes.  
12 Q Okay. But prior to that time, you didn't  
13 have anything to show that there was -- that the  
14 applicant met this particular requirement of the  
15 application. Correct?  
16 A That's correct.  
17 Can I add to my response? What I was --  
18 what I was going to --  
19 Q Sure.  
20 A -- add was at the time the application was  
21 filed, we went through our administrative review  
22 process before we accepted it for filing, and we asked  
23 for that additional documentation before it was  
24 accepted.  
25 Q So when was the application accepted for

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1 filing?  
2 A I don't have the file in front of me to see  
3 that date.  
4 Q Would that have been after the date of the  
5 effective date of the new rules?  
6 A It had to have been.  
7 Q Okay. Because the new rules went into effect  
8 September 1st -- correct -- of 2005?  
9 A Yes.  
10 Q And you don't consider an application to be  
11 complete or acceptable for filing --  
12 MR. RODRIGUEZ: Your Honor, can I make  
13 an objection actually?  
14 JUDGE NORMAN: I'm going to let him ask  
15 his question, though, first, and then you can object.  
16 MR. RODRIGUEZ: It was actually to the  
17 previous question, Your Honor.  
18 MR. CARLTON: That water is under the  
19 bridge, sir.  
20 MR. RODRIGUEZ: With respect to the  
21 question, I believe the question was -- was it the new  
22 rules or was he talking about the statute that was  
23 passed on -- that became effective September 1st?  
24 MR. CARLTON: I probably said the new  
25 rules.

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1 MR. RODRIGUEZ: Okay. Well, I'll --  
2 thank you.  
3 JUDGE NORMAN: All right. You meant to  
4 say the new rules anyway?  
5 MR. CARLTON: I probably did --  
6 JUDGE NORMAN: Okay.  
7 MR. MYRICK: -- but I'll ask it the  
8 other way, too.  
9 Q (BY MR. CARLTON) When did the statute, House  
10 Bill -- was it 2867?  
11 A 2876, when did it become effective?  
12 Q See, you know better than me. You testified  
13 on that bill, didn't you?  
14 A Yes, I did.  
15 Q Okay. Good.  
16 JUDGE NORMAN: And so the question is  
17 when did it become effective?  
18 Q (BY MR. CARLTON) When did that statute  
19 become effective?  
20 A I don't recall. I'd have to go back and  
21 look.  
22 Q If I represented to you that it was  
23 September 1, 2005, would that surprise you?  
24 A No, it wouldn't.  
25 Q All right. And did your rules go into effect

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1 at the same time that the statute became effective?  
2 A We didn't have the rules written at that  
3 time.  
4 Q And how would we determine when the  
5 application was determined to be complete and accepted  
6 for filing?  
7 A The administrative review process basically  
8 just looks for, you know -- I mean information in the  
9 application, just checks all the blanks, makes sure  
10 that the information is provided. Now, whether the  
11 response to these items is accurate or whether it's --  
12 all we look for is a check or payment for the  
13 application and that all the I's are dotted and T's  
14 are crossed. Then it's accepted for filing. We don't  
15 really go into the technical review to actually look  
16 at the documentation in detail until that point.  
17 Q Okay. So you don't consider an application  
18 filed until you have all that information?  
19 A No. We actually consider the application  
20 filed on the date it's received with the agency. And  
21 then we consider it accepted for filing, which is a  
22 little bit different in our eyes.  
23 JUDGE NORMAN: Accepted for filing when  
24 the application is completed in accordance with your  
25 instructions. Is that right?

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<p>1 A Correct.</p> <p>2 JUDGE NORMAN: Okay.</p> <p>3 MR. CARLTON: I realize we haven't</p> <p>4 admitted it -- I don't know, have we -- DLM-9. I</p> <p>5 think we offered and admitted that. Do you have DLM-9</p> <p>6 over there?</p> <p>7 JUDGE NORMAN: Well, I think so. I</p> <p>8 think it was.</p> <p>9 MR. CARLTON: I think it was admitted.</p> <p>10 MR. RODRIGUEZ: I think it was removed,</p> <p>11 Your Honor.</p> <p>12 JUDGE NORMAN: DLM-9 was removed? Okay.</p> <p>13 MR. RODRIGUEZ: Oh, I'm sorry. It was</p> <p>14 admitted, Your Honor.</p> <p>15 MR. CARLTON: Yeah, DLM-8 was removed.</p> <p>16 DLM-9 was admitted.</p> <p>17 JUDGE NORMAN: All right. Go ahead.</p> <p>18 Q (BY MR. CARLTON) Can you identify DLM-9 for</p> <p>19 me, Ms. Benter?</p> <p>20 A Yes, it's a letter dated November 21, 2005,</p> <p>21 and it's the letter accepting the application for</p> <p>22 filing.</p> <p>23 Q Okay. So what was the -- what would you</p> <p>24 consider then the date that the application was</p> <p>25 accepted for filing?</p>	<p>1 A The legislation actually came through as a</p> <p>2 petition for rulemaking, and it came through from a</p> <p>3 group of developers in the Houston area, and it had</p> <p>4 different parts to it, not just the expedited release,</p> <p>5 but it had different parts to it. And the Commission</p> <p>6 decided at that point to seek direction from the</p> <p>7 legislature when the session started, and it came</p> <p>8 through that way.</p> <p>9 Q Okay. And do you know what those developers</p> <p>10 were trying to -- what problem were they trying to</p> <p>11 solve in filing that petition for rulemaking and then</p> <p>12 seeking the legislation?</p> <p>13 A They had --</p> <p>14 MR. RODRIGUEZ: I'll object to</p> <p>15 speculation as to what they -- what those developers</p> <p>16 thought. Secondly, Your Honor, to the relevancy to</p> <p>17 these requests for service.</p> <p>18 JUDGE NORMAN: Well, I am allowing --</p> <p>19 have allowed inadmissible -- in order to rule on this</p> <p>20 inadmissible testimony. So I'm going to permit it.</p> <p>21 Go ahead. Repeat your question. Or do you even</p> <p>22 remember the question?</p> <p>23 A Can you repeat the question, please?</p> <p>24 MR. CARLTON: Kim, can you repeat the</p> <p>25 question?</p>
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<p>1 A November 21, 2005.</p> <p>2 Q Okay. Now, you talked a little bit in your</p> <p>3 testimony with Mr. MacLeod and Mr. Rodriguez about</p> <p>4 House Bill 2876 and the expedited release process.</p> <p>5 A Uh-huh.</p> <p>6 Q And you were one of the state's witnesses in</p> <p>7 providing resource testimony to the legislature on the</p> <p>8 adoption of that bill. Correct?</p> <p>9 A No, not at that time, I wasn't.</p> <p>10 Q Oh, you weren't?</p> <p>11 A No.</p> <p>12 Q I thought you said you testified on the bill.</p> <p>13 A Like talking about it here, but not in front</p> <p>14 of the lege, no. That was Doug Holcomb. I'm sorry.</p> <p>15 I guess I misunderstood.</p> <p>16 Q Okay. So when you say "talking about it</p> <p>17 here," what do you mean?</p> <p>18 A Here during this testimony and in other</p> <p>19 contested CCN matters where it's come up, but not in</p> <p>20 front of the legislature.</p> <p>21 Q Okay. Now, are you familiar with why that</p> <p>22 legislation was passed?</p> <p>23 A Yes.</p> <p>24 Q And why do you understand that legislation</p> <p>25 was passed?</p>	<p>1 (Requested portion read)</p> <p>2 A I don't know what they were thinking, but I</p> <p>3 can speculate that I believe they were trying to make</p> <p>4 certain that their -- that they were providing the</p> <p>5 level or manner of service that they needed. And if</p> <p>6 they couldn't get that from whoever or whomever they</p> <p>7 were currently within their CCN of, they could file</p> <p>8 for expedited release. They were also seeking for</p> <p>9 clarification on cities expanding their CCNs at that</p> <p>10 time.</p> <p>11 JUDGE NORMAN: And doing what now?</p> <p>12 A Cities expanding their CCNs --</p> <p>13 JUDGE NORMAN: Cities expanding their</p> <p>14 CCNs?</p> <p>15 A -- outside of their ETJ at that time, which</p> <p>16 that has since gone away. And they were also seeking</p> <p>17 landowner notification for landowners owning 25 acres</p> <p>18 or more in the area. And there were some other items</p> <p>19 in there. I don't remember all of them off the top of</p> <p>20 my head.</p> <p>21 Q (BY MR. CARLTON) So would it be -- would it</p> <p>22 be safe to say that those developers were having</p> <p>23 trouble getting service at a reasonable timeframe,</p> <p>24 manner, cost from current CCN holders, and so they</p> <p>25 were looking for a way out?</p>

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1 A I'm not sure. I mean, that could be. It's  
2 also a possibility that some of these landowner were  
3 wanting to get released from their current CCN holder  
4 to develop and create their own distribution in the  
5 area to serve their development. So there's different  
6 ways of looking at it.

7 Q Have you been involved in conversations with  
8 the representatives of the Texas Rural Water  
9 Association on this particular issue on expedited  
10 releases?

11 A No, I have not.

12 Q Okay. How many applications for  
13 decertification of a CCN have you reviewed in the last  
14 ten years?

15 A For decertification, you're talking about  
16 13.254 type decertifications, or are you talking about  
17 expedited? Because we look at them differently.

18 Q Let's start with 254.

19 A 254(a), 254(b), 254(a)(1), they're all  
20 different.

21 Q I understand. Let me pull my 254 out, and  
22 I'll tell you.

23 A Okay. I probably need my rules, too.

24 Q Well, 254(a) is a Commission decertification  
25 action where the Commission gets petitioned, and

1 Q In your role as kind of the team leader for  
2 your group, do you have occasion to meet with utility  
3 owners or representatives regarding their obligations  
4 to provide service within their CCN outside of a  
5 formal CCN application process?

6 A Absolutely.

7 Q Okay. And in those situations, have you  
8 experienced circumstances under which a utility is  
9 concerned that a developer within their service area  
10 is going to try and get released or removed from their  
11 CCN?

12 A Yes, we've heard of that happening.

13 Q And wouldn't it be -- is it true that those  
14 situations usually arise when a developer is concerned  
15 about the cost for extending service to them, that  
16 they'd have to pay the utility for that?

17 A Sometimes. Sometimes it's also timeframe.

18 JUDGE NORMAN: Mr. Carlton -- no, I'm  
19 just going to tell you that, you know, all this  
20 evidence and testimony right now is for whether or not  
21 to admit. And so if you want, you may be developing  
22 evidence that's going to aid your case in chief, but  
23 that's not what this is for right now, and you're  
24 going to have to redo it.

25 MR. CARLTON: I understand.

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1 (a)(1) is the expedited release process. Correct?

2 A That's correct. And I can tell you on (a)(1)  
3 we've had maybe five or six total filed, one or two  
4 that were not accepted for filing out of that.

5 Q Okay. And how many under (a)?

6 A I'd have to look at (a) exactly. Let me get  
7 my rule book. One second.

8 Q Okay.

9 (Brief pause)

10 A We've received one water and sewer petition,  
11 that I know of, filed under 13.254(a), and it  
12 actually -- we prefiled on that matter, and then it  
13 settled right before that. It involved the city of  
14 Presidio.

15 Q (BY MR. CARLTON) So in the past ten years  
16 you've only received one application under (a), or  
17 you've only been involved in one?

18 A I've only been involved in one.

19 Q Okay. In your role as the team leader for  
20 your group --

21 A Uh-huh.

22 Q -- do you meet with utility owners about  
23 their obligations to provide service when they have  
24 questions about that?

25 A I'm sorry. Can you repeat the question?

1 JUDGE NORMAN: Okay.

2 MR. CARLTON: I'm trying to figure out  
3 how to get somewhere as quickly as I can.

4 JUDGE NORMAN: Okay. Okay.

5 MR. CARLTON: So I appreciate your --

6 JUDGE NORMAN: All right. That's fine.

7 MR. CARLTON: I appreciate your

8 statements, though.

9 JUDGE NORMAN: Okay.

10 Q (BY MR. CARLTON) In those situations, do the  
11 developers usually have an alternative utility that's  
12 available to them?

13 A In what situations?

14 Q In situations where the certificated utility  
15 has got a developer that's applying for service,  
16 they're concerned about costs, and they want to not  
17 have to pay that much costs. Are they usually looking  
18 at a different utility for service that might cost  
19 less?

20 A Yes.

21 Q Okay. And --

22 A But not that might cost less. Sometimes it  
23 might be able to provide the level and manner, which  
24 is totally different.

25 Q Okay. All right. So those are both options.

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<p>1 Would that be a problem if there was not a CCN for the</p> <p>2 area over which the developer was trying to develop</p> <p>3 their land? They wouldn't need to get released from</p> <p>4 the CCN if that CCN hadn't been issued for that area?</p> <p>5 A I'm not sure I understand what you're asking.</p> <p>6 Q I suppose what I'm trying to get at is that</p> <p>7 if there is truly a need for service, then that need</p> <p>8 is relatively imminent in terms of developers or a</p> <p>9 homeowner wants service to be provided to them so they</p> <p>10 can have water. Right?</p> <p>11 A I don't know what you mean by the word</p> <p>12 "imminent."</p> <p>13 Q Well, let me put it this way: If I am a</p> <p>14 property owner and I have a well and I'm providing</p> <p>15 myself water from my well, and I say "Gee, I'm going</p> <p>16 to send in this letter that says I'd like to be in</p> <p>17 your CCN," do I have a need for service?</p> <p>18 A You may in the future.</p> <p>19 Q You may in the future?</p> <p>20 A Yes.</p> <p>21 Q And so how far in the future is important to</p> <p>22 the TCEQ?</p> <p>23 A It depends. I mean, for us it's not "do you</p> <p>24 need" an immediate need?" I mean, it's do you need it</p> <p>25 today? Do you need it tomorrow? Do you need it next</p>	<p>1 actually signed. In fact, they are signed by the</p> <p>2 individual. They're all different, handwritten. They</p> <p>3 have a phone number and everything. I mean we could</p> <p>4 call and verify whether or not --</p> <p>5 Q But if you found out that the city had</p> <p>6 prepared a form letter and taken it around to all</p> <p>7 these people and said, "You know, by having these</p> <p>8 letters signed, you're going to be able to protect and</p> <p>9 be a part of the City of Lindsay instead of having</p> <p>10 Gainesville come out and control your area," would</p> <p>11 that give you concern over why these letters were</p> <p>12 filed?</p> <p>13 A I don't know that happened.</p> <p>14 Q If you did, would it give you concern over</p> <p>15 why these letters were filed?</p> <p>16 A It may, but --</p> <p>17 Q Is it the Commission's policy to allow</p> <p>18 utilities to be certificated for reasons other than</p> <p>19 providing utility service? Do you support</p> <p>20 applications in that instance?</p> <p>21 A Other than utility service, no.</p> <p>22 MR. CARLTON: No further questions.</p> <p>23 JUDGE NORMAN: Okay. Are there -- we've</p> <p>24 gone a long time without a break, and some people may</p> <p>25 need a break.</p>
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<p>1 week or next month? If that person wants to be in the</p> <p>2 CCN and they show us that they want to be in the CCN,</p> <p>3 then we say okay, you want to be in there.</p> <p>4 Q But doesn't that situation lead to or doesn't</p> <p>5 that policy lead to situations where areas are locked</p> <p>6 in to a CCN and when it may be more reasonable for</p> <p>7 them to obtain service in another way, they can't?</p> <p>8 A It's possible that they could.</p> <p>9 Q So how many expedited release petitions have</p> <p>10 been approved by the agency?</p> <p>11 A Two, maybe three. I can't recall exactly how</p> <p>12 many.</p> <p>13 Q Have been approved where the area was</p> <p>14 actually released?</p> <p>15 A Yes. We had one that was denied.</p> <p>16 Q Would you say that it's an easy process to be</p> <p>17 decertified?</p> <p>18 A It depends on how you're filing it.</p> <p>19 Q If you found out that these letters were not</p> <p>20 prepared by these individuals but were prepared by</p> <p>21 somebody who then walked around and circulated form</p> <p>22 letters for signature by these folks, would that give</p> <p>23 you any concern about the real need for service or why</p> <p>24 these folks were filing these letters?</p> <p>25 A Not necessarily. Most of these letters are</p>	<p>1 MR. MacLEOD: I almost need one --</p> <p>2 THE WITNESS: Yeah.</p> <p>3 MR. MacLEOD: -- but I would like to</p> <p>4 clarify one thing real quickly if I could.</p> <p>5 JUDGE NORMAN: All right. Go ahead.</p> <p>6 REDIRECT EXAMINATION</p> <p>7 BY MR. MacLEOD:</p> <p>8 Q I just wanted to clarify something on the</p> <p>9 applicable statute, the effective date and the date</p> <p>10 the application was filed because there's some</p> <p>11 question on that. Does the date the application was</p> <p>12 filed change if the ED requires further information?</p> <p>13 A No, it does not.</p> <p>14 Q Does the phrase "has not been accepted for</p> <p>15 filing" change the date the application was actually</p> <p>16 filed?</p> <p>17 A No.</p> <p>18 Q Does that phrase relate to whether an</p> <p>19 application that has already been filed is</p> <p>20 administratively complete?</p> <p>21 A Yes, it does.</p> <p>22 Q Do you know whether the act which changed the</p> <p>23 language in CCN criteria provided that it would apply</p> <p>24 to applications filed after September 1, 2005 or the</p> <p>25 application is administratively complete after</p>

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1 September 1, 2005?  
2 A Filed before the September 1 date.  
3 MR. MacLEOD: Pass the witness.  
4 MR. RODRIGUEZ: Actually, Tammy, I want  
5 to start right where you -- or Ms. Benter, excuse  
6 me -- where you --  
7 JUDGE NORMAN: Well, let me ask, do we  
8 need -- does someone need for us to take a break right  
9 now?  
10 MR. RODRIGUEZ: I do in a little bit  
11 Your Honor.  
12 THE WITNESS: I do.  
13 JUDGE NORMAN: You do? Okay. I'm not  
14 going to leave you up there then.  
15 MR. RODRIGUEZ: All right.  
16 JUDGE NORMAN: We'll be back in ten  
17 minutes.  
18 (Recess: 10:50 a.m. to 11:01 a.m.)  
19 JUDGE NORMAN: Okay. We are back on the  
20 record. And, Mr. Rodriguez, you had some questions.  
21 RE-CROSS-EXAMINATION  
22 BY MR. RODRIGUEZ:  
23 Q Yes, Ms. Benter, I'm going to ask you -- kind  
24 of follow up on the very few last questions that  
25 Mr. MacLeod asked you with respect to House Bill

1 excuse me.  
2 A Oh, okay.  
3 Q In Applicant's Exhibit No. 2.  
4 A Okay.  
5 Q You would agree with me that whether it was  
6 either filed or accepted for filing that those dates  
7 both preceded the applicability of House Bill 2876?  
8 A Yes.  
9 Q Okay. And also you would agree with me that  
10 the rules that implement House Bill 2876 did not  
11 actually get approved until January 6, 2007, I  
12 believe. Is that right? I'm sorry 2006; January 5,  
13 2006?  
14 A That's correct.  
15 Q Okay.  
16 A That was -- there was a lot going on that  
17 agenda day, I remember.  
18 Q So regardless of when House Bill 2876 came  
19 into law, it only affected applications that were  
20 filed after January 1, 2006?  
21 A Yes.  
22 Q Okay. And you mentioned during questioning  
23 from Lindsay Pure Water that one of the things in  
24 House Bill 2876 that have since been changed -- and I  
25 wrote it down. Is it something about cities beyond

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1 2876 --  
2 A Okay.  
3 Q -- some of its applicability.  
4 A Sure.  
5 Q You reviewed House Bill 2876?  
6 A Yes, I did.  
7 Q And you know where it's codified in the  
8 statutes. Is that correct?  
9 A Yes.  
10 Q Do you recall in House Bill 2876 there was  
11 actually an uncoded section, there was a Section 15  
12 that talked about the applicability of the section?  
13 A I don't remember exactly.  
14 Q Do you recall that even though the law went  
15 into effect September 1, 2005 it actually only applied  
16 to applications filed after January 1, 2006?  
17 A That's correct.  
18 Q You do remember that?  
19 A I vaguely remember something like that in  
20 there, yes.  
21 Q Okay. And now if we look at what was --  
22 what's already been admitted as DLM No. 8, I  
23 believe --  
24 MS. WRIGHT: 9.  
25 Q (BY MR. RODRIGUEZ) 9, excuse me; DLM-9,

1 the ETJ?  
2 A Uh-huh.  
3 Q And you mentioned it has since gone away.  
4 Can you explain that for me, please?  
5 A Yes, in 2876, when the legislation was  
6 passed, there was a requirement for landowners outside  
7 the city's ETJ. If the city was actually -- if the  
8 city was applying for a CCN that covered area outside  
9 its ETJ, they had to have individual landowner consent  
10 from those landowners to be included in the CCN. And  
11 since then, actually August 22, 2008, just recently,  
12 the new rules -- the latest rules, not the statute,  
13 but the TCEQ rules were adopted, and they no longer  
14 have that in there.  
15 Q Okay. Senate Bill 3 in the 2007 legislative  
16 session removed the requirement of -- well, allows a  
17 city to extend its CCN beyond its extraterritorial  
18 jurisdiction. Is that correct?  
19 A That's correct.  
20 Q Okay. It's no longer prohibited?  
21 A That's correct. It was Senate Bill 3 of the  
22 80th legislative session.  
23 Q Now, there were some questions from Lindsay  
24 Pure Water with respect to CCN holders and landowners  
25 that are within the CCN and -- regarding some

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<p>1 developments needing a certain level of service and</p> <p>2 not being able to get it. Do you recall the question</p> <p>3 and answer there generally?</p> <p>4 A Yes, yes.</p> <p>5 Q Now, don't the TCEQ rules also provide some</p> <p>6 customer service standards for certificate holders to</p> <p>7 abide by?</p> <p>8 A We do.</p> <p>9 Q And also there are some protections in there</p> <p>10 for customers who the certificate holder is not</p> <p>11 abiding by those statutes. Is that correct?</p> <p>12 A That's correct.</p> <p>13 Q And one of them -- one of the options is to</p> <p>14 either complain for an enforcement action for the</p> <p>15 certificate holder to take corrective action in a</p> <p>16 certain manner. Is that correct?</p> <p>17 A That's correct.</p> <p>18 Q One of the other -- if you've got -- if</p> <p>19 you've got acreage of any size, you can avail yourself</p> <p>20 of Water Code Section 13.254(a) for decertification.</p> <p>21 Is that correct? Or maybe it's (b).</p> <p>22 A Let me turn to that section. That's correct.</p> <p>23 Q And also if you're a landowner that's got</p> <p>24 50 acres or more, you're unplatted and you're not</p> <p>25 receiving service from anyone, you can avail yourself</p>	<p>1 JUDGE NORMAN: -- about the effective</p> <p>2 date?</p> <p>3 MR. MacLEOD: And when filed.</p> <p>4 MR. CARLTON: I don't think I have any</p> <p>5 further questions.</p> <p>6 JUDGE NORMAN: Okay. And, Mr. MacLeod?</p> <p>7 MR. MacLEOD: We don't have any more</p> <p>8 questions.</p> <p>9 JUDGE NORMAN: Thank you, Ms. Benter.</p> <p>10 Now, is there any more evidence that</p> <p>11 anyone wants to produce on this issue?</p> <p>12 MR. CARLTON: I think I'm up.</p> <p>13 JUDGE NORMAN: You're up? Yeah, you</p> <p>14 are.</p> <p>15 MR. CARLTON: I'd like to call</p> <p>16 Ms. Fleitman.</p> <p>17 JUDGE NORMAN: Okay. Who is the city</p> <p>18 secretary?</p> <p>19 MR. CARLTON: Yes.</p> <p>20 JUDGE NORMAN: All right. Is that you,</p> <p>21 ma'am?</p> <p>22 MS. FLEITMAN: Yes, sir.</p> <p>23 JUDGE NORMAN: Okay. You've been called</p> <p>24 to testify. Would you raise your right hand?</p> <p>25 (Witness sworn)</p>
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<p>1 of 13.254(a)(1) which -- yeah, (a)(1) -- that would</p> <p>2 allow for an expedited release from someone's CCN. Is</p> <p>3 that correct?</p> <p>4 A That's correct.</p> <p>5 Q Okay. And really kind of the only real</p> <p>6 exception to that is if you're located within the city</p> <p>7 ETJ -- in a city or the city's ETJ that has a</p> <p>8 population of over half a million. Is that right?</p> <p>9 A That's correct.</p> <p>10 Q Okay. And regardless of whether you're</p> <p>11 inside a city that has more than half a million in</p> <p>12 population you still have the -- and you're a</p> <p>13 customer, you still have customer service rules you</p> <p>14 may be able to avail yourself of if a certificate</p> <p>15 holder is not doing what they need to do?</p> <p>16 A Yes.</p> <p>17 MR. RODRIGUEZ: Okay. I pass the</p> <p>18 witness, Your Honor.</p> <p>19 JUDGE NORMAN: Okay. I've forgotten</p> <p>20 whose turn it is. Mr. Carlton?</p> <p>21 MR. CARLTON: I'm trying to remember</p> <p>22 what Mr. MacLeod asked on redirect.</p> <p>23 JUDGE NORMAN: What he asked --</p> <p>24 MR. MacLEOD: The effective date and</p> <p>25 stuff.</p>	<p>1 JUDGE NORMAN: Okay. Go ahead.</p> <p>2 PRESENTATION ON BEHALF OF LINDSAY PURE WATER COMPANY</p> <p>3 BETSY FLEITMAN,</p> <p>4 having been first duly sworn as an adverse witness,</p> <p>5 testified as follows:</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MR. CARLTON:</p> <p>8 Q Good morning, Ms. Fleitman. I'm going to</p> <p>9 apologize, first, for putting you on the stand, but</p> <p>10 you're here, so I'm going to take advantage of it.</p> <p>11 A Good morning. I'll be glad to leave.</p> <p>12 (Laughter)</p> <p>13 Q (BY MR. CARLTON) Would you please state your</p> <p>14 name for the record?</p> <p>15 A Elizabeth Ann Fleitman. I go by the name of</p> <p>16 Betsy Fleitman</p> <p>17 JUDGE NORMAN: And how do you spell your</p> <p>18 last name?</p> <p>19 A F, like in "Frank," L-E-I-T-M-A-N.</p> <p>20 JUDGE NORMAN: All right.</p> <p>21 Q (BY MR. CARLTON) Thank you. And where are</p> <p>22 you employed currently?</p> <p>23 A For the City of Lindsay as the city</p> <p>24 secretary.</p> <p>25 Q And as the city secretary, I believe I've</p>

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1 seen your name on a lot of affidavits testifying that  
2 these are copies of documents on some of these  
3 exhibits that came out of your files. Right?  
4 A Yes, sir.  
5 Q Okay. And including an affidavit on top of  
6 this stack of letters that we've been talking about?  
7 A Yes, sir.  
8 A Are you familiar with those letters?  
9 A Oh, yes, sir.  
10 Q Okay. And when did you first become familiar  
11 with those letters?  
12 A When I typed up this form.  
13 Q Okay. So you prepared the form for these  
14 folks to sign?  
15 A At the request of the people, yes.  
16 Q At the request of the people. Which people?  
17 A The individuals that signed these letters.  
18 Q Okay. Were you involved in the application  
19 process for the city with its CCN at all?  
20 A Yes, sir.  
21 Q Okay. And so why weren't these letters filed  
22 with the application initially?  
23 A I didn't have them initially.  
24 Q And what caused you to go and try to get  
25 them?

1 a legal notice in the newspaper and to send a letter  
2 to every property owner within the requested area.  
3 And so we did that, and the letter that we sent out  
4 was prescribed by TCEQ. It followed the wording that  
5 was provided through them. And I had citizens come in  
6 and say they either read the legal notice in the paper  
7 or they received a letter, and what was it all about,  
8 what did it mean, what should they do.  
9 Q And what did you tell them it was about?  
10 A I told them that the city was requesting to  
11 expand their CCN, which meant that if that area that  
12 we had asked for was granted to the city, then the  
13 city would be the one that would be providing water  
14 service, sewer service to that area when it was needed  
15 or when it was requested by the people that lived in  
16 that area, and that it really changed nothing  
17 currently. If the person had a water well or a septic  
18 tank, they could continue to have a water well or a  
19 septic tank, but they could not sell water to someone  
20 else, and they could not buy water from someone else  
21 if we held the certificate, at least that was my  
22 understanding of what it meant.  
23 Q Were the people that came into your office  
24 and talked to you, were those the folks that signed  
25 these letters?

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1 A I didn't go and try to get them. People came  
2 to me.  
3 Q Did you have any -- well, strike that.  
4 How many people came to you and said  
5 they needed service?  
6 A I couldn't give you a count, a number,  
7 because I'm at city -- when this was going on, I was  
8 at city hall by myself. I had no one to work with me.  
9 The mayor and city council are all voluntary. They're  
10 not in the office day by day, and so I'm taking care  
11 of everything that comes up. And people would come in  
12 over a period of time and ask, and then some of them  
13 would -- they would ask me if they could have -- "Can  
14 I have a couple of these because I want to talk to my  
15 brother" or "I want to talk to my uncle and I think  
16 they would be interested in signing a request letter  
17 also." And so that's why they have the same dates on  
18 them because I just made a copy of the letter I had,  
19 and then sent them with them. And so they would take  
20 the letters, and then they would bring them back to  
21 me.  
22 Q Do you know what prompted them to come in and  
23 ask you about this?  
24 A I was required by TCEQ -- or the city was  
25 required by TCEQ when we filed our application to put

1 A Yes -- well, I'd have to say I don't think  
2 all of them signed, there were one or two, because  
3 when they asked me what they were supposed to do, I  
4 told them that if they did not want to be included in  
5 this or they did not approve of what the city was  
6 doing, that they should submit a letter, according to  
7 the guidelines, in what they had received to TCEQ  
8 filing a protest. And if they did agree with what the  
9 city was doing, that they really did not have to do  
10 anything at all, but several of them said "Well, you  
11 know, I want to be sure I'm included. How can I be  
12 sure that, you know, I'm going to be part of this?"  
13 And I said "Well, then you can file a letter of  
14 request." And then they said -- they would say,  
15 "Well, can you give me some words" or "What should I  
16 say" or "How should it be written?" And so that's  
17 when I came up with this. I got several examples from  
18 the city consultant, and I wrote up this letter and  
19 said something like -- basically what I said was  
20 "something like this."  
21 Q Okay. And so --  
22 A And then most of them said "Well, will you  
23 type it up? And I'll sign it."  
24 Q So really these letters were prepared after  
25 the application had been filed in order to support the

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1 application. Correct?  
2 A Yes, that's true.  
3 Q How many CCN applications have you been  
4 involved in?  
5 A This is it.  
6 Q Would you consider dealing with this CCN to  
7 be part of your daily activities as city secretary?  
8 A In what way?  
9 Q Is this something that you routinely do as  
10 city secretary, routinely deal with CCN requests for  
11 service, or do you routinely deal with other stuff?  
12 A I have to do it all. I mean, I'm not quite  
13 sure what you're asking me. If someone came in and  
14 wanted water service from the City of Lindsay and they  
15 came in and said, you know, "We would like to tie into  
16 the city system," or "We would like to get water  
17 service from the city," then, yes, I would be the one  
18 that would take the information that would provide  
19 whatever documentation, you know, they needed. We'd  
20 work with them to get whatever they needed to get in  
21 order to make that presentation to the city.  
22 Q Okay. So -- and have you received any of  
23 those types of requests?  
24 A I've had -- just recently I've had one  
25 citizen who asked to tie into the system that was not

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1 on the system previously, and we just extended water  
2 service to them.  
3 Q How long have you been the city secretary?  
4 A Since 2001.  
5 Q Okay. And how many times has the city had a  
6 request like that other than the one you just  
7 mentioned?  
8 MR. RODRIGUEZ: Once again, Your Honor,  
9 I'll object to the difference between a qualified  
10 applicant and these requests for service. I think  
11 we're --  
12 JUDGE NORMAN: Okay. I'm going to  
13 permit the question.  
14 A The number 55 is floating around. I had all  
15 of these requests to be -- to be provided service  
16 within our CCN at some future date if we got our CCN.  
17 I am aware of that one citizen that asked recently to  
18 have their water service extended.  
19 On a regular basis, we have subdivision  
20 developments where additional lines are put in by the  
21 developer, and they are attached onto our water  
22 system. So I mean, we have several subdivisions  
23 within our city limits that are expanding and getting  
24 additional service. We have had some properties that  
25 have annexed into the city, but have not yet requested

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1 service.  
2 Q (BY MR. CARLTON) Have you had any requests  
3 where you've been asked to provide service outside the  
4 city limits?  
5 A We do provide service to some citizens  
6 outside the city limits currently, about ten taps.  
7 Q And you said there was one -- one subdivision  
8 that had been annexed that hadn't -- or one property  
9 that had been annexed that hadn't gotten service yet?  
10 A We've had several properties annexed recently  
11 that don't have service at this time and haven't  
12 requested it. They have inquired about it. They've  
13 asked, you know --  
14 Q Right.  
15 A -- if it could be provided, but they haven't  
16 actually come in and said "Now we're ready. We want  
17 to tie into the system."  
18 Q Were any of those property owners part of the  
19 group that submitted these letters, or do you remember  
20 who it was? Maybe that's the easier way to say it.  
21 Who has come in and asked for that?  
22 A No, I can't. I don't know. I would have to  
23 go through all these letters again. And considering  
24 that I do all this other stuff for the city, I  
25 don't -- I couldn't -- without going through here, I

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1 can't tell you for sure everybody that signed the  
2 letter.  
3 Q But you said there was a few folks who had  
4 recently requested annexation, that they would request  
5 service in the future. Do you know who those property  
6 owners are?  
7 A Two years ago, three years ago, we did annex  
8 some property, and some of those property owners asked  
9 about that, about service --  
10 Q Who was that?  
11 A -- on the north side of town.  
12 Q Who was that?  
13 A Well, I know the properties that were  
14 annexed. I can't tell you for sure which ones asked  
15 what at the time that we annexed.  
16 Q Does the property have some common name that  
17 you use when you refer to it or subdivision?  
18 A Just the property owners that live out there.  
19 JUDGE NORMAN: And who were they is what  
20 he's asking. Who are the property owners?  
21 A Okay. Chris Neu, Harold Owens, Frances  
22 Zimmerer, Louie Gieb, Ed Schad, Harold Nortman, all of  
23 those were properties that were annexed in the city in  
24 2003 -- 2002, 2003. I'm not that good on --  
25 Q (BY MR. CARLTON) Is that the area on the

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<p>1 city map that extends up on the northeast --</p> <p>2 A Yes, sir.</p> <p>3 Q -- side of the city?</p> <p>4 A Yes, sir, it is.</p> <p>5 Q Okay. All right. So apart from that, you</p> <p>6 haven't had any requests for annexation?</p> <p>7 A For annexation?</p> <p>8 Q Right.</p> <p>9 A We just annexed a ten-foot-wide strip going</p> <p>10 north out of the city limits all the way to Moss Lake</p> <p>11 and going south out of the city limits all the way to</p> <p>12 1630.</p> <p>13 Q Okay. In order to extend your ETJ and at the</p> <p>14 request of those landowners?</p> <p>15 A Well, we cannot just go out and annex.</p> <p>16 People have to petition, voluntary petition for</p> <p>17 annexation, yes.</p> <p>18 MR. CARLTON: No further questions.</p> <p>19 Thank you, Ms. Fleitman. I appreciate it.</p> <p>20 JUDGE NORMAN: Mr. MacLeod, any</p> <p>21 questions?</p> <p>22 MR. MacLEOD: We don't have any</p> <p>23 questions for this witness.</p> <p>24 JUDGE NORMAN: Any more questions?</p> <p>25 MR. RODRIGUEZ: No questions, Your</p>	<p>1 which was a hearsay objection, as I recall.</p> <p>2 MR. CARLTON: Right. And</p> <p>3 Mr. Rodriguez's response to that was it had been an</p> <p>4 affidavit attached --</p> <p>5 JUDGE NORMAN: That was the</p> <p>6 certification.</p> <p>7 MR. CARLTON: -- so that that overcame</p> <p>8 the hearsay objection under 803(6) and 803(8).</p> <p>9 JUDGE NORMAN: But it did not. But I'm</p> <p>10 admitting it over the -- I'm overruling your hearsay</p> <p>11 objection under 2001.081.</p> <p>12 MR. RODRIGUEZ: Thank you, Your Honor.</p> <p>13 At this time, we would call Mr. Metzler back to the</p> <p>14 stand.</p> <p>15 JUDGE NORMAN: All right. Mr. Metzler,</p> <p>16 you're still under oath. Go ahead.</p> <p>17 PRESENTATION ON BEHALF OF THE CITY OF LINDSAY</p> <p>18 (CONTINUED)</p> <p>19 DONALD METZLER,</p> <p>20 having been previously sworn, continued to testify as</p> <p>21 follows:</p> <p>22 FURTHER REDIRECT EXAMINATION</p> <p>23 BY MR. RODRIGUEZ:</p> <p>24 Q Thank you, Mr. Metzler --</p> <p>25 A You're welcome.</p>
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<p>1 Honor.</p> <p>2 JUDGE NORMAN: Thank you very much.</p> <p>3 And let me remind you-all again that</p> <p>4 this evidence that I'm taking right now is for the</p> <p>5 purpose, as I said in the beginning, to determine</p> <p>6 whether or not this is going to be admissible. It's</p> <p>7 not for any other purpose at this point. Okay?</p> <p>8 All right. So is that all the evidence</p> <p>9 that we had?</p> <p>10 (No response)</p> <p>11 JUDGE NORMAN: I'm going to admit</p> <p>12 the DLM-10 for -- as some evidence on need. It's not</p> <p>13 determinative, but I am going to admit it for the</p> <p>14 purpose -- all.</p> <p>15 MR. CARLTON: And just for purposes of</p> <p>16 the record --</p> <p>17 JUDGE NORMAN: Okay.</p> <p>18 MR. CARLTON: -- I appreciate your</p> <p>19 ruling. We had objected on the grounds that it was</p> <p>20 hearsay, that it didn't fall under 803(6) or 803(8) as</p> <p>21 far as exceptions, and that it hadn't been properly</p> <p>22 authenticated as required under -- that's the wrong</p> <p>23 book -- 902, Self-authentication. Thank you.</p> <p>24 JUDGE NORMAN: I'm admitting it on the</p> <p>25 basis of your objection and your prefiled objections,</p>	<p>1 Q -- for staying here.</p> <p>2 (Laughter)</p> <p>3 MR. RODRIGUEZ: I believe at this point,</p> <p>4 it's appropriate to I guess kind of start at the</p> <p>5 beginning and allow the witness --</p> <p>6 JUDGE NORMAN: Sure.</p> <p>7 MR. RODRIGUEZ: -- some time to --</p> <p>8 JUDGE NORMAN: Right, to summarize his</p> <p>9 testimony, and then it will be tendered for cross.</p> <p>10 Sorry.</p> <p>11 (Simultaneous discussion)</p> <p>12 MR. RODRIGUEZ: -- provide some summary</p> <p>13 of his testimony. Is that appropriate at this time</p> <p>14 your Honor?</p> <p>15 JUDGE NORMAN: Correct. And you just</p> <p>16 stop me whenever you need to. Okay?</p> <p>17 THE REPORTER: Okay.</p> <p>18 JUDGE NORMAN: All right.</p> <p>19 Q (BY MR. RODRIGUEZ) Mr. Metzler, can you just</p> <p>20 go ahead and provide us a summary of your testimony?</p> <p>21 A I'm here today as a representative of the</p> <p>22 City of Lindsay serving as mayor pro-tem, presenting</p> <p>23 this application for a water CCN and supporting all</p> <p>24 the documentation that I have already previously filed</p> <p>25 in the prefiled testimony. I've reviewed all of the</p>

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<p>1 additions that we made in the last week due to the</p> <p>2 September 30th hearing and the changing of maps. I've</p> <p>3 reviewed all of the information that was struck based</p> <p>4 on rulings from last Thursday. Everything in this</p> <p>5 updated, amended testimony, I'm here to say is still</p> <p>6 accurate and true.</p> <p>7 Q So, Mr. Metzler, you're still the mayor</p> <p>8 pro-tem for the city?</p> <p>9 A I still am.</p> <p>10 Q You're on the city council?</p> <p>11 A Yes, sir.</p> <p>12 MR. RODRIGUEZ: Okay. Your Honor, at</p> <p>13 this point, I would tender the witness for</p> <p>14 cross-examination.</p> <p>15 JUDGE NORMAN: Okay.</p> <p>16 MR. RODRIGUEZ: I believe -- and just to</p> <p>17 make it clear, both APP-1 and APP-2 were offered and</p> <p>18 admitted previously. Is that --</p> <p>19 JUDGE NORMAN: Yes, subject to the</p> <p>20 previous objections.</p> <p>21 MR. RODRIGUEZ: Okay.</p> <p>22 JUDGE NORMAN: And, Mr. MacLeod?</p> <p>23 MR. MacLEOD: Yeah, I've got one area I</p> <p>24 want to do a little cross-examination on.</p> <p>25 JUDGE NORMAN: Okay.</p>	<p>1 prefiled testimony --</p> <p>2 A Yes, I do.</p> <p>3 Q -- and the attached exhibits? At DLM-1,</p> <p>4 could you look at Bates Stamp APP-1002? I think</p> <p>5 that's part of the application.</p> <p>6 MR. CARLTON: You're talking about</p> <p>7 APP-1?</p> <p>8 MR. MacLEOD: Yeah, his --</p> <p>9 MR. CARLTON: APP-1.</p> <p>10 MR. MacLEOD: I'm talking about --</p> <p>11 right, the application.</p> <p>12 MR. CARLTON: DLM-1 is his resume.</p> <p>13 MR. MacLEOD: Okay. All right. Then</p> <p>14 that's what I want.</p> <p>15 JUDGE NORMAN: 1002. Is that right?</p> <p>16 MR. MacLEOD: Yeah, and one of the</p> <p>17 subtitles on there is, yes, APP-1002, and it's part of</p> <p>18 APP-2. It's kind of confusing because it was before</p> <p>19 the -- it was provided in front of the actual</p> <p>20 testimony.</p> <p>21 Q (BY MR. MacLEOD) But we're on the same page</p> <p>22 now. Right?</p> <p>23 A I think so.</p> <p>24 Q Yeah, No. 2 says Location Information on that</p> <p>25 page?</p>
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<p>1 FURTHER RE-CROSS-EXAMINATION</p> <p>2 BY MR. MacLEOD:</p> <p>3 Q Do you have a copy of DLM-1 in front of you?</p> <p>4 MR. RODRIGUEZ: Your Honor, will the</p> <p>5 order of witnesses be -- or the order of</p> <p>6 cross-examination be that the ED goes second in all</p> <p>7 cases?</p> <p>8 JUDGE NORMAN: It's going to be from</p> <p>9 less friendly -- I mean more friendly to less</p> <p>10 friendly.</p> <p>11 MR. RODRIGUEZ: Okay.</p> <p>12 JUDGE NORMAN: That's the way it's going</p> <p>13 to go. So the person at the end, who is Mr. Carlton,</p> <p>14 will have --</p> <p>15 MR. RODRIGUEZ: The least friendly of</p> <p>16 everyone here?</p> <p>17 JUDGE NORMAN: Right.</p> <p>18 MR. CARLTON: Ah, that hurts; that</p> <p>19 hurts.</p> <p>20 (Laughter)</p> <p>21 JUDGE NORMAN: He'll have the benefit of</p> <p>22 all that before he crosses. So that will make it</p> <p>23 efficient rather than having him go after you and then</p> <p>24 go after Mr. MacLeod.</p> <p>25 Q (BY MR. MacLEOD) You do have a copy of your</p>	<p>1 A Yes, sir.</p> <p>2 Q If you go down to D, you indicate there that</p> <p>3 there is an overlap with the city of Gainesville --</p> <p>4 A Yes.</p> <p>5 Q -- in your requested area. Is that right?</p> <p>6 A Correct.</p> <p>7 Q And you said that there was a verbal</p> <p>8 agreement to have the overlapped area served by the</p> <p>9 City of Lindsay. Was that an agreement for dual</p> <p>10 certification?</p> <p>11 A I'm not aware of whether or not it was.</p> <p>12 Q You also said that you would supplement the</p> <p>13 application -- at least the application says that the</p> <p>14 application will be supplemented with the agreement</p> <p>15 once it was excused. Was that agreement ever</p> <p>16 executed?</p> <p>17 A It has not been at this time.</p> <p>18 Q Did your application or petition state that</p> <p>19 Gainesville has never provided, is no longer providing</p> <p>20 or is incapable of providing or has failed to provide</p> <p>21 continuous and adequate service in that overlap area?</p> <p>22 A Are you finding that somewhere in particular?</p> <p>23 Q No. That's the language that's required for</p> <p>24 decertification. I just want to make sure that can't</p> <p>25 be decided in this case because that wasn't in the</p>

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1 application, unless it is in the application.  
 2 A I don't think it's in the application, and  
 3 I've not heard anything that would indicate a "yes"  
 4 answer to your question.  
 5 Q All right. Are you still -- are you going to  
 6 provide -- have you provided maps that are excluding  
 7 that overlap area in this application at this point?  
 8 Do you know?  
 9 A No, I don't think so. I think it shows the  
 10 overlapped area.  
 11 Q So you still are requesting the overlap area.  
 12 Is that right?  
 13 A Yes.  
 14 Q Do you have a map available so you can show  
 15 us where this overlap area is? Because the ED is  
 16 going to have to resist decertifying an existing CCN.  
 17 A I believe in DLM-13 -- and, Mr. Rodriguez,  
 18 you may have to help me with that. It's that little  
 19 portion up here, the portion that looks like a small  
 20 factory with the two smokestacks on it that's outlined  
 21 in red, yellow inside of it.  
 22 Q Where there's an overlap between the red dots  
 23 and the yellow, is that what you're talking about?  
 24 A Possibly red stripes -- well, maybe dots.  
 25 MR. RODRIGUEZ: He's pointing at it

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1 right here, Brian.  
 2 A Right. Mr. MacLeod, right here, that little  
 3 portion.  
 4 JUDGE NORMAN: But the record can't pick  
 5 that up.  
 6 MR. MacLEOD: Let me go take a look and  
 7 see if I can figure out how to get that in the record.  
 8 THE WITNESS: Okay.  
 9 MR. CARLTON: Can we go off the record?  
 10 JUDGE NORMAN: Certainly.  
 11 (Discussion off the record)  
 12 JUDGE NORMAN: We're back on the record.  
 13 Q (BY MR. MacLEOD) Let's go to -- now, DLM-13  
 14 is already in the record. Is that right?  
 15 A Yes.  
 16 Q And then I don't think I need to admit that  
 17 into evidence. Well, let's make it really clear. I'm  
 18 going to go ahead and admit this as an exhibit. I'm  
 19 handing you what's been marked ED-1 for  
 20 identification.  
 21 (Exhibit ED No. 1 marked)  
 22 Q (BY MR. MacLEOD) And could you identify what  
 23 that is?  
 24 A That is a map of our extraterritorial  
 25 jurisdiction with an overlay of the water CCN

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1 application. It also shows the city limits of the  
 2 City of Lindsay, both the stripes running south and  
 3 north, the areas that were annexed in 2002, 2003, and  
 4 then this portion right here that is at the north end  
 5 of that annexed from 2002, 2003.  
 6 JUDGE NORMAN: When you say "right  
 7 here," though, the record is not picking that up.  
 8 A How do I word that?  
 9 Q (BY MR. MacLEOD) Let me ask another  
 10 question. Could you -- is this an exact copy of  
 11 DLM-13 --  
 12 A Yes, it is.  
 13 Q -- that's already been admitted into  
 14 evidence? Could you take this pen I'm handing you now  
 15 and circle the overlap area which you've described as  
 16 looking like a factory?  
 17 A (Complied)  
 18 Q And that area that you've just marked on  
 19 the -- on ED-1 is the area where your CCN request  
 20 overlaps the existing CCN of the city of Gainesville.  
 21 Is that correct?  
 22 A It is correct.  
 23 JUDGE NORMAN: And that's where --  
 24 that's the little area that's outlined in red and has  
 25 red dots and a yellow background. Is that right?

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1 A Yes, it is, Your Honor.  
 2 JUDGE NORMAN: And the two little  
 3 smokestacks there, the two little things --  
 4 A Uh-huh.  
 5 JUDGE NORMAN: All right. Two little  
 6 rabbit ears. Right?  
 7 A Correct.  
 8 JUDGE NORMAN: Okay.  
 9 MR. MacLEOD: I want to go ahead and  
 10 offer ED-1 into evidence.  
 11 JUDGE NORMAN: Any objection?  
 12 MR. RODRIGUEZ: No objections.  
 13 MR. MacLEOD: Pass the witness.  
 14 JUDGE NORMAN: Any objection to that,  
 15 Mr. Carlton?  
 16 MR. CARLTON: No, I don't.  
 17 JUDGE NORMAN: It's admitted.  
 18 (Exhibit ED No. 1 admitted)  
 19 JUDGE NORMAN: And I want to state for  
 20 the record just for my own records that I've just  
 21 marked on my copy that little area as ED Exhibit 1.  
 22 I also want to state for the record so  
 23 that I don't forget it, you know, I note that in the  
 24 new rules, 291.102(d)(2)(D) that the words are written  
 25 "application or requests for service." It's in the

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1 distinctive. That's for me for the record. Thank 2 you. Go ahead. 3 MR. CARLTON: Oh, I'm up? 4 JUDGE NORMAN: Yes. 5 MR. CARLTON: Well, delightful. 6 FURTHER RECROSS-EXAMINATION 7 BY MR. CARLTON: 8 Q Good morning, Mr. Metzler, again. 9 A Good morning. 10 Q How long have you been in the Lindsay 11 community? 12 A Well, I'm 53 years old and outside of six 13 years, so 47 years. 14 Q Forty-seven years. So -- and your family, 15 did they -- were they in the community before you? 16 A Yes, they were one of the original founding 17 families in 1892. 18 Q Okay. How many founding families were there? 19 A There were only four or five. 20 Q Oh. Which ones are they? 21 A Oh, I can't recall four or five. I just know 22 we're listed as one of the original settlers. 23 Q Okay. You were -- you've had some history as 24 serving the City of Lindsay as council member and 25 mayor previously. Right?	1 the Exhibit APP-1, in the application? And the 2 application indicates that there were verbal requests 3 for service. Correct? 4 A Yes. 5 Q And did the application, when it was 6 originally filed, attach a list of those requests? 7 A It doesn't appear to on a cursory review of 8 it. 9 Q Is there a map attached to the application 10 that shows where those requests are? 11 A Well, there's maps on APP-1014, APP-1015, but 12 in looking at them, it would be very difficult to pick 13 up that small red dot, if it's there, because the 14 background is almost the identical same color. 15 Q So Page 1014 and 1015 don't identify any 16 specific areas where these requests might have been 17 from, do they? 18 A No, they do not. 19 Q In your role on the city planning and zoning 20 commission from 2005 to 2007, what kind of 21 applications did you deal with, or what kind of 22 matters did you deal with? 23 A Oh, some variances to, you know, planning and 24 zoning to subdivision ordinances, looking at some 25 street repairs, park improvements. Those are the ones
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1 A Correct. 2 Q And I'm going to have to ask you some of this 3 stuff again because -- what was your involvement with 4 preparing what has been admitted as APP-1, the 5 application? 6 A This was done previous to my latest time on 7 the council. And even though it's received 8 August 31st, which technically would have had me as a 9 P&Z member a couple of months, I had nothing to do 10 with the application itself. 11 Q So when you're testifying about the 12 application, that's solely based upon you having 13 reviewed the document? 14 A Reviewing all of this document and all of 15 these other documents that have been supplied by the 16 city. 17 Q And I think you testified earlier that the 18 reason you're here giving this testimony is because 19 the mayor isn't able to do that? 20 A Correct. 21 Q And was the mayor the one who was involved 22 for the city in preparing the application or 23 overseeing that? 24 A The mayor would have been. 25 Q Would you turn with me to 1002, APP-1002 in	1 that pop up quickly in my head. 2 Q During your what appears to be two years on 3 the planning and zoning commission, how many variances 4 to subdivision ordinances did you have to deal with? 5 A It wouldn't have been more than four or five. 6 Q Is that because there were only four or five 7 subdivision applications filed during that two-year 8 period that you were on the commission? 9 A There were one or two of those, and then 10 there would have been a couple of variances for 11 individual property owners wanting to do something out 12 of the norm. 13 Q Do you recall the two subdivision 14 applications that were filed? 15 A Well, we would have dealt with the one 16 located north of 82, the Nortman addition. He was 17 adding ten lots at a time to it. There was some 18 initial discussion about another one on the southeast 19 side of town. It's an extension of one that was 20 started by Ronnie Hess. I don't know the official 21 name of it. Blue Ribbon. 22 MS. FLEITMAN: Yes. 23 A The Blue Ribbon addition. 24 Q (BY MR. CARLTON) How many lots are in the 25 Nortman addition?

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1 A I think he has as many as 150, 160 potential  
2 lots out there.  
3 Q How many lots are in the Blue Ribbon  
4 subdivision?  
5 A Oh, there's two streets that are in place  
6 with the third proposed one, each street having 16  
7 to 20 homes on it, and the third street would have  
8 been similar in nature to that with some possible  
9 homes. There's supposed to be a loop on the backside  
10 of that connecting all three streets that would have  
11 had some homes on the east side of it, which could  
12 have been another ten to fourteen.  
13 Q And is the Blue Ribbon subdivision within the  
14 city limits?  
15 A Yes.  
16 Q Okay. And the city limits is already within  
17 your CCN. Correct?  
18 A Yes.  
19 Q And the Nortman subdivision, is it within the  
20 city limits?  
21 A I believe all of that territory is inside our  
22 city limits.  
23 Q And the Nortman subdivision is within the  
24 area for which the order was just recently issued  
25 correcting where your CCN is located. Correct?

1 Q Are you familiar with -- well, let me ask it  
2 this way: Are you aware of whether any of those  
3 family-owned farms have been sold or conveyed to  
4 anyone who is not a family member?  
5 A I'm not aware of any, and I don't keep track  
6 of that personally. So I'm not aware of any.  
7 Q Do you -- are you aware of any of those  
8 families that are wanting to subdivide their property  
9 and have water service from the City of Lindsay in the  
10 next year?  
11 A There is one family that owns some property  
12 inside of our ETJ that has sold off two or three small  
13 lots along Highway 82, but they have not requested  
14 water or sewer from us.  
15 Q And which family is that?  
16 A The Block family. They could be under Mary  
17 Jean Fleitman and Others may be the legal description  
18 of it.  
19 JUDGE NORMAN: And how do you spell the  
20 Blog, or Block?  
21 A B-L-O-C-K.  
22 JUDGE NORMAN: B-L-O-C-K, okay.  
23 Q (BY MR. CARLTON) And is that in your ETJ or  
24 your city limits?  
25 A That's inside of our ETJ.

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1 A North of 82, yes.  
2 Q Okay. So you're not -- during that time you  
3 were on the planning and zoning commission, you didn't  
4 receive any subdivision applications for anything  
5 outside those two?  
6 A No, we did not.  
7 Q Okay. And have you had any that you've  
8 considered since you've been on the city council?  
9 A No.  
10 Q How many subdivisions are in the city's ETJ?  
11 A I would think two, one being the north side  
12 of town, Kupper-Fuhrmann or whatever their name is,  
13 and the other one would be the South Ridge of Lindsay  
14 that would now be inside of our ETJ, parts of it  
15 anyway.  
16 Q So those are the only other two subdivisions  
17 in your -- in the town of Lindsay's ETJ?  
18 A Correct.  
19 Q Is the rest of your property in your ETJ  
20 family farms?  
21 A The vast majority of it would be, yes.  
22 Q And would it be safe to say that the vast  
23 majority of those farms are owned by descendents of  
24 those founding fathers of Lindsay?  
25 A That would be a fair statement to make.

1 Q On Highway 82?  
2 A West.  
3 Q West?  
4 A Part of their property on the very east side  
5 of it is inside our city limits, but the three spots  
6 that were sold off on 82 are outside the city limits,  
7 but inside the ETJ.  
8 Q How does -- how do people who are outside --  
9 or not on the city's utility system, how do they get  
10 service? How do they get water or wastewater service?  
11 A I would assume most of them drill a water  
12 well and put in a septic tank of some kind.  
13 Q I turn your attention to Page 1006 of APP-1  
14 and look at F. And the question is, "What is the  
15 effect of granting or amending a certificate on a  
16 recipient of the certificate and on any retail public  
17 utility of the same kind already serving the  
18 approximate area?" And the answer is "There are no  
19 other utilities providing service within the requested  
20 area except for the small overlap with Gainesville."  
21 And that's not a correct statement, is it?  
22 A Well, is Mr. -- is the Lindsay Pure Water a  
23 retail public utility?  
24 Q Yes, it is.  
25 A Then it would not be a correct statement.

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1 Q So there is potentially an impact on Lindsay  
2 Pure Water Company as a result of your application.  
3 Correct?  
4 A Well, I'm not a financial person. So I don't  
5 know if there would be or not.  
6 Q Let me represent to you that if the City of  
7 Lindsay is awarded the CCN in the area around where  
8 Lindsay Pure Water is currently certificated, that  
9 Lindsay Pure Water would be prohibited from serving in  
10 that area, and that would be an impact on Lindsay Pure  
11 Water, wouldn't it?  
12 JUDGE NORMAN: Assuming those facts.  
13 A I would think so, but I also don't know what  
14 his business plan showed he needed to recapture his  
15 original investment and maintain it.  
16 Q (BY MR. CARLTON) And I'm certainly not  
17 asking you to testify about the extent of the impact.  
18 I agree, I don't think you have enough information to  
19 be able to testify about that.  
20 (Discussion off the record)  
21 Q (BY MR. CARLTON) I believe in your testimony  
22 you indicated that there are four contract operators  
23 for the city's water and wastewater systems, and that  
24 two of those are water operators.  
25 A Yes.

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1 Q Is that correct? When you say they're  
2 contract operators, they don't -- they're not  
3 employees of the city?  
4 A No, they are -- the two water?  
5 Q Correct.  
6 A One of them is an employee of the city, the  
7 other would be a purely contractual arrangement.  
8 Q Okay. And which -- who are those?  
9 A Frank Joe Geray is the city employee who has  
10 obtained his Class D and is working towards his  
11 Class C. And then Robert Walterscheid would be the  
12 other one who has a Class C, I think.  
13 Q And is Charles Young an operator for the  
14 city, too?  
15 A Yes, he is.  
16 Q Does he just do wastewater, or does he do  
17 water?  
18 A Well, I think he holds both licenses and  
19 would oversee primarily the wastewater and would be  
20 available for help with the city water system. And  
21 then Claude Tamplin is the fourth operator who I think  
22 has a Class C wastewater license. And then there's a  
23 fifth one we're training right now, Lori Geray, on  
24 water.  
25 Q In your testimony, in particular the

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1 testimony you updated today, you indicated that  
2 Lindsay has approximately 399 water connections?  
3 A Yes, sir.  
4 Q But you had also in your testimony indicated  
5 that Lindsay had three wells from which it was able to  
6 provide 306 additional customers. Now, I don't recall  
7 what the old number was, but is that 306 still  
8 accurate, or are there now fewer customers that you're  
9 able to provide service to in addition to the ones  
10 you're already serving?  
11 A Since I'm not an engineer, I may defer that  
12 question to Mr. Maroney.  
13 Q So how did you determine how many  
14 customers --  
15 A In a conversation earlier, four or five  
16 months ago, with Mr. Maroney.  
17 Q So I'm going to ask it so it's on the record.  
18 So how did you determine how many additional customers  
19 Lindsay could serve?  
20 A By working with the city engineer.  
21 Q So you don't have any particular expertise in  
22 being able to make that calculation yourself?  
23 A No.  
24 Q And where did you get your information in  
25 your testimony regarding the lines that are -- the

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1 size and lengths of the lines that are owned by the  
2 city?  
3 A The city -- city hall, the records we have.  
4 Q So you went through those individually and  
5 read all those and added up the length of pipe?  
6 A City staff did.  
7 Q And when you say "city staff," who was that?  
8 A Well, that would have been either  
9 Ms. Fleitman, or it would have been Mr. Maroney, or it  
10 could have been Mr. Swinggi, Kelly Swinggi, who also  
11 works with the city as an engineering consultant.  
12 Q Is Mr. Maroney the city's engineer on a  
13 routine basis, or has he been hired especially for  
14 this process?  
15 A Hired especially for this. Mr. Swinggi would  
16 be the one we deal with.  
17 JUDGE NORMAN: On a routine basis?  
18 A Uh-huh.  
19 JUDGE NORMAN: Correct?  
20 A Yes.  
21 JUDGE NORMAN: Okay.  
22 Q (BY MR. CARLTON) So you're not familiar with  
23 the capacity of the wells that you have?  
24 A No. That would be a question best left for  
25 Mr. Maroney.

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34 (Pages 130 to 133)

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1 Q And you --  
2 MR. CARLTON: Sorry?  
3 JUDGE NORMAN: How do you spell Swinggi?  
4 A Z-W-I-G-G-N-I (sic).  
5 MR. CARLTON: Just like it sounds.  
6 JUDGE NORMAN: Okay. Thank you.  
7 (Laughter)  
8 Q (BY MR. CARLTON) And likewise, you wouldn't  
9 be familiar with what improvements the city might need  
10 to make in order to provide additional service?  
11 A Correct.  
12 Q Does the city's existing CCN boundary as  
13 shown on what is Exhibit DLM-17 include all of the  
14 property that's within the city limits except for the  
15 two ten-foot strips that had been annexed to the north  
16 and south along 3108 and 1199?  
17 A Well, it certainly doesn't include those two  
18 ten-foot strips, and there could be some question over  
19 whether or not it would include the overlapped area  
20 between our proposed -- our CCN proposal on water and  
21 Gainesville's CCN. And since I don't have a scale in  
22 front of me to work all the footages out, that's a  
23 just-looking-at-it answer.  
24 Q I have one if it would be helpful.  
25 JUDGE NORMAN: Would it be helpful?

1 Q Okay. So DLM-13, you didn't prepare that?  
2 A Did I personally prepare it?  
3 Q Yes.  
4 A No, I did not personally prepare this.  
5 Q Who prepared it? Do you know?  
6 A Well, I would --  
7 MR. RODRIGUEZ: It's on the other map.  
8 A Oh, this one.  
9 MR. RODRIGUEZ: Yeah.  
10 A No, I can't answer you specifically who  
11 called for this to be prepared.  
12 Q (BY MR. CARLTON) Do you know who Engineering  
13 Concepts and Design, L.P. is?  
14 A No, I do not.  
15 Q The Blue Ribbon subdivision that we talked  
16 about earlier --  
17 A Yes.  
18 Q -- can you tell whether it's within the  
19 city's CCN area on DLM-17?  
20 A Yes, it would appear to be.  
21 Q And is the -- is Kupper subdivision?  
22 A Yes, spelled K-U-P-P-E-R.  
23 Q Okay. Is that within the city's CCN?  
24 A It would appear to be. It's located right  
25 north of 82 on 1199, the west side of it, left side of

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1 A Well, I could try.  
2 Q (BY MR. CARLTON) So --  
3 A But I can't -- since I don't do this for a  
4 living, it's hard to answer that question exactly.  
5 Q So your concern would be that this doesn't  
6 show the area where there is overlap with the  
7 Gainesville CCN that was identified on DLM-13, now  
8 ED-1, where you circled in red?  
9 A Correct. It would be nice if the DLM-17 had  
10 a better -- I'm having a hard time reading this -- if  
11 the city limits, which I'm assuming are the yellow  
12 broken line, but I can't say that for sure because  
13 there's no rows on here to tell us that. So the map  
14 to show that possible area that's overlapped by the  
15 two CCNs from the two different cities, it doesn't  
16 depict it very well in DLM-17.  
17 Q Okay. But would it be safe to say but for  
18 any area that overlaps the Gainesville CCN, all of the  
19 city limits are within the town -- City of Lindsay's  
20 existing CCN?  
21 A It does appear to be that way.  
22 Q Okay. And is the Nortman subdivision based  
23 on DLM-17 within the existing CCN?  
24 A I don't know if Mr. Maroney wouldn't be a  
25 better person to ask that question of.

1 Farm-to-Market 1199.  
2 Q Okay. And then the South Ridge of Lindsay is  
3 where the Lindsay Pure Water Company's CCN is located.  
4 Correct?  
5 A I'm not -- not an expert on what their CCN  
6 looks like, but I'm assuming -- I'm assuming it is.  
7 Q Okay. But that's the location of the South  
8 Ridge subdivision?  
9 A Correct.  
10 Q To your knowledge, are there any other  
11 subdivisions or is there any development occurring  
12 outside the town of Lindsay's existing CCN except  
13 South Ridge of Lindsay?  
14 A I'm not aware of any.  
15 Q Can I get you to turn to Exhibit DLM-3 in  
16 your testimony? Have you found it?  
17 A Yes.  
18 Q And could you identify that document?  
19 A City Ordinance 0607-1, annexing properties.  
20 Q And is this the ordinance that annexed what  
21 I'm going to call the -- kind of the finger that goes  
22 up on the northeast side of town?  
23 A The ten-foot strip, yes.  
24 Q Oh, it's the ten-foot strip, okay.  
25 A Uh-huh.

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<p>1        Q    Now, there's a service extension policy</p> <p>2    for -- or there's an explanation about how to get</p> <p>3    water services attached to this ordinance, isn't</p> <p>4    there?</p> <p>5        A    Section 3, the service plan providing.</p> <p>6        Q    Okay. Would you turn to -- and they're not</p> <p>7    numbered. So I'm going to apologize, but there's a</p> <p>8    subsection in Exhibit B with the title Water Services.</p> <p>9        A    All right. I have it.</p> <p>10       MR. CARLTON: Your Honor, I believe</p> <p>11    that's about six pages in.</p> <p>12       JUDGE NORMAN: I've got it.</p> <p>13       Q    (BY MR. CARLTON) And that states that anyone</p> <p>14    who wants water service from the city has to bear the</p> <p>15    costs of construction of those facilities that are</p> <p>16    necessary to provide them service. Correct?</p> <p>17       A    Correct.</p> <p>18       Q    So if I'm now annexed into this territory and</p> <p>19    I'm in that ten-foot strip and I want water, I have to</p> <p>20    pay for it?</p> <p>21       A    That would be my understanding based on the</p> <p>22    wording here.</p> <p>23       Q    Now, turn with me to -- if you have LPWC-8,</p> <p>24    which has been admitted, and I guess it's probably</p> <p>25    going to come in as JES-13, but it's not in yet.</p>	<p>1        MR. RODRIGUEZ: Sure.</p> <p>2        JUDGE NORMAN: And I tried to make clear</p> <p>3    that I was not going to limit myself to admissible</p> <p>4    evidence, as I'm not required to do under Rule 104(a)</p> <p>5    of the Texas Rules of Evidence.</p> <p>6        So I think in order to be real clean</p> <p>7    about that, then, you know, anything else -- anything</p> <p>8    that came up within that context, you know, you</p> <p>9    probably would be better off, if you wanted it as part</p> <p>10   of your case, to retender that evidence, either in the</p> <p>11   form of testimony -- now, what Mr. Metzler said at</p> <p>12   first, you know, when he came in and you first</p> <p>13   tendered his exhibit --</p> <p>14       MR. RODRIGUEZ: That's what I was</p> <p>15   concerned with.</p> <p>16       JUDGE NORMAN: Yeah, that came in, and</p> <p>17   then we got to the issue of whether or not those --</p> <p>18       MR. RODRIGUEZ: So I don't -- just to be</p> <p>19   clear, I do not need to re-offer --</p> <p>20       JUDGE NORMAN: You don't have to do</p> <p>21   that.</p> <p>22       MR. RODRIGUEZ: -- APP-1 or APP-2?</p> <p>23       JUDGE NORMAN: Correct, you do not.</p> <p>24       MR. RODRIGUEZ: Okay. Those have been</p> <p>25   admitted?</p>
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<p>1        JUDGE NORMAN: Okay. LP --</p> <p>2        MR. CARLTON: LPWC-8.</p> <p>3        JUDGE NORMAN: Okay.</p> <p>4        MR. CARLTON: It is the ordinance on the</p> <p>5    utility service outside the city.</p> <p>6        JUDGE NORMAN: All right. I got it.</p> <p>7        MR. CARLTON: So do I need to offer it</p> <p>8    again?</p> <p>9        JUDGE NORMAN: Yes. You know, because</p> <p>10   I'm trying to keep it all -- I obviously took in some</p> <p>11   inadmissible evidence.</p> <p>12       MR. CARLTON: So can I just re-offer it</p> <p>13   as --</p> <p>14       JUDGE NORMAN: Sure.</p> <p>15       MR. CARLTON: -- 8 again?</p> <p>16       JUDGE NORMAN: Yes. And you do. Is</p> <p>17   there any objection?</p> <p>18       MR. RODRIGUEZ: No, but I think at some</p> <p>19   point, Your Honor, can we go through and see what's</p> <p>20   been admitted for all purposes and what's been</p> <p>21   limited?</p> <p>22       JUDGE NORMAN: Well, you know, we spent</p> <p>23   a long time this morning -- you know, I'm trying to</p> <p>24   caution you on that on whether or not to admit the</p> <p>25   names and the map, you know, that shows the places.</p>	<p>1        JUDGE NORMAN: They have been admitted</p> <p>2    subject to the objections.</p> <p>3        All right. Okay. LPWC-8 is admitted.</p> <p>4        (Exhibit LPWC No. 8 admitted)</p> <p>5        Q    (BY MR. CARLTON) So, Mr. Metzler, would you</p> <p>6    turn to the first page of that exhibit in Paragraph</p> <p>7    (A)(1)? Do you find that paragraph?</p> <p>8        A    Yes, sir.</p> <p>9        Q    Does this ordinance say that once the city</p> <p>10   starts providing utility service that it can terminate</p> <p>11   those services at any time if it's beyond the</p> <p>12   corporate limits?</p> <p>13        A    Yes.</p> <p>14        Q    And so the city, if it's providing service</p> <p>15   outside its city limits, would not consider itself to</p> <p>16   be obligated to continue to provide those services?</p> <p>17        A    Yes.</p> <p>18        Q    And the second paragraph says that the city</p> <p>19   reserves a right to basically provide service to who</p> <p>20   it wants to. And if they don't want to, they don't</p> <p>21   have to, and it's in the city's discretion. Is that</p> <p>22   correct?</p> <p>23        A    That could be one reading of it, yes.</p> <p>24        Q    The third paragraph appears to require that</p> <p>25   the folks who are outside the city limits who are</p>

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1 getting service have to maintain -- well, have to  
2 construct those facilities at their own expense, and  
3 that the city doesn't assume any responsibility for  
4 the quality of that construction. Is that correct?

5 A Yes.

6 Q In Paragraph (3), I'm confused, and I need  
7 your help with understanding what is intended here.  
8 The last part of that paragraph says that "The city  
9 assumes no responsibility or liability for  
10 satisfactory service maintenance, pressure or wastage  
11 until it acquires sole ownership as part of its  
12 utility system." When would the city acquire sole  
13 ownership of the line as part of its utility system?

14 MR. RODRIGUEZ: I'll object, Your Honor.  
15 The ordinance speaks for itself. It's the best  
16 evidence of it.

17 JUDGE NORMAN: Overruled.

18 A Well, not being an attorney, it might be a  
19 little difficult for me to answer, but based on this  
20 and reading some of the others, it would seem that  
21 once these people have asked to be completely -- or be  
22 annexed into the city and we take in all the property  
23 that's being served with the sewer system or the water  
24 system, at that point in time after they are annexed,  
25 then we would begin to look at becoming responsible

1 would the city refuse to provide service if somebody  
2 who was requesting service didn't file a petition for  
3 annexation?

4 A I really don't know what the full council  
5 would decide to do.

6 Q Would you turn to the next page, Section  
7 (B)(1)? And what is the minimum size of line that is  
8 required to be constructed in order to obtain service  
9 from the city?

10 A Six inches.

11 Q So regardless of the location of service, how  
12 far away, how close, the six-inch line is the minimum  
13 size that's required?

14 MR. RODRIGUEZ: I'll object to asked and  
15 answered, and the document speaks for itself. It's  
16 the best evidence of what's required.

17 JUDGE NORMAN: I think he's just getting  
18 a clarification. I'm going to let him ask questions  
19 about interpretation of the document, his  
20 interpretation, if you make that clear, Mr. Carlton.  
21 But based on what the document itself says, the best  
22 evidence of what a document says is the document  
23 itself.

24 MR. CARLTON: I agree, and I think the  
25 issue really becomes how is it applied by the city.

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1 for the system and its upkeep.

2 Q (BY MR. CARLTON) So once the property is  
3 annexed into the city, the city will then take over  
4 operation and maintenance of the lines?

5 A I would think that would be an accurate  
6 statement.

7 Q And is it a precondition to getting service  
8 outside the city that you file a petition for  
9 annexation based on this ordinance in Paragraph (A)?

10 A Paragraph (A)?

11 Q 1(A).

12 A 1(A).

13 Q I apologize.

14 MR. RODRIGUEZ: I'll also object, Your  
15 Honor, it's not the best evidence. The document  
16 speaks for itself.

17 JUDGE NORMAN: Oh, okay. Sustained.

18 A It would have.

19 MR. RODRIGUEZ: That's okay.

20 JUDGE NORMAN: The objection is  
21 sustained.

22 A Oh, okay.

23 JUDGE NORMAN: It's the best evidence  
24 rule objection.

25 Q (BY MR. CARLTON) Based on this ordinance,

1 JUDGE NORMAN: You can ask that. I'll  
2 permit you to ask that.

3 Q (BY MR. CARLTON) So is it your understanding  
4 that the ordinance requires that regardless of  
5 distance a six-inch line is the minimum size that has  
6 to be constructed by somebody who wants service  
7 outside the city limits?

8 A Based on this reading right here, it would  
9 appear six inches is the smallest size, but there  
10 could always be a variance granted if you had a  
11 property owner wanting water to his home located on  
12 our -- right outside of our city limits and all he  
13 needs is a one-inch waterline run over to him.

14 Q But that would require a variance from the  
15 ordinance?

16 A I would think so.

17 Q And could you get a variance for having to  
18 pay the maintenance costs for the waterlines that's  
19 set forth a little bit further down in that ordinance  
20 in that section where it says "such water pipe and  
21 meter shall be kept at all times in a good condition  
22 of repair at the cost of the person using the water"?

23 A I would think that it's always a possibility  
24 that a variance can be granted. Whether or not the  
25 P&Z would do it or the council would agree with it, I

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<p>1 can't speak for them.</p> <p>2 Q Does this section of the ordinance that I</p> <p>3 just quoted mean regardless of whether the city owns</p> <p>4 the line or not, the person who is receiving service</p> <p>5 is responsible for the cost of repair?</p> <p>6 MR. RODRIGUEZ: Once again, I'll object</p> <p>7 on the best evidence rule, Your Honor.</p> <p>8 JUDGE NORMAN: Overruled.</p> <p>9 A Yes.</p> <p>10 Q (BY MR. CARLTON) While you've been on the</p> <p>11 planning and zoning commission or the city council</p> <p>12 have you received or been responsible for reviewing</p> <p>13 any requests for service under this policy?</p> <p>14 A No.</p> <p>15 Q So nobody outside the city limits has come to</p> <p>16 the city and asked for service?</p> <p>17 A Not that I'm aware of.</p> <p>18 Q Is there anybody that would be more familiar</p> <p>19 with that than you?</p> <p>20 A The city secretary would probably be the best</p> <p>21 source. She's at city hall during the week. I'm not.</p> <p>22 Q Do requests for service come before the city</p> <p>23 council?</p> <p>24 A For within the city?</p> <p>25 Q Outside the city.</p>	<p>1 A Well, I may have to defer that to the city</p> <p>2 secretary. I don't know our whole customer list.</p> <p>3 Q Do you know about how much property</p> <p>4 Mr. Bezner owns?</p> <p>5 A No, I really don't.</p> <p>6 Q Do you know what kind of utility service he's</p> <p>7 interested in having?</p> <p>8 A Well, based on his statement here is all I</p> <p>9 have to go on, water and sewer.</p> <p>10 Q But you don't have any idea of when he wants</p> <p>11 it or how much he wants or what his plans are?</p> <p>12 A No, I do not.</p> <p>13 Q Would that same -- those same answers apply</p> <p>14 to every one of those letters that's attached to</p> <p>15 Exhibit DLM-10?</p> <p>16 A Yes.</p> <p>17 Q So you don't know how much water or what</p> <p>18 these folks intend to do with their land for any of</p> <p>19 the service requestors?</p> <p>20 A Yes, that's correct.</p> <p>21 JUDGE NORMAN: You're very precise,</p> <p>22 Mr. Metzler. Most people answer that question no, but</p> <p>23 the correct answer is yes, you don't know.</p> <p>24 Q (BY MR. CARLTON) Would you take a look at --</p> <p>25 MR. CARLTON: And, Your Honor, let me</p>
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<p>1 A I would think it would come before the</p> <p>2 council, yes.</p> <p>3 Q But you haven't had any of those --</p> <p>4 A No.</p> <p>5 Q -- kinds of requests to approve at council?</p> <p>6 A No.</p> <p>7 Q Have you reviewed the letters that are a part</p> <p>8 of Exhibit DLM-10?</p> <p>9 A Yes.</p> <p>10 Q And would you look at the first letter in</p> <p>11 that packet that is -- I'll use APP-0351 as a page</p> <p>12 number.</p> <p>13 A All right, I have it.</p> <p>14 Q Who is Weldon Bezner?</p> <p>15 A He's a gentleman who lives in the -- he lives</p> <p>16 in the southwest part of the city and has property</p> <p>17 outside of our city limits to both his south and west.</p> <p>18 Q And what does he do on that property?</p> <p>19 A I believe it's all farm or ranch.</p> <p>20 Q He has a house on that property?</p> <p>21 A He has a house on that property.</p> <p>22 Q Has the city taken any steps to extend</p> <p>23 service to his house?</p> <p>24 A Well, not in my brief time on the council.</p> <p>25 Q He's not a customer of the city. Right?</p>	<p>1 get some clarification.</p> <p>2 JUDGE NORMAN: Sure.</p> <p>3 MR. CARLTON: DLM-11 was the map that</p> <p>4 shows all the service requests.</p> <p>5 JUDGE NORMAN: Yes, and that was --</p> <p>6 that's included within my ruling.</p> <p>7 MR. CARLTON: I just want to make sure</p> <p>8 before I start delving into it.</p> <p>9 JUDGE NORMAN: Okay. All right.</p> <p>10 Q (BY MR. CARLTON) Would you pull out this map</p> <p>11 that is DLM-11?</p> <p>12 A I have it.</p> <p>13 Q Okay. And could you tell me how many of the</p> <p>14 pieces of property on here that are identified as</p> <p>15 being service requests are actually already within the</p> <p>16 town of Lindsay's CCN based upon Exhibit DLM-17, the</p> <p>17 new CCN map that's been issued?</p> <p>18 JUDGE NORMAN: You want him to count</p> <p>19 them? Is that what you're asking him to do?</p> <p>20 MR. CARLTON: I'm asking how many of</p> <p>21 them are within that area or within their existing CCN</p> <p>22 based on DLM-17.</p> <p>23 JUDGE NORMAN: Right, right, and so</p> <p>24 you're asking for a count?</p> <p>25 MR. CARLTON: Yes.</p>

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1 JUDGE NORMAN: Okay. It might be easier  
2 to count the ones that are outside and subtract.  
3 MR. CARLTON: And where I'm trying to  
4 go, Your Honor, just so we can try to short circuit  
5 it, there's no reason to keep this long if we don't  
6 have to, I want to find out of the 55 letters --  
7 JUDGE NORMAN: 53, right.  
8 MR. CARLTON: 53, we'll get into that a  
9 little bit, too -- but how many are actually --  
10 JUDGE NORMAN: Outside the CCN.  
11 MR. CARLTON: -- are from people who are  
12 outside the CCN that want service.  
13 JUDGE NORMAN: Right.  
14 MR. CARLTON: So it's -- and I think  
15 there's some clarification that needs to be made there  
16 because I don't think all 55 of them or 53, or however  
17 many it is, are really within that area.  
18 JUDGE NORMAN: Right.  
19 MR. RODRIGUEZ: Your Honor, I think -- I  
20 mean, the 55 or 53, however you want to characterize  
21 it, was basically counted prior to the September --  
22 JUDGE NORMAN: Right.  
23 MR. RODRIGUEZ: -- September 30th.  
24 JUDGE NORMAN: I understand.  
25 MR. RODRIGUEZ: So if the point he's

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1 trying to make is that not all of them now, the 55 or  
2 53, are included in the requested service area as it  
3 existed prior to September 30th, we can stipulate to  
4 that fact.  
5 JUDGE NORMAN: And then your CCN has  
6 been expanded since then.  
7 MR. RODRIGUEZ: And our CCN has been  
8 expanded. So some of those people are actually  
9 included in the expanded CCN portion.  
10 JUDGE NORMAN: Right.  
11 MR. RODRIGUEZ: And so we can -- if the  
12 clarification that needs to be made is some of these  
13 that now are in DLM-10 have property in the area where  
14 there's the expansion area, we can stipulate to that,  
15 Your Honor.  
16 JUDGE NORMAN: Okay. And I think that's  
17 probably understood, but what he wants right now is  
18 for the purpose of the application as it exists right  
19 now how many people are outside the CCN area. Is that  
20 right?  
21 MR. CARLTON: And I believe that's  
22 right, and ultimately what I'm going to have to end up  
23 doing is going through all these letters now because  
24 there are more duplicates than what's been identified.  
25 JUDGE NORMAN: I see. All right.

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1 MR. CARLTON: It may speed us up if we  
2 take a break and get through that process --  
3 JUDGE NORMAN: Okay.  
4 MR. CARLTON: -- and then come back.  
5 JUDGE NORMAN: Just tell him what you  
6 want.  
7 MR. CARLTON: Exactly.  
8 JUDGE NORMAN: Why don't you do that.  
9 MR. CARLTON: Okay. So if we can go off  
10 the record --  
11 JUDGE NORMAN: We're going to go off the  
12 record.  
13 (Recess: 12:26 p.m. to 1:55 p.m.)  
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1 AFTERNOON SESSION  
2 TUESDAY, OCTOBER 7, 2008  
3 (1:55 p.m.)  
4 JUDGE NORMAN: We're back on the record.  
5 MR. CARLTON: All right. Thank you.  
6 PRESENTATION ON BEHALF OF THE CITY OF LINDSAY  
7 (CONTINUED)  
8 DONALD METZLER,  
9 having been previously sworn, continued to testify as  
10 follows:  
11 FURTHER RECROSS-EXAMINATION (CONTINUED)  
12 BY MR. CARLTON:  
13 Q Mr. Metzler, while we were on break, did you  
14 have an opportunity to review the letters that are  
15 part of DLM-5?  
16 A Yes, sir.  
17 Q And compare those to the revised DLM-11 map?  
18 A Yes, sir.  
19 JUDGE NORMAN: And so that would be  
20 DLM-10 actually that he reviewed. Correct?  
21 MR. CARLTON: Excuse me. I apologize.  
22 JUDGE NORMAN: Okay. Just make the  
23 record right.  
24 MR. CARLTON: DLM-10.  
25 Q (BY MR. CARLTON) The letters that are DLM-10

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1 to the map, that's DLM-11?  
 2 A Yes.  
 3 Q And after making that review, how many of  
 4 those letters are still requests for service, in the  
 5 city's opinion, for areas that are outside of the town  
 6 of Lindsay's existing CCN?  
 7 A Forty-one.  
 8 Q Forty-one, okay. And since there are more of  
 9 them that are still in, can you tell me which ones are  
 10 not?  
 11 A Yes. Do you want names, or do you want page  
 12 numbers? It would be quicker for me with page  
 13 numbers.  
 14 Q Let's do page numbers then. That's fine.  
 15 A All right. Are you ready?  
 16 Q Yes.  
 17 A These are the ones that are in. What was  
 18 your question?  
 19 Q I was going to ask you the ones that are  
 20 not --  
 21 A Okay.  
 22 Q -- because there are a few -- a number of  
 23 them as opposed to the 41.  
 24 A There are fewer number that are in.  
 25 Q Oh, okay. All right. Well, then let's go

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1 that way.  
 2 MR. RODRIGUEZ: In the CCN area?  
 3 Q (BY MR. CARLTON) All right. Let's be clear  
 4 what we're talking about.  
 5 A Okay.  
 6 Q There are 41 that are within the requested  
 7 CCN area. There are, whatever the difference is --  
 8 A Thirteen.  
 9 Q -- in the CCN area that the city already has?  
 10 A Just received last week.  
 11 Q And so you're going to tell us the 13 that  
 12 are in the city's --  
 13 A In the CCN.  
 14 Q -- existing CCN?  
 15 A Numbers 356, 368, 370, 372, 375, 381, 386,  
 16 389, 399, 402, 404, 407, 408.  
 17 JUDGE NORMAN: Mr. Metzler, the map is  
 18 Exhibit 17 of your -- attached to your testimony. Is  
 19 it that the dotted portions, the red dotted portions  
 20 are the requested area? Is that right? Am I looking  
 21 at the right map?  
 22 MR. RODRIGUEZ: That's 11.  
 23 JUDGE NORMAN: I'm sorry?  
 24 MR. RODRIGUEZ: That's 11.  
 25 JUDGE NORMAN: 11, okay.

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1 A The map you were just looking at, Judge, I  
 2 don't think it has any markings on it --  
 3 JUDGE NORMAN: Okay.  
 4 A -- identifying any of the 54. He asked if  
 5 they were marked.  
 6 JUDGE NORMAN: Okay. This is DLM-17.  
 7 Correct?  
 8 A Yes.  
 9 JUDGE NORMAN: All right. Does DLM-17  
 10 show the existing CCN?  
 11 A As of today, yes.  
 12 JUDGE NORMAN: Right, okay. And 14 of  
 13 the requested service area, if you want to use that  
 14 terminology, are within that --  
 15 A Thirteen are inside of that, 13.  
 16 JUDGE NORMAN: Thirteen are in there.  
 17 And the rest are outside?  
 18 A Yes, sir.  
 19 JUDGE NORMAN: Okay. The ones that are  
 20 outside of it, are they in the requested service area,  
 21 all of them?  
 22 A There would be two or three that are --  
 23 actually one or two of them are in the contested area  
 24 between Gainesville and Lindsay, that little --  
 25 JUDGE NORMAN: Uh-huh.

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1 A -- spot. And there is one or two others that  
 2 were right north of there, but not inside our  
 3 requested area. It would have been in Gainesville's  
 4 totally.  
 5 JUDGE NORMAN: Okay. So all but those  
 6 few are in your requested service area. Is that  
 7 right?  
 8 A Yes.  
 9 JUDGE NORMAN: Okay.  
 10 MR. RODRIGUEZ: Can I just make a  
 11 clarification?  
 12 JUDGE NORMAN: Sure.  
 13 MR. RODRIGUEZ: And he can testify to  
 14 this if you want him to, but some --  
 15 JUDGE NORMAN: You need to speak up a  
 16 little bit.  
 17 MR. RODRIGUEZ: Some of them also have  
 18 property that are both inside and outside the  
 19 requested service territory. So some of these  
 20 property owners would have property in the requested  
 21 service territory as well as in the existing CCN area.  
 22 JUDGE NORMAN: Okay.  
 23 MR. RODRIGUEZ: So the 13 he's referring  
 24 to are the ones that were solely within the  
 25 existing --

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1 JUDGE NORMAN: Okay. And, Mr. Metzler,  
2 is that accurate what he just said?  
3 A Yes.  
4 JUDGE NORMAN: Okay.  
5 MR. RODRIGUEZ: With the exception of  
6 the ones that are in the Gainesville area like he  
7 testified to.  
8 JUDGE NORMAN: True, Mr. Metzler?  
9 A Yes.  
10 JUDGE NORMAN: Okay. Go ahead.  
11 Q (BY MR. CARLTON) Let's keep working off  
12 those page numbers, Mr. Metzler, if that's all right  
13 with you. Would you take a look at Bates 363?  
14 A I have it.  
15 Q And then turn also and look at Page 351.  
16 A Yes, I have it.  
17 Q Are those duplicates?  
18 A Yes, they are.  
19 Q And Page 364?  
20 A I have it.  
21 Q And Page 352, are those also duplicates?  
22 A Yes, sir.  
23 Q On Page 405 and 357, are those duplicates as  
24 well?  
25 A Yes, sir.

1 time, seven -- six, seven for 2008 for home  
2 construction.  
3 Q And you only issue building permits for areas  
4 within the city limits. Correct?  
5 A Correct. At least that's all we've done to  
6 date.  
7 MR. CARLTON: This is going to be  
8 LPWC-9.  
9 (Exhibit LPWC No. 9 marked)  
10 MR. CARLTON: Your Honor, this was part  
11 of the documents that were produced by the applicant.  
12 The Bates numbers from the applicant's productions are  
13 at the bottom of the page.  
14 JUDGE NORMAN: Okay. And this is LPW  
15 what?  
16 MR. CARLTON: LPWC-9.  
17 JUDGE NORMAN: 9, okay.  
18 Q (BY MR. CARLTON) Mr. Metzler, can you take a  
19 look at what's been marked as LPWC-9 and tell the  
20 Judge what that is?  
21 A Well, the top page is a list of 2002 building  
22 permits from the beginning of the year until  
23 August 28, 2002.  
24 Q And does this look like a document that's  
25 generated by the City of Lindsay?

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1 Q Okay. Page 406 and 356, duplicates?  
2 A Yes, sir.  
3 Q Page 409 and 355, are those duplicates?  
4 A Yes, they are.  
5 Q Okay. And finally Page 411 and 359, are  
6 those also duplicates?  
7 A Yes, it is.  
8 Q Okay. So those duplicates shouldn't be  
9 included in the total number of requests as well?  
10 A Correct.  
11 Q Okay. Are you familiar at all with the  
12 city's building permit process?  
13 A Somewhat.  
14 Q Do you know how many building permits the  
15 city has been issuing for new homes in the last -- on  
16 average over the last five or six years?  
17 A No, I don't. I don't know that for the last  
18 five or six years.  
19 Q Do you know that for any particular period of  
20 time?  
21 A Well, I can probably go back to '86 to '90  
22 when I was mayor and we gave out three or four a year.  
23 Q Okay.  
24 A But we've got -- we received a report July or  
25 August, an update on building permits, and at that

1 A Yes.  
2 Q And could you confirm that this has the list  
3 of building permits that have been issued by the City  
4 of Lindsay from January 1, 2002 through approximately  
5 April 30, 2008?  
6 A I can speak for 2002 -- 2007 and 2008. Prior  
7 to that, I wouldn't be as comfortable. I wasn't on  
8 the council. And prior to 2005, I wasn't involved at  
9 P&Z or council.  
10 Q Let's turn to 2008, the last page. How many  
11 permits were issued for new home construction from  
12 January 1, 2008 through April 30, 2008?  
13 A Four.  
14 Q And how can you tell that on the list?  
15 A Underneath Type, "new home."  
16 Q So if we wanted to determine how many new  
17 homes had had building permits issued between 2002 and  
18 2008, we'd just use this list and add up all the ones  
19 that said "new home." Right?  
20 A Well, I can't speak from experience 2002  
21 through 2005, but from '7 and '8, yes, that's one way  
22 you could look at it.  
23 MR. CARLTON: I offer LPWC-9.  
24 JUDGE NORMAN: Any objection?  
25 MR. MacLEOD: No objection.

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<p>1 JUDGE NORMAN: It's admitted. 2 (Exhibit LPWC No. 9 admitted) 3 Q (BY MR. CARLTON) Would you take a look at 4 the revised DLM-11? That's the map. 5 A I have it out. 6 Q Do you see just south of the green area on 7 that map where it says South Ridge? 8 A Yes. 9 Q The property owned by A. Hess? 10 A Yes. 11 Q If A. Hess wanted service from the City of 12 Lindsay, how would they go about obtaining that 13 service? 14 A They would come to city hall and start the 15 process for making application for whatever the 16 service is they're asking. Are you talking about 17 water or sewer? 18 Q Water. 19 A Okay, water. They would certainly come and 20 could make that application to us, that request. 21 Q And how would the city provide water service 22 to the Hess tracts? 23 A That's hard to figure out right now. I don't 24 know what the majority of the council would want to 25 do.</p>	<p>1 a portion of the costs for that tract now? 2 A I don't think at this point in time they 3 would pay anything from wherever our closest water 4 service line would be inside of our territory to that 5 point. 6 JUDGE NORMAN: And you said that given 7 this you don't have the CCN. Right? 8 A Right. 9 JUDGE NORMAN: Okay. 10 Q (BY MR. CARLTON) Now, if you had the CCN, 11 would the city pay for the cost of that extension? 12 A Well, it would certainly be in a better 13 position to go ahead and start formulating a plan for 14 dealing with how to extend our water and sewer 15 services anywhere inside of our CCN. 16 Q Wouldn't that be inconsistent with the 17 ordinance that the city has adopted regarding service 18 outside the city limits? 19 A That ordinance is -- are we talking about 20 LW -- 21 Q LPWC-8. 22 A The one that we passed in '05? 23 Q Yes. 24 A That deals with utility service outside our 25 city?</p>
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<p>1 Q Okay. Does the city have facilities in that 2 area? 3 A No, we do not. 4 Q So would the city have to extend lines to 5 serve that tract? 6 A Yes, they would. 7 Q And would the city pay for the cost of that 8 extension? 9 A That's a good question. I don't think they 10 would pay the full cost. 11 Q So the owner would have to pay the cost of 12 that extension? 13 A It might be negotiated. 14 Q Under what circumstances would the city pay 15 part of the cost? 16 A For that particular property in that 17 particular location? 18 Q Yes. 19 A Given that we don't have the CCN to that 20 territory right now, I don't know that the city 21 council would want to invest any money in an 22 infrastructure down to that location right now. We 23 have no way to guarantee that we wouldn't have to deal 24 with some competition down the road. 25 Q So is your answer that the city wouldn't pay</p>	<p>1 Q Yes. 2 A Well, this one says, you know, we're not 3 going to pay beyond our corporate limits, and this is 4 still outside of our corporate limits. 5 Q Yes. 6 A So I would think that we're not going to pay 7 for that. 8 Q So even if it's within your CCN, you wouldn't 9 pay for it? Even if the service is within your CCN, 10 the city would not pay for the line extension? 11 A Well, I can't answer what the council would 12 do. I mean, this is going to be an issue that will 13 have to be addressed by the full council and look at 14 the changing dynamics of just receiving that newest 15 water CCN and how it impacts some of these previous 16 ordinances passed. And we haven't had a chance to do 17 that in a week. 18 Q Has the city ever paid for service extensions 19 outside the city limits in the past, to your 20 knowledge? 21 A I'm not aware of any. 22 Q Hasn't it been the city's policy not to pay 23 for service extensions outside the city limits? 24 A That's usually been our practice. 25 JUDGE NORMAN: Tell me on Exhibit DLM-11</p>

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1 the dotted -- the red dotted area is the requested  
 2 area. Is that right, Mr. Metzler?  
 3 A DLM-11?  
 4 JUDGE NORMAN: The one you've been  
 5 looking at.  
 6 A Oh, this?  
 7 JUDGE NORMAN: Yeah.  
 8 A Yes, Your Honor.  
 9 JUDGE NORMAN: Okay.  
 10 A The section is right south and then again  
 11 north.  
 12 JUDGE NORMAN: And you may have gone  
 13 over this, and I just may not have quite gotten it,  
 14 but I'm just going to ask you. And then the diagonal  
 15 line area, is that the existing CCN?  
 16 A As of today, yes.  
 17 JUDGE NORMAN: As of today?  
 18 A As of the 30th of September.  
 19 JUDGE NORMAN: Okay. Now, is the  
 20 yellowed area, is that the area that's also part of  
 21 the Gainesville CCN?  
 22 A The yellowed area?  
 23 JUDGE NORMAN: The yellow within the  
 24 existing CCN.  
 25 A No, I believe that to represent the city

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1 limit, the boundaries of the city limits of Lindsay.  
 2 JUDGE NORMAN: I see. Okay. And then  
 3 we talked about that ten-foot area that went north. I  
 4 thought there was one that went south, too, but went  
 5 north.  
 6 A Yes, there is.  
 7 JUDGE NORMAN: Okay. Is that looking to  
 8 the northeast there, if the map is like other maps, is  
 9 that ten-foot area that you have annexed going up  
 10 northeast there up to that factory building looking  
 11 thing that you talked about?  
 12 A Well, no, it wouldn't include that factory.  
 13 It actually goes back to the -- to the west and then  
 14 north and comes back east to FM or State Highway 1200.  
 15 I guess that's State Highway 1200, but it wouldn't  
 16 include that little factory-shaped piece.  
 17 JUDGE NORMAN: Okay. But it does  
 18 include that long vertical piece. Is that right? Or  
 19 it might just -- you know, I want to make sure I  
 20 understand this really.  
 21 A Okay.  
 22 JUDGE NORMAN: So I'm not trying to get  
 23 you to say something.  
 24 What is -- that yellowed area then is  
 25 what has been annexed. Right? All of the yellow area

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1 is either part of the present city or has been  
 2 annexed. Is that right?  
 3 A That's my understanding, yes.  
 4 JUDGE NORMAN: Okay. Including that  
 5 factory-looking area. Right?  
 6 A Yes.  
 7 JUDGE NORMAN: Okay.  
 8 A I just pulled it out of this pile. Which  
 9 exhibit was this?  
 10 JUDGE NORMAN: I'm looking at DLM-11. I  
 11 think you've got it spread out right in front of you.  
 12 MR. RODRIGUEZ: That's 13.  
 13 A DLM-13 shows in green --  
 14 JUDGE NORMAN: Uh-huh.  
 15 A -- the south and the north --  
 16 JUDGE NORMAN: Okay.  
 17 A -- strip.  
 18 JUDGE NORMAN: Ten-foot strip?  
 19 A Right.  
 20 JUDGE NORMAN: That's been annexed.  
 21 Right?  
 22 A Yes.  
 23 JUDGE NORMAN: All right.  
 24 A That's a better depiction of it.  
 25 JUDGE NORMAN: Okay. Good. Go ahead.

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1 Q (BY MR. CARLTON) And I think we talked about  
 2 this before the break, but I want to clarify. On this  
 3 map that shows all the names, there's obviously more  
 4 circles of names than 41.  
 5 A Right.  
 6 Q And is that because each tract that is owned  
 7 by that particular individual is separately outlined?  
 8 A I didn't design this, but looking at it, it  
 9 does appear that each individual property is outlined  
 10 and a name is attached to it.  
 11 Q So where there are multiple tracts with the  
 12 same name, is it the city's position that the letter  
 13 that's in DLM-10 serves as a request for service to  
 14 all of those tracts?  
 15 A That wouldn't be my understanding of it. I  
 16 would think an individual is requesting service, and  
 17 unless they chose to list multiple locations or  
 18 properties on their application, then I myself  
 19 personally would look at it and say it's going to the  
 20 home place or wherever the gentleman or lady is living  
 21 at the time.  
 22 Q So you wouldn't necessarily construe these  
 23 letters to be a request for service to an entire farm,  
 24 just the homestead that's at that location?  
 25 A That would be how I would read them myself.

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1 Q Let me just focus your attention on the area  
2 south of Highway 82.  
3 JUDGE NORMAN: And what map are you  
4 looking on?  
5 MR. CARLTON: On DLM-11.  
6 JUDGE NORMAN: Okay.  
7 Q (BY MR. CARLTON) Within the requested  
8 service area.  
9 A Okay.  
10 JUDGE NORMAN: Okay. Now, where is  
11 Highway 82?  
12 MR. CARLTON: I'm sorry, Your Honor.  
13 A Just right below the center crease.  
14 JUDGE NORMAN: Okay. I see it.  
15 MR. CARLTON: You can barely see it.  
16 It's a thicker like that runs right through the  
17 middle --  
18 JUDGE NORMAN: All right.  
19 MR. CARLTON: -- of the map from east to  
20 west.  
21 JUDGE NORMAN: Oh, I see it. Okay.  
22 MR. CARLTON: It forms the southern  
23 boundary of the existing city CCN on the west side.  
24 JUDGE NORMAN: I don't see that.  
25 MR. CARLTON: Okay. Highway 82 as it

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1 comes west out of town runs right along the edge of  
2 that new CCN boundary, the yellow and red hashed area.  
3 JUDGE NORMAN: I see a double line in  
4 the center of the page, and I see 80 --  
5 MR. CARLTON: That's it.  
6 A That's it.  
7 JUDGE NORMAN: -- 82. Yeah, okay.  
8 Q (BY MR. CARLTON) Now, I want you to focus  
9 your attention on the area to the south. I'm not  
10 particularly concerned with the things to the north.  
11 A Okay.  
12 Q Would you confirm for me that none of the  
13 property owners that are shown or identified on this  
14 map to the south have actually filed an application  
15 for water service from the city?  
16 A To the best of my knowledge, none of them  
17 have.  
18 Q And would you also confirm for me that none  
19 of these property owners identified have filed  
20 subdivision plats with the city?  
21 A On the property south --  
22 Q Correct.  
23 A -- or any property that they might own?  
24 Q On the property south.  
25 A Okay. Because we do have a developer,

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1 Michael Hermes, down in this area, but his development  
2 is on the north side of 82.  
3 Q Correct, correct.  
4 A We have property owner T. Zimmerer who has  
5 some development in the south -- central southeastern  
6 part of the City of Lindsay; J. Bezner I'm assuming  
7 could be Jacob Bezner, and if I'm not mistaken -- he  
8 hasn't filed for subdivision, but I know he owns  
9 property that -- he has talked to us about the street  
10 that leads into it being wide enough for access into  
11 his property on the south -- right south central,  
12 south of 1st street.  
13 Q And the area --  
14 A To answer your original question, I'm not  
15 seeing a name that I'm familiar with having some kind  
16 of a development starting, other than what I've  
17 mentioned, and most of those are somewhere other than  
18 south where we're looking at.  
19 Q Okay. So when we talk about J. Bezner, the  
20 area that he's come in and asked about is actually  
21 within the city limits?  
22 A Yes.  
23 Q Okay. And is the same thing true with  
24 Zimmerer?  
25 A Tommy Zimmerer?

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1 Q Yes.  
2 A I think most of his is inside the city limits  
3 also.  
4 Q Okay. So it's south of 82, but in the city  
5 limits?  
6 A Right.  
7 JUDGE NORMAN: And his name is Zimmerer,  
8 isn't it?  
9 A Well, us poor Germans pronounce it Zimmer.  
10 We couldn't afford both double E-Rs.  
11 JUDGE NORMAN: Okay. Okay.  
12 Q (BY MR. CARLTON) It's spelled Zimmerer?  
13 A Yes, it is spelled Zimmerer.  
14 MR. CARLTON: Thank you, Your Honor. I  
15 appreciate your patience. Thank you, Mr. Metzler.  
16 THE WITNESS: You're welcome.  
17 MR. CARLTON: Pass the witness.  
18 JUDGE NORMAN: Okay.  
19 MR. CARLTON: Oh, before I do real  
20 quick, I want to confirm LPWC-8 and LPWC-9 have been  
21 admitted. Correct?  
22 JUDGE NORMAN: Yes.  
23 MR. CARLTON: Thank you.  
24 JUDGE NORMAN: Okay. Yes, go ahead,  
25 Mr. Rodriguez.

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## FURTHER REDIRECT EXAMINATION

BY MR. RODRIGUEZ:

Q I'm going to ask you some questions, first off, Mr. Metzler, regarding the service requests that are DLM-10 and attached -- or in Exhibit APP-2 and just to kind of -- really kind of clarify some of the confusion that there might have been on that.

Now, if you look at the very first page of that, which is Bates Page No. 0351 --

A I'm at that.

Q Okay. And you would agree, wouldn't you, that all the letters are sequentially numbered from there?

A Yes.

JUDGE NORMAN: You're looking at 03?

MR. RODRIGUEZ: 51, APP -- Bates Page No. APP0351.

JUDGE NORMAN: You know, somehow I'm lost. APP -- okay.

MR. CARLTON: It's in Exhibit DLM-10.

JUDGE NORMAN: DLM-10?

MR. RODRIGUEZ: Exhibit 2.

JUDGE NORMAN: All right. DLM-10,

sorry.

MR. RODRIGUEZ: DLM-10.

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JUDGE NORMAN: Okay.

A Yes, sequentially numbered.

Q (BY MR. RODRIGUEZ) Now, if you look at the very last page of that, it's at APP0414. Right?

A Correct.

Q And the very first page is APP0351?

A Correct.

Q I'm assuming because you're an educator you can perform simple subtraction for me. How many requests if you just did that simple subtraction would you get?

A Sixty-three.

Q Sixty-three? So when you take out the duplicates that you and Mr. Carlton went through earlier, that's where you came up with the 54 that you spoke about earlier. Correct?

A Yes.

Q Okay. I just wanted to make clear that it's not 54 and then you take away the duplicates. It was 63 and you took away the duplicates?

A Yes.

Q Mr. Metzler, I'm going to ask you to go back to the LPWC-8 exhibit, which is the ordinance that you and Mr. Carlton spoke about extensively before lunch. I'm going to ask you when was that ordinance passed?

A August 8, 2005.

Q What is your understanding of what the city's CCN was at the time that this ordinance was approved by the city?

A Our CCN was basically the same as our city limits around the city.

Q And we're talking water specifically?

A Water specific.

Q Okay. Now, Mr. Metzler, do you understand that the water -- your CCN obligates you to provide service?

A Yes.

Q Okay. Now, this ordinance here, LPWC-8, actually talks about areas that are outside the city's corporate limits. Is that correct?

A That's correct.

Q And those would also be areas that are outside -- would have been outside the CCN at the time that it was approved. Right?

A Correct.

Q Now, do you have an opinion based on what needs to be done to this ordinance now?

A In light of the TCEQ's recommendation on September 30th granting us additional water CCN territory on the north part of town, I would expect

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the city needs to go back to this ordinance, revisit it, possibly do away with it and replace it with a new one. But the bottom line is we now have CCN water responsibilities that are outside of our city limits, and we're going to have to adjust the ordinances that we live by to recognize that fact.

Q So you recognize that if they were -- if you had a qualified applicant now outside your city limits but in your CCN, it's not can we provide service or do we choose to provide service, you understand that it's an obligation now?

A Yes.

Q Okay. Now, since your CCN was amended on September 30, 2008, have you had another city council meeting since that time to be able to reconsider what your service extension policies are going to be outside your corporate limits?

A No, we have not.

Q Mr. Metzler, you were a member of the city's planning and zoning commission. Is that right?

A That's correct.

Q Can you tell me basically what your duties were on the P&Z?

A A couple of primary duties. One is to help interpret current ordinances and regulations dealing

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<p>1 with planning and zoning that we have on the books.</p> <p>2 Another one is looking to the future and seeing how</p> <p>3 new ones need to be brought up or older ones adjusted</p> <p>4 to fit new circumstances.</p> <p>5 Q Now, do you know what the city -- well, the</p> <p>6 city's planning and zoning commission, how far its</p> <p>7 jurisdiction extended?</p> <p>8 A Well, we handle things inside the city</p> <p>9 limits, and then we could look at subdivision</p> <p>10 situations in the ETJ.</p> <p>11 Q So if we look at DLM-13, which is attached to</p> <p>12 city's Exhibit APP-2, with respect to subdivisions,</p> <p>13 everything kind of within that little red area that's</p> <p>14 identified in the legend as City of Lindsay existing</p> <p>15 ETJ area, that would be the jurisdiction of the --</p> <p>16 that's as far as the jurisdiction of the P&amp;Z would</p> <p>17 extend. Correct?</p> <p>18 A Correct.</p> <p>19 Q Okay. So you wouldn't necessarily -- or the</p> <p>20 city wouldn't see, for instance, if a plat or</p> <p>21 subdivision request was filed in any of the other</p> <p>22 areas outside that red-lined area?</p> <p>23 A That wouldn't come to us.</p> <p>24 Q Now, I want to clear up some -- I guess some</p> <p>25 confusion that there might have been before we broke</p>	<p>1 the ordinance earlier.</p> <p>2 MR. CARLTON: The question was just</p> <p>3 anywhere in here does the document say this.</p> <p>4 Q (BY MR. RODRIGUEZ) Would someone need to</p> <p>5 come and request service from the city?</p> <p>6 JUDGE NORMAN: Well, you know what, I'm</p> <p>7 just going to -- what I'm going to do is the document</p> <p>8 is the best evidence. It is, but I need -- I want to</p> <p>9 know that information, so --</p> <p>10 MR. RODRIGUEZ: Well, let me rephrase</p> <p>11 it, Your Honor.</p> <p>12 JUDGE NORMAN: All right.</p> <p>13 MR. RODRIGUEZ: I'll see if I can do it.</p> <p>14 Q (BY MR. RODRIGUEZ) Is it your understanding,</p> <p>15 Mr. Metzler, that after reviewing LPWC-8 that the only</p> <p>16 time one needs to come to the city council is when</p> <p>17 they're making application for water service or when</p> <p>18 they're requesting water service?</p> <p>19 A Well, if requesting water service carries the</p> <p>20 higher degree, that will eventually end up before city</p> <p>21 council. If it doesn't, it will go to city staff or</p> <p>22 the city secretary first. But in either -- you know,</p> <p>23 for either situation of asking for water, it's going</p> <p>24 to start at city -- the city secretary. I mean,</p> <p>25 someone is not usually going to get on our agenda and</p>
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<p>1 for lunch in questioning from Lindsay Pure Water. I</p> <p>2 believe that the question that was asked of you was</p> <p>3 whether someone that was requesting service needed to</p> <p>4 come to the city council to request service from the</p> <p>5 city. Is that what your understanding is?</p> <p>6 A Of the question earlier?</p> <p>7 Q Yes.</p> <p>8 A Someone asking for water comes before the</p> <p>9 city council? Well, initially they're going to go</p> <p>10 to -- if they're inside our city limits?</p> <p>11 Q No, outside the city.</p> <p>12 A Outside the city limits, but inside of our</p> <p>13 CCN?</p> <p>14 Q Well, let me go back. It was basically</p> <p>15 someone that was outside of your corporate limits, and</p> <p>16 then you-all were looking at LPWC-8.</p> <p>17 A All right.</p> <p>18 Q Okay? Anywhere in here does it provide for</p> <p>19 someone needing to go to the city council to request</p> <p>20 service from the city?</p> <p>21 MR. CARLTON: Objection. I'll turn this</p> <p>22 around, the document is the best evidence of what it</p> <p>23 says.</p> <p>24 MR. RODRIGUEZ: Your Honor, you allowed</p> <p>25 him to ask the questions about his interpretation of</p>	<p>1 come in and ask for city water somewhere in the CCN.</p> <p>2 They're going to go through the city staff first, at</p> <p>3 least that's how typically it's been handled. They're</p> <p>4 not going to come directly to us asking if they can</p> <p>5 have permission to get some water.</p> <p>6 Q Mr. Metzler, I'm going to ask you to go to</p> <p>7 Applicant's Exhibit No. 1 and turn to Page APP1006,</p> <p>8 and at the same time while you're looking at that ask</p> <p>9 you to look at DLM-13 in Applicant's Exhibit No. 2.</p> <p>10 Now, what do you understand in DLM-13,</p> <p>11 the pink area to be, the hatched pink area?</p> <p>12 A To be our additional requested water CCN</p> <p>13 territory.</p> <p>14 Q And do you see kind of in the south area,</p> <p>15 Mr. Metzler, there's kind of a seven that's kind of</p> <p>16 redacted out of that area?</p> <p>17 A Yes, I do.</p> <p>18 Q Do you know what that is?</p> <p>19 A It says South Ridge.</p> <p>20 Q Okay. And do you understand that to</p> <p>21 be the --</p> <p>22 A Lindsay Pure Water.</p> <p>23 Q Their CCN area. Correct?</p> <p>24 A Correct.</p> <p>25 Q Okay. Now, when you look at --</p>

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# HEARING ON THE MERITS

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1 JUDGE NORMAN: And where is that again?  
2 Okay. So ask the witness, too. Okay. Right there on  
3 that red line -- is that right -- right just south of  
4 that red line?  
5 A Well, it's on the green line. Going back to  
6 your left is a white seven shaped piece of property.  
7 JUDGE NORMAN: Okay. Oh, I see. All  
8 right.  
9 Q (BY MR. RODRIGUEZ) Let me be clear with  
10 that. When you look at DLM-11 in conjunction with  
11 DLM-17 --  
12 A Okay.  
13 Q When you look at -- when you compare DLM-17  
14 with DLM-13 and you see the green area on DLM-17, what  
15 do you understand that green CCN to be?  
16 A The CCN belonging to Lindsay Pure Water.  
17 Q Okay. And in DLM-13, the area that's not  
18 being requested?  
19 A Belonging to -- the CCN belonging to Lindsay  
20 Pure Water.  
21 Q Okay. So when you look then back at the  
22 application, APP-1, on page -- and specifically Bates  
23 Page No. APP1006, there are no other -- the statement  
24 there, is that an incorrect statement?  
25 A On what portion?

1 Honor.  
2 JUDGE NORMAN: I'm sorry?  
3 MR. RODRIGUEZ: I think I'm ready.  
4 JUDGE NORMAN: Okay. Go ahead.  
5 Q (BY MR. RODRIGUEZ) Mr. Metzler, thank you  
6 again for indulging me as I needed to take my break.  
7 I'm going to ask you some questions  
8 again regarding DLM No. 11 and DLM-10, which are both  
9 attached to your prefiled testimony, which is Lindsay  
10 Exhibit APP-2. And can you read just silently to  
11 yourself any of the requests that are in DLM-10, just  
12 to yourself?  
13 A Okay.  
14 Q Are most of the requests that are made in  
15 DLM-10 fairly similar?  
16 A Yes, they are.  
17 Q Okay. Do you read anywhere -- or what is  
18 your understanding with respect to what those people  
19 are requesting or how they're requesting service from  
20 the city?  
21 A When looking back through and reading them,  
22 it would be very easy to think that any -- any one of  
23 them is asking to have water or sewer services brought  
24 to all the properties that they own or their property  
25 location. Quite a few of these people own multiple

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1 Q Under Subsection F.  
2 A F, all right. Now looking at it, I would say  
3 that the answer is correct that's given under F.  
4 Q And why would you say that the answer is  
5 correct under F on APP1006?  
6 A The service area for a water company inside  
7 of the area we're asking for, it's a defined territory  
8 that we're not asking for any of it. They have their  
9 boundaries, they have their unique spot in the world  
10 to sell water.  
11 Q Have you sought to certificate -- or has the  
12 City of Lindsay -- I have to be more specific --  
13 sought to certificate any territory within the Lindsay  
14 Pure Water CCN area?  
15 A No.  
16 MR. RODRIGUEZ: Your Honor, can I take  
17 about five minutes? I just need to organize some  
18 things.  
19 JUDGE NORMAN: Sure.  
20 MR. RODRIGUEZ: I don't have very much  
21 more for this witness.  
22 JUDGE NORMAN: Yeah, let's go off the  
23 record.  
24 (Recess: 2:45 p.m. to 2:48 p.m.)  
25 MR. RODRIGUEZ: I think I'm ready, Your

1 acres of land. They're not just a single family out  
2 in the middle of nowhere. So I can see where they're  
3 asking to have water or sewer services brought to  
4 their entire property, whether it was a  
5 200-by-200-foot lot or 200 acres.  
6 Q Okay. And is it reasonable that many of  
7 those believe -- after looking at DLM-11 that many of  
8 those requestors own multiple pieces of property?  
9 A Yes, several of them do own multiple pieces.  
10 Q I believe Mr. Hess, which is south of the  
11 South Ridge development on DLM-10, was referred to by  
12 Mr. Carlton.  
13 A Yes, he has at least three.  
14 Q Three tracts. From your review of the  
15 service requests, would there be in your  
16 understanding -- or what would be your understanding  
17 as to which parcel of property he would be asking for  
18 service from? I direct your attention to APP373.  
19 A Okay. Well, it could be any one of the three  
20 or all three of them.  
21 Q Does he limit it in his request to any  
22 particular parcel?  
23 A No, he doesn't.  
24 Q In fact he says "my property." Right?  
25 A "My property" --

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