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

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

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THURSDAY, OCTOBER 9, 2008

BE IT REMEMBERED THAT AT approximately
8:30 a.m., on Thursday, the 9th day of October 2008,
the above-entitled matter came on for hearing at the
State Office of Administrative Hearings, 300 West
15th Street, Hearing Room 402, Austin, Texas, before
JAMES W. NORMAN, Administrative Law Judge; and the
following proceedings were reported by Lou Ray, a
Certified Shorthand Reporter of:

Volume 3

Pages 512 - 601

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October 9, 2008

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1 PROCEEDINGS
2 THURSDAY, OCTOBER 9, 2008
3 (8:30 a.m.)
4 JUDGE NORMAN: Okay. Let's go on the
5 record.
6 MR. RODRIGUEZ: Your Honor, at this time
7 the City of Lindsay recalls Jack Stowe.
8 JUDGE NORMAN: Okay. And, Mr. Stowe,
9 you're still under oath.
10 WITNESS STOWE: Yes, sir.
11 REBUTTAL PRESENTATION ON BEHALF OF
12 TOWN OF LINDSAY
13 JACK E. STOWE, JR.
14 having been previously duly sworn, testified as
15 follows:
16 DIRECT EXAMINATION
17 BY MR. RODRIGUEZ:
18 Q Mr. Stowe, were you in the courtroom
19 yesterday when you saw Mr. Myrick present his direct
20 testimony?
21 A Yes, I was.
22 Q And also when Ms. Benter was -- provided her
23 testimony as well?
24 A Yes, sir.
25 Q Let me ask you specifically with Mr. Myrick's

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1 testimony, was there anything in his testimony that
2 caused you any concern with respect to the investment
3 that Lindsay Pure Water Company has made?
4 A Yes, sir.
5 Q Would you explain that for us?
6 A According to Mr. Myrick's testimony, he
7 testified that the infrastructure investment cost and,
8 to some extent, the start-up operating cost had been
9 consolidated, captured, into the cost of the lots that
10 were sold and the selling price of those lots. Myrick
11 Development -- the relationship between Myrick
12 Development and Lindsay Pure Water is one of an
13 affiliated company. And specifically within the Texas
14 Water Code under Chapter 13 there's specific rules and
15 regulations as to how affiliated transactions are to
16 be reviewed and determined whether reasonable or not.
17 In this particular case, if that
18 testimony is correct, then what we have by examining
19 the income tax statements that I looked at is that we
20 have the development company capturing the investment
21 cost of the infrastructure and recovering that
22 infrastructure cost through the sale of the lots and
23 reporting that revenue on the books of Myrick
24 Development. However, the infrastructure investment
25 cost is actually recorded on the books of Lindsay Pure

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1 Water, and those costs are being depreciated and
2 recovered through rates.
3 So under the circumstances that were
4 presented in the testimony yesterday, the
5 infrastructure cost is actually being paid for by the
6 ratepayer twice, once through the sale of the lot and
7 the purchase of the lot, which incorporates the cost
8 of the infrastructure, and then in the payment of
9 rates that incorporates the cost of the infrastructure
10 through depreciation expense.
11 Q Mr. Stowe, you mentioned that you examined
12 income tax statements from Lindsay Pure Water?
13 A That is correct.
14 Q Now, yesterday there was admitted into
15 evidence an Applicant's Exhibit APP-7?
16 A That's my understanding, yes, sir.
17 Q And is this one of the documents that you
18 reviewed last night in preparation for your testimony
19 today?
20 A That's the 2007 tax return.
21 Q It's right up here. We can grab that for
22 you.
23 A Yes, sir, this is the tax return I reviewed.
24 Q And did you have an opportunity last night to
25 come to any conclusions about Lindsay Pure Water

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1 Company's ability to provide service -- continue as an
2 adequate service based on your review of the income
3 tax statements?
4 A Yes, sir, I did.
5 MR. RODRIGUEZ: Okay. At this point,
6 Your Honor, we're going to hand out a document.
7 (Exhibit APP No. 8 marked)
8 Q (BY MR. RODRIGUEZ) Mr. Stowe, I'm handing you
9 what is being marked as Applicant's Exhibit No. 8 and
10 ask you if you recognize that document.
11 A Yes, sir. This is a sheet that denotes some
12 of the analysis -- a portion of the analysis that I
13 performed last night.
14 Q Okay. Can you please walk us through that
15 and, if you can, provide us where in the -- where you
16 drew these numbers from as well as you walk through
17 the analysis, I would appreciate it.
18 A Yes, sir. The first line item on Exhibit
19 APP-8 is the 1997 capital cost of 101,854. That
20 number is obtained from Exhibit APP-7, the last page
21 of that exhibit, which is a listing of the assets of
22 the investor-owned utility Lindsay Pure Water.
23 Q Let me just stop you right there. And by the
24 last page, it's the Bates page number LPWC00250. Is
25 that right?

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1 A That's correct.
 2 Q All right. Please continue.
 3 A The \$101,854 is the calculation of the
 4 original cost basis for the assets that were placed in
 5 service according to this schedule on September 26th,
 6 1997.

7 The next line is the 1997 organization
 8 cost, which is shown on down on this schedule down
 9 towards the bottom where it says "amortization." You
 10 have the organization cost of 9/26/97 of 1687, and
 11 then start-up cost of -- dated 9/26/97 of \$792.00 that
 12 follows \$2,479 reflected on APP-8.

13 From that amount those two -- excuse me,
 14 those two numbers on APP-8 total \$104,333, which
 15 represents the capital investment for Lindsay Pure
 16 Water at the date of origination as far as invested
 17 capital.

18 So to determine where that invested
 19 capital came from, I went to Exhibit APP-7 and Bates
 20 stamp LPWC00238. Presented on this tax return is a
 21 balance sheet. And specifically I'm looking at Line
 22 22, capital stock of \$25,000, and also additional paid
 23 in capital at that time of \$16,000. So there's a
 24 total capital infusion, if you would -- original
 25 capital infusion of \$41,000.

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1 So if I take the \$41,000 from the
 2 \$104,333 that we calculated, this indicates that there
 3 must have been a loan made from Myrick Development
 4 Corporation approximately of \$63,333.

5 Q And that's MDC was your shorthand --

6 A MDC is shorthand for Myrick Development
 7 Corporation.

8 If I go to the capital additions through
 9 2006, which again is reflected on APP-7, Bates code --
 10 the last page, Bates code LPWC00250, and adding up the
 11 capital compound investment -- infrastructure
 12 investment taking place since 1997, when you add those
 13 assets together that are listed there on pages --
 14 excuse me, line items 7 through 14, we have a total
 15 capital additions through 2006 of \$60,629.

16 During that same period of time now,
 17 from 1997 to 2006, the company recorded on its books
 18 depreciation in the amount of 73,973. This can be
 19 found on APP-7, Bates number LPWC00238, Line 10B,
 20 Column C. In other words, the company had recovered
 21 investment costs and -- or also cash -- had recovered
 22 \$13,344 more than what they had put in investment
 23 during that period of time.

24 In addition, through the 1997 through
 25 2006 time frame, the company incurred an operating

1 loss of approximately \$82,000. This can be found also
 2 on APP-7, Bates number LPWC00238 at Line 24, Column B.
 3 And the actual number shown in Column B is 82,211.

4 The total of these numbers that I've
 5 just gone through is penciled in, I believe, on the
 6 exhibit that you have on APP-8 at 131,989. And that
 7 number represents 600 -- excuse me, the \$63,333 minus
 8 the 13,344 in excess cash, plus the \$82,000 in
 9 estimated -- or actual losses through 2006. That
 10 131,989 that I calculated -- and these are a little
 11 bit off, but not much -- compares to the MDC note --
 12 or Myrick Development Corporation note -- of 131,669,
 13 which is reflected in Column B, Line 18, "Other
 14 Current Liabilities." And you'll see that it says
 15 "See Statement 2" typed out to the side.

16 Statement 2 is reflected in APP-7, Bates
 17 number LPWC00247 as due to MDC, which is Myrick
 18 Development Corporation. And you'll see the 131,669.
 19 So basically at this point I have reconciled the note
 20 outstanding to Myrick Development to the cash flows
 21 that have taken place within the company.

22 Q And that analysis that you went through, what
 23 does that suggest to you?

24 A Well, a couple of things. First I would
 25 note, if you look at APP-7, LPWC0023 -- excuse me.

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1 00238 -- the company at this juncture on
 2 December 31st, 2007 had \$1949 in cash, had net assets
 3 of \$88,509. Against that they had a note to Myrick
 4 Development, which is a short-term note as it's listed
 5 under current liabilities, of \$131,669. So basically
 6 at this date of 2007 the company is insolvent.

7 JUDGE NORMAN: By the difference between
 8 those two amounts. Is that right?

9 WITNESS STOWE: Exactly. They owe
 10 \$131,669 and they only have \$90,000 in assets.

11 JUDGE NORMAN: Okay.

12 Q (BY MR. RODRIGUEZ) Mr. Stowe, in formulating
 13 your opinion, is relying on an income tax statement as
 14 contained in APP-7 a -- the type of statement that one
 15 in your field would rely on in formulating the
 16 opinions that you make?

17 A Yes. I would also add at this juncture, you
 18 will see that there has been no relief of the assets
 19 for -- reflective of any of the cost recapture
 20 associated with the infrastructure that, if the
 21 testimony of Mr. Myrick is correct, then those
 22 revenues obviously are being recorded on Myrick
 23 Development Company's books and not being reflected on
 24 the books of its affiliated company Lindsay Pure
 25 Water.

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1 If Lindsay Pure Water were a stand-alone
2 utility without the affiliated relationship, these
3 cost recoveries would have been reflected as developer
4 contributions or contributions in aid of construction
5 and would have offset the cost of the facilities.
6 Q Now, Mr. Stowe, in reviewing APP-7, were
7 there any other issues that caused you concern about
8 Lindsay Pure Water Company?
9 A There is.
10 Q Please explain that to me.
11 A The analysis that I have just gone through
12 with you is analysis to reconcile the note that we
13 have outstanding -- or that Lindsay Pure Water has
14 outstanding to Myrick Development company. However,
15 if we do more of a cash-on-cash analysis, other
16 concerns are raised, which at this time I don't have
17 answers for and I really can't speculate. But to give
18 you an idea, if we look at LPWC --
19 MR. CARLTON: I'm going to object to
20 continued testimony. The witness has just stated that
21 the opinion he's about to give is speculation and that
22 it's not based upon a sufficient amount of facts for
23 him to give a definitive opinion about it.
24 JUDGE NORMAN: Okay.
25 MR. RODRIGUEZ: Actually, I don't think

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1 that's what he said, Your Honor. I think what he said
2 was he didn't have an explanation for the numbers
3 that -- as to why the discrepancy he's about to
4 testify to exists, but he wants to bring out the
5 discrepancy, I believe, is what he said.
6 JUDGE NORMAN: Is that right?
7 WITNESS STOWE: That's right, sir.
8 JUDGE NORMAN: And so you're not
9 speculating?
10 WITNESS STOWE: No, sir. The numbers
11 I'm fixing to give are factual numbers obtained from
12 the tax return.
13 JUDGE NORMAN: And cause you concern?
14 WITNESS STOWE: That's correct, sir.
15 JUDGE NORMAN: As your expertise in
16 financial -- okay. I'm going to overrule the
17 objection.
18 MR. RODRIGUEZ: And actually, Your
19 Honor, at this point we will request admission of
20 Exhibit APP-8.
21 JUDGE NORMAN: Any objection?
22 MR. CARLTON: No objection.
23 JUDGE NORMAN: Excuse me, your name is
24 Mr. --
25 MR. SIANO: Siano.

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1 JUDGE NORMAN: Siano?
2 MR. SIANO: Yes.
3 JUDGE NORMAN: Any objection?
4 MR. SIANO: No objection.
5 JUDGE NORMAN: It's admitted.
6 (Exhibit APP No. 8 admitted)
7 Q (BY MR. RODRIGUEZ) Mr. Stowe, I'm sorry, can
8 you please explain to me -- or you began your
9 additional concerns with respect to Lindsay Pure Water
10 Company.
11 A Yes, sir. According to the tax return --
12 again looking at APP-7, Lines 22 and 23, Column D, we
13 have --
14 JUDGE NORMAN: What page?
15 WITNESS STOWE: Excuse me, that's
16 LPWC00238.
17 JUDGE NORMAN: Okay.
18 A This tax return reflects that the company had
19 \$25,000 in origination stock and \$16,000 in paid in
20 capital, which is a total of \$41,000 in cash.
21 On this same document, same page, at
22 Line 18, we see that the company had a note to Myrick
23 Development Corporation which constitutes cash of
24 \$131,669. We also see that the company, through this
25 period of time, had recovered through a noncash

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1 expense -- had recovered cash associated with
2 depreciation of \$73,973.
3 We also see --
4 JUDGE NORMAN: And where is that?
5 WITNESS STOWE: Excuse me, sir, that is
6 on Column C of Line --
7 JUDGE NORMAN: I see it.
8 WITNESS STOWE: -- 11B.
9 JUDGE NORMAN: Right. 10B?
10 WITNESS STOWE: 10B, yes, sir.
11 JUDGE NORMAN: All right.
12 A We also see on column -- on this same page
13 Column C at 13A that the company had recovered the
14 noncash amortization expense of the start-up cost of
15 \$2,479. When we totaled these four items, the total
16 cash that the company has generated is \$249,121.
17 If we go to APP-7, LPWC00250 is the
18 Bates stamp, we can see that the company had a total
19 invested capital in infrastructure of \$162,483. The
20 company also had the start-up cost of \$2,479.
21 At this juncture, the company had
22 experienced cash operating losses of \$5,759, which can
23 be calculated off of Exhibit APP-7, LPWC00238 Bates
24 number, by taking the \$82,000 -- \$82,211 loss on
25 Schedule D, Line 24, adjusting that number to remove

| Page 525 | Page 527 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 the noncash line items of amortization costs, which</p> <p>2 again is Column C, 13B -- Line 13B, and Column C, Line</p> <p>3 10B of \$73,973 of accumulated depreciation. This</p> <p>4 results in a cash operating loss of \$5,759.</p> <p>5 Also on the same exhibit at Line 1, we</p> <p>6 see the company had cash on hand of \$1,949 in Column</p> <p>7 D. Accounting for these uses of cash, contrasted</p> <p>8 against the cash that was generated by the company of</p> <p>9 \$249,121, there's \$76,452 of cash that's unaccounted</p> <p>10 for.</p> <p>11 Q (BY MR. RODRIGUEZ) Based on that analysis,</p> <p>12 Mr. Stowe, does that provide you any concerns with</p> <p>13 respect to Lindsay Pure Water's ability to provide</p> <p>14 continuous and adequate service?</p> <p>15 A It may or may not. I would have to see the</p> <p>16 explanation for this discrepancy. However, the review</p> <p>17 of the return does point out other concerns for me as</p> <p>18 the ability to continue providing continuous and</p> <p>19 adequate service. And that is, if I can refer you</p> <p>20 back to --</p> <p>21 MR. CARLTON: I'm going to object,</p> <p>22 nonresponsive.</p> <p>23 JUDGE NORMAN: Sustained.</p> <p>24 Q (BY MR. RODRIGUEZ) Please explain your other</p> <p>25 concerns, Mr. Stowe.</p> | <p>1 funds by the company this particular year in 2007,</p> <p>2 according to APP-7, 00235, a loss of \$12,201. An</p> <p>3 affiliated transaction where capital cost recovery and</p> <p>4 infrastructure cost recovery is being recorded</p> <p>5 evidently on the books of an affiliated company and</p> <p>6 not reflected within the utility company, a rate</p> <p>7 structure that, by the witness's own testimony does</p> <p>8 not know how it was developed, and the fact that that</p> <p>9 rate, even though in the face of continuing mounting</p> <p>10 losses, has not applied for a rate relief before this</p> <p>11 Commission and these rates have not been reviewed in a</p> <p>12 period of 10 years, a decade, it's actually my opinion</p> <p>13 and it would be my recommendation if I could to --</p> <p>14 MR. CARLTON: I'm going to object</p> <p>15 because I'm going to anticipate what he's about to</p> <p>16 say.</p> <p>17 JUDGE NORMAN: Sustained.</p> <p>18 Q (BY MR. RODRIGUEZ) Mr. Stowe, can you please</p> <p>19 provide for us what your recommendation would be based</p> <p>20 on your analysis?</p> <p>21 JUDGE NORMAN: No.</p> <p>22 MR. CARLTON: I'm going to object it's</p> <p>23 irrelevant because we're in a CCN proceeding and his</p> <p>24 recommendation as to what the agency ought to do with</p> <p>25 respect to Lindsay Pure Water Company is irrelevant.</p> |
| Page 526 | Page 528 |
| <p>1 A If we go back to Exhibit APP-7, and again the</p> <p>2 last page, which is Bates stamped LPWC00250, you'll</p> <p>3 notice that for all the depreciable assets under life,</p> <p>4 the company is depreciating their asset at 20 years</p> <p>5 other than for the water tank, which is being</p> <p>6 depreciated at 25 years. These are extremely</p> <p>7 accelerated lives when compared to the TCEQ-approved</p> <p>8 depreciation rates which range from 40 to 50 years for</p> <p>9 these type of assets.</p> <p>10 You'll also notice that the company,</p> <p>11 under method column, the company is employing an</p> <p>12 accelerated form of depreciation, which is fine for</p> <p>13 tax return purposes, but it's not accepted under the</p> <p>14 statutes and the rule of the Commission. And you can</p> <p>15 see there by denotation they're using 150 DBHY. What</p> <p>16 that means, that's the -- 150 percent of the declining</p> <p>17 balance with a half-year convention. In other words,</p> <p>18 they assume the asset went into service mid-year and</p> <p>19 then you calculate your straight line depreciation and</p> <p>20 then take 150 percent of that number to record your</p> <p>21 depreciation expense. This is an accelerated method</p> <p>22 of depreciation and would not be accepted in</p> <p>23 ratemaking.</p> <p>24 Therefore, my opinion is that based on</p> <p>25 this tax return and the continuation of the loss of</p> | <p>1 JUDGE NORMAN: Sustained.</p> <p>2 Q (BY MR. RODRIGUEZ) Mr. Stowe, can you please</p> <p>3 explain to us what a current liability is?</p> <p>4 A Current liability is a liability that's due</p> <p>5 within 12 months or less.</p> <p>6 Q Now, if -- and I believe you referred to it</p> <p>7 earlier on APP Exhibit 7, Bates page number LPWC00239</p> <p>8 that Lindsay Pure Water Company has current -- 238,</p> <p>9 excuse me -- that Lindsay Pure Water Company has</p> <p>10 current liabilities of approximately \$132,000.</p> <p>11 A 131,669.</p> <p>12 Q What is your opinion, Mr. Stowe, about</p> <p>13 Lindsay Pure Water Company's ability to meet its</p> <p>14 current liabilities?</p> <p>15 A It cannot.</p> <p>16 Q And what do you base that on?</p> <p>17 A The company is currently generating gross</p> <p>18 revenues of \$14,254 approximately before operating</p> <p>19 expenses.</p> <p>20 Q How do you arrive at that figure?</p> <p>21 A That again comes from APP-7 00235, Line 1,</p> <p>22 also again restated on Line 3 and Line 6. That's the</p> <p>23 gross revenues before any operating expenses and</p> <p>24 before any depreciation expense. So as you can see on</p> <p>25 Line 21, the company is losing \$12,201 annually.</p> |

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1 There's no ability to repay the current liabilities.
2 Q Now, Mr. Stowe, I'm going to ask you with
3 respect to your analysis that you've performed, can
4 you please explain to us -- relate that back to us for
5 the City of Lindsay CCN application? How does your
6 analysis impact the effect of Lindsay Pure Water's --
7 I'm sorry, the City of Lindsay's application on other
8 retail public utilities, specifically Lindsay Pure
9 Water Company?
10 A It's my opinion that based on the evidence
11 and based on the testimony yesterday, the
12 infrastructure costs are being recovered through the
13 sale of lots; that to the extent that there's
14 infrastructure outside Lindsay Pure Water's CCN that
15 that cost and that investment is recaptured through
16 the sale of those lots, and currently those ratepayers
17 are being requested -- not only have they paid for it
18 in the cost of their lots, but also are paying for it
19 again in the rates that they're paying. So the impact
20 upon Lindsay Pure Water would be a denial of them
21 recovering their investment twice.
22 Q You heard Ms. Benter's testimony yesterday
23 about stranded investment?
24 A Yes, sir.
25 Q In your opinion, based on the testimony that

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1 was adduced yesterday, what does that tell you about
2 stranded investment outside of Lindsay Pure Water's
3 CCN?
4 A To the extent the testimony given was
5 correct, those investment costs have been recovered
6 through the sale of the lots and there is no stranded
7 investment.
8 JUDGE NORMAN: Let me ask you:
9 Yesterday you also said that -- I think that because
10 of Pure Water's investment in that infrastructure,
11 those six-inch lines, that, you know, any sort of --
12 if the CCN were granted that that has -- that some
13 sort of recognition has to occur on that and -- you
14 recall your testimony better than I do.
15 WITNESS STOWE: Yes, Your Honor, I do
16 recall that testimony, which was prior to Mr. Myrick's
17 testimony.
18 JUDGE NORMAN: Okay.
19 WITNESS STOWE: At this juncture, based
20 on Mr. Myrick's testimony, I believe the record will
21 reflect that Myrick Development Company is recovering
22 that infrastructure cost through the sale of the lots.
23 JUDGE NORMAN: Okay.
24 WITNESS STOWE: Therefore, it's not
25 necessary to compensate Lindsay Pure Water for that

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1 investment since their affiliate has recovered that
2 investment.
3 JUDGE NORMAN: Let me just ask you
4 though: What's going to determine the price of the
5 sale of the lots is fair market value, isn't it?
6 WITNESS STOWE: The fair market value
7 does determine the sale of the lots. But in
8 developing the profit of the line is how do you roll
9 in your costs? And obviously as a development company
10 and having been in the development business, I'm going
11 to put all the costs that I possibly can into my lot,
12 so that it can reduce the amount of profit that I'm
13 going to --
14 MR. CARLTON: I'm going to have to
15 object to the answer, because this witness is
16 qualified as a utility expert and I've not heard his
17 qualification with respect to how development
18 companies manage their profits, keep their records,
19 those kinds of things. So I think he's speculating to
20 some degree as to how a development company -- in any
21 event, he has not got specific knowledge of what
22 Mr. Myrick testified yesterday how Myrick Development
23 Company --
24 JUDGE NORMAN: Okay. I'll withdraw the
25 question.

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1 Q (BY MR. RODRIGUEZ) Mr. Stowe, do you have
2 any experience with respect to valuing or determining
3 development of lots in subdivisions?
4 A Specifically within my prefiled direct
5 testimony I state that I was chief financial officer
6 for International Investment Advisors. And in my
7 summary I also restated that in that position I was
8 responsible for the development of projects,
9 development of rehabilitation of commercial projects,
10 investment in land, the sale of land, the tax
11 responsibilities, the complete accounting function and
12 financial reporting.
13 Q At this point, Mr. Stowe, I'd like you, if
14 you wouldn't mind, please complete your answer that
15 the Judge had asked you.
16 A It's just that the market price -- you're
17 correct, Your Honor, that the market price will
18 determine the sale of the lots. But what determines
19 the profitability of the lot sale is dependent on the
20 cost that is put in by the developer.
21 JUDGE NORMAN: I see. So you load up
22 costs in order to lessen your tax burden?
23 WITNESS STOWE: That's correct.
24 JUDGE NORMAN: Okay. I'm -- I certainly
25 understand your point about -- that you're making

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6 (Pages 529 to 532)

HEARING ON THE MERITS

SOAH DKT. NO. 582-06-2023

TCEQ DKT. NO. 2006-0272-UCR

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1 about Pure Water's ability to provide service because
2 of their financial condition. I'm having a little
3 more trouble -- the reality of what's going on is
4 you're saying that both they recover their cost --
5 they recover their cost both through the sale of the
6 lots and through their rates; however, their rates are
7 inadequate because they're losing money each year.

8 It's hard for me to see how some
9 credence should be given to -- in the reality of
10 Mr. Myrick's testimony, I'm not sure there were bright
11 lines between all this.

12 WITNESS STOWE: A little
13 clarification --

14 JUDGE NORMAN: All right.

15 WITNESS STOWE: -- the reason they're
16 losing money is they're using accelerated depreciation
17 on the infrastructure cost, which has already been
18 recaptured in the sale of the lot.

19 JUDGE NORMAN: Oh, I see.

20 WITNESS STOWE: So that's why they're
21 losing money.

22 JUDGE NORMAN: All right. Okay.

23 MR. CARLTON: And I'm going to object.
24 I don't think that -- I think that misstates the
25 testimony of Mr. Myrick. I mean, I think you'll

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1 recall --

2 JUDGE NORMAN: -- what he said or what I
3 said?

4 MR. CARLTON: No, what Mr. Stowe
5 indicated. I think what Mr. Myrick has testified is
6 that they've not pulled any cash out of the utility at
7 all. So, you know, depending on how we're talking
8 about losing money, there's losing from an accounting
9 perspective, which is what accountants are paid to do
10 is to put the numbers down, and then there's whether
11 or not you've actually got any money coming out of the
12 system.

13 JUDGE NORMAN: Well, the accelerated
14 depreciation is what he's talking about. That's --

15 MR. CARLTON: It's not necessarily a
16 cash issue.

17 JUDGE NORMAN: And my concern honestly
18 is -- just to tell you what's in my mind -- is the --
19 you know, it's one thing that -- I think that Pure
20 Water is a bit -- you know, in terms of whether or not
21 the CCN is granted to all the area south of Highway 82
22 minus South Ridge, I think Pure Water's -- in terms of
23 the effect on Pure Water -- Pure Water's ability to in
24 itself provide that service is probably an important
25 issue, if that makes sense. So if there's only one

1 utility that is the City of Lindsay that has the
2 ability to provide that service south of 82 as opposed
3 to the protestant, then that's a significant factor on
4 the one hand. That's where my thought is going.

5 On the other hand, in carving out South
6 Ridge in order to let Mr. Myrick have a chance to
7 recover his investment along the lines that you were
8 talking about yesterday before Mr. Myrick's testimony,
9 it seems like something that -- the line of my
10 thinking is that would have effect on Pure Water of
11 not letting him do that.

12 And so, I mean, you-all -- that's
13 where -- that's what I was thinking coming in this
14 morning. So -- and I don't know where you are on
15 that.

16 MR. RODRIGUEZ: Well, that's the reason
17 for the testimony.

18 JUDGE NORMAN: Right. I understand.
19 You're trying to establish he should be limited to his
20 present CCN is what you're trying to do. Isn't that
21 right?

22 MR. RODRIGUEZ: That's correct.

23 JUDGE NORMAN: All right. Well, those
24 are my thoughts.

25 Q (BY MR. RODRIGUEZ) Mr. Stowe, do you recall

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1 any testimony yesterday from Mr. Myrick regarding
2 Myrick Development Company's obligation to loan money
3 to Lindsay Pure Water?

4 A Yes.

5 Q Did any of that testimony cause you any
6 concern?

7 A Yes, sir.

8 Q Please explain that.

9 A His testimony was that they're under no
10 obligation to provide continuing funding to Lindsay
11 Pure Water.

12 Q Mr. Stowe, is the -- I believe the Judge
13 yesterday asked about the granting of Lindsay Pure
14 Water -- I'm sorry, the City of Lindsay's CCN and an
15 analysis -- three-way analysis. One way was by
16 granting it all, by granting -- by granting it all
17 except for a quarter-mile around Lindsay Pure
18 Water's --

19 JUDGE NORMAN: Well, based on the
20 testimony yesterday, I think that that quarter mile is
21 really not an issue anymore because all of South Ridge
22 is within a quarter mile. So really I think what I'm
23 talking about is just all of South Ridge.

24 MR. RODRIGUEZ: Thank you.

25 Q (BY MR. RODRIGUEZ) Then just basically two is

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1 the granting it all or not granting it to the town of
2 Lindsay with the exception of the South Ridge
3 development. Is that right?
4 JUDGE NORMAN: And then -- or the last
5 is what Mr. Myrick has urged, and that is --
6 MR. RODRIGUEZ: That's what I'm saying,
7 granting none of it, granting it all --
8 JUDGE NORMAN: Granting none south of
9 82, correct, or granting all south of 82 except for
10 South Ridge, or granting just -- or just granting it
11 all period, which excludes Mr. Myrick's CCN.
12 Q (BY MR. RODRIGUEZ) Can you describe for us,
13 Mr. Stowe -- let me ask this: Do you have an opinion,
14 Mr. Stowe, on the effect of granting the town of
15 Lindsay's CCN application on the town itself? What
16 effect -- do you have an opinion as to what effect
17 that might have on the town?
18 A Yes, sir.
19 Q Can you please explain that?
20 A To grant it -- the complete request, the
21 impact would be one of economies of scale that would
22 be present. Perhaps even more importantly, however,
23 is that the city is, at the time, exploring the
24 potential of augmenting or converting from groundwater
25 to surface water.

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1 MR. CARLTON: Objection, I don't believe
2 there's testimony to that effect.
3 JUDGE NORMAN: No, he's explaining the
4 effect on the City of Lindsay, and I'll permit it.
5 MR. CARLTON: I thought what he
6 testified to was that the town was considering
7 conversion from groundwater to surface water, and I
8 don't know that that testimony is anywhere in the
9 record.
10 JUDGE NORMAN: No, it may not be, but
11 I'm interested in -- I'm going to decide between one
12 of three choices, and I want to find out the effect --
13 the effect of these in terms of the regulatory
14 standards. They are the effect on Pure Water, the
15 ability of the Applicant to provide adequate service,
16 probable improvement of service or lowering of costs
17 to consumers. I think that's what you're addressing,
18 wasn't it?
19 WITNESS STOWE: Yes. Ultimately that is
20 correct.
21 JUDGE NORMAN: All right. And the
22 adequacy of service currently -- well, currently
23 provided. So go ahead.
24 A Obviously there is a threshold of demand in
25 service requirements that will be necessary before the

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1 city could make the investment necessary to switch
2 over to surface water supplies and to diminish their
3 reliance upon groundwater. This would have an impact
4 upon Lindsay also if they were to lose part of the
5 system that they're applying for.
6 Based on the testimony yesterday of
7 staff witness Benter, there also would be evidently an
8 environmental impact. One of the issues she rose in
9 her testimony was the environmental impact of having
10 to punch more holes in the ground as to develop more
11 well sites. Obviously if it were granted in areas
12 sufficient to justify the conversion to surface water,
13 then the need to punch more holes will be done away
14 with.
15 Q (BY MR. RODRIGUEZ) Now is that -- and I'm
16 going to try to get to those three choices with the
17 Judge on that. Does that opinion hold or not hold
18 with respect to exclusion of the South Ridge of the
19 Lindsay development -- granting it all with the
20 exception of the South Ridge of Lindsay?
21 A The effect will be impacted because there's
22 less area and less demand.
23 Q Now, how about not granting the CCN south of
24 82 to the town of Lindsay? What impact would that
25 have?

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1 A That would have a significant impact --
2 Q And that --
3 A -- you're talking larger area -- you know,
4 came conditions, lessening of demand.
5 Q Now, based on your analysis that you detailed
6 this morning, can you please provide us the -- your
7 opinion as to the impact specifically on Lindsay Pure
8 Water by granting the city's requested CCN?
9 A Based on the testimony of Mr. Myrick
10 yesterday, I'm now of the opinion that the investment
11 costs will not be stranded. It has been recovered
12 through the lots that have been sold.
13 JUDGE NORMAN: It has been recovered or
14 is being recovered through the sale of these lots?
15 WITNESS STOWE: Through the sale of the
16 lots. The ones that have actually been sold and for
17 those lots that are inside -- or outside his CCN,
18 those lots have been sold and are currently being
19 served. And that investment associated with those
20 lots has been recovered, according to his testimony.
21 To the extent beyond that what the
22 impact may or may not be, based on the operations of
23 the company right now, I don't see that there would be
24 any further impact as long as there continues the
25 opportunity to sell those lots.

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1 JUDGE NORMAN: There would not be an
2 impact on Pure Water?
3 WITNESS STOWE: I do not see that it
4 would be.
5 JUDGE NORMAN: Because he's covering his
6 investment cost through the sale of lots?
7 WITNESS STOWE: That's correct.
8 JUDGE NORMAN: However, he would no
9 longer be able to sell water to his outside CCN
10 customers?
11 WITNESS STOWE: That's correct.
12 JUDGE NORMAN: Would or would that not
13 be an impact?
14 WITNESS STOWE: Well, if he were denied
15 the ability to recover the investment cost twice
16 through the rates, then I don't see that it would have
17 any impact upon him.
18 JUDGE NORMAN: Okay.
19 Q (BY MR. RODRIGUEZ) Mr. Stowe, were you here
20 yesterday when Mr. Myrick indicated that he could --
21 he could provide service three times cheaper than the
22 City of Lindsay?
23 A Yes, sir. And first he started off at two
24 times, but then he decided it would be three times
25 cheaper.

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1 Q Do you have an opinion as to whether that's
2 an accurate statement?
3 A Yes, I do.
4 Q Could you please explain that to us?
5 A If we look at the investment cost that Myrick
6 has -- Myrick -- excuse me, Pure Water has on his
7 books today restated to normalized depreciation
8 instead of accelerated depreciation, but still using
9 the shortened lives of 20 years, I believe that the
10 total investment is roughly \$95,000 --
11 Q I believe I have your notes.
12 A Thank you. Yes, \$95,711. If we divide that
13 by the number of active connections that he has in
14 place today, that constitutes an investment \$3,828 per
15 connection. If we do it at build-out of the 64
16 connections, that constitutes an investment cost of
17 \$1,495 per connection.
18 To contrast, if we go to the city's
19 audited financial statements, as of September 30th,
20 2007 their audited financial statements demonstrate a
21 net investment for water and sewer -- not just water
22 but water and sewer -- of \$515,795. The company
23 has -- the city has 399 active connections, so the net
24 investment per connection for water and sewer as we
25 sit here today is \$1293 per connection for water and

1 sewer versus Pure Water's investment of \$3,328.
2 JUDGE NORMAN: Per connection for
3 water --
4 WITNESS STOWE: Per connection for water
5 only. If we look at the capacity testimony of
6 Mr. Maroney, at the 700 connections the net investment
7 per connection then is \$737 per connection for water
8 and sewer versus the build-out investment per
9 connection of Pure Water of \$1495 per connection for
10 water only.
11 Q Mr. Stowe, are you familiar with the possible
12 funding sources that a municipally-owned utility has
13 available to it?
14 A Yes.
15 Q Can you please explain those to us?
16 A A municipality has available to them revenue
17 bond funding which is bonds, traditionally 20 years,
18 sometimes 25 years, that are backed by the revenues of
19 the utility system. They also have general obligation
20 bonds available to them, which are backed by the
21 taxing authority and tax revenue of the city. They
22 also have certificate of obligation bonds available to
23 them, which is a combination, sometimes called a
24 double barrel, which has a first call on the revenues
25 of the utility and a second call on the tax -- and

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1 supported by the taxing authority of the municipality.
2 Then you also have grants available.
3 You also have short-term loan instruments such as
4 warrants or commercial paper available. And then, of
5 course, you have pay-as-you-go, which is funding
6 through cash flow. And you also can have funding
7 through the general fund cash flow, which would be the
8 taxing ability of the municipality.
9 Those are all available. It's not that
10 I would recommend the use of all of those, but those
11 are available.
12 MR. RODRIGUEZ: I appreciate your
13 testimony, Mr. Stowe. We pass the witness.
14 JUDGE NORMAN: Okay. Mr. Siano, any
15 questions?
16 MR. SIANO: No questions.
17 JUDGE NORMAN: Okay. Go ahead.
18 CROSS-EXAMINATION
19 BY MR. CARLTON:
20 Q Mr. Stowe, have you reviewed the tax returns
21 or financial statements for Myrick Development
22 Company?
23 A No, sir, I have not.
24 Q Okay. So have you ever had clients that
25 relied upon you for how their accounting should be

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| <p>1 taken care of, to let you make the decisions and</p> <p>2 recommendations to them about that?</p> <p>3 A Yes, sir.</p> <p>4 Q Those clients don't have a lot of expertise</p> <p>5 in accounting and tax matters, do they?</p> <p>6 A Some more than others.</p> <p>7 Q But generally they hire you for that</p> <p>8 expertise, correct?</p> <p>9 A At times they have.</p> <p>10 Q And if somebody needed to hire somebody --</p> <p>11 needed to hire a person for tax and accounting</p> <p>12 matters, you would be a good choice for that, wouldn't</p> <p>13 you?</p> <p>14 A I'd be a better --</p> <p>15 Q On utility matters.</p> <p>16 A -- on utility and regulatory matters I'd be a</p> <p>17 good choice.</p> <p>18 Q So is it possible in your mind that</p> <p>19 Mr. Myrick, when he stated that he's recovered his</p> <p>20 costs of the utility system through his lot sales,</p> <p>21 that he was talking about really his real world cash</p> <p>22 flow rather than the accounting mechanisms for how all</p> <p>23 that is tracked?</p> <p>24 A I took his testimony for the fact that it was</p> <p>25 the real world cash flows, and that's the concern.</p> | <p>1 both places is extremely wrong.</p> <p>2 Q I understand. And the only way we can really</p> <p>3 determine that is to look at the books and tax returns</p> <p>4 for both entities, right?</p> <p>5 A Again, I'm -- to quantify it, but based on</p> <p>6 the testimony that was given, that is transpiring. To</p> <p>7 the magnitude it's transpiring I agree with you, it</p> <p>8 has not been quantified.</p> <p>9 JUDGE NORMAN: When you say that he's</p> <p>10 recovering it because of the depreciation, it's the</p> <p>11 depreciation factor that shows that he's recovering it</p> <p>12 through rates. Is that right?</p> <p>13 WITNESS STOWE: That's correct, Your</p> <p>14 Honor.</p> <p>15 Q (BY MR. CARLTON) I think the Judge asked you</p> <p>16 about market value.</p> <p>17 A Yes, sir.</p> <p>18 Q In terms of selling property, with your</p> <p>19 experience in the development industry, is -- lots</p> <p>20 sell in an area based on the market value, not based</p> <p>21 on necessarily the expenses that have been incurred to</p> <p>22 develop those lots, right?</p> <p>23 A Ultimately, yes. But I would assume that an</p> <p>24 astute developer is going to do the market study and</p> <p>25 do the cost build up and know what his cost in his</p> |
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| <p>1 Q Okay. So that the only way we can really</p> <p>2 know from an accounting standpoint whether or not he</p> <p>3 has recovered his expenses for the utility system --</p> <p>4 or Lindsay Pure Water's utility infrastructure through</p> <p>5 Myrick Development Company, would be to look at those</p> <p>6 books and look at those tax returns. Isn't that</p> <p>7 right?</p> <p>8 A You'd have to look at those affiliated</p> <p>9 transactions right now to actually quantify. All we</p> <p>10 have is his testimony that they were recovered.</p> <p>11 Q But it's correct that the only real way to</p> <p>12 know whether that profit or that expense has been</p> <p>13 double recovered, as you asserted, would be to look at</p> <p>14 Myrick Development Company's books. Is that correct?</p> <p>15 A To ascertain that affiliated transaction,</p> <p>16 that would be correct.</p> <p>17 Q It's not inappropriate for a developer to</p> <p>18 recover those development expenses, including utility</p> <p>19 infrastructure costs, through the development company,</p> <p>20 is it?</p> <p>21 A When the development company and the utility</p> <p>22 company are affiliated, as they are in this case by</p> <p>23 the same owners, for them to recover it through the</p> <p>24 sale of a lot is not wrong. For them to recover it</p> <p>25 through rates is not wrong. But to recover it through</p> | <p>1 lots will be versus what the market is. Otherwise</p> <p>2 he'd go under in a heartbeat.</p> <p>3 Q I appreciate that. But the answer to the</p> <p>4 question is yes, right?</p> <p>5 A Repeat the question.</p> <p>6 MR. CARLTON: I'm going to ask the court</p> <p>7 reporter to read it.</p> <p>8 (The question was read back)</p> <p>9 A My answer to that question would be I think</p> <p>10 no, that it's going to take a combination of both.</p> <p>11 Q Well, isn't it really true that it's -- that</p> <p>12 the expenses that occur in developing the lots really</p> <p>13 only affect the profit that the developer makes on</p> <p>14 those lots?</p> <p>15 A That statement is true, but it also impacts</p> <p>16 the marketability of the lots.</p> <p>17 Q Because when you market lots in an area, you</p> <p>18 have to be within the fair market value range of</p> <p>19 various lots of that type that are sold within an</p> <p>20 area?</p> <p>21 A That's correct.</p> <p>22 Q Did you do a study of the market value of</p> <p>23 lots in the area surrounding Lindsay?</p> <p>24 A No, I have not.</p> <p>25 Q Do you know how much the lots that Mr. Myrick</p> |

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|-----------------------------------------------------------|----------------------------------------------------------|
| 1 sold in South Ridge sold for? | 1 Q It's APP-2, TLM-16. |
| 2 A I've heard it in conversation, but that's | 2 A And, I'm sorry, the schedule reference again. |
| 3 all. | 3 Q TLM-16. |
| 4 Q As an accountant, do you advise your clients | 4 A TLM-16. Yes, sir. |
| 5 to put their utility infrastructure costs on the | 5 Q I'd like to look at the first two categories |
| 6 development company side of their accounting? | 6 for water rates of three-quarter inch meters. |
| 7 A I do not practice accounting, so I don't give | 7 A This is in the third page back, schedule -- |
| 8 any accounting advice at this time. | 8 Q It's Exhibit A. It's in the ordinance? |
| 9 Q If you were giving -- if someone came to you | 9 JUDGE NORMAN: It's Page 343 -- no, it's |
| 10 and said, "Hey, we want to create a new development | 10 not. Excuse me. |
| 11 and we're going to build the utility infrastructure," | 11 MR. CARLTON: It's part of the |
| 12 would you recommend that that utility infrastructure | 12 supplemental testimony of Mr. -- it was offered -- |
| 13 be accounted for on the utility side or on the | 13 WITNESS STOWE: I have it. It was |
| 14 development company side? | 14 behind the statement. |
| 15 A On the utility side. | 15 Q (BY MR. CARLTON) I want you to take a minute |
| 16 Q Okay. And that's because there's an ability | 16 to look at the two classifications of three-quarter |
| 17 to earn a return on that investment and it's favorable | 17 inch meter rates for a second and let me know when |
| 18 from a tax standpoint just as equally as it would be | 18 you're done. |
| 19 from the development standpoint? | 19 A I'm done. |
| 20 A No, sir. | 20 Q There's a pretty significant difference |
| 21 Q Okay. But you would recommend that utility | 21 between those two classifications in terms of rates, |
| 22 infrastructure not be expensed on the development | 22 isn't there? |
| 23 company side? | 23 MR. RODRIGUEZ: I'll object, Your Honor. |
| 24 A If I owned both, the utility company and the | 24 The questioning exceeds the scope of my rebuttal |
| 25 development company, I would recommend that the | 25 testimony. |
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| 1 infrastructure cost not be capitalized into the lots | 1 JUDGE NORMAN: I'm going to let him |
| 2 and that that infrastructure cost be recorded on the | 2 answer that question. Go ahead. |
| 3 books and records of the utility company. | 3 A There is a difference between the two, |
| 4 JUDGE NORMAN: And that would be to | 4 approximately -- you're talking about referencing the |
| 5 justify a rate. Is that right? | 5 three-quarter inch inside and outside? |
| 6 WITNESS STOWE: That is part of the | 6 Q (BY MR. CARLTON) Yes. |
| 7 answer, Judge. The real answer, from my perspective, | 7 A Yes. |
| 8 though, is that water is a very precious natural | 8 Q So under this schedule, somebody lives |
| 9 resource in this state right now and getting more so. | 9 outside the city limits would pay significantly more |
| 10 And to actually price a service to the end user that | 10 for their water bill for \$10,000 -- I mean, 10,000 |
| 11 does not encompass the cost of providing that service | 11 gallons, excuse me -- than somebody who lives inside |
| 12 is a waste of the natural resource. | 12 the city, correct? |
| 13 JUDGE NORMAN: Okay. | 13 A Approximately 50 percent more. |
| 14 Q (BY MR. CARLTON) Along those lines, let me | 14 Q If the city is not using any of its property |
| 15 ask you a question. Would you recommend to a | 15 tax revenues to fund its utility system, how would |
| 16 municipal client that they use ad valorem property | 16 TCEQ treat that rate difference in a rate proceeding? |
| 17 taxes or sales taxes in order to fund utility system | 17 MR. RODRIGUEZ: I'll object, Your Honor. |
| 18 costs? | 18 These rates are not at issue here because these rates |
| 19 A That is not my recommendation, but I see | 19 have not been protested by any party. |
| 20 quite a few that do that. | 20 JUDGE NORMAN: And you talked about, I |
| 21 Q I noticed in the recent rate structure that | 21 think, in the rebuttal that -- as I recall anyway -- |
| 22 is established for the town of Lindsay -- I think that | 22 that the City of Lindsay's rates, water rates, were |
| 23 was an exhibit to your testimony. Let's look at | 23 less? |
| 24 TLM-16, please. | 24 MR. RODRIGUEZ: No, Your Honor, we |
| 25 A That exhibit number again? | 25 talked about the cost per connection. |

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1 JUDGE NORMAN: Cost per connection.
2 MR. RODRIGUEZ: The rate structure was
3 never an issue that Mr. Stowe testified to in the
4 rebuttal case.
5 MR. CARLTON: Your Honor, I think the
6 door has been opened as far as what's the cost and the
7 impact to these people who are going to live out
8 there. And then also --
9 JUDGE NORMAN: I agree.
10 MR. CARLTON: -- in terms of the
11 accounting and how people are treating their income
12 and expense.
13 MR. RODRIGUEZ: The testimony was it's
14 three times more -- that Lindsay Pure Water can
15 provide service at a third the less cost, and what
16 Mr. Stowe testified to was that the actual investment
17 for all those -- the comparative of the two was
18 different. There was no rate structure that was
19 testified to.
20 JUDGE NORMAN: But, you know, this is
21 going back into -- this is really going back into
22 direct testimony to address these issues, and I'm
23 going to permit cross-examination. Go ahead.
24 Q (BY MR. CARLTON) Do you recall the question,
25 Mr. Stowe?

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1 A No, not sufficiently. I'm sorry,
2 Mr. Carlton. I know you wanted me to speculate on
3 what TCEQ may or may not do.
4 Q But you're an expert and you have a lot of
5 experience with TCEQ, haven't you?
6 A Yes, sir.
7 Q And you've dealt with TCEQ on rate appeals
8 for municipal rates, haven't you?
9 A At the wholesale level, yes, sir. Maybe one
10 or two -- maybe one case at the retail level that I'm
11 thinking of right now.
12 Q It's more experience than most people have,
13 so -- how many wholesale cases have you dealt with?
14 A Oh, gosh.
15 Q That's what I thought. Okay. So let's talk
16 about these rates. How would TCEQ look at rates being
17 charged to these customers, assuming with me that
18 there's no property tax general fund transfer
19 occurring, given that the rates are 50 percent more
20 for outside city customers than inside city customers?
21 A The TCEQ would require cost justification for
22 that type of differential.
23 Q So you can't just go out and charge rates to
24 people that are higher than what your cost of service
25 is, correct?

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1 A Outside the city limits -- inside the city
2 limits of course you could.
3 Q Well, sure, inside the city limits. The
4 reason there's no regulatory authority by TCEQ -- at
5 least primary jurisdiction -- is because the policy is
6 people can vote out those council members. Is that
7 right?
8 A That's correct.
9 Q And outside the city, those people don't have
10 that option, do they?
11 A That's correct.
12 Q So their only recourse is to appeal to TCEQ?
13 A That's correct. And there's an avenue to do
14 that.
15 Q Right. And TCEQ is going to look at those
16 rates on a cost basis and make sure that there's not
17 some arbitrary multiplier being applied to those
18 rates?
19 A That's true, beyond a threshold, based on my
20 experience.
21 Q And absent some sort of taxes that are being
22 used to fund rates inside the city, there wouldn't
23 really be a justification for this -- for this
24 50 percent multiplier on these rates, would there?
25 A That's not true, especially in a rural area.

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1 Q What would you think would be a reasonable
2 justification for a 50 percent multiplier on these
3 rates?
4 A Several items that could enter into it --
5 whether or not it justifies 50 percent, I have no
6 idea. But the time and expense associated with labor
7 costs to travel beyond the city limits for repairs,
8 for maintenance, for meter reading, the time -- the
9 investment costs for the extension beyond the city
10 limits, whether or not the lack of density in the
11 outside city limits opposed to the inside city limits,
12 all these factors can have a cost impact.
13 Q And so these factors are exacerbated by
14 distance from the core of the city, right?
15 A They become exacerbated by the distance from
16 the core of the city, that's correct.
17 Q So have you ever seen rate classifications
18 based on distance from the core of the city on any of
19 your work?
20 A No.
21 Q I'd like for you to review also the other
22 schedules of these on here. There's a one-inch meter
23 rate and a one-inch meter rate for outside the city.
24 Do you see those two? It's actually 1 and 1B.
25 A Yes, sir.

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1 Q Is that same multiplier essentially being
2 used -- or same increase in rates occurring for those
3 outside city customers as well?

4 A Yes, sir. It's the same 50 percent it
5 appears to be. And also I'd point out it's the same
6 inclining block structure, which is a conservation
7 mechanism.

8 Q You mentioned that Lindsay Pure Water is
9 currently insolvent. They don't have enough assets to
10 pay off their debt, right?

11 A If the note was called today, either by
12 Myrick Development or -- in the event Myrick
13 Development were to go under -- by its receiver, they
14 will not be able to pay with enough cash in the
15 company today.

16 Q You're not suggesting that Myrick Development
17 is about to go under, are you?

18 A I have no idea where they stand.

19 Q What would the effect be on the success of
20 the South Ridge development if Myrick Development
21 Company didn't continue to fund -- or fund the
22 shortfalls in Lindsay Pure Water or called the debt on
23 Lindsay Pure Water?

24 A Obviously, unless there was a purchaser for
25 the development, the development would come to a halt

1 neighborhood of about \$6,000. So, yes, I mean that --
2 if they had more customers, then they probably would
3 not experience any cash shortfall.

4 Q And they'd be able to make payments on the
5 debt that they owed, right?

6 A I don't know that to be the case under the
7 existing rates, no.

8 Q But it's possible?

9 A I don't believe so.

10 Q And you've done an analysis of what the
11 additional cash flow for the full build-out of 60 lots
12 would be?

13 A No, sir.

14 Q And speaking of that, you did mention that
15 you had done an analysis on the net investment and
16 full build-out. What do you mean by full build-out?

17 A The 64 lots.

18 Q The 64 lots? Is it your understanding that
19 the infrastructure that's constructed is only
20 sufficient to serve 64 lots?

21 A It's two things -- no, it's my understanding,
22 based on Mr. Maroney's testimony that the lending
23 factor on the infrastructure right now is about a
24 hundred connections, which would be the pressure tank.

25 Q And you recall the testimony that pressure

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1 and a receiver would be appointed by the TCEQ.

2 Q And do you think that Myrick Development
3 Company would therefore have any incentive to call
4 that note at this time if they didn't want the
5 development to come to a halt?

6 A It depends. If the market for the lots have
7 dropped to the point that the total profit in the lot
8 sales is envisioned to be less than the \$135,000 -- or
9 \$131,000 that the utility company owes them, they
10 might say utility company pay them \$131,000.

11 Q And the likelihood of them obtaining those
12 funds if they did that is what?

13 A I don't know.

14 Q Does the utility company have the assets to
15 pay for it?

16 A They don't have the assets.

17 Q So they're not going to recover their money
18 if they call that note, are they?

19 A They could put the company in a situation
20 where they would have to sell or go into receivership.

21 Q Now, a lot of this cash shortfall would be
22 alleviated if there were more customers on the Lindsay
23 Pure Water system. Is that correct?

24 A Well, again the cash shortfall we're speaking
25 of over this ten-year period appears to be in the

1 tanks cost 25 to 50,000 for a 1- to 2,000-gallon
2 pressure tank?

3 A I do recall that testimony.

4 Q So if we were to actually spread the cost of
5 the oversized Lindsay facilities over those hundred
6 units, your net investment would drop?

7 A It would drop to approximately \$957 for water
8 only. And it would be compared to the city's
9 700-or-so-dollars for water and sewer.

10 Q I thought your 900 was at full build out, 65
11 units?

12 A The 95,000 -- no, sir. Currently there's
13 \$95,711 net investment assuming straight line
14 depreciation. At 64 build out, 64 lots, the total was
15 \$1,495 connection, again the limiting factor being
16 the -- we take into fact the limiting -- going beyond
17 the development and the limiting factor of the
18 pressure tank at a hundred connections, then the cost
19 per connection or investment cost would be \$957 per
20 connection, comparing that to the \$737 of the city for
21 water and sewer.

22 Q Okay. How old is the city system?

23 A I'm not sure. I don't know.

24 Q More than 10 years old?

25 A Probably.

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| <p>1 Q So they've had a longer amount of accumulated</p> <p>2 depreciation on their assets, correct?</p> <p>3 A That's correct. Both water and sewage.</p> <p>4 Q So the age of the system is important in</p> <p>5 making that net investment calculation that you made?</p> <p>6 A Yes, it would be.</p> <p>7 Q Okay. And so really this net investment</p> <p>8 means that what we've got is Lindsay is a younger</p> <p>9 system, possibly built --</p> <p>10 JUDGE NORMAN: Lindsay Pure Water?</p> <p>11 Q (BY MR. CARLTON) Lindsay Pure Water is a</p> <p>12 younger system, built when prices were higher for the</p> <p>13 assets that have been constructed?</p> <p>14 A I don't know that totally to be the case</p> <p>15 because I don't know the age of the Lindsay system</p> <p>16 completely. So those time frames could have been</p> <p>17 comparable.</p> <p>18 The other thing, though, I would also</p> <p>19 point out is that according to Lindsay -- or Pure</p> <p>20 Water's tax return is their system now is 50 percent</p> <p>21 depreciated by using 20-year life.</p> <p>22 Q Sure. And you said there was no problem with</p> <p>23 how you treat depreciation from a tax standpoint in</p> <p>24 that way, because there's a distinction between tax --</p> <p>25 depreciation on your tax returns versus depreciation</p> | <p>1 Q What would happen to one of the homes -- the</p> <p>2 owners of the home that are currently being served by</p> <p>3 Lindsay Pure Water if they were forced to obtain</p> <p>4 service from the town of Lindsay?</p> <p>5 A Realistically, based on my experience in</p> <p>6 these situations --</p> <p>7 Q Assuming that they are -- they have to go get</p> <p>8 service from the town of Lindsay, what's the impact to</p> <p>9 them?</p> <p>10 A Based on my experience?</p> <p>11 Q I'm asking the question. We'll talk about</p> <p>12 what your basis is in a little bit.</p> <p>13 A Based on my experience what would happen is</p> <p>14 that the City of Lindsay would attempt to enter into a</p> <p>15 contractual agreement with Pure Water so Pure Water</p> <p>16 would continue to provide the service and charge the</p> <p>17 rate -- Lindsay's rate and remit that to the city in</p> <p>18 turn for a fee until such time as the system develops</p> <p>19 far enough out into that area that you could hook on</p> <p>20 those connections.</p> <p>21 Q So the town of Lindsay wouldn't be the actual</p> <p>22 retail provider in that interim period. It would be</p> <p>23 Lindsay Pure Water, correct?</p> <p>24 A No. The town of Lindsay would be the retail</p> <p>25 provider under a contractual agreement -- wholesale</p> |
| Page 562 | Page 564 |
| <p>1 for ratemaking purposes, correct?</p> <p>2 A I believe my testimony was that the -- that</p> <p>3 is correct. But the 20-year life is short.</p> <p>4 Q Okay. And to the extent Lindsay Pure Water</p> <p>5 could make a small investment in its system in order</p> <p>6 to increase capacity of any one of those limiting</p> <p>7 pieces of infrastructure, you would add the amount of</p> <p>8 that investment to this \$95,000 number you've got and</p> <p>9 divide by the new maximum number of connections that</p> <p>10 could be attached -- connected, right?</p> <p>11 A That would be true of both systems, both</p> <p>12 systems being the city and Pure Water.</p> <p>13 Q You also talked a little bit about you no</p> <p>14 longer have a concern on the stranded investment based</p> <p>15 on Ms. Benter's testimony. Do you recall that?</p> <p>16 A No, sir.</p> <p>17 Q I thought you said that you didn't feel like</p> <p>18 there was any stranded investment as Ms. Benter had</p> <p>19 described it.</p> <p>20 A That's true, based on Mr. Myrnick's testimony.</p> <p>21 Q Okay. Combination of the two. There still</p> <p>22 would be assets in the ground with the capacity to</p> <p>23 serve that would no longer be used and useful. Isn't</p> <p>24 that correct?</p> <p>25 A That's true, with the zero cost basis.</p> | <p>1 agreement, basically, if you would, with Pure Water.</p> <p>2 That's my experience.</p> <p>3 JUDGE NORMAN: Is it true that at the</p> <p>4 time the CCN -- assume a CCN was granted. A CCN</p> <p>5 amendment is granted to the entire area. At that time</p> <p>6 the existing customers outside the Pure Water CCN</p> <p>7 could not legally purchase, nor could Pure Water</p> <p>8 legally sell, the water to that customer.</p> <p>9 WITNESS STOWE: Without an agreement of</p> <p>10 the parties.</p> <p>11 JUDGE NORMAN: Without an agreement of</p> <p>12 the parties.</p> <p>13 WITNESS STOWE: And the other -- based</p> <p>14 on my experience, the other situation I've seen is</p> <p>15 where those specific customers are excluded -- those</p> <p>16 specific customers are excluded from the CCN and are</p> <p>17 retained by the existing utility.</p> <p>18 JUDGE NORMAN: Say that again, please.</p> <p>19 WITNESS STOWE: That the existing actual</p> <p>20 connections are excluded from the CCN.</p> <p>21 JUDGE NORMAN: Yes.</p> <p>22 WITNESS STOWE: And that the current</p> <p>23 serving utility continues to serve those connections</p> <p>24 and those connections only. They do not make any new</p> <p>25 connections into -- outside of their CCN.</p> |

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1 JUDGE NORMAN: You have seen that -- I'm
2 not -- you've seen that situation?
3 WITNESS STOWE: Yes, sir. Yes, Your
4 Honor. In fact, I've just finished negotiating one
5 that was approved by the city council last week.
6 JUDGE NORMAN: I see.
7 Q (BY MR. CARLTON) Would you agree with me that
8 it appears that much of the problem that Lindsay Pure
9 Water is experiencing from a cash flow standpoint is
10 that it doesn't have enough customers? The
11 subdivision hasn't built out as quickly as it would
12 have been, and if we were at 65 customers as -- at
13 full build-out, there would be -- there would be less
14 of -- well, they'd be breaking even at a minimum and
15 perhaps have a little extra cash?
16 A I haven't done the calculation, Mr. Carlton.
17 JUDGE NORMAN: However, in principle --
18 is what he saying in principle a valid -- even though
19 you don't know the specific figures?
20 WITNESS STOWE: Perhaps rather than
21 speculate I can look at it.
22 JUDGE NORMAN: All right. You want him
23 to do that?
24 Q (BY MR. CARLTON) Sure. You're looking at
25 APP-7?

1 do this real quick.
2 Q Instead of the current 26 customers, divide
3 it by the build-out 65 customers, right?
4 A That's probably the easiest way.
5 Q Simple ratemaking?
6 A Sixty-four customers?
7 Q I thought you said you would use 65 -- you
8 did say 64. My apologies.
9 A All right. I'm going to use round numbers.
10 That's \$304 a year versus -- and if we add -- that's
11 39 more connections?
12 Q Right.
13 A That's \$304 times 64 connections. That's
14 \$19,456 and 64 connections. You'd be collecting
15 11,856 additionally.
16 Q Okay.
17 A But wait a minute, under the testimony
18 yesterday of Mr. Myrick, the average customer at 8,000
19 gallons average bill is 30 bucks a month.
20 Q Okay.
21 A That's \$360 per connection. So if I collect
22 the \$360 per connection times the new connections of
23 39, I'm going to collect in total from the -- at
24 build-out under the rates, \$14,040. From that amount
25 now --

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1 A Yes, sir. Okay. Going through APP-7, if I
2 look down the line, we have repairs and maintenance of
3 \$1,269, and that number is a function of the number of
4 connections that you'll have. The more connections --
5 Q The variable costs?
6 A It's somewhat of a variable cost. So if my
7 connections go up, that cost goes up, so that's a
8 wash. Taxes and licenses, \$6,755. Let's assume that
9 that's a fixed cost. Depreciation, let's assume that
10 that's a fixed cost. Then we have other deductions of
11 11,000 which are reflected on Statement 1, which
12 appears on Exhibit APP-7, LPWC00247 Bates number. We
13 have \$2 in bank charges. I'll omit that. We've got
14 legal and professional fees. Mr. Carlton, I'll ask
15 you whether that's a good number or not.
16 Q I'll tell you that's before my time. It's
17 probably a fixed cost though.
18 (Laughter)
19 A Okay. We'll put the \$5,155 in. Supplies, I
20 think we agree that is a variable cost. Utilities is
21 a variable cost.
22 Q Okay.
23 A So basically we're dealing with -- it looks
24 like \$19,442, which possibly could be considered fixed
25 costs. If I take the \$19,442 -- let me think how to

1 Q Let me ask you to look at LPWC00235 which
2 gives a gross revenue of 14,254.
3 A 235? I'm sorry.
4 Q Gross revenue of 14,254 of --
5 A Right. But that's not the number at this
6 time I'm trying to calculate. What I'm trying to
7 figure out is with the new 35 connections, if I'm
8 charging the existing rates, I'm going to collect
9 \$14,000 -- \$14,040 more than what I currently collect.
10 But from that we've agreed -- we agreed that my
11 variable expenses are 1269, plus the utilities of
12 5354, plus supplies of 428. So my variable expenses
13 right now are running \$7,051 divided by the 25
14 connections. They're running \$282 per connection.
15 So if I multiply the \$282 by the 39
16 increase in connections, I got 10,000 -- additional
17 expenses of \$10,998.
18 Now, I had additional revenues of
19 14,040. So my net to -- that would be 13. So I
20 got -- I'll have a total contribution to my fixed
21 charges then that I deplete. If I have build-out of
22 \$3,000 annually, and I have a \$131,000 note.
23 Now, this assumes that the note doesn't
24 get any bigger, which we're still ramping. But
25 assuming that the note didn't get any bigger at

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1 \$131,000, if I assume a nominal interest rate -- which
2 I'm surprised IRS isn't assuming at this point in time
3 on his tax returns -- but if you assume a nominal
4 interest rate of 6 percent, I can't pay the interest
5 on the note at build-out.
6 Q So can we use that data for our rate
7 application? You don't have to answer that.
8 A No, actually, I would like to answer that. I
9 think a rate application would definitely be in order
10 with the affiliated transactions.
11 Q Okay. And the more connections Lindsay Pure
12 Water is able to add, the closer they get towards
13 being able to meet those potential obligations, right?
14 A No. We've established that we're at 64
15 connections is at build-out right now. If we had more
16 connections than that, then your fixed costs are going
17 to start going up.
18 Q But they have assets capable in the ground of
19 serving up to 100 connections, correct?
20 A They have assets.
21 Q So if we took this evaluation out to --
22 instead of only 34 -- 35 disconnections but out to 100
23 additional connections -- to 74 additional
24 connections, that \$3,000 number becomes much larger,
25 doesn't it?

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1 A No, sir. You've got to incur more fixed
2 costs now to extend the services beyond this
3 development.
4 Q Depending upon how you treated the line
5 extensions, correct? Because that's the only cost
6 you're incurring is lines.
7 A Line extension, meter box, meters -- you
8 know, there's certainly --
9 Q And there's fees that recover those costs
10 through the --
11 A There are fees that recover some of those
12 costs, yes.
13 Q And line extensions are typically paid for by
14 whoever is requesting the service, right?
15 A Depending on the line fee policy. There is
16 usually an extension of a certain level if you're
17 talking about a service line. If you're talking about
18 a main extension, then, yeah, that's a
19 different scenario.
20 Q Okay. So if we assume that whoever is
21 creating the demand for the additional connections to
22 use up the capacity that's available within the
23 system, if they pay for those line extensions, then we
24 are creating more revenue that could be used to pay
25 off the note?

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1 A You're creating more expenses beyond -- at
2 this level I'm comfortable with the calculations that
3 I made. I will say this: At 100 -- if we're
4 generating 3,000 by adding 39 connections, we're
5 generating \$3,000 of cash flow potentially to service
6 the note, if I double it and add 40 connections, then
7 therefore I'm adding approximately 6 to \$7,000 to
8 service the note. That's still less than the interest
9 on the note would be.
10 Q So if we add more connections and incur some
11 more expense to be able to get there?
12 A A lot more. And meanwhile the note is
13 getting bigger and bigger and bigger.
14 Q Depending upon whether that loan is made. It
15 may not, right?
16 A It might not be made, and it might be called.
17 Q But the note may also not grow. You don't
18 know the terms of the note, do you?
19 A No, sir, I have not seen the terms of the
20 note. But I do see that there's not an interest
21 expense in -- reported on the books of Pure Water and
22 I see that there's no capitalized interest on the
23 books of Pure Water. So that's what raises some
24 uncertainties in my mind.
25 Q I'm going to ask you about the \$76,000

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1 discrepancy in unaccounted-for cash that you found
2 because, frankly, I didn't follow you. What exhibits
3 were we looking at to make that determination?
4 A We can look at it a couple of different ways.
5 And again, this is just something that I noted.
6 Q Which exhibits? Which exhibits?
7 A On APP-7.
8 Q Okay.
9 A If we go to Bates No. LPWC00235 and at Lines
10 22 and 23, the 25,000 and 16,000 is \$41,000.
11 Q Hang on a second, 00235?
12 A I'm sorry, 00238, Lines 22 and 23. Are you
13 with me?
14 Q I gotcha.
15 A Those two numbers are \$41,000.
16 Q Okay.
17 A Then if we go to Line 18.
18 Q Okay.
19 A It's a cash note of 131,669, correct?
20 Q Okay.
21 A We go to Line 10B, Column C, we have the
22 noncash expense of \$73,973.
23 Q Okay.
24 A And if we go to Line 13B, Column C, we have
25 the noncash expense for amortization of 2,479.

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| <p>1 Q Okay.</p> <p>2 A When you total those numbers, that totals</p> <p>3 \$249,121.</p> <p>4 Q What was that number again?</p> <p>5 A \$249,121.</p> <p>6 Q And why are you totaling those numbers?</p> <p>7 A That's the total cash that's come into the</p> <p>8 company via these vehicles.</p> <p>9 Q Okay.</p> <p>10 A Okay. Then if we go to APP-7, LPWC00250, and</p> <p>11 basically the third column right after the number 14,</p> <p>12 the total, we see that we have spent a 162,483 on</p> <p>13 infrastructure. Okay?</p> <p>14 Q Okay.</p> <p>15 A Then we also come on down and see -- under</p> <p>16 amortization we see Lines 4 and 5 that we spend \$2,479</p> <p>17 on start-up costs.</p> <p>18 Q Okay.</p> <p>19 A Then if we go back to LPWC00238, we see we</p> <p>20 have cash on hand of \$1,949. And then we have the</p> <p>21 actual cash lost -- actual cash lost from operations,</p> <p>22 which is calculated by taking off of LPWC00238, Column</p> <p>23 B, Line 24, retained earnings of a negative \$82,211.</p> <p>24 From that number we add back in the</p> <p>25 noncash expense item of 73,973. We add back in the</p> | <p>1 Mr. Rodriguez?</p> <p>2 MR. RODRIGUEZ: I don't think I have</p> <p>3 any, but can I have a break?</p> <p>4 JUDGE NORMAN: Yeah, certainly. We'll</p> <p>5 take a little break. And, Mr. Siano, will you have</p> <p>6 any questions?</p> <p>7 MR. SIANO: Possibly.</p> <p>8 (Recess: 10:11 a.m. to 10:20 a.m.)</p> <p>9 JUDGE NORMAN: We're back on the record.</p> <p>10 MR. RODRIGUEZ: Your Honor, we have no</p> <p>11 questions.</p> <p>12 JUDGE NORMAN: Mr. Siano?</p> <p>13 MR. SIANO: Yeah, I do want to -- it's</p> <p>14 my understanding that you're trying to get out of</p> <p>15 here -- Can you hear me?</p> <p>16 WITNESS STOWE: I believe I can.</p> <p>17 MR. SIANO: For the court reporter, I'm</p> <p>18 Christiaan Siano. Am I loud enough?</p> <p>19 THE REPORTER: Yes.</p> <p>20 MR. SIANO: I'm with the Executive</p> <p>21 Director standing in for Brian MacLeod this morning.</p> <p>22 CROSS-EXAMINATION</p> <p>23 BY MR. SIANO:</p> <p>24 Q I do have a couple of questions. And</p> <p>25 mainly -- mainly just to clarify, because I heard</p> |
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| <p>1 noncash item of amortization of 2,479, and that</p> <p>2 results in an actual cash loss due to operations of</p> <p>3 \$5,759. When you specifically subtract those uses of</p> <p>4 cash of plant investment, start-up cost, cash loss on</p> <p>5 operations and cash on hand, you wind up with an</p> <p>6 unreconcilable difference of 76,452.</p> <p>7 Q That's where I lost you. Where you -- you're</p> <p>8 taking the -- how do you get from this cash loss of</p> <p>9 5,759 to this 76,000? What are you taking the</p> <p>10 difference of?</p> <p>11 A Okay. If we take the cash provided -- let's</p> <p>12 go back to the 249,121. And we back out the purchase</p> <p>13 of the assets of 162,482 and back out the start-up</p> <p>14 cost of 2,479, and we back out the actual cash that we</p> <p>15 lost in operations, 5,759, and we back out the \$1,949</p> <p>16 of cash that we have on hand, we come up with a</p> <p>17 balance of 76,452 positive cash.</p> <p>18 It's an observation only. I'm not</p> <p>19 saying anything is wrong here. But when I saw that I</p> <p>20 said, "Let me try this another way."</p> <p>21 Q Would you add the depreciation of 73,973 and</p> <p>22 the amortization 2479 and tell me what that number is?</p> <p>23 A That's the same number, 73,452.</p> <p>24 MR. CARLTON: Pass the witness.</p> <p>25 JUDGE NORMAN: Any questions,</p> | <p>1 the -- this discussion about depreciation and</p> <p>2 accelerated depreciation. I want to know where -- I</p> <p>3 believe that you said that the normal life is 50</p> <p>4 years. Is that correct? Did you say that?</p> <p>5 A I said based on my recollection the</p> <p>6 TCEQ-approved depreciable life range from -- for these</p> <p>7 particular assets range from 40 to 50 years.</p> <p>8 Q Okay. And based on your recollection of</p> <p>9 what?</p> <p>10 A The TCEQ-approved depreciation rates.</p> <p>11 Q Okay. Is there -- do you know of information</p> <p>12 in our rules that prohibit an accelerated</p> <p>13 depreciation?</p> <p>14 A Yes, for use in ratemaking.</p> <p>15 Q Yes. Can you point -- point me to those</p> <p>16 rules?</p> <p>17 A Chapter 291 -- can we go off the record?</p> <p>18 JUDGE NORMAN: Certainly.</p> <p>19 (Discussion off the record)</p> <p>20 JUDGE NORMAN: All right. Let's go back</p> <p>21 on the record. Go ahead. You were not able to find</p> <p>22 that briefly looking. Is that right?</p> <p>23 WITNESS STOWE: Briefly looking, I know</p> <p>24 it's in Chapter 291, but it's going to take me a while</p> <p>25 to find it.</p> |

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| <p>1 JUDGE NORMAN: Okay. The parties can 2 argue that in briefs to the extent it's -- 3 MR. SIANO: And I can represent that the 4 part of 291 dealing with depreciation is 5 291.31(e)(1)(B). 6 JUDGE NORMAN: Okay. 7 Q (BY MR. SIANO) And I'm just asking, 8 Mr. Stowe, do you know of an instance of a -- of a 9 utility ever getting depreciation for a life less than 10 50 years with a rate application with the TCEQ? 11 A Yes, I thought I testified that it's 40 to 50 12 years on particular assets, and I've seen -- yes. 13 Q 40 to 50 years? 14 A Yes. 15 Q But at no time less than 40? 16 A Depending on the asset. There are some 17 assets such as meters that I believe are prescribed -- 18 TCEQ prescribed rates are down in the 7 to 10-year 19 range maybe. But when we're talking about pipes in 20 the ground, it's 40 to 50 years. 21 Q Could there ever be any mineral or soil 22 conditions that would cause the life to be reduced? 23 A Sure. If there was a depreciation study and 24 evidence brought forth that would substantiate a life 25 different than the prescribed methods -- and</p> | <p>1 KERRY MARONEY, 2 having been previously duly sworn, testified as 3 follows: 4 DIRECT EXAMINATION 5 BY MR. RODRIGUEZ: 6 Q Mr. Maroney, you were -- have been here to 7 hear most of the direct cases provided by the 8 Executive Director as well as Lindsay Pure Water. Is 9 that correct? 10 A Yes, sir. 11 Q Mr. Stowe, I would like -- I mean, 12 Mr. Maroney, excuse me -- 13 A Don't hold me to that. 14 Q If you could, please, are you familiar 15 with -- in your experience -- the different funding 16 options that are available to the city -- to cities? 17 A Yes, sir, I am. 18 Q Can you describe those for me? 19 A The experience that I've had in typical 20 funding options for a municipality would be, for 21 example, Rural Utility Services, which is a USDA 22 program whereby they have not only low-interest loans, 23 but, depending on the circumstances, they'll combine 24 grants with those low-interest loans. 25 In addition there's Texas Water</p> |
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| <p>1 prescribed methods by the American Waterworks 2 Association, then, yes, there could be justification 3 based on evidence that a life could be shorter. 4 MR. SIANO: I have no further questions. 5 MR. CARLTON: That doesn't raise 6 anything for me. 7 JUDGE NORMAN: All right. Any further 8 questions from anybody of Mr. Stowe? 9 Thank you, Mr. Stowe. 10 WITNESS STOWE: Thank you, sir. 11 JUDGE NORMAN: Any reason to hold onto 12 Mr. Stowe? Do you want to let him go? 13 MR. RODRIGUEZ: Yes, he can leave. 14 JUDGE NORMAN: Does anybody have any 15 reason to hold onto Mr. Stowe. 16 MR. CARLTON: Nothing legitimate, Your 17 Honor. 18 (Laughter) 19 JUDGE NORMAN: All right. Thank you. 20 Have a safe trip home. 21 MR. RODRIGUEZ: Mr. Maroney is the next 22 witness we've got. 23 JUDGE NORMAN: Okay. Mr. Maroney, 24 you're still under oath. 25 WITNESS MARONEY: Yes, sir.</p> | <p>1 Development Board, which is a state agency, typically 2 funds municipalities with low-interest loans into 3 rural areas and for -- within the municipal areas. 4 Then there are community development 5 block grant funds, which are typically grant funds 6 that -- that cities can apply for and obtain those 7 grant funds. 8 There's also an agency known as ORCA, 9 acronym ORCA, which is the Office of Rural Community 10 Affairs, which also provides for grant funds to 11 municipalities. And then obviously a funding 12 mechanism would be rate increases, for example. 13 Q Now, Mr. Maroney, did you indicate that you 14 had -- that you had experience with those different 15 grant agencies and low-interest loan agencies? 16 A I've actually had experience with all of 17 those. 18 Q How many of those agencies would allow for 19 funding of investor-owned utilities? 20 A The rate increase part would obviously be 21 something that investor-owned utilities -- to my 22 knowledge, the other four -- the RUS or Texas Water 23 Development Board, CDBG or ORCA would not allow an 24 investor-owned utility. 25 Q There was some testimony yesterday,</p> |

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1 Mr. Maroney, regarding certain limiting factors on
2 water systems. Are you familiar with the size of the
3 storage -- the storage facilities for the City of
4 Lindsay?

5 A I am.

6 Q Can you describe for me, Mr. Maroney, the --
7 based on well supply -- how many connections --
8 without adding in additional infrastructure what's the
9 well supply capacity for the City of Lindsay?

10 A Currently they have a well supply from three
11 wells totaling 420 gallons a minute, which could have
12 a service capacity of 700 connections.

13 Q How about total storage?

14 A Total storage they have a combination of
15 elevated storage and ground storage for a total
16 storage of 290,000 gallons. You convert the 290,000
17 gallons to capacity, it would allow for a connection
18 capacity of 1,450 connections.

19 Q And how about if it was just elevated
20 storage?

21 A The elevated storage portion which makes up
22 part of the total storage -- but the elevated storage
23 portion is 150,000 gallon elevated tank, and it has a
24 customer capacity of 1,500 connections.

25 Q But when you add that in with the ground

1 Planning Group in Region C.

2 Q Now, based on your familiarity with the
3 Region C planning study, do you -- what is your
4 understanding regarding the availability of surface
5 water supplies to the City of Lindsay?

6 A As part of the Region C plan, the regional
7 water planning group has in fact adopted management
8 strategies that directly impact Cooke County as it
9 relates to the excess capacity that's in Moss Lake.
10 This would be a Cooke County water project, lake owned
11 and operated by the City of Gainesville. And that at
12 some point in time one of the strategies that's been
13 approved by Texas Water Development Board and the
14 regional water planning group is to provide surface
15 water to Lindsay and some of the other surrounding
16 areas in Cooke County.

17 Q And you're familiar with the City of
18 Lindsay's water system?

19 A I am.

20 Q Has the city taken any -- well, is the city's
21 facilities today in a position to be able to begin
22 accepting surface water?

23 A They obviously have various line sizes and
24 various infrastructure within the distribution system.
25 One particular line that was put in -- and I'm sorry I

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1 storage, the actual connection count increases a bit.
2 Is that correct?

3 A That's correct.

4 Q Now, how about the high service pump
5 capacities for the city?

6 A The city has two separate pump stations, two
7 pumps at each station. It has a total pump capacity
8 with all four pumps of 715 gallons a minute. And that
9 has a customer capacity of 1,192 connections.

10 Q Mr. Maroney, just in your experience, do you
11 have any experience with the regional water planning
12 studies that are done -- that are required throughout
13 the state?

14 A I do.

15 Q How are you familiar with them?

16 A The regional water planning study, I happen
17 to be the prime consultant on the Region B study and
18 the regional water planning group of Region B, which
19 is to the west of Region C. Cooke County is contained
20 within Region C, and I'm familiar with that plan in
21 that I have reviewed that plan and have in fact made
22 presentations to Cooke, Grayson and Fannin County as
23 it relates to proposed water improvements and water
24 management strategies that's been adopted by the Texas
25 Water Development Board and the Regional Water

1 can't tell you exactly when it was -- but it was put
2 in and extended east from Lindsay, east along Highway
3 82 to about the city limits between Lindsay and the
4 City of Gainesville.

5 Q And it's stubbed out to the eastern city
6 limits of the City of Lindsay?

7 A Yes, sir.

8 Q Okay. And towards -- to the western -- to
9 the west of the City of Gainesville?

10 A It would be on the western edge of the city
11 of Gainesville and on the eastern edge of the City of
12 Lindsay.

13 Q Along Highway 82?

14 A Along Highway 82.

15 Q I should have asked this question earlier,
16 Mr. Maroney, and I apologize, but how many connections
17 could a 1000-gallon pressure tank serve?

18 A A 1000-gallon pressure tank, based on 20
19 connections, would serve 50 customers; 20 gallons per
20 connection would serve 50 customers.

21 Q Okay. Now, you were in the courtroom
22 yesterday, Mr. Maroney, when the Judge asked for some
23 additional evidence regarding the impact of the CCN --
24 requested CCN on both the town of Lindsay and other
25 retail public utilities including Lindsay Pure Water?

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1 A I was.
2 Q Now, can you describe for me, Mr. Maroney,
3 what the impact would be on the City of Lindsay and
4 Lindsay Pure Water if the city were granted its
5 requested CCN territory?
6 A I can.
7 Q Please provide that.
8 A Assuming that Lindsay was granted its
9 requested area, Lindsay would obviously be required to
10 provide a qualified service applicant with continuous
11 and adequate service in compliance with the TCEQ water
12 standards. In addition, Lindsay would include this
13 area in their strategic planning master plan and begin
14 planning for future improvements in these areas.
15 The property owners that requested the
16 service within this area would obviously be included
17 in the CCN as they requested. It would also allow
18 Lindsay to make application in this area, and it would
19 qualify for grant funds to extend facilities in the
20 requested area.
21 As it relates to Lindsay Pure Water, I
22 believe Lindsay Pure Water would have some minimal
23 effect in that they're currently serving customers
24 outside their CCN that in fact would end up in the
25 City of Lindsay's CCN.

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1 Q How about -- now, an almost identical
2 scenario, but what would the effect on both
3 entities -- Lindsay and Lindsay Pure Water -- if the
4 town of Lindsay's application were granted with the
5 exception of the South Ridge of Lindsay subdivision?
6 A For Lindsay -- City of Lindsay there would be
7 exactly the same. For Lindsay Pure Water, there
8 would -- there would be no impact in that all of their
9 customers that are currently in Lindsay Pure Water
10 would remain with Lindsay Pure Water.
11 JUDGE NORMAN: Well, that's not the
12 question that was asked. The question was if -- I
13 believe -- if South Ridge was cut out, not if just the
14 existing customers were cut out. Isn't that true,
15 Mr. Rodriguez.
16 MR. RODRIGUEZ: Yes, that's what I
17 understood you to be asking.
18 JUDGE NORMAN: All or both or -- I
19 missed the answer to both questions.
20 Q (BY MR. RODRIGUEZ) Can you provide answers --
21 A Well, ask the question again.
22 Q Okay. What would the impact on -- and I
23 believe you provided the impact of the City of Lindsay
24 if the South Ridge of Lindsay subdivision were removed
25 from the requested service territory, right? That was

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1 the answer you provided?
2 A Correct.
3 Q Can you please provide detail for the Judge
4 what the impact would be on Lindsay Pure Water if the
5 town of Lindsay's CCN were granted with the exception
6 of the town of Lindsay -- with the exception of the
7 South Ridge -- South Ridge of Lindsay subdivision?
8 We'll do that one first.
9 JUDGE NORMAN: Okay.
10 A With the South Ridge subdivision, all four
11 phases, there would be no impact to Lindsay Pure
12 Water.
13 JUDGE NORMAN: Okay.
14 Q (BY MR. RODRIGUEZ) Now, almost identical
15 scenario. What would be the impact on Lindsay Pure
16 Water Company if the CCN that's been requested by the
17 town of Lindsay were included, with the exception of
18 the current customers that Lindsay Pure Water is
19 serving outside of its CCN?
20 A If you include those customers -- eliminate
21 those customers, it would be no impact to Lindsay Pure
22 Water.
23 Q And why is that?
24 A Simply because those customers would be
25 continued to be served by Lindsay Pure Water.

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1 Q Now, can you describe the impact to the City
2 of Lindsay if the -- if the City of Lindsay CCN is not
3 granted for all areas south of Highway 82?
4 A Well, in that particular case, Lindsay would
5 not financially commit any funds to extending their
6 service in that area. That area would not qualify for
7 grant funds -- assuming that Lindsay could obtain
8 grant funds, they could not use those grant funds in
9 that uncertified area. They also would not include
10 this area in their strategic planning or master water
11 plan. The landowners in that area would not be
12 granted their request to be included in Lindsay's CCN.
13 At the same -- in the same token, Lindsay Pure Water
14 would not be affected.
15 JUDGE NORMAN: Okay.
16 Q (BY MR. RODRIGUEZ) Now, do you have an
17 opinion as to how the City of Lindsay's application
18 impacts the Myra CCN or the city of Gainesville CCN --
19 Myra, excuse me.
20 A I don't see any impact to Myra CCN, city of
21 Gainesville -- the application does overlap a portion
22 of the city of Gainesville's CCN.
23 Q Now, if the overlap area with the city of
24 Gainesville were removed, does it have any impact on
25 the city of Gainesville at that point?

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1 A It would not.
2 MR. RODRIGUEZ: I pass the witness, Your
3 Honor.
4 JUDGE NORMAN: Mr. Siano?
5 CROSS-EXAMINATION
6 BY MR. SIANO:
7 Q Good morning, Mr. Maroney.
8 A Good morning.
9 Q What the basis of your proposition that areas
10 outside of the certificated area would not be eligible
11 for grant funding?
12 A The area outside the certificated area -- it
13 would be my opinion that grant funds could not be
14 expended in an area that they would not have the right
15 to serve.
16 Q But for a district or municipality which
17 doesn't need a CCN, that wouldn't apply to them, isn't
18 that correct? They would not need a certificate to
19 serve outside of their territory.
20 A It's been my -- they do not need a
21 certificate to serve. It's been my experience that
22 grant funds could not be and would not be obligated to
23 an area of which they in fact do not have the right to
24 serve.
25 Q But you're not certain of that?

1 duplicative infrastructure laying lines, et cetera,
2 that's disturbing the habitat --
3 A As far as from a construction standpoint,
4 should that occur, yes.
5 MR. SIANO: No further questions.
6 CROSS-EXAMINATION
7 BY MR. CARLTON:
8 Q Mr. Maroney, I want to go back to a
9 conversation we had a couple of days ago regarding the
10 improvements that will be made to Lindsay's system to
11 provide service to that Hellinger tract on 3108 -- or
12 south down 3108. Do you recall that from the other
13 day?
14 A Vaguely I do.
15 Q Me, too. I recall that you mentioned that
16 there was an abandoned tank that you -- that would be
17 used -- or could be used to pressurize that line. Do
18 you remember that?
19 A I do.
20 Q What kind of tank is that?
21 A It's a pressure tank.
22 Q How big is it?
23 A I believe a couple of thousand gallons.
24 Q So that wasn't included in your -- in either
25 the total storage that you were calculating?

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1 A I'm not positive about that.
2 Q And you speculated on the impact of
3 eliminating the customers -- Lindsay Pure's customers
4 that it's serving outside of its certificated area,
5 and I believe you represented that there would be no
6 impact to the customers, and I didn't hear what the
7 financial impact would be to Lindsay Pure?
8 A I didn't address the financial impact. I
9 left that to Mr. Stowe.
10 Q But you don't have an idea of the financial
11 impact of Lindsay Pure of eliminating customers --
12 A It would be my -- I would speculate that in
13 fact if they did not -- if those customers were not --
14 were left with Pure Water, then there would not be a
15 financial impact to Lindsay Pure Water.
16 Q And did you opine on the environmental impact
17 of taking those customers?
18 A No.
19 Q Do you have an opinion as to the
20 environmental impact?
21 A Of those staying with Lindsay Pure Water?
22 Q Well, staying with versus removing them.
23 A I do not see that there would be an
24 environmental impact to them staying.
25 Q Now, of course, putting in the, in essence,

1 A No.
2 Q Are you familiar with any projections on the
3 wholesale cost of surface water from Gainesville out
4 of Moss Lake?
5 A I am not.
6 Q What's your experience with the cost
7 differential between surface water and groundwater?
8 A Typically the surface water is more
9 expensive.
10 Q What's the magnitude of that difference, in
11 your experience?
12 A In the case with -- in this case with
13 Gainesville, I couldn't speak to that, but in the case
14 of the cities that have in fact purchased the surface
15 water, it could be double the cost.
16 Q And do you know when the Lindsay water system
17 was first installed?
18 A The original system? No, sir.
19 Q Are you familiar with some portions of the
20 system?
21 A I'm familiar with, for example, the elevated
22 storage tank was installed, from my understanding, in
23 about 1996.
24 MR. CARLTON: Okay. Pass the witness.
25 MR. RODRIGUEZ: Nothing.

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|----------|-------------------------------------------------------|----------|--------------------------------------------------------|
| 1 | JUDGE NORMAN: Mr. Siano? | 1 | accountant to do accounting and I hire a lawyer to do |
| 2 | MR. SIANO: Nothing. | 2 | my lawyering. If they're experts -- you've got to |
| 3 | JUDGE NORMAN: Thank you, Mr. Maroney. | 3 | have experts. And hopefully a lawyer to straighten |
| 4 | MR. RODRIGUEZ: We have no further | 4 | out my mess with the TCEQ. |
| 5 | rebuttal witnesses, Your Honor. | 5 | MR. CARLTON: No further questions. |
| 6 | JUDGE NORMAN: And, Mr. Siano -- | 6 | JUDGE NORMAN: Mr. Rodriguez? |
| 7 | Mr. Carlton, do you have any additional evidence? | 7 | MR. RODRIGUEZ: I have nothing, Your |
| 8 | MR. CARLTON: I didn't think we could | 8 | Honor. |
| 9 | have any rebuttal opportunity. | 9 | JUDGE NORMAN: Mr. Siano? |
| 10 | JUDGE NORMAN: Well, I'm going to give | 10 | MR. SIANO: Nothing. |
| 11 | you an opportunity -- we've heard more, and I'm going | 11 | JUDGE NORMAN: Thank you, Mr. Myrick. |
| 12 | to give you a chance to -- if you want the take a | 12 | WITNESS MYRICK: Thank you. |
| 13 | break -- | 13 | JUDGE NORMAN: Okay. We're going to |
| 14 | MR. CARLTON: If I can have a break, I | 14 | talk about the schedule. When can we expect the |
| 15 | don't know that we will -- | 15 | transcript? |
| 16 | JUDGE NORMAN: All right. | 16 | THE REPORTER: Two weeks from today. |
| 17 | MR. CARLTON: Will this be limited to | 17 | JUDGE NORMAN: Two weeks from today? |
| 18 | the issues that were brought up? | 18 | Okay. And then we'll want -- I'll want -- I think the |
| 19 | JUDGE NORMAN: I think so. | 19 | normal course is to have briefs on the basis of -- you |
| 20 | MR. CARLTON: Okay. | 20 | know, with citations to the record, including the |
| 21 | (Discussion off the record) | 21 | transcript and the exhibits. And so what's the usual |
| 22 | JUDGE NORMAN: All right. Let's go. | 22 | time for that? |
| 23 | We're back on the record. | 23 | MR. RODRIGUEZ: About a month after |
| 24 | Mr. Myrick, you're still under oath. | 24 | the -- after the two weeks, so six weeks from today. |
| 25 | WITNESS MYRICK: Yes, sir. | 25 | MR. CARLTON: So that would put us at |
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| 1 | REBUTTAL PRESENTATION ON BEHALF OF | 1 | Thanksgiving, the week before Thanksgiving, |
| 2 | LINDSAY PURE WATER COMPANY | 2 | November 21st. I'm worried Thanksgiving would be in |
| 3 | JAMES MYRICK, | 3 | the middle of that, but if we file right before |
| 4 | having been previously duly sworn, testified as | 4 | Thanksgiving, that's okay. |
| 5 | follows: | 5 | MR. RODRIGUEZ: That's fine with me. I |
| 6 | DIRECT EXAMINATION | 6 | just would like some additional time afterwards. |
| 7 | BY MR. CARLTON: | 7 | Usually you do replies in two weeks, but given the |
| 8 | Q Mr. Myrick, I want to clarify a couple of | 8 | holidays, Thanksgiving and Christmas coming up -- |
| 9 | things that were raised in rebuttal testimony by | 9 | MR. CARLTON: My travel plans aren't |
| 10 | Mr. Stowe. And just for the record, do you have any | 10 | until after Christmas. |
| 11 | accounting expertise? | 11 | MR. RODRIGUEZ: Yeah, I'm gone the |
| 12 | A None. | 12 | entire week after Thanksgiving. |
| 13 | Q And do you keep the books for the Lindsay | 13 | MR. CARLTON: We could push to the |
| 14 | Pure Water Company or Myrick Development? | 14 | middle of January. |
| 15 | A No, sir. | 15 | MR. RODRIGUEZ: If that's okay with Your |
| 16 | Q Who do you rely upon to do that? | 16 | Honor, that would be fine with me. |
| 17 | A My accountant. | 17 | JUDGE NORMAN: Is that -- does that |
| 18 | Q So when you testified on direct that any | 18 | sound good to you? |
| 19 | money you recovered has been through lot sales, was | 19 | MR. SIANO: I'm sorry? |
| 20 | that based upon your understanding of the books and | 20 | JUDGE NORMAN: For final -- finally get |
| 21 | records of Lindsay Pure Water? | 21 | it all in mid-January. That's what we're looking at. |
| 22 | A Yes, sir. | 22 | And y'all can divide that up any way you want to, if |
| 23 | Q And how -- what is your -- what do you | 23 | you want to think about that. You may want to divide |
| 24 | understand about those records? | 24 | it up differently than what you're talking about. In |
| 25 | A Just what the accountant tells me. I hire an | 25 | other words, three weeks after the transcript you may |

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1 want -- Mr. Rodriguez you can divide that up.
2 Why don't you-all get your heads
3 together and divide that up.
4 MR. RODRIGUEZ: It's just that --
5 MR. CARLTON: It's just with the
6 holidays, we want to make sure everybody has enough
7 time to focus on stuff.
8 JUDGE NORMAN: Right.
9 MR. RODRIGUEZ: And I guess the other
10 thing is do you want proposed findings of fact and
11 conclusions of law with the briefs or with the
12 replies?
13 JUDGE NORMAN: You know, I don't find
14 them very useful.
15 MR. RODRIGUEZ: You don't want them?
16 JUDGE NORMAN: I don't need them. If
17 you want to give them --
18 MR. RODRIGUEZ: No, it's easier not
19 preparing them.
20 JUDGE NORMAN: Right.
21 MR. RODRIGUEZ: But if you -- some
22 judges find them useful.
23 JUDGE NORMAN: Yeah, I don't.
24 MR. SIANO: So no replies --
25 JUDGE NORMAN: No, no proposed findings

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1 of fact and conclusions of law.
2 MR. SIANO: Let me call Brian MacLeod --
3 MR. RODRIGUEZ: Why don't we do this,
4 why don't the three of us just talk about it and then
5 we can submit a schedule for you.
6 JUDGE NORMAN: That's fine.
7 MR. RODRIGUEZ: Within the next two
8 weeks while we're waiting on the transcripts. Is that
9 okay?
10 JUDGE NORMAN: That's just fine. And
11 then you-all can just work backwards from mid-January.
12 MR. RODRIGUEZ: Okay.
13 JUDGE NORMAN: Sounds good.
14 MR. SIANO: Before we forget, I'd like
15 to get this --
16 JUDGE NORMAN: Absolutely.
17 MR. SIANO: Maybe if you could all just
18 break out your --
19 MR. CARLTON: The record is closed,
20 Christiaan.
21 (Laughter)
22 MR. SIANO: Well, it's a little bit of a
23 change, but just so you don't have two copies of the
24 same thing. It's marked exactly the same, and so
25 there's no way to identify the difference.

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1 (Discussion off the record)
2 MR. RODRIGUEZ: So do I understand we're
3 replacing ED-4 with ED-4A or amended 4A?
4 MR. SIANO: I didn't -- it's just ED-4.
5 MR. RODRIGUEZ: So you're just yanking
6 what was here and removing it.
7 MR. SIANO: This is an exact
8 replacement, yes.
9 MR. RODRIGUEZ: Okay.
10 MR. SIANO: And what is deleted is
11 stricken through, and what is added is underlined.
12 JUDGE NORMAN: Okay.
13 MR. SIANO: If you guys want to take a
14 look at it to make sure it's okay, we can do that.
15 MR. RODRIGUEZ: I have no problem with
16 it, Judge.
17 JUDGE NORMAN: Okay.
18 MR. CARLTON: I'm fine.
19 JUDGE NORMAN: All smooth.
20 MR. CARLTON: I'm sure it's okay.
21 JUDGE NORMAN: Okay. That's it then.
22 You-all submit something to me within the next two
23 weeks, and I'm sure I'll go with it.
24 Okay. Thank you very much.
25 (Proceedings concluded at 11:04 a.m.)

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1 CERTIFICATE
2
3 STATE OF TEXAS)
4 COUNTY OF TRAVIS)
5
6 We, Lou Ray and Kim Pence, Certified
7 Shorthand Reporters in and for the State of Texas, do
8 hereby certify that the above-mentioned matter
9 occurred as hereinbefore set out.
10 WE FURTHER CERTIFY THAT the proceedings
11 of such were reported by us or under our supervision,
12 later reduced to typewritten form under our
13 supervision and control and that the foregoing pages
14 are a full, true, and correct transcription of the
15 original notes.
16 IN WITNESS WHEREOF, we have hereunto set
17 our hand and seal this 23rd day of October 2008.
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