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1 JUDGE NORMAN: There's no R there that I  
2 see.  
3 A Double N.  
4 JUDGE NORMAN: Who knows. Mr. Metzler,  
5 is it F-U-H-R?  
6 MR. METZLER: Yes, it is.  
7 JUDGE NORMAN: Okay. It's not -- on the  
8 map it's F-U-H, but it's actually F-U-H-R-M-A-N-N.  
9 A He is my son-in-law's second cousin.  
10 JUDGE NORMAN: Okay.  
11 Q (BY MR. RODRIGUEZ) Likewise, Mr. Myrick, I'm  
12 going to direct your attention down here to Albert and  
13 Kay Anger. It's in the southwest corner of the city's  
14 requested service area just north of 1630. Do you see  
15 that?  
16 A Yes, sir.  
17 Q How much -- how much would it cost for  
18 Lindsay Pure Water to provide service there?  
19 A Same answer, sir.  
20 Q Same answer as what?  
21 A \$400,000. I would estimate that to be  
22 somewhere in the neighborhood of seven to eight miles.  
23 Q Now, Mr. Myrick, you understand that -- well,  
24 let me ask this: Is Lindsay Pure Water Company  
25 considered an investor-owned utility by the TCEQ?

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1 A Yes, sir.  
2 Q Okay. And is it your understanding that  
3 Lindsay Pure Water Company can only serve outside of  
4 its CCN territory up to one-quarter mile?  
5 A Yes, sir, that's my understanding.  
6 Q Okay. So if Mr. Fuhrmann or the Angers  
7 wanted you to provide service to them, could you do it  
8 under your present certificate?  
9 A No, sir.  
10 Q They're both out -- they're both well outside  
11 your one-quarter mile halo around your CCN. Is that  
12 correct?  
13 A That is correct.  
14 Q So it wouldn't be just the \$400,000  
15 construction costs to provide service to them, would  
16 it?  
17 A You asked me what it would cost to service  
18 that.  
19 Q That's right.  
20 A And I answered 400,000, but, no, it would be  
21 more than that.  
22 Q Okay.  
23 A Because I would -- if I had the ability to  
24 get a CCN, then it would cost considerably more.  
25 Q Okay. Now, the -- so in addition to the

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1 construction costs, you also need the regulatory  
2 approvals to provide that service. Is that correct?  
3 A Yes, sir, and you would need the need of  
4 someone needing water.  
5 Q Right. If these people came to you and asked  
6 for service is what I'm asking you. That was the  
7 premise that I gave you.  
8 A Yes, sir, you're right.  
9 Q And so the -- and so not only would you have  
10 the construction costs, but you would also have to go  
11 through the expense of obtaining the CCN. Is that  
12 correct?  
13 A That is correct.  
14 Q And you estimated that would be at about 20  
15 to \$30,000 or more earlier?  
16 A No, sir, I estimated -- I said that when I  
17 got my CCN in '97 I thought the cost was in that  
18 range.  
19 Q Okay. And then I asked you later would it be  
20 more today, and you agreed with me that it would be.  
21 A Oh, it definitely would be, I'm sure.  
22 Q Okay. So how much of the 430 plus that it  
23 would cost to provide service to the Angers or the  
24 Fuhrmanns would Lindsay Pure Water charge to the -- to  
25 those requestors of service?

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1 A Repeat that question.  
2 Q If it cost Lindsay Pure Water Company more  
3 than \$430,000 to provide service, let's take the  
4 Angers for instance, how much of that cost would be  
5 borne by the Angers versus being borne by Lindsay Pure  
6 Water Company?  
7 A And you're saying if I had a CCN and was  
8 requested service, how much would it cost?  
9 Q No, sir. I asked you -- I think we already  
10 established that it would be more than \$430,000 --  
11 A Yes.  
12 Q -- for you to provide service to the Angers.  
13 A Yes.  
14 Q My question is, how much of that \$430,000  
15 would Lindsay Pure Water Company require the Angers to  
16 pay in order for them to receive service?  
17 A Probably all of it.  
18 Q Mr. Myrick, you would agree with me, wouldn't  
19 you, that someone might request water service without  
20 subdividing their property. Right?  
21 A They would want the protection of a CCN in  
22 order to keep someone else out, yes.  
23 Q I'm not asking that. I'm asking you about a  
24 property owner. A property owner wants service  
25 because their pump has gone out or for whatever other

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1 reason, it's possible that that property owner might  
2 make a request for water service without the intention  
3 of subdividing his property, isn't it?  
4 A And be serious and be ready to pay the price  
5 of what it would cost to take them -- bring them  
6 water?  
7 Q No. My question is, might someone ask for  
8 water service, Mr. Myrick, without the intention of  
9 subdividing their property?  
10 A I guess I could ask -- yes, the answer would  
11 be yes.  
12 Q Mr. Myrick, in the time that you have been  
13 the owner of Lindsay Pure Water Company and its  
14 president, has the water well pump ever gone -- become  
15 inoperative?  
16 A As I've stated previously, yes, it has.  
17 Q Okay. I think you stated that in deposition.  
18 I'm asking you -- the only reason why I'm asking you  
19 again is because we're here today.  
20 A Okay.  
21 Q My apologies --  
22 A Not a problem.  
23 Q -- if I'm being repetitive to you.  
24 MR. RODRIGUEZ: Your Honor, can I take  
25 about five minutes? I think I'm about done --

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1 JUDGE NORMAN: Sure.  
2 MR. RODRIGUEZ: -- but I just want to  
3 organize myself before I pass.  
4 JUDGE NORMAN: Yeah, let's limit it to  
5 five minutes, but anybody can take a break if they  
6 want to, but let's be back in five minutes.  
7 (Recess: 2:07 p.m. to 2:13 p.m.)  
8 JUDGE NORMAN: Okay. Let's go back.  
9 Q (BY MR. RODRIGUEZ) Mr. Myrick, I'm going to  
10 use a term that's become famous by your attorney.  
11 I've just got a couple more questions for you.  
12 If Lindsay Pure Water needs additional  
13 money for capital or for -- to fund a project or just  
14 needs additional money --  
15 A Such as putting infrastructure in Phase IV?  
16 Q Such as that.  
17 A Yes, sir.  
18 Q That's a good example -- Lindsay Pure Water  
19 could borrow the money. Is that correct?  
20 A Myrick Development could.  
21 Q Okay.  
22 A And it would be -- it would be -- on the  
23 books, it would be put into Lindsay Pure Water  
24 Company.  
25 Q Lindsay Pure Water Company would borrow the

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1 money from Myrick Development. Is that correct?  
2 A Yes.  
3 Q Okay. Another option for -- to generate more  
4 revenue for Lindsay Pure Water is it could add -- it  
5 could increase rates as well. Right?  
6 A Yes, it could.  
7 Q If it went through the proper TCEQ process,  
8 et cetera?  
9 A If it -- yes.  
10 Q And would another funding mechanism be -- for  
11 Lindsay Pure Water would be to get new equity?  
12 A Explain.  
13 Q Do you know what equity is?  
14 A Yes.  
15 Q Stock?  
16 A Yes.  
17 Q Would an additional funding source for  
18 Lindsay Pure Water be new equity?  
19 A No, I would not do that, unless my accountant  
20 told me to.  
21 Q What other funding sources might be available  
22 to Lindsay Pure Water besides those three?  
23 A That would be it.  
24 Q Now, I believe, Mr. Myrick, in my -- we  
25 talked about this, I believe, in the deposition. So I

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1 apologize if this seems repetitive, but isn't it true  
2 that you don't -- isn't it true that the City of  
3 Lindsay has the capability of providing service  
4 throughout this requested service territory?  
5 A If you're talking about the funds to fund  
6 any -- I suppose -- I guess the best way to say that  
7 is the City of Lindsay could fund anything they want  
8 to do with regards to taking water anywhere they want  
9 to take it.  
10 Q Anywhere within the requested service  
11 territory?  
12 A Well, I don't know. The city doesn't have to  
13 have a CCN I understand.  
14 Q I'm asking you about the requested service  
15 territory.  
16 JUDGE NORMAN: Do they have the ability  
17 to do that?  
18 A Yes, they do have the ability.  
19 MR. RODRIGUEZ: Your Honor, I pass the  
20 witness.  
21 JUDGE NORMAN: Okay. Mr. Carlton?  
22 MR. CARLTON: I guess I can't take a  
23 break.  
24 (Laughter)  
25

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40 (Pages 427 to 430)

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1 REDIRECT EXAMINATION  
 2 BY MR. CARLTON:  
 3 Q I'm going to try and clarify a couple of  
 4 things Mr. Rodriguez was asking you.  
 5 A Yes, sir.  
 6 Q You talked about your original application  
 7 for a CCN.  
 8 A Yes, sir.  
 9 Q And you indicated it was protested by  
 10 Mr. Hess.  
 11 A Yes, sir.  
 12 Q What did Mr. Hess do in protesting that  
 13 application?  
 14 A I truly do not know.  
 15 Q Did he -- in what way did he -- well, did you  
 16 ever reach an agreement with Mr. Hess?  
 17 A I would have had to because he dropped his  
 18 protest, and I'm sure he probably, whenever we  
 19 advertised for a CCN -- I would think that there's a  
 20 place to either write or file a protest with the TCEQ,  
 21 then the Railroad Commission, and I'm sure that's what  
 22 he did.  
 23 Q And you said he dropped that protest?  
 24 A It's my understanding that he dropped that.  
 25 Q So I'm trying to get clarification. Was

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1 there a contested hearing like this on that first  
 2 application, or was it with regard to the town of  
 3 Lindsay's amendment or both?  
 4 A Say that again.  
 5 Q I'm trying to clarify. You had testified  
 6 with Mr. Rodriguez that there was -- there was a  
 7 contested hearing --  
 8 A Yes.  
 9 Q -- an order -- a contested hearing like this  
 10 on your original CCN application.  
 11 A Yes, sir.  
 12 Q But you also testified Mr. Hess dropped his  
 13 protest. So I'm trying to clarify whether or not  
 14 there really was a hearing or whether or not there was  
 15 a process through which TCEQ just issued you the CCN,  
 16 if you recall.  
 17 A I was not here. So I do not recall.  
 18 Q Okay. You also told Mr. Rodriguez that you  
 19 have had a well pump failure. Do you recall that  
 20 testimony?  
 21 A Yes, sir.  
 22 Q What was the impact to your customers of that  
 23 well pump -- well pump failure?  
 24 A The biggest impact was for me to go around  
 25 and tell them that I had a well failure, and if they

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1 would curtail their use of water for at least a few  
 2 hours, 12 to 14 hours, I would have it back on line.  
 3 And I had it back on line in less than 24. And it  
 4 was -- if you were talking about impact of water,  
 5 there was zero impact.  
 6 Q What did you do to get the well back on line?  
 7 A I called Mr. Neusch and told him the problem  
 8 that I had. He came out within a few hours, which is  
 9 a miracle, and assessed the problem, got a pump and  
 10 put it in that night.  
 11 Q Were the customers ever without water?  
 12 A The customers were never without water. I  
 13 had like between 30 and 60,000 gallons in my  
 14 standpipe, and it was more than enough for a couple of  
 15 days.  
 16 Q Have any customers ever filed any complaints  
 17 with you or, to your knowledge, with the TCEQ  
 18 regarding the quality of service they receive?  
 19 A None to my knowledge, and I'm sure I would  
 20 know if they were.  
 21 Q You went through -- I'll call it a convoluted  
 22 discussion with Mr. Rodriguez about the various lots  
 23 in Phases I, II and III --  
 24 A Yes.  
 25 Q -- that have houses --

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1 A Yes, sir.  
 2 Q -- on them. Would you pull out ED Exhibit 2?  
 3 A Yes, sir.  
 4 Q I believe in your testimony you indicated  
 5 that all the lots had been sold, except for Lot 3,  
 6 within Phase I, which is shown on the first page.  
 7 A Yes, sir.  
 8 Q Now, there are some lots shown on the first  
 9 page that don't have any numbering on the inside of  
 10 those. Are those lots part of Phase I?  
 11 A No, sir. Those are Phase II only, there to  
 12 show where Phase I would be.  
 13 Q Okay. Now, Mr. Rodriguez asked you -- or  
 14 stated whether any of the seven lots that don't have  
 15 homes on them receive service from Lindsay Pure Water.  
 16 Do you recall that?  
 17 A Yes, sir, I do.  
 18 Q And I believe you testified that none of them  
 19 receive service. Is there service available to those  
 20 lots should they desire it?  
 21 A Yes, sir.  
 22 Q And how is that available to them?  
 23 A There is a -- there's a meter box with a  
 24 three-quarter inch -- and I want to say it's called an  
 25 incorporation -- there to accept a meter.

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1      Q    So there are service lines, stubs --

2      A    There's service lines -- stubs to every lot

3      that's available.

4      Q    And would that be true for the lots in Phases

5      II and III as well?

6      A    Yes, sir, it is -- well, with the exception.

7      The three lots -- if you turn to Page 2, the three

8      lots on the extreme left side, which are floodplain

9      lots, there isn't -- there is not water taps -- there

10     are not water taps there.

11     Q    You testified there were ten homes in

12     Phase I. Correct?

13     A    Let me count them. I may have counted ten,

14     but I count eleven right now. Just a minute. Let me

15     count them again. I'm not going to write on your --

16     Q    Do you need a piece of paper?

17     A    No. I need my -- I promise I won't write on

18     it. Jolly, Kohler, Horn, Cooney, Knight -- there

19     are 12.

20     Q    And so that would mean there are only five

21     lots in Phase I without homes. Correct?

22     A    There are five without homes.

23     Q    And would you tell me -- would you go through

24     that same process to verify the number of homes in

25     Phase II?

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1      A    Yes, sir. There are eight homes in Phase II.

2      Q    Okay. And how many of those homes are within

3      the area that you now -- within the area that's

4      generally shown as part of the CCN in TCEQ's records

5      in Phase II?

6      A    Well, if I were to assume that TCEQ's map is

7      correct, there would be 12, Phase I only. It is my

8      belief and my understanding that Phase I and Phase II

9      were -- had a CCN.

10     Q    Okay. Now, in response to Mr. Rodriguez's

11     questioning, you indicated that in Phase II the lots

12     that are adjacent to 3108 would be within the CCN --

13     A    Yes, sir.

14     Q    -- as depicted on TCEQ's maps?

15     A    That's correct.

16     Q    Are there any homes on any of those lots?

17     A    One -- well, yeah, one.

18     Q    So would one of the eight homes in Phase II

19     be potentially within --

20     A    Phase II.

21     Q    -- TCEQ's CCN?

22     A    Repeat that.

23     Q    Would that one home on those lots adjoining

24     3108 be within the TCEQ boundary as shown -- with the

25     CCN boundary as shown in TCEQ's records?

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1      A    Yes.

2      Q    So the other seven would not?

3      A    That is correct.

4      Q    And none of the homes in Phase III would be?

5      A    That is correct.

6      Q    I believe you also talked with Mr. Rodriguez

7      about the corporate structure for your entities, and

8      he asked you a question about South Ridge of Lindsay.

9      Do you recall that?

10     A    Yes, sir.

11     Q    Is the South Ridge of Lindsay a separate

12     corporation?

13     A    The South Ridge of Lindsay -- I testified

14     that it was a corporation. It is not. Myrick

15     Development Company is a corporation. South Ridge of

16     Lindsay is the name that we use, and I stand corrected

17     by my accountant that I called just a little bit

18     ago -- well, at dinner a little bit ago.

19     Q    How much of the 96 acres -- well, excuse me.

20     Let me start over.

21             There's a portion of the South Ridge of

22     Lindsay, the 96 acres, that is not apparently within

23     the CCN boundaries as shown on the TCEQ maps.

24     A    Yes, sir.

25     Q    How much of that area that's not within the

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1      CCN, but is within the South Ridge of Lindsay

2      development, is within a quarter mile of the CCN area?

3      A    All of it.

4             JUDGE NORMAN: All of the -- excuse

5      me -- all of the South Ridge is within a quarter mile

6      of the CCN area?

7      A    All of the lots with the point of origin

8      being where the water taps are --

9             JUDGE NORMAN: Taps, yeah.

10     A    -- is within a quarter mile --

11             JUDGE NORMAN: Uh-huh.

12     A    -- of the one lot or -- well, I obviously

13     have to have a CCN -- well, I guess I do. I would

14     think I would obviously have to have a CCN on my water

15     well lot.

16             JUDGE NORMAN: Okay.

17     A    And I would also -- I know I have a CCN on

18     the first lot on the left in Phase II, and the depth

19     is 220 feet.

20             JUDGE NORMAN: So that's less than a

21     quarter mile.

22     A    And the entire distance from my east to my

23     west boundary is 1766 feet at the south end, which

24     means that all of the lots of the 96 acres would be

25     within --

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1 JUDGE NORMAN: A quarter mile.  
2 A -- a quarter of a mile, sir.  
3 JUDGE NORMAN: All right.  
4 Q (BY MR. CARLTON) And when you refer to the  
5 point of origin, you're referring to the location of  
6 the meter?  
7 A Yes, sir.  
8 Q You also were asked some questions -- a  
9 question about whether the issuance of a CCN makes it  
10 easier for developers -- to sell land to developers.  
11 Do you remember that question by Mr. MacLeod?  
12 A Yes, sir.  
13 Q And in this situation in the community of  
14 Lindsay, would the issuance of a CCN, in your opinion,  
15 make it more likely that the land would sell?  
16 A The issuance of a CCN to the City of Lindsay?  
17 Q To anyone.  
18 A Well, having a CCN would mean that I could  
19 furnish water to all of my lots, and it would  
20 definitely help the sale of a lot because I could  
21 furnish water to them.  
22 Q If you had -- if you held the CCN?  
23 A Yes, if I held the CCN.  
24 Q If you were -- or if the town of Lindsay is  
25 granted its CCN as it's requested, exclusive of the

1 JUDGE NORMAN: Okay. Yeah, sure.  
2 A I mean, it's -- I, if I were going to take  
3 water to any of my neighbors, could do it twice as  
4 cheap as Lindsay or three times as cheap as Lindsay.  
5 Q (BY MR. CARLTON) Would the current  
6 landowners be more likely to sell as a result of the  
7 CCN?  
8 A No. The landowners are not going to sell  
9 anyhow unless -- unless someone dies or the -- can I  
10 go over that again?  
11 JUDGE NORMAN: I think I understood it.  
12 A Okay.  
13 JUDGE NORMAN: I think I got it pretty  
14 much. If there's something you need to add, that  
15 would be just fine, but I think I understand your  
16 point of view on that.  
17 A The only way that it would sell is if the  
18 heirs could not agree on a split of the land. And if  
19 they could not agree on a split of the land, then they  
20 would have to sell in order to cut up the money  
21 because money is easier than land.  
22 Q (BY MR. CARLTON) We talked about the -- and  
23 you showed on ED-3 the lines that are currently in the  
24 ground for Lindsay Pure Water Company.  
25 A Yes, sir.

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1 area in South Ridge, what impact would that have on  
2 the likelihood of the land surrounding or the land in  
3 the area the town of Lindsay is seeking being sold?  
4 A I would say it would be devastating.  
5 Q And why is that?  
6 JUDGE NORMAN: To whom? To you?  
7 A If the City of Lindsay got a CCN and I were  
8 not able to furnish water to my lots --  
9 JUDGE NORMAN: That's not your question.  
10 Q (BY MR. CARLTON) That wasn't my question.  
11 A Oh, okay.  
12 Q My question is, if the town of Lindsay  
13 obtains its CCN --  
14 A Yes.  
15 Q -- as requested but does not get it for South  
16 Ridge of Lindsay, what impact do you believe that  
17 would have --  
18 A Okay.  
19 Q -- on the land that would then be subject to  
20 that CCN being sold for development?  
21 JUDGE NORMAN: It would be more likely,  
22 wouldn't it?  
23 A Well, it would depend, sir, on how much the  
24 City of Lindsay -- how much they would charge to bring  
25 the water to them.

1 Q Now, those lines are also shown on ED-2.  
2 Correct?  
3 A Yes, sir.  
4 Q What is the -- what improvements have you  
5 made to the Lindsay system that will allow you to  
6 serve Phase IV when it's constructed?  
7 A When we initially platted Phase I, Phase I  
8 was on the north end of South Ridge. My water well  
9 lot, our water well lot, is on the south end on the  
10 highest part of Phase II. Well, it's not part of  
11 Phase II. It's on the south end of Phase II close to  
12 the road.  
13 I had to take the waterlines through  
14 Phase II to Phase I and loop them back into Phase II.  
15 When we started, we went about approximately 60  
16 to 70 feet and put a valve -- a T and a valve and a  
17 stub to go across the low waterway into Phase IV so we  
18 could loop the entire system, and the system being  
19 Phase I, II and III and IV. And, thereby, creating a  
20 reliable -- I think is the word that Mr. Maroney used,  
21 and that is the only way that I will be able to loop  
22 Phase I, II and III with the water well is to go  
23 through Phase IV. So completing the system is  
24 imperative to have a reliable looped water system.  
25 Q And what is the importance of Phase IV in

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<p>1 that effort?</p> <p>2 A Phase IV is to the -- if you're at the water</p> <p>3 well lot, Phase IV is to the southwest of my water</p> <p>4 well lot. It is due south of Phase III. It's the</p> <p>5 missing loop in order to have a reliable water system.</p> <p>6 And the other part is -- Mr. Mahoney -- Maroney --</p> <p>7 JUDGE NORMAN: Maroney.</p> <p>8 A -- Maroney stated a reliable system was a</p> <p>9 well capable of producing 100 gallons, storage,</p> <p>10 pressure pumps, valves to isolate and a looped system.</p> <p>11 JUDGE NORMAN: Okay.</p> <p>12 A And I must say that I have built this system</p> <p>13 and it has fire protection, fire flow, and I could</p> <p>14 have gone with four-inch lines, but I chose to go with</p> <p>15 six-inch lines because -- number one, because the</p> <p>16 mayor of Lindsay at the time, Robert Walterscheid, and</p> <p>17 a couple more friends advised me that's the way I</p> <p>18 needed to go, and that's the reason that I spent more</p> <p>19 money. And I may be wrong. I don't know. That's</p> <p>20 where I -- that's how I did it.</p> <p>21 And, yes, it is important that if</p> <p>22 someone outside my CCN in the future, in the next ten</p> <p>23 to fifteen years, if I live that long, to supply water</p> <p>24 to them if -- if the need ever comes.</p> <p>25</p>	<p>1 homes on your hundred acres?</p> <p>2 A Ten years. I might mention when we bought</p> <p>3 and started South Ridge, there was one subdivision,</p> <p>4 which was called Henry Street at the time, in the City</p> <p>5 of Lindsay. And shortly after we opened our</p> <p>6 subdivision up, there were five subdivisions within</p> <p>7 the City of Lindsay that opened up in a year, year and</p> <p>8 a half, two years.</p> <p>9 JUDGE NORMAN: And I'm not sure what</p> <p>10 the -- how that testimony is -- what is that intended</p> <p>11 to show?</p> <p>12 A I'm sorry. I didn't hear you, sir.</p> <p>13 JUDGE NORMAN: Mr. Carlton, what is that</p> <p>14 testimony intended to show, that five subdivisions</p> <p>15 started up, you know, shortly after?</p> <p>16 MR. CARLTON: Well, I think it goes to</p> <p>17 where developments are occurring, which is already</p> <p>18 within the town of Lindsay's existing CCN.</p> <p>19 JUDGE NORMAN: Right. Okay.</p> <p>20 MR. CARLTON: And South Ridge is the</p> <p>21 only thing that's been outside.</p> <p>22 JUDGE NORMAN: Okay. I see. Okay.</p> <p>23 MR. CARLTON: I pass the witness.</p> <p>24 JUDGE NORMAN: Okay. Mr. MacLeod?</p> <p>25</p>
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<p>1 Q (BY MR. CARLTON) It is -- excuse me.</p> <p>2 What is the importance to you of being</p> <p>3 able to expand your CCN beyond the South Ridge of</p> <p>4 Lindsay development?</p> <p>5 A Then I could be even more reliable because I</p> <p>6 could have a second well and have the reliability of</p> <p>7 one well. I could have two wells. And if one went</p> <p>8 dry, it would be looped and could supply water</p> <p>9 wherever it is required.</p> <p>10 Q Why can't you have two wells now?</p> <p>11 A It's not economically feasible. \$400,000 for</p> <p>12 a well, I don't have the connections to justify</p> <p>13 another well.</p> <p>14 Q And if the town of Lindsay is granted its CCN</p> <p>15 as it's applied for it, how would that impact your</p> <p>16 ability to expand your service beyond South Ridge?</p> <p>17 A Well, if they were to expand -- I mean be</p> <p>18 granted a CCN and somebody created a subdivision, of</p> <p>19 which I don't think will happen in the next 20 years,</p> <p>20 but that's just me thinking, they would have the legal</p> <p>21 rights to sell water to whoever it is that put in the</p> <p>22 subdivision, and I would not be able to take water to</p> <p>23 them and expand my system, which would make it more</p> <p>24 reliable.</p> <p>25 Q How long has it taken for you to get to 26</p>	<p>1 RECROSS-EXAMINATION</p> <p>2 BY MR. MacLEOD:</p> <p>3 Q Mr. Myrick, I just wanted to clear a few</p> <p>4 things up. If we can get some terms explained, and</p> <p>5 then I'm going to ask a question.</p> <p>6 The TCEQ when determining where the</p> <p>7 CCN -- where you're allowed to serve point of use of</p> <p>8 where the water is used, that's our main term. You</p> <p>9 had used the term "point of origin." Were you</p> <p>10 thinking of "point of use" when you were using the</p> <p>11 term "point of origin"?</p> <p>12 A Yes, sir.</p> <p>13 Q I just wanted to get that clear for the</p> <p>14 record.</p> <p>15 And some people have argued that the</p> <p>16 meter location may be what the CCN should be, but</p> <p>17 that's not the TCEQ's position. I don't think it's</p> <p>18 ever been established, but it doesn't really matter</p> <p>19 because the meters and the point of use for your</p> <p>20 entire subdivision are all within a quarter mile of</p> <p>21 your CCN boundary. Is that right?</p> <p>22 A That is correct.</p> <p>23 Q I also wanted to clarify that Myrick</p> <p>24 Development Company owned the entire 96 or 100 acres</p> <p>25 from the beginning -- when you originally -- when that</p>

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1 property was originally purchased. Is that right?  
2 A From its inception, yes, sir.  
3 Q And the remaining unsold lots are still owned  
4 by Myrick Development Company. Is that correct?  
5 A That is correct.  
6 Q And Myrick Development Company still owns all  
7 the lots that don't have homes on them. Is that  
8 right --  
9 A No.  
10 Q -- or not? So you have sold some lots that  
11 don't have homes on them?  
12 A Yes, sir.  
13 Q I don't think -- I don't know if that's  
14 relevant or we need to go into which ones those are.  
15 So I just wanted to clarify.  
16 A I have in my -- my restrictions that they  
17 have to build within six months. It is not  
18 enforceable.  
19 MR. MacLEOD: Okay. Just a minute.  
20 (Discussion of the record)  
21 Q (BY MR. MacLEOD) Also, I wanted to say now  
22 you have lines in place to serve all the lots whether  
23 they have homes on them or not. Is that only in I, II  
24 and III or also Phase IV?  
25 A I have lines in all -- or taps, if you will,

1 that you were working on that. Have you already  
2 contacted the TCEQ on that, or you're planning to  
3 contact the TCEQ on that?  
4 A I have planned for my -- I contacted a lawyer  
5 this morning about that, and we plan to rectify any  
6 and all wrongs that I have committed.  
7 MR. MacLEOD: Okay. Pass the witness.  
8 THE WITNESS: Thank you, sir.  
9 JUDGE NORMAN: Mr. Rodriguez?  
10 RECROSS-EXAMINATION  
11 BY MR. RODRIGUEZ:  
12 Q Mr. Myrick, I'm going to get you to take a  
13 look again at DLM-17 that's attached to Applicant's  
14 Exhibit No. 2 and --  
15 MS. WHITCEQE: Are you on DLM --  
16 MR. RODRIGUEZ: 17. I'm sorry.  
17 MR. CARLTON: 17.  
18 MR. RODRIGUEZ: Did I say 10?  
19 Q (BY MR. RODRIGUEZ) I'm also going to show  
20 you ED-3 at the same time to show you what the City of  
21 Lindsay's requested service territory is.  
22 A Uh-huh.  
23 Q Now, Mr. Myrick, you'd agree with me that  
24 even if the City of Lindsay's requested service  
25 territory was granted for all its requested area,

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1 lines going around to all of the lots in Phase I, II,  
2 III and IV, with the exception of the three lots that  
3 are in the floodplain in Phase II, which are in the  
4 northwest corner of that hundred acres.  
5 Q All right. Also, of all the letters that  
6 were submitted as requests for service, I think -- was  
7 that was DLM-10? I'm not sure, the requests for  
8 service.  
9 A Yes, sir.  
10 Q None of those requests came from people that  
11 live within the South Ridge of Lindsay subdivision, or  
12 were any of them from that?  
13 A No, sir, none of them did.  
14 Q Also, there's some question about, you know,  
15 you need to get approval from the TCEQ on certain  
16 things like more distribution lines and also serving  
17 people outside of your CCN but within the quarter  
18 mile. First of all, on distribution lines, do you  
19 know -- is the distribution system that is outside of  
20 your CCN that the TCEQ states is your CCN, is that  
21 less than 10 percent of your existing distribution  
22 system or more than 10 percent, or do you know?  
23 A I do not know.  
24 Q All right. And also on serving customers  
25 within the quarter mile but outside your CCN, you said

1 Lindsay Pure Water Company would still have an ability  
2 to expand at east of 3108. Isn't that right?  
3 A Yes, and I would encroach on the --  
4 Q Isn't that the -- isn't there currently no  
5 CCN between -- in a large area just east of 3108 for  
6 water service?  
7 A That is correct.  
8 MR. RODRIGUEZ: I pass the witness, Your  
9 Honor.  
10 JUDGE NORMAN: Mr. Carlton? And this  
11 is --  
12 MR. CARLTON: Limited.  
13 JUDGE NORMAN: Yeah. Well, I'm going to  
14 give you another shot.  
15 MR. CARLTON: Oh, okay.  
16 JUDGE NORMAN: And then after that --  
17 MR. CARLTON: I'll limit it.  
18 JUDGE NORMAN: I'm sorry?  
19 MR. CARLTON: I'll self-limit then.  
20 JUDGE NORMAN: All right.  
21 MR. CARLTON: Just a couple of  
22 questions.  
23 JUDGE NORMAN: Okay. A couple, huh?  
24 (Laughter)  
25

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1      FURTHER REDIRECT EXAMINATION	1      JUDGE NORMAN: And you've been sworn,
2      BY MR. CARLTON:	2      Ms. Benter, and you're under oath.
3      Q    Mr. Myrick, would you -- what would your	3      A    Yes, I have.
4      concerns be about extending your CCN to the east?	4      JUDGE NORMAN: Okay.
5      A    I suppose I would be out of the pan and into	5      Q    (BY MR. MacLEOD) And you work for the TCEQ.
6      the fire. The current sewer CCN is held by the city	6      Right?
7      of Gainesville. At the present time, they have the	7      A    That's correct.
8      same problem, "they" being the people to the east of	8      Q    And what is your position there?
9      3108, being the majority of the land is owned by the	9      A    I'm the team leader of the utilities
10     German descendents. There is 40 acres that's owned by	10     financial review team in the Utilities and Districts
11     Howard Kohler that is not -- I don't think Howard	11     section.
12     Kohler is German, but it's also not for sale. I've	12     Q    I think we've already gone through your
13     already asked, but I don't mind the fight.	13     qualifications when you were testifying earlier. So
14     I'm just simply saying I don't think the	14     I'm not going to revisit that.
15     TCEQ would -- I don't know what the TCEQ would do, but	15     A    Okay.
16     it's -- there's not a need for service there, period.	16     Q    What is the purpose of your direct testimony
17     Q    And you talked earlier in your testimony	17     in this case?
18     about the status of Phase IV.	18     A    To state the ED's opinion as to whether or
19     A    Yes, sir.	19     not the application that was filed by the town of
20     Q    When would you expect Phase IV to be	20     Lindsay should be granted for the water CCN.
21     completed now that you've kind of pulled the trigger	21     Q    Now, in your direct testimony, the
22     on beginning the subdivision process?	22     information that you relied on in forming your
23     A    I would anticipate early 2009, February or	23     opinions, giving your testimony, is it of the type
24     March.	24     reasonably relied upon by experts in your field in
25     MR. CARLTON: Pass the witness.	25     forming opinions or inferences on the subject of how
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1      JUDGE NORMAN: Okay.	1      CCN applications are processed?
2      MR. MacLEOD: No more questions.	2      A    Yes, sir, it is.
3      MR. RODRIGUEZ: Nothing, Your Honor.	3      Q    You've already been handed what has been
4      JUDGE NORMAN: Okay. Thank you very	4      marked as ED-4. Is that the number we're at?
5      much, Mr. Myrick.	5      A    Yes.
6      THE WITNESS: Thank you, sir.	6      Q    And could you identify what that is?
7      JUDGE NORMAN: All right.	7      A    Yes, it's a copy of my prefiled testimony and
8      MR. MacLEOD: Can we take a short break?	8      the attached exhibit.
9      JUDGE NORMAN: Sure. Yeah.	9      Q    Now, before we go into specifically what's in
10     (Recess: 2:55 p.m. to 3:03 p.m.)	10     that and actually offering it for evidence -- well, no
11     (Exhibit ED No. 4 marked)	11     let's go ahead.
12     JUDGE NORMAN: Okay. Are we ready?	12     MR. MacLEOD: Do you want the summary
13     MR. MacLEOD: Yes, Your Honor.	13     before we offer it, Your Honor?
14     JUDGE NORMAN: Go ahead.	14     JUDGE NORMAN: Not necessarily.
15     PRESENTATION ON BEHALF OF THE EXECUTIVE DIRECTOR	15     MR. MacLEOD: Okay.
16     (CONTINUED)	16     JUDGE NORMAN: You can just go on and
17     TAMMY HOLGUIN-BENTER,	17     offer if you want to.
18     having been previously sworn, continued to testify as	18     MR. MacLEOD: I go ahead and would offer
19     follows:	19     Exhibit ED-4.
20     FURTHER REDIRECT EXAMINATION	20     JUDGE NORMAN: And are there any
21     BY MR. MacLEOD:	21     objections other than the ones already noted and ruled
22     Q    Could you state your name for the record,	22     on?
23     please?	23     MR. RODRIGUEZ: No, sir.
24     A    Tammy Lee Holguin-Benter. I go by	24     JUDGE NORMAN: No?
25     Tammy Benter.	25     MR. CARLTON: Not other than the ones



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<p>1 you've already ruled on.</p> <p>2 JUDGE NORMAN: Right. Okay. It's</p> <p>3 admitted with those -- with that notation.</p> <p>4 (Exhibit ED No. 4 admitted)</p> <p>5 Q (BY MR. MacLEOD) Ms. Benter, I believe you</p> <p>6 have some -- I don't know to do the revisions or not.</p> <p>7 You have some revisions to that testimony. Is that</p> <p>8 correct?</p> <p>9 A Yes, I do.</p> <p>10 Q Do you want to go through those?</p> <p>11 A Sure. First of all, I'd like to state that</p> <p>12 my testimony makes reference to specific page numbers</p> <p>13 of other testimonies that I relied on to make my --</p> <p>14 base my final recommendation on. And the page numbers</p> <p>15 I referred to throughout my testimony, I based those</p> <p>16 off of the original testimonies. And so that I</p> <p>17 wouldn't muddy it up much, I'm not changing those page</p> <p>18 numbers, but I am making some additional changes to</p> <p>19 the contents.</p> <p>20 JUDGE NORMAN: You're doing what?</p> <p>21 A Making additional changes to the contents of</p> <p>22 my testimony.</p> <p>23 JUDGE NORMAN: Okay.</p> <p>24 A On Page 1, Line 22, the question currently</p> <p>25 reads "Please describe current your work</p>	<p>1 and on page -- same page, Line 5.</p> <p>2 JUDGE NORMAN: Line 5? Okay.</p> <p>3 A Yes. The number "304," I'd like to change to</p> <p>4 "301." Line 14, the number "396," I'd like to change</p> <p>5 that to "399." Line 16, the No. "470," I'd like to</p> <p>6 change to "467."</p> <p>7 Page 13, starting on Line 19 through</p> <p>8 Line 22, I'd like to strike on Line 19 "by filing a</p> <p>9 CCN amendment application" at the end of the sentence</p> <p>10 or at the end of that line all the way through the end</p> <p>11 of the page.</p> <p>12 JUDGE NORMAN: "By filing" and strike it</p> <p>13 all?</p> <p>14 A Yes.</p> <p>15 Page 14, I'd like to strike the entire</p> <p>16 first paragraph, Lines 1 through 4.</p> <p>17 Same page, on Page 14, Line 9,</p> <p>18 between -- the line starts with "CCN service." Right</p> <p>19 after the word "service" and before the period, I'd</p> <p>20 like to add "and for the area for which Lindsay Pure</p> <p>21 is already providing water service, where Lindsay Pure</p> <p>22 has facilities already in place," --</p> <p>23 JUDGE NORMAN: Hold on a second.</p> <p>24 "Lindsay Pure already has" what?</p> <p>25 A "Facilities already in place."</p>
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<p>1 responsibilities," and I'd like it to read "Please</p> <p>2 describe your current work responsibilities."</p> <p>3 And if I go too fast, just let me know.</p> <p>4 I can stop.</p> <p>5 JUDGE NORMAN: Okay.</p> <p>6 A Page 4, Line 4, between -- or after the words</p> <p>7 "prefiled testimonies," I'd like to add a period. And</p> <p>8 I'd also like to add a statement in there, "I also</p> <p>9 reviewed supplemental prefired filed by Mr. Myrick and</p> <p>10 the transcript of his -- the transcripts of his</p> <p>11 deposition for this matter."</p> <p>12 JUDGE NORMAN: And the transcript --</p> <p>13 A Yes, "of his deposition for this matter,"</p> <p>14 period, and I'd like to strike the rest of that "filed</p> <p>15 for this proceeding."</p> <p>16 JUDGE NORMAN: Okay.</p> <p>17 A On Page 5, Line 18, the number "55," I'd like</p> <p>18 to change that to "53."</p> <p>19 Page 7, Line 2, I'd also like to change</p> <p>20 that number "55" to "53."</p> <p>21 Page 8, Line 9, after the word "area --</p> <p>22 "outside its CCN area," I'd like to add the word "it"</p> <p>23 -- I-T -- "is in danger."</p> <p>24 Page 9, Line 3, the number "396" near</p> <p>25 the end of the line, I'd like to change it to "399,"</p>	<p>1 JUDGE NORMAN: Okay.</p> <p>2 A "And any of the area in the South Ridge</p> <p>3 subdivision."</p> <p>4 JUDGE NORMAN: Okay. Give us a chance</p> <p>5 to stop and read that because that's a change in</p> <p>6 your -- a real substantive change in your testimony,</p> <p>7 isn't it?</p> <p>8 A Yes, it is.</p> <p>9 JUDGE NORMAN: Okay.</p> <p>10 (Brief pause)</p> <p>11 JUDGE NORMAN: Okay.</p> <p>12 A And that's all I have.</p> <p>13 Q (BY MR. MacLEOD) So with those revisions and</p> <p>14 corrections, is the testimony contained in ED-4 the</p> <p>15 same that you would give if I had asked you those</p> <p>16 questions contained in ED-4 today live? Is that</p> <p>17 right?</p> <p>18 A That's correct.</p> <p>19 Q There was something that came out earlier</p> <p>20 that I wanted to ask you just a few questions on, and</p> <p>21 that is found in LPWC-8. And if you don't have a copy</p> <p>22 of it, I can bring you a copy. And that was -- that</p> <p>23 was the ordinance of Lindsay dealing with extensions</p> <p>24 outside of the city.</p> <p>25 A I have it here.</p>

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1 Q Now, if a CCN is granted that creates a duty  
2 to provide continuous and adequate service -- no, a  
3 CCN -- excuse me. Let me reword that.  
4 If a CCN is created, that does create a  
5 duty to provide continuous and adequate service that  
6 is enforced by the TCEQ. Is that right?  
7 A That's correct.  
8 Q And there are certain items in LPWC-8 that  
9 the TCEQ would -- rules for providing continuous and  
10 adequate service that would override. Is that  
11 correct?  
12 A That's correct.  
13 Q Do you want me to draw your attention to  
14 which areas those are, or do you already have them  
15 marked?  
16 A I don't have them marked.  
17 Q Okay. Could you take a look at (A)(2) under  
18 Section 1 that provides "The city reserves the right  
19 to furnish such customers" --  
20 A Uh-huh.  
21 Q -- "if deemed advisable, and to, at any time,  
22 wholly or partially discontinue the utility service."  
23 Could that happen if the city had a CCN, or would  
24 they -- could they get an order requiring service from  
25 the TCEQ?

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1 JUDGE NORMAN: Tell me where it is  
2 again.  
3 MR. MacLEOD: This is on the first page,  
4 1 of 4.  
5 JUDGE NORMAN: All right.  
6 MR. MacLEOD: Section 1(A)(2).  
7 JUDGE NORMAN: Okay. All right. That's  
8 something that would no longer be operative. Right?  
9 Is that what you're saying?  
10 MR. MacLEOD: Right.  
11 JUDGE NORMAN: Okay. Right?  
12 A That's correct.  
13 Q (BY MR. MacLEOD) And (B) -- if you go to (B)  
14 on the next page -- well, it's actually two more pages  
15 down because I want to go to (B)(3).  
16 A I don't see a (B).  
17 JUDGE NORMAN: It's on Page 3 of 4.  
18 A I see two (B)(2)s. Am I looking at the right  
19 page?  
20 Q (BY MR. MacLEOD) You are. There are two --  
21 it appears there are two (B)(2)s.  
22 A Okay. Okay. So it's the (3) starting with  
23 "City Not Liable"?  
24 Q Right.  
25 A Okay.

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1 Q Would that provision still be enforceable if  
2 the CCN were put in place?  
3 A If the CCN were put in place, that would not  
4 be enforceable by --  
5 Q Yes, go ahead and explain.  
6 A Well, the TCEQ would require the city, if it  
7 had a CCN for that area, to maintain that and provide  
8 continuous and adequate service.  
9 Q And what about No. (5) on that same page  
10 where it says "City May Revoke Permission"?  
11 A The city, again, would be required to provide  
12 continuous and adequate service to those individuals  
13 outside the city limits if it had a CCN for that area.  
14 MR. MacLEOD: I'll pass the witness.  
15 JUDGE NORMAN: And were you going to ask  
16 her the questions that I wanted asked, that I asked to  
17 be asked this morning, which were --  
18 MR. MacLEOD: Oh, oh, the effect on --  
19 JUDGE NORMAN: Right.  
20 MR. MacLEOD: What would the effect  
21 on -- let's see if I've got them right -- the question  
22 right.  
23 JUDGE NORMAN: Okay.  
24 Q (BY MR. MacLEOD) What would the effect on  
25 other utilities be if the CCN were granted but

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1 excluded the area that was -- excuse me. I can't read  
2 that unfortunately -- excluded the area that was in  
3 Myrick's CCN and a quarter of a mile around that? Do  
4 you have an opinion as to what the effect would be on  
5 the --  
6 JUDGE NORMAN: Other utilities.  
7 Q (BY MR. MacLEOD) -- on the utility?  
8 A Okay. I'm sorry. Myrick -- the current  
9 application that we have in front of us does not ask  
10 for area currently in Lindsay Pure's CCN. So you're  
11 talking about all the area that the applicant asked  
12 for. Is that what you're --  
13 Q Right.  
14 A Okay. If the applicant was awarded the  
15 entire requested service area, there would be an  
16 impact on utilities in that area. The area that  
17 overlaps Gainesville would certainly be impacted if it  
18 was awarded that area.  
19 The area that -- I keep wanting to call  
20 it Myrick Development -- Lindsay Pure currently has --  
21 where they currently have connections would certainly  
22 be impacted, which is that quarter mile outside of  
23 Lindsay Pure's current CCN service area. Not only  
24 would it leave stranded investments in some of the  
25 additional area out there for Lindsay Pure, and by

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1 "stranded investments" I mean facility lines that are  
2 currently in place and not being utilized and also  
3 additional pressure, storage capacities and things  
4 from the current water system that Lindsay Pure has,  
5 but it would also not -- Lindsay Pure would lose the  
6 capability of additional revenues from some of those  
7 connections that may come up later on in the future.  
8 And also from the current customers that they're  
9 serving in that quarter mile area if that area was  
10 awarded to Lindsay.

11 Q And that's for the quarter mile outside.  
12 Okay.

13 A Now, as for the Gainesville area, I'm not  
14 sure if Gainesville has any investments as far as  
15 facility lines or anything in the area, and I'm not  
16 sure if they're currently serving in that area, but  
17 they do have a CCN for it. And if they -- if Lindsay  
18 was awarded a CCN area for that same area, then  
19 Gainesville would lose the opportunity to provide  
20 service in that area.

21 Q All right. And before I go to the second two  
22 areas, I wanted to do one other thing, and that is,  
23 the TCEQ couldn't approve decertifying Gainesville in  
24 this -- for the area of the overlap, could they, in  
25 this proceeding?

1 Q (BY MR. MacLEOD) The blue line -- if all the  
2 area south of the blue line were excluded from the  
3 CCN.

4 A All of the area south of it?

5 Q Yeah.

6 JUDGE NORMAN: Of the blue line.

7 A South of the blue line. Ah, if all of the  
8 area south of the blue line was excluded, what would  
9 be the impact? I'm sorry, can you --

10 Q What would be the impact on the utilities --  
11 the different retail public utilities associated with  
12 this case?

13 A The different retail -- besides Lindsay, is  
14 that what you're saying?

15 Q I suppose you can go ahead and say what would  
16 happen to Lindsay, too.

17 A The impact -- if the town of Lindsay were not  
18 awarded the area south of this blue line, which is 83,  
19 Myrick -- I'm sorry -- Myrick Development or Lindsay  
20 Pure -- because Myrick Development isn't the  
21 utility -- Lindsay Pure would be -- would not be  
22 impacted.

23 As for the town of Lindsay, it would be  
24 impacted because they've actually got some -- they've  
25 got quite a few requests for service in this area, and

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1 A No, that wasn't noticed. And so since we  
2 didn't have a decertification noticed, we couldn't do  
3 that with this proceeding.

4 Q Okay. I want to cover the other two options.  
5 Now, if the CCN were granted and excluded all of the  
6 property owned by Myrick Development Company, what  
7 would be the impact on the surrounding utilities? It  
8 would probably be similar to the quarter mile because  
9 it's all within a quarter mile. In fact, the answer  
10 might be the same.

11 A Right, right, it would be the same except  
12 for -- I think it would remove an impact to Lindsay  
13 Pure, but it would still leave the impact to  
14 Gainesville.

15 Q And then finally, what would be the effect on  
16 the utilities -- of the retail public utilities if all  
17 of the area south of 82, as indicated on ED-3, were  
18 excluded?

19 A Let me refer to the map. One second. I  
20 don't --

21 MR. RODRIGUEZ: This is ED-3.

22 A Oh. You said ED-3?

23 Q (BY MR. MacLEOD) Yeah, ED-3. I believe that  
24 line -- what color is it?

25 MR. RODRIGUEZ: The blue line.

1 they could as a city go ahead and provide service to  
2 that area and go ahead and obviously put in some lines  
3 and some infrastructure to serve those connections,  
4 but they would not be able to protect their investment  
5 with a CCN. And by that I mean if someone else came  
6 in to request a CCN for that area, the city at that  
7 point would have to protest the application and go  
8 through a similar type proceeding at this point  
9 because they don't already have a CCN for that area.

10 There's other things they could do.  
11 They could also apply for a CCN, and then we would  
12 have competing applications in-house. And again, we'd  
13 be back in here on a similar matter if they couldn't  
14 come to settlement.

15 Q And then I guess I forgot one more question  
16 which I need to ask you, and that is, could you  
17 summarize your testimony briefly?

18 A Yes. I'm just going to flip through my  
19 testimony to refresh my memory.

20 Q That will be fine.

21 A I begin my testimony by giving a little bit  
22 of my educational background and past work  
23 experiences. I also discuss how many CCN applications  
24 and rate applications I've reviewed and helped process  
25 at TCEQ. I discuss the fact that I've testified in

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1 other CCN-related matters and also in rate-related  
2 matters at SOAH.  
3 I discuss that the purpose of my  
4 testimony is to present the ED's position as to  
5 Lindsay's proposed amendments to its water  
6 application.  
7 I discuss the fact that I've reviewed  
8 all the prefiled testimonies, all the exhibits, all  
9 the discovery and all supplemental prefiled that has  
10 been filed for this proceeding.  
11 I've also reviewed the town of Lindsay's  
12 application with respect to the eight criteria in the  
13 old rules that were in effect on August 31, 2005,  
14 which are the rules -- which is the date that the  
15 applicant filed its application.  
16 I discuss the fact that we received  
17 several protests on this application, but Lindsay Pure  
18 was the only one named as a party other than the ED  
19 and OPIC at the preliminary hearing.  
20 I discussed the fact that as a city, the  
21 town of Lindsay is not required to have a CCN to  
22 extend service to any area that's outside of its city  
23 limits except for where there's currently a retail  
24 public utility already serving.  
25 I discuss my position as to whether or

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1 not the town of Lindsay can meet the eight criteria  
2 for amending a CCN, that position being that I believe  
3 the town of Lindsay has the capability to provide  
4 continuous and adequate service to the requested area,  
5 and that the town of Lindsay should be awarded all of  
6 the area that it requested in its water application  
7 except for the portion in -- that overlaps the city of  
8 Gainesville and the portion that overlaps the area  
9 where Lindsay Pure is already serving, where it  
10 currently has facilities already in place or any other  
11 area in the South Ridge subdivision.  
12 Q Is that a summary of all your testimony?  
13 A Yes, it is.  
14 MR. MacLEOD: Before I pass the witness,  
15 can we go off the record for just a second?  
16 JUDGE NORMAN: Yes.  
17 (Discussion off the record)  
18 MR. MacLEOD: All right. We can go back  
19 on the record.  
20 JUDGE NORMAN: Okay.  
21 MR. MacLEOD: Pass the witness.  
22 JUDGE NORMAN: Okay. And I don't know  
23 who is the least friendly and the most unfriendly now.  
24 (Laughter)  
25 MR. STOWE: Do you want to flip a coin?

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1 (Laughter)  
2 JUDGE NORMAN: Yeah, right. Do you want  
3 to go first, Mr. Rodriguez?  
4 MR. RODRIGUEZ: That's fine.  
5 FURTHER RECROSS-EXAMINATION  
6 BY MR. RODRIGUEZ:  
7 Q Ms. Benter, you've been in the courtroom at  
8 least for the majority of the time the testimony has  
9 been provided in this case. Is that right?  
10 A That's correct.  
11 Q And you --  
12 MR. CARLTON: Art?  
13 MR. RODRIGUEZ: I'm sorry. This is the  
14 only hearing where people have accused me -- have not  
15 been able to hear me. Generally that's not a problem.  
16 MR. CARLTON: You're just too relaxed.  
17 (Laughter)  
18 MR. RODRIGUEZ: Do you-all need me to  
19 repeat that last question?  
20 MR. CARLTON: Please.  
21 Q (BY MR. RODRIGUEZ) All right. Ms. Benter?  
22 A Uh-huh?  
23 Q You've been here in this proceeding to hear  
24 the majority -- at least a majority of the evidence  
25 that's been or testimony that's been provided. Is

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1 that correct?  
2 A That's correct.  
3 Q And specifically you were here for the  
4 testimony of Mr. Metzler yesterday?  
5 A Yes, I was.  
6 Q And do you understand him to be the mayor  
7 pro-tem of the city?  
8 A Yes, I do.  
9 Q Now, there were some questions regarding LPWC  
10 No. 8 and the operative nature of some of the  
11 provisions in that -- in the ordinance that's  
12 contained in that exhibit. Correct?  
13 A That's correct.  
14 Q Now, and you also understand that the City of  
15 Lindsay, prior to it receiving -- at least the  
16 testimony yesterday was that at least prior to  
17 receiving the new CCN area on September 30, 2008 that  
18 the city's water CCN and the city limits were  
19 basically one and the same?  
20 A Correct.  
21 Q Okay. And you also understand that the city  
22 has not even had a chance to have a city council  
23 meeting since the September 30th issuance of the CCN?  
24 A Yes, I do.  
25 Q Okay. Now, with respect to the criteria that

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1 are used, the eight criteria that you referenced that  
2 you used to evaluate the city's CCN application, those  
3 are -- there are eight factors. Is that right?  
4 A That's correct.  
5 Q And is there one that's more heavily weighted  
6 than the others?  
7 A Not necessarily. They --  
8 Q The rules don't provide that. Right?  
9 A They don't. You're right.  
10 Q It just says these are factors to consider?  
11 A Correct.  
12 Q Okay. Now, Ms. Benter, if the CCN that the  
13 city has requested in this proceeding is issued and  
14 subsequent to the issuance of the CCN a customer has  
15 issues with the certificate holder, town of Lindsay,  
16 they have -- there's some customer service provisions  
17 that they could avail themselves of at the Commission.  
18 Is that right?  
19 A That's correct.  
20 Q And if they own more than 50 acres, they  
21 might avail themselves of a decertification process?  
22 A It would have to be -- it would have to be a  
23 tract of land, meaning it could be -- and by that I  
24 mean it has to be one tract, but it could be 50 -- I  
25 mean it has to be a 50 or more acre tract. It can't

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1 be a 30 acre tract here and a 20 acre tract there, and  
2 I probably shouldn't do that. The record can't get  
3 "here and there."  
4 Q I understand.  
5 JUDGE NORMAN: Contiguous, it would have  
6 to be a contiguous tract?  
7 A Yes, thank you.  
8 Q (BY MR. RODRIGUEZ) All right. Now, let's go  
9 through this because I think you and I went through  
10 this yesterday morning.  
11 A Okay.  
12 Q But my understanding is we need to go through  
13 it again if we want to get it considered a part of  
14 this proceeding.  
15 A Okay.  
16 Q If a landowner was unhappy --  
17 A Uh-huh.  
18 Q -- with the service that was being provided  
19 to them by the town of Lindsay, they could avail  
20 themselves, regardless of their acreage size, of  
21 decertification through an application pursuant to  
22 13.254(a) of the Commission -- of the Texas Water  
23 Code. Is that right?  
24 A Of the old rules?  
25 Q No, as presently constituted. Not the

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1 Commission rules, the water code.  
2 JUDGE NORMAN: He's talking about the  
3 water code, not the rules.  
4 A Okay. Of (a), yes.  
5 Q (BY MR. RODRIGUEZ) Okay.  
6 A And that would be of any size. The (a)  
7 doesn't specify the 50. The (a)(1) does.  
8 Q There's no tract limitation -- tract size  
9 limitation?  
10 A Correct.  
11 Q Okay. And likewise, if you wanted to avail  
12 yourself of the -- what's commonly referred to at the  
13 Commission as the expedited release process, you need  
14 to have a tract more than 50 acres --  
15 A Uh-huh, but one owner.  
16 Q -- not platted and not getting service. Is  
17 that right?  
18 A By one owner.  
19 Q Right.  
20 A And (a)(1) is correct. I just wanted to make  
21 sure. Yes.  
22 Q Okay. And even if -- but even if the  
23 property owner was not seeking decertification but  
24 still was unhappy with the utility, the certificate  
25 holder, there's also other customer service rules that

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1 are contained within the TCEQ rules for them to avail  
2 themselves of. Is that right?  
3 A That's right.  
4 MR. RODRIGUEZ: Okay. I pass the  
5 witness, Your Honor.  
6 JUDGE NORMAN: Okay.  
7 MR. CARLTON: I guess that's me.  
8 FURTHER RECROSS-EXAMINATION  
9 BY MR. CARLTON:  
10 Q Good afternoon, Ms. Benter.  
11 A Hi. I can barely hear you.  
12 Q I'll scoot up.  
13 A Okay.  
14 Q I just have a couple of questions.  
15 A By "a couple," do you mean just two?  
16 JUDGE NORMAN: Everybody gets a couple  
17 of questions.  
18 (Laughter)  
19 Q (BY MR. CARLTON) Let's take a look at  
20 Exhibit ED-3. Do you have that in front of you?  
21 A I do.  
22 Q Okay. And you revised your testimony on  
23 Page 14 to indicate that you were recommending that  
24 the CCN not be granted for any other area in the South  
25 Ridge subdivision.

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<p>1      A    That's correct.</p> <p>2      Q    And I want to clarify that. When you say</p> <p>3      "any other area in the South Ridge subdivision," you</p> <p>4      mean the area that's outlined in red on ED-3. Is that</p> <p>5      correct?</p> <p>6      A    I wasn't up here when you guys were marking</p> <p>7      this. So I don't know what the red area box is</p> <p>8      supposed to stand for.</p> <p>9      Q    Okay. Then let me clarify this way: You</p> <p>10     were here for Mr. Myrick's testimony about the South</p> <p>11     Ridge?</p> <p>12     A    Yes, I was.</p> <p>13     Q    Okay. And is it your understanding that the</p> <p>14     South Ridge subdivision includes Phases I, II, III and</p> <p>15     IV and the well site?</p> <p>16     A    That's correct.</p> <p>17     Q    Okay. Thank you. So when you refer to any</p> <p>18     other area in the South Ridge subdivision, you mean</p> <p>19     all four phases plus the well site?</p> <p>20     A    Yes.</p> <p>21     Q    Okay. Thank you. I want to talk a little</p> <p>22     bit with you about 13.246 and --</p> <p>23     A    In the old rules or new rules?</p> <p>24     Q    Well, 13.246 is the Water Code provision, but</p> <p>25     the rules would be in 291.102.</p>	<p>1      additional service in the requested area.</p> <p>2      A    Uh-huh.</p> <p>3      Q    And I believe that your testimony and opinion</p> <p>4      has been that the letters that are a part of DLM-10</p> <p>5      and KDM-5 are adequate, in your opinion, to satisfy</p> <p>6      this requirement of showing need for additional</p> <p>7      service?</p> <p>8      A    That's one of the items I looked at, yes.</p> <p>9      Q    Okay. And do those letters constitute, in</p> <p>10     your opinion, evidence of need for additional service?</p> <p>11     A    Yes, they do.</p> <p>12     Q    Okay. I don't know if, but maybe you do, the</p> <p>13     definition of "service" has changed from August 31,</p> <p>14     2005 under the old rules to the new rules. Do you</p> <p>15     know?</p> <p>16     A    I don't believe it has.</p> <p>17     Q    Okay. So would you agree with me that the</p> <p>18     letters that are a part of DLM-10 and KDM-5 do not ask</p> <p>19     the city to furnish water to those customers?</p> <p>20     A    Not today, right.</p> <p>21     Q    Okay. So they don't ask the city to</p> <p>22     undertake any action to provide them with water</p> <p>23     service at this point in time. Right?</p> <p>24     A    I don't recall all of them, but I'd have to</p> <p>25     go back and look at them.</p>
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<p>1      A    Oh, I'm sorry.</p> <p>2      Q    And I'm happy to talk about it in the old</p> <p>3      rules if you'd like --</p> <p>4      A    It doesn't matter.</p> <p>5      Q    -- for these purposes. I really don't think</p> <p>6      it matters a whole lot.</p> <p>7      A    Okay.</p> <p>8      Q    Mr. Rodriguez talked with you about the</p> <p>9      criteria that are set forth, and would you agree with</p> <p>10     me that the criteria that are set forth in the</p> <p>11     agency's rules mimic the criteria set forth in the</p> <p>12     statute?</p> <p>13     A    It depends if we're talking about the old</p> <p>14     rules -- old statute or the new statute.</p> <p>15     Q    The statute in effect and the rules in effect</p> <p>16     at the time the application was filed.</p> <p>17     A    Let me get that book and refer to it. The</p> <p>18     statute that was in effect at the time the application</p> <p>19     was filed, yes. In the new one, no.</p> <p>20     Q    Correct. So let's -- I guess for ease of</p> <p>21     talking about it then, let's look at 291.102 in the</p> <p>22     old rules.</p> <p>23     A    The old rules, okay. Okay.</p> <p>24     Q    And (d)(2) is the criteria where it asked --</p> <p>25     it directs the Commission to consider the need for</p>	<p>1      Q    Can we get out DLM-10? It's in exhibit --</p> <p>2      Applicant's Exhibit 2.</p> <p>3      A    Okay. Did you say DLM-10?</p> <p>4      Q    I believe so, and I think we can probably</p> <p>5      just look at the first letter since they all read the</p> <p>6      same, with two exceptions.</p> <p>7      A    They don't specifically say "I want service</p> <p>8      today," but they say "I am interested in water and</p> <p>9      sewer service to my property located southwest of</p> <p>10     Lindsay, Texas." So that to me means that they're</p> <p>11     seeking service.</p> <p>12     Q    They're interested in it?</p> <p>13     A    Uh-huh.</p> <p>14     Q    But they're not asking the city to perform</p> <p>15     any act to necessarily provide them with service at</p> <p>16     this point in time?</p> <p>17     A    Not -- not today, no.</p> <p>18     Q    And are they asking the city to commit any</p> <p>19     facilities or lines at this point in time for their</p> <p>20     property?</p> <p>21     A    No, they are not.</p> <p>22     Q    Are they asking the city to use any lines or</p> <p>23     facilities at this time to serve their property?</p> <p>24     A    No.</p> <p>25     Q    So all they're really doing is saying to the</p>

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1 city, "Hey, we're interested in being in your CCN so  
 2 that at some undetermined point in the future we could  
 3 have water or wastewater service?"  
 4 A Yes, that's correct.  
 5 Q Would you agree with me that there is not at  
 6 the current time a need for the city to construct any  
 7 facilities or commit any of its facilities to provide  
 8 service to areas within the requested CCN?  
 9 A I can't agree to that.  
 10 Q And why not?  
 11 A Because I'm not sure if from -- I haven't  
 12 heard any testimony today, but I don't know for a fact  
 13 if -- or let me rephrase -- testimony today, but I  
 14 don't know if they've actually received applications  
 15 for service in this area between the time of the date  
 16 that all this information was filed and now or not.  
 17 And if they did have a request out in one of those  
 18 areas, then -- and an application of service from a  
 19 qualified applicant, then, yeah, I do believe they  
 20 would have need to do that.  
 21 Q But you've been here for the whole  
 22 proceeding. Right?  
 23 A Yes, I have.  
 24 Q And there has been none of that type of  
 25 evidence presented in this proceeding, has there?

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1 A Not to my knowledge.  
 2 Q Why do you think need is an important  
 3 criteria for determining whether or not to grant a CCN  
 4 over a particular area?  
 5 A If we don't feel that there's a need based on  
 6 the evidence, if it's our opinion that there is not a  
 7 need out there, we don't blanketly grant CCNs for just  
 8 blank areas where we can't show a demonstration of a  
 9 need for service. And the reason that we don't is  
 10 because -- well, for one, you may have someone on the  
 11 outreach of the system that's seeking service at one  
 12 point, and that individual may need service. And  
 13 whoever is getting the CCN, if they're not capable of  
 14 providing that service within 180 days, then we don't  
 15 believe that that's providing continuous and adequate  
 16 service. So we wouldn't grant a CCN over just a  
 17 blanket area.  
 18 It also -- one of the other reasons is  
 19 because of the cost of having to run lines out to  
 20 specific areas in the far reaches of a system. It  
 21 costs -- I mean, it does cost quite a bit, and that's  
 22 another thing that the utility or whoever is applying  
 23 for the CCN will have to demonstrate. And so need is  
 24 not one of the only factors we look at, but it  
 25 certainly comingles with a lot of the other factors

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1 that we look at. And so we wouldn't grant a CCN for  
 2 an area we didn't feel comfortable there wasn't a need  
 3 for.  
 4 Q And so -- and is that because if there's no  
 5 need then you don't want to burden the utility with  
 6 the obligation to extend service or burden the  
 7 landowner with the obligation to get service from the  
 8 utility?  
 9 A Both.  
 10 Q Okay. So on ED Exhibit 3 -- and I'll use  
 11 Mr. Rodriguez's example with the Angers -- how far  
 12 would service have to be extended to serve the Anger  
 13 property in the southwest corner of the requested area  
 14 from the town of Lindsay?  
 15 A Let me locate the Angers on here. How far  
 16 from its current CCN, or are you talking about from  
 17 its current facility lines? I don't know where the  
 18 facility lines are.  
 19 Q Let's go with CCN boundary because I don't  
 20 think we've had anything admitted that say exactly  
 21 where the facilities are.  
 22 A Right. I think yesterday we said about three  
 23 and a half to four miles, if I remember correctly.  
 24 Q And are you -- you're not an engineer.  
 25 Right?

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1 A No, I'm not.  
 2 Q So you don't design system extensions and  
 3 those kinds of things?  
 4 A No, I don't.  
 5 Q Okay. So would you defer to Mr. Maroney's  
 6 testimony regarding the cost of extending those lines?  
 7 A Yes, I would.  
 8 Q And if that distance is approximately 25,000  
 9 linear feet --  
 10 A Uh-huh.  
 11 Q -- at a cost of, for math purposes, \$20 a  
 12 foot, even though I think Mr. Maroney's testimony  
 13 was 18 -- that would be approximately \$500,000 just to  
 14 extend the line to the Anger property?  
 15 A From the CCN's current --  
 16 Q Boundary.  
 17 A Yes.  
 18 Q Is that the kind of obligation that you're  
 19 comfortable imposing upon the city and on the  
 20 landowners in that area?  
 21 A The financial obligation?  
 22 Q Yes.  
 23 A I can't really say without looking at -- no,  
 24 it's not, but I can't really say without knowing  
 25 exactly where the lines are and where everything is

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1 because that's not the only factor we would consider.  
2 Q Let me ask you this question: We talked a  
3 little bit about the expedited release process and  
4 decertification. Assume with me that the Angers end  
5 up in Lindsay's CCN and assume with me that it is  
6 approximately \$500,000 to extend -- to build the line  
7 to extend out to them, and they want to get out and  
8 the town of Lindsay opposes it. And they come in and  
9 say "Look, we need to get out because it's going to  
10 cost us \$500,000 to extend service to our property,"  
11 would the TCEQ allow them to be removed from the  
12 city's CCN solely on the basis of the financial impact  
13 on the Angers?  
14 A They wouldn't qualify for an expedited  
15 release if they don't have at least 50 acres or more.  
16 Q Okay.  
17 A And you specifically said expedited release,  
18 but there's other methods they can use to ask for  
19 decertification.  
20 Q Okay. Well, assume with me that they have  
21 50 acres -- this property has 50 acres, and I don't  
22 know whether the Angers do or not but in that same  
23 general area. Under expedited release, will TCEQ  
24 decertify based solely upon financial impact to the  
25 landowner?

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1 A If they had an alternative service provider  
2 that was capable of serving them, yes.  
3 Q And would the same thing be true under the  
4 other methods for release from the CCN?  
5 A Yes.  
6 Q Let's turn to 291.102(d)(3).  
7 A Back to the old?  
8 Q Old rules; yeah, we're just going to work on  
9 the old rules here.  
10 A Okay. 291.102(d)(3)?  
11 Q (3).  
12 A Okay.  
13 Q "The effect of the granting of a certificate  
14 on" -- and I'm going to skip the recipient because I  
15 think we've talked about that plenty -- but also "on  
16 any retail public utility of the same kind already  
17 serving the proximate area."  
18 A Uh-huh.  
19 Q Now, is it your interpretation of that rule  
20 that it has to be a utility that's serving an  
21 overlapping area?  
22 A No, not -- no. In fact, my testimony refers  
23 to a couple of other ones. I think it was Myra. I'd  
24 have to look at it. I don't remember, but it refers  
25 to several other utilities in the approximate area,

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1 not just overlapping.  
2 Q Okay. So what we're looking at is utilities  
3 that not necessarily have to overlap, but could be  
4 adjacent to or just in the general area?  
5 A Correct.  
6 Q Okay. And why do you think that criteria is  
7 important for consideration when the Commission  
8 evaluates an application for a CCN?  
9 A There's several reasons. For one, again,  
10 stranded investments. We don't like to see  
11 utilities -- investor-owned utilities have  
12 different -- investor-owned utilities are a little bit  
13 different than -- well, they're a lot different than  
14 municipalities, like the town of Lindsay's, for  
15 example, and Lindsay Pure.  
16 Lindsay Pure, if it has investments out  
17 there that the customers have already -- it all plays  
18 into whether they get a contribution in aid of  
19 construction, did the customers actually give -- you  
20 know, put in those facilities at their own expense and  
21 then give them to the utility. So it all plays into  
22 the utility may be able to recover its cost. And we  
23 don't want utilities out there to go certainly  
24 bankrupt or anything. So we're trying to protect any  
25 investments out there from being stranded or not being

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1 used and utilities to go under. That's one reason.  
2 Another reason is because we're trying  
3 to ensure that the Commission's policy on  
4 regionalization is -- that we take that into  
5 consideration. And so with regionalization we want  
6 utilities that -- we're trying to prevent new  
7 utilities or new facilities and certainly wells or  
8 other types of water infrastructure from just  
9 blanketly going out there, and we trying to make sure  
10 we've got utilities that can provide continuous and  
11 adequate service providing out there. We don't want  
12 to leave a utility with the -- I mean, we don't want  
13 to make them incapable of providing service. So we  
14 don't take that into consideration.  
15 Q And those are the two, from your perspective,  
16 those two things that you've talked about, one, the  
17 stranded investments and then regionalization?  
18 A Those are two of the factors, yeah.  
19 Q Okay. Let me deal with regionalization real  
20 quickly because you talked about something -- and I  
21 agree with you -- the policy is in place in order to  
22 prevent this proliferation of utility systems.  
23 A Right.  
24 Q And would you turn with me to Exhibit 2 to  
25 your testimony, TB-ED-2, particularly on Page 4 and

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1 particularly the statement about who the  
2 regionalization policy applies to. Does the  
3 regionalization policy apply to CCN amendments?  
4 A It does not, but we do take the factors of  
5 regionalization still under consideration for the  
6 provision of continuous and adequate service.  
7 Q Okay. And perhaps the reason it wouldn't  
8 necessarily apply to CCN amendments is because you  
9 already have those utilities in place and there is no  
10 further proliferation caused by the issuance of a CCN.  
11 Right?  
12 A Not by the issuance of a CCN, but if for some  
13 reason they had to, depending on population density or  
14 density of development, and for whatever reason, if  
15 they needed to put in a new system, we would certainly  
16 consider that in the future.  
17 So if we're going to grant a CCN for a  
18 larger area, we're certainly going to take  
19 regionalization into consideration being the utility  
20 may have to come in and add additional plants later on  
21 or drill any well or so forth.  
22 Q Okay. So is it your understanding that the  
23 town of Lindsay can serve the proposed CCN area  
24 without drilling an additional well?  
25 A They can serve up to another 300 and

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1 something connections, yes.  
2 Q And is it your understanding -- how many  
3 acres are in this area that they're requesting?  
4 A I don't know. They've cut some out, and I  
5 can't -- we went over that, and there wasn't an exact  
6 acreage given.  
7 Q Do you remember how many they had originally  
8 applied for?  
9 A I can go back to the application and look.  
10 It was in their notice, but I don't remember off the  
11 top of my head.  
12 Q I'm going to say it was around 18,000.  
13 A That's correct.  
14 Q Okay. Do you think there would be in the  
15 future only the 301 more connections within this  
16 18,000 acres?  
17 A I have no idea. It just depends on what type  
18 of development goes out there.  
19 Q How many connections does the town of Lindsay  
20 currently serve? I think in your testimony you said  
21 399.  
22 A Yes, I amended my testimony based on  
23 information given yesterday.  
24 Q Would you take Exhibit DLM -- well, ED-2 --  
25 ED-3 because it's the one we have out. The big map,

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1 it's the same. It's been marked on.  
2 A Yes, okay. Are you talking about ED-3?  
3 Q ED-3.  
4 A Okay.  
5 Q The map that's been marked on.  
6 A Uh-huh.  
7 Q I believe in that map it shows -- can you  
8 distinguish on that map the area that's within the  
9 current city limits of Lindsay?  
10 A They don't have the city limits marked on  
11 here.  
12 Q It's, I believe, really hard to see, but it's  
13 a faint yellow line.  
14 A And I can't -- I don't know if I'm -- I don't  
15 think I'm colorblind, but I really don't see a yellow  
16 line anywhere.  
17 MR. CARLTON: May I approach?  
18 JUDGE NORMAN: Sure.  
19 A Oh, okay. I faintly see it. Yeah. Okay. I  
20 do see the yellow line.  
21 Q (BY MR. CARLTON) Given the size of the town  
22 of Lindsay and the fact that there are 399 connections  
23 within that area --  
24 A Uh-huh.  
25 Q -- would you anticipate that there would only

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1 be 301 connections in the rest of the 18,000 acres  
2 that were being applied for?  
3 A Absolutely not.  
4 Q So there would be additional facilities that  
5 would need to be constructed, a well -- wells at least  
6 in particular or maybe other connections to service  
7 water treatment plants, in order to enable Lindsay to  
8 serve the rest of this area?  
9 A Maybe even ground water. I know you just  
10 said surface, but possibly ground.  
11 Q Wells or groundwater, but we would have  
12 additional facilities that would have to be  
13 constructed in order to accomplish that?  
14 A Additional connections after the 300 and  
15 something, yes.  
16 Q Okay. What factors does TCEQ consider when  
17 evaluating the impact on these retail public utilities  
18 in the approximate area?  
19 A I'm sorry. I thought I --  
20 Q Well, you talked about it being important  
21 because of the regionalization policy and -- oh, it  
22 was the other one -- I can't remember. Give me the  
23 two you --  
24 A The recovery of costs by the utilities.  
25 Q Recovery of costs. So is there any

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

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

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

16 A No.

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

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

25 Q If that kind of utility were to file an

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

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

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

11 A Uh-huh.

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

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

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

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

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

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

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

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

10 Q Right.

11 A Okay.

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

14 A Yes.

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

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

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

21 JUDGE NORMAN: I'm sorry?

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

24 JUDGE NORMAN: Okay. Sure, please.  
25 Thank you.

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1 A Could you repeat the question?

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

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

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

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

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

24 A No.

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

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

6 JUDGE NORMAN: Why is it relevant?

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

16 JUDGE NORMAN: Right.

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

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

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

10 MR. RODRIGUEZ: I'm sorry?

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

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

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

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

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

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

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

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

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

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

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

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

12 Q I understand. So --

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

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

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

20 A No, not at this time.

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

23 A Uh-huh.

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

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<p>1      A    Environmental needs, one of the things we</p> <p>2      look at -- and I know we severed the sewer portion,</p> <p>3      but I'm going to use that as an example.</p> <p>4      Right now a lot of the development south</p> <p>5      of the blue line here on Exhibit ED-3, a lot of that</p> <p>6      area, from what I've heard, they use septic as a</p> <p>7      method of -- or for their sewer. That's their method</p> <p>8      of having a sewer system of some sort. It's not a</p> <p>9      retail sewer system, but they do have septic systems.</p> <p>10     All the punching of holes and the</p> <p>11     proliferation of the ground due to all the punching of</p> <p>12     holes to get each septic system in, that's one of the</p> <p>13     things that we look at. That's one of the</p> <p>14     environmental needs. We see or we view a centralized</p> <p>15     sewer system to be better than 80 million holes in the</p> <p>16     ground for all these different homes going in the</p> <p>17     area. So that's one of the things we look at.</p> <p>18     We look at different things like that,</p> <p>19     disturbance of the earth while lines are being laid</p> <p>20     and if there's going to be -- if there's dual</p> <p>21     certification, which there isn't in this application,</p> <p>22     I mean there is for the -- they've asked for the area</p> <p>23     where Gainesville -- Lindsay has asked for the area</p> <p>24     where Gainesville currently has a CCN. For that area,</p> <p>25     we certainly look at, you know, the disturbance of the</p>	<p>1      groundwater.</p> <p>2      Q    And so to the extent that Lindsay Pure Water</p> <p>3      has additional well capacity to serve other</p> <p>4      connections, they would also be able to fill that</p> <p>5      environmental need?</p> <p>6      A    Absolutely.</p> <p>7      Q    Let's talk about (E) a little bit for reports</p> <p>8      or market studies demonstrating anticipated growth.</p> <p>9      Have you seen any evidence along those lines in this</p> <p>10     proceeding?</p> <p>11     A    I have seen the census information that was</p> <p>12     attached to -- I believe it was Mr. Metzler's</p> <p>13     testimony, but I can't remember without referring to</p> <p>14     it.</p> <p>15     Q    Okay. So apart from that U.S. Census Bureau</p> <p>16     data, you've seen no other studies or anything</p> <p>17     indicating growth or anticipated growth in the area?</p> <p>18     A    Well, I haven't seen any per se market</p> <p>19     studies, but I have seen things that have told me that</p> <p>20     there's -- I have seen a demonstration of the existing</p> <p>21     growth in the area.</p> <p>22     Q    And that was through what?</p> <p>23     A    ED-3.</p> <p>24     Q    So you're considering growth in the area to</p> <p>25     be demonstrated by the letters that were submitted?</p>
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<p>1      earth twice, not only from Gainesville putting in</p> <p>2      lines, but also the possibility of Lindsay putting in</p> <p>3      lines. That's all an environmental need for us.</p> <p>4      Q    Based on what you've testified to --</p> <p>5      A    Uh-huh.</p> <p>6      Q    -- it doesn't sound to me that there are any</p> <p>7      environmental needs that you've identified on the</p> <p>8      water side of things for the areas south of U.S. 82.</p> <p>9      Is that correct?</p> <p>10     A    I feel that there are some environmental</p> <p>11     needs here.</p> <p>12     Q    For water?</p> <p>13     A    For the water, yes.</p> <p>14     Q    And what would those be on the south side of</p> <p>15     U.S. 82?</p> <p>16     A    Lindsay currently has the capability of</p> <p>17     serving some additional -- 300 and something</p> <p>18     additional connections outside of what it's currently</p> <p>19     certificated to, and they wouldn't have to drill</p> <p>20     another well right now in order to do that.</p> <p>21     Q    Okay.</p> <p>22     A    Beyond that 301, they would have to. So the</p> <p>23     environmental need there would be -- they don't have</p> <p>24     to punch another hole in the ground or maybe two or</p> <p>25     three to finally hit water if they're going to get</p>	<p>1      A    Not the letters. I'm talking about the map</p> <p>2      in this case. I wasn't -- by looking at the map, you</p> <p>3      can actually see the size of the properties roughly --</p> <p>4      Q    Okay.</p> <p>5      A    -- and the shape of the properties, and some</p> <p>6      of them are quite large, and the owners' name is</p> <p>7      there. And so you can say "Oh, well, obviously</p> <p>8      there's growth." And these properties here look like</p> <p>9      they all are seeking service from someone at some</p> <p>10     point.</p> <p>11     Q    Okay. So your opinion on growth is based</p> <p>12     upon the large tract size and the letters in</p> <p>13     combination?</p> <p>14     A    More so the map than the letters.</p> <p>15     Q    Okay.</p> <p>16     A    And the reason I say that is because we may</p> <p>17     have the letters, but it may just be -- I mean, it may</p> <p>18     just be 13 RV lots. I don't know, or 53 or however</p> <p>19     many. So they're smaller lots than some of these</p> <p>20     bigger ones.</p> <p>21     MR. CARLTON: Pass the witness.</p> <p>22     JUDGE NORMAN: Okay. Mr. MacLeod?</p> <p>23     FURTHER REDIRECT EXAMINATION</p> <p>24     BY MR. MacLEOD:</p> <p>25     Q    I want you to take another look at ED-3.</p>

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1 A Okay.

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

8 A Ten or twelve.

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

13 A Absolutely.

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

20 A That's correct.

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

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

25 Q And would it also include necessary for the

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

4 A Okay.

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

9 A I don't remember what I said.

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

13 A Yes, I did.

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

17 A They do.

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

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

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

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

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

3 A I was just about to say that.

4 Q Okay. Go ahead and say it.

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

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

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

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

21 A That's correct.

22 MR. MacLEOD: Pass the witness.

23 JUDGE NORMAN: Mr. Rodriguez?

24 FURTHER RECROSS-EXAMINATION

25 BY MR. RODRIGUEZ:

1 specifically about what did I hear today or yesterday.

2 Q Okay.

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

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

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

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

13 JUDGE NORMAN: Is that true?

14 A That's true.

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

20 A No, it does not.

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

23 A Yes, I did.

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

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1 the fact that the City of Lindsay has the capability  
2 to provide service to its requested service area, with  
3 the exception of the two areas that you talked about,  
4 the South Ridge of Lindsay area and the city of  
5 Gainesville overlap area. Is that right?  
6 A That's correct.  
7 Q Now, there was some questions with respect to  
8 the definition of "service," and I believe the  
9 regulatory definition and statutory definition are  
10 almost identical. Would you agree with me on that?  
11 A Give me a moment to review them.  
12 Q Okay.  
13 A They are almost identical.  
14 Q Okay. Now, but even based on the definition  
15 of "service" as contained in both the Water Code as  
16 well as in Chapter 291, you're comfortable that the  
17 requests for service that the city submitted are in  
18 evidence in this case are indeed requests for service  
19 for application of a new or an amended -- I'm sorry --  
20 an amended CCN. Is that right?  
21 A I believe that they demonstrate a need for  
22 service, yes.  
23 Q Now, let me ask you, there was some questions  
24 from Mr. Carlton regarding economies of scale.  
25 A Uh-huh.

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1 Q Do you recall that testimony?  
2 A I do.  
3 Q Ms. Benter, I'm going to ask you to look at  
4 ED No. 3 here --  
5 A Okay.  
6 Q -- just because it's the map that's right in  
7 front of you.  
8 A Okay.  
9 Q And you'll agree with me, wouldn't you, that  
10 it shows the City of Lindsay's existing water CCN  
11 service territory as well as the city of Gainesville's  
12 existing water CCN service territory. Right?  
13 A That's correct.  
14 Q Now, also there is an area that is between --  
15 that's kind of actually bounded by the City of  
16 Lindsay's existing, the City of Lindsay's proposed CCN  
17 area and Gainesville's existing CCN area that is  
18 uncertificated. Is that correct?  
19 A That's correct.  
20 Q Now, if Mr. Myrick or Lindsay Pure Water  
21 Company sought to certificate that area because for  
22 whatever reason they sought to do that, they could --  
23 that's an area eligible for them to seek  
24 certification, isn't it?  
25 A The area that's not -- that is unrequested?

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1 Q Yes, uncertificated.  
2 A Yes, yes. Well, okay.  
3 Q They'd have to make demonstrations to  
4 actually receive it. I understand that, but they  
5 could --  
6 A Right, but when you said "uncertificated," I  
7 still see this and that, because we're not done with  
8 this proceeding, as uncertificated.  
9 Q I understand that.  
10 A Okay. Okay.  
11 Q My question was specific to the area bounded  
12 by --  
13 A Okay.  
14 Q -- by those three areas --  
15 A Yes, okay.  
16 Q -- that we discussed.  
17 A Okay.  
18 Q Now, in response to Lindsay Pure Water  
19 Company's questioning, you used the term "qualified  
20 applicant" during one of the responses. Can you tell  
21 me what you mean by "qualified applicant"?  
22 A I think -- I believe I was referring to an  
23 application for service, for water or sewer utility  
24 service. And what I mean by "qualified applicant" is  
25 if someone can meet all the service requirements and

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1 pay all the application fees and fees related to like  
2 a tap fee or whatever they have to pay to get service  
3 from a utility, then they would be considered a  
4 qualified applicant, and then they would be eligible  
5 for service.  
6 Q Okay. Is there a difference in your mind  
7 between a qualified applicant and a requester for  
8 service?  
9 A Absolutely.  
10 Q Okay. Can you please tell me what that --  
11 A A requestor for service at that point hasn't  
12 demonstrated that they meet all the prerequisites to  
13 obtain service. At that point, I'm not sure if  
14 they've paid all the fees, if they've actually met all  
15 the application or service requirements in order to --  
16 like easements or whatever else is in the application  
17 for service. At that point, I'm not aware whether  
18 they've been able to meet those standards or not to be  
19 able to get service.  
20 Q And a CCN holder's obligation under the TCEQ  
21 rules are -- only extend to existing customers and  
22 qualified applicants. Is that right?  
23 A Can you repeat that?  
24 Q Yeah, the TCEQ rules regarding customer  
25 service --

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60 (Pages 507 to 510)

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1 A Uh-huh.

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

6 A Correct.

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

9 JUDGE NORMAN: Mr. Carlton?

10 MR. CARLTON: No questions.

11 MR. MacLEOD: No more questions.

12 JUDGE NORMAN: Thank you very much.

13 We're going to take a little break.

14 (Discussion off the record)

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

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