

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE VERIFIED PETITION)
OF THE TOWN OF PENDLETON AND TOWN OF)
PENDLETON WATER UTILITY FOR APPROVAL)
OF A REGULATORY ORDINANCE) CAUSE NO. 46087
ESTABLISHING A SERVICE TERRITORY FOR)
THE TOWN’S MUNICIPAL WATER SYSTEM)
PURSUANT TO INDIANA CODE §§ 8-1.5-6-1)
ET SEQ.)

CITY OF ANDERSON, INDIANA’S RESPONSE AND EXCEPTIONS TO TOWN OF
PENDLETON, INDIANA’S PROPOSED ORDER

Intervenor, the City of Anderson, Indiana (“Anderson”), by counsel, respectfully submits its response and exceptions to the April 14, 2025 Proposed Order (the “Pendleton Proposed Order”) filed by Petitioner, the Town of Pendleton, Indiana (“Pendleton”). Anderson takes exception to Pendleton’s Proposed Order, including, but not limited to, Sections 10(C) and 10(D). Pendleton’s Proposed Order ignores the bulk of Anderson’s evidence; fails to address the impact of Pendleton’s proposed rates as set forth in Pendleton’s Preliminary Engineering Report (“Pendleton PER”) and their potential effect on current and future economic development; and erroneously cites inapplicable case law that the Court of Appeals recognized was abrogated by the adoption of Ind. Code ch. 8-1.5-6. Therefore, Anderson files this response and proposes the following exceptions to Pendleton’s Proposed Order¹ and additions to Anderson’s Proposed Order, more particularly set forth in Exhibit A:

¹ The exceptions and responses herein reflect Anderson’s most significant concerns with Pendleton’s Proposed Order. Anderson’s response and exceptions should not be interpreted as Anderson’s agreement with or acceptance of other portions of Pendleton’s Proposed Order.

1. **Other Utilities’ Ability to Provide Service to the Disputed Area.** At pages 28-30, Section 10(C)(i), Pendleton’s Proposed Order analyzes the ability of other utilities to provide service as set forth in Ind. Code 8-1.5-6-8(g)(1). As set forth herein, the Commission should adopt Section 7(A)(1) of Anderson’s Proposed Order, at pages 14-16.

Pendleton’s Proposed Order on this factor is telling – it never proposes a finding that Pendleton is better suited than Anderson to serve the Disputed Area. Instead, Pendleton’s Proposed Order simply states that:

We find that the evidence presented in this Cause *sufficiently addresses* the ability of another utility to provide service in the Pendleton Regulated Territory and find this evidence supports our approval of the Pendleton Regulatory Ordinance.

(Pendleton Proposed Order, p. 30) (emphasis added).

In other words, not even Pendleton in its Proposed Order can reasonably contend that the evidence indicates Pendleton is best suited to serve the Disputed Area – only that the evidence “sufficiently addresses the ability of another utility to provide service” to the Disputed Area. This should inform the Commission’s review of the evidence and confirm that Anderson is best suited to serve the Disputed Area, and the Commission should accordingly adopt Anderson’s Proposed Order at Section 7(A)(1) at pages 14-16.

Pendleton’s Proposed Order also analyzes Pendleton’s water loss and contends that “Pendleton’s bottom range of its lost water percentage over the past five years is not dissimilar to Anderson’s lost water percentage.” (Pendleton Proposed Order, p. 29). But even assuming, for the sake of argument, that Pendleton’s calculations on page 29 of its Proposed Order are accurate, Pendleton’s 2023 water loss statistics are still approximately 8% worse than Anderson’s water loss statistics. Moreover, the Pendleton PER even recognizes that “The Utility experiences high water losses in the system” and that “[t]hese losses are likely due to a mixture of leaks and meter

inaccuracies; however, such a high percentage of water loss is indicative of significant leaks in the system.” (Petitioner’s Exhibit SER-8, Section 2.3(C)). Not only this, but the Pendleton PER further recognizes that Pendleton has “several/deficiencies that have resulted in water treatment plant and distribution system operational issues, IDEM violations, and/or increased maintenance.” (Petitioner’s Exhibit SER-8, Section ES.3). Moreover, the Pendleton PER recognized that IDEM determined that one of Pendleton’s treatment plants is in violation because the gaseous chlorine system and the fluoride feed system are housed in the same room, and IDEM has put Pendleton on notice that it must remedy this “safety hazard.” (Petitioner’s Exhibit SER-8, Section ES.3) (“The chlorine room does not currently meet Ten States Standards for ventilation. Chlorine gas carries a significant risk to both operator and resident health and safety.”) In summary, Pendleton’s own PER admits that IDEM determined its treatment plant is in violation and presents a “significant risk to both operator and resident health and safety.” The potential future customers in the Disputed Area should not be subjected to this safety hazard, particularly when Anderson is ready, willing, and able to serve the area.

Pendleton further claims that “The record evidence suggests that Anderson’s planned improvements in its water utility is primarily to serve its *existing* service area.” (Pendleton Proposed Order, p. 30). This ignores the testimony of Anderson witnesses Mr. McKee, Ms. Young, and Ms. Wilson, all of which testified that Anderson’s proposed improvements are designed to improve both its existing infrastructure and to facilitate service to the Disputed Area. But even if the Commission agrees with Pendleton that Anderson’s proposed improvements are “primarily” to serve its existing service area (which is contrary to the evidence), Pendleton seemingly admits that Anderson’s improvements at the very least will secondarily serve the Disputed Area. In contrast, Pendleton witness Reske admitted that “Pendleton did not intend for the PER to address

any future plans of expansion into the Regulated Territory.” (Reske Rebuttal Testimony, p. 7, lines 5-6). Mr. Reske further explained that “once the Commission rules upon Pendleton’s Regulated Territory, Pendleton will invest in its Master Plan which will address future expansion into the Regulated Territory.” (*Id.* at p. 7, lines 13-15). Therefore, while Anderson’s evidence supports the conclusions that Anderson’s proposed water improvements are both to improve its existing service and to facilitate service to the Disputed Area, Pendleton admits both that: (1) Anderson’s improvements at the very least will secondarily be used to serve the Disputed Area; and (2) Pendleton has done nothing to plan or facilitate service to the Disputed Area. Moreover, no Pendleton witness testified that Pendleton has a better ability than Anderson to serve the Disputed Area, which is confirmed by the sum of the evidence.

Pendleton’s Proposed Order also cites to the sentence in Anderson’s Preliminary Engineering Report (“Anderson PER”) that states Anderson’s “service area is not expected to change in any significant way over the next 20 years.” (Pendleton Proposed Order, p. 30). However, in the context of the full Anderson PER, it is clear Anderson contemplates continued service outside its municipal boundary. For example, the Anderson PER anticipates a declining population within its municipal limits in the coming years while an overall increase in water usage. (See Intervenor Exhibit 6, Ch. 2-1). The fact that the Anderson PER estimates that the population is decreasing within Anderson’s municipal limits but water usage on Anderson’s entire system is estimated to increase recognizes that there will be increased water usage from users outside of Anderson’s current municipal limits, including the Disputed Area. This is further supported by the fact that Anderson’s PER recognizes that Anderson has already installed test wells and proposed other improvements within the Proposed Anderson Service Area, including the Disputed Area.

Pendleton's Proposed Order also attempts to claim that Anderson lacks an ability to maintain its facilities because it is proposing a rate increase. For example, Pendleton claims:

We note that Intervenor Anderson's Exhibit 9 says that their current monthly water user rates do not provide sufficient income to maintain Anderson's water utility in a sound financial and physical condition to render adequate and sufficient service. This raises questions as to Anderson's ability to maintain its existing facilities.

(Pendleton Proposed Order, p. 30).

However, in Pendleton's water rate Ordinance No. 2023-19, Pendleton also recognized that its "existing rates and charges of the municipal waterworks utility are insufficient to maintain the operation of said utility[,]" thus leading to its most recent rate increase approved on July 13, 2023. (Petitioner's Exhibit SER-4). Pendleton cannot reasonably make the argument that the fact Anderson is seeking a rate increase means there are "questions as to Anderson's ability to maintain its existing facilities," particularly when Pendleton's latest rate ordinance recognized the exact same thing.

Moreover, Anderson's current rates were enacted following a Commission Order in Cause No. 44510 dated March 4, 2015, meaning Anderson has not had a rate increase for over ten (10) years. (Intervenor's Exhibit 9).² The fact that Anderson has been able to provide water service from rates based on rates a ten-year old revenue requirement demonstrates that Anderson has the ability to maintain its existing facilities at extremely affordable rates for its customers. This does not "raise questions as to Anderson's ability to maintain its existing facilities," as suggested by Pendleton. To the contrary, the fact that Anderson has proposed a rate increase to approximately

² Anderson's rates were more recently adjusted following the repeal of Indiana's Utility Receipts Tax, approved by the Commission in a 30-Day Filing No. 50512, Conference Minutes dated June 28, 2022. (Intervenor's Exhibit 8); *see also* Ind. Code §§ 8-1-2-4.2, -4.3. The referenced Conference Minutes reflect that Anderson's request "To decrease rates from implementation of HEA 1002 repealing the Utility Receipts Tax" was approved on June 28, 2022. <https://iurc.portal.in.gov/thirtyday-case-details/?id=80264b51-f5c6-ec11-983e-001dd8034fe0>

\$47.00 per month with a \$164,011,400.00 capital improvement plan demonstrates that Anderson is willing to ensure that its facilities continue to provide adequate and sufficient service, while also maintaining its rates at competitive levels. (See Intervenor's Exhibit 8, pp. 16-17).

Pendleton's Proposed Order further attempts to cast doubt on Anderson's ability to serve due to the need for Anderson to seek Commission approval for its rates, charges, and financings.

Pendleton states:

Anderson's planned expansion of its facilities into the Disputed Area is accordingly contingent not only on our approval of its rate and financing case to the extent that the financing is necessary for construction, but also on Anderson securing such financing.

(Pendleton Proposed Order, p. 30). Anderson, however, sees Commission regulation as a positive for the anticipated customers in the Disputed Area in that the Commission provides further safeguards for the current and future customers. If Pendleton were to serve the Disputed Area, these safeguards would not be in place. In fact, Pendleton readily admits that it will consider at least a 15% out of town surcharge. (Verified Direct Testimony of Scott Reske, p. 10, lines 3-8). The lack of Commission oversight over Pendleton, especially in light of Pendleton's desire to impose out of town surcharges, is not in the public interest of the current and future customers in the Disputed Area.

As set forth more fully in Anderson's Proposed Order, Anderson has substantial existing and planned water facilities in or very near to the Disputed Area that will have sufficient capacity to serve the Disputed Area, and Pendleton admitted none of its proposed improvements will be used to serve the Disputed Area. Pendleton readily admits that while it provides limited service outside its southern municipal boundaries, it provides no service and has no facilities within miles of the bulk of the Disputed Area and, in fact, it will not analyze potential service to the Disputed Area until after this case is over. In short, Pendleton offers zero evidence on how it would serve

the Disputed Area, how much the service would cost, what the rates might be if it were authorized to serve, or whether it is financially or technical viable for it to serve the area. The uncontroverted evidence demonstrates that Anderson is better able to serve the Disputed Area. For all the foregoing reasons, Anderson respectfully requests that the Commission adopt its analysis of the “ability of another utility to provide service” to the Disputed Area set forth in Section 7(A)(1) of Anderson’s Proposed Order.

2. **Effect on Customer Rates and Charges Within the Disputed Area.** Section 10(C)(ii) of Pendleton’s Proposed Order (pages 31-32) analyzes the effect on rates to the proposed territory. On page 31, the Pendleton Proposed Order states that “Mr. Reske testified that Pendleton does not intend to raise its rates at this time.” However, this statement is inconsistent with the record. While Mr. Reske did testify that “*At this time* the intent is to charge the same rates throughout the Territory, as set forth” in Pendleton’s ordinances (Testimony of Scott Reske, p. 9, lines 21-22) (emphasis added), this statement in the Proposed Order is inconsistent with the evidence of near-term and future rate increases presented by Pendleton.³

First, this statement specifically ignores the Pendleton PER which sets forth proposed rate increases associated with immediate projects to remedy 50% of the lead service lines within Pendleton’s municipal boundary. (See Petitioner’s Exhibit SER-8). The Pendleton PER sets forth the “Proposed Schedule for Town System Improvements Projects,” which indicates Pendleton will advertise for construction bids in August 2025 and contemplates closing on an SRF loan for these

³ Even if Mr. Reske did specifically testify to this, this would raise significant concerns that Pendleton does not appear to be willing to spend the requisite funds in order to remedy the existing and hazardous lead service line issues within Pendleton’s municipal boundaries. Indeed, the Pendleton PER recognizes that: “Lead poses a potential health risk to those who regularly consume or come in contact with the Town’s water and thus must be addressed. It is likely that as the system continues to age, additional breakages will occur and allow this harmful substance to enter the water system.” (Petitioner’s Exhibit SER-8, Section ES.3, pp. 25-26).

improvements in November 2025. (Petitioner's Exhibit SER-8, Table ES-3). If Pendleton anticipates closing with the SRF Program in November 2025, it presumably will need sufficient additional revenues in place at that time before it can close on the loan, which will mean a rate increase for Pendleton's customers in the near future. As set forth more extensively in Anderson's Proposed Order, Pendleton's PER sets forth a proposed rate increase in order to pay for the 50% lead service line project at up to \$75.51, and up to \$98.47 when considering the Pendleton PER's Recommended Alternative (including Pendleton's fire protection charge). (Anderson Proposed Order, Section 7(A)(2)). Pendleton's Proposed Order cannot reasonably point to Anderson's proposed 2029 rates to stand for the proposition that Anderson's rates will be higher than Pendleton's at that time, (Pendleton Proposed Order, pp. 31-32) while simultaneously ignoring the Pendleton PER's rates for improvements to remedy immediate health and safety hazards within its existing system.

Further, the Pendleton PER recommends that it is necessary to expand one of its treatment plants from 1,300,000 GPD to 2,600,000 GPD in 2028. (Petitioner's Exhibit SER-8, Section 3-8; Figure 3-2). The treatment plant expansion will presumably require an additional rate increase in 2028 (in addition to the other rate increases in the Pendleton PER). However, as noted by Mr. Reske and the Pendleton PER itself, "Pendleton did not intend for the PER to address any future plans of expansion into the Regulated Territory." (Reske Rebuttal Testimony, p. 7, lines 5-6); *see also* (Petitioner's Exhibit SER-8, Section ES.1, p. 25) (noting the "one study area" for the Pendleton PER is the "Pendleton Corporation Limits").

In addition, the statement in Pendleton's Proposed Order that "Mr. Reske testified that Pendleton does not intend to raise its rates at this time" also ignores the remainder of Mr. Reske's testimony where he explains in detail that after Pendleton receives an order regarding its request

in this Cause and completes its future master planning, Pendleton will review its rates and “will adjust its rates so as to ensure that rates within the Territory are concurrent with costs of service[.]” including potentially adopting an out-of-town surcharge. (Verified Direct Testimony of Scott Reske, p 9, line 21-p.10, line 8). Pendleton’s statements in its Proposed Order about its future rates are not supported by, and are inconsistent with, the record. These inconsistencies highlight the fact that Pendleton has no idea what it will cost to make service available to the Disputed Area or what the rates might be to recover these costs.

Pendleton and Anderson’s respective borrowing powers also indicate that Anderson will be able to extend and provide service to the Disputed Area at lower cost than Pendleton, as well as make other future improvements to its system at a lower rate-impact. For example, the Pendleton PER indicates that if Pendleton were to borrow \$14,151,000 for the 50% lead service line replacement projects, it will drive Pendleton’s water rates to approximately \$75.51 per month, including Pendleton’s fire protection charge. (Petitioner’s Exhibit SER-8, Table ES-3). In addition, if Pendleton were to borrow \$24,876,000 for the 50% lead service line replacement projects plus a new water storage tank and select main replacements, Pendleton’s rates would increase to \$98.47, inclusive of Pendleton’s fire protection charge. (Petitioner’s Exhibit SER-8, Table 6-5). In stark contrast, Anderson’s current capital improvement plan of \$164,011,400 will only result in approximately a \$47.00 rate for its customers (*See Intervenor’s Exhibit 8*, pp. 16-17). Extrapolated forward, this demonstrates that Anderson will be in a much better position to provide lower rates and charges than Pendleton as each utility incurs future debt to make improvements to its water system, including to serve the Disputed Area.

Pendleton’s Proposed Order essentially invites the Commission to completely ignore the rate increase evidence that Pendleton submitted in the Pendleton PER, but then faults Anderson

for also proposing a rate increase. Anderson accordingly takes exception to Pendleton's analysis of the "effect on rates" on pages 31-32 of the Pendleton Proposed Order, and requests that the Commission adopt Section 7(A)(2) as set forth in Anderson's Proposed Order.

3. **Effect on Economic Development in the Disputed Area.** Section 10(C)(iii), pages 32-33, of the Proposed Order sets forth Pendleton's proposed analysis on the effect of economic development in the Disputed Area. In this section, Pendleton again makes a statement that is contrary to the record. For example, it states:

However, Mr. Reske testified that Pendleton does not anticipate raising its rates from \$44.96 and explained that the Pendleton PER was a preliminary report for replacing lead service lines, and not for expansion into the Pendleton Regulated Territory.
(Pendleton Proposed Order, p. 33).

Mr. Reske never specifically testified that Pendleton "does not anticipate raising its rates from \$44.96," and the rest of the record does not reflect that it is true either. As set forth more fully in Section 2 above, Pendleton's PER sets forth proposed rates that are for immediate projects to replace 50% of the lead service lines within its municipal boundary and projects that could raise Pendleton's rates to over \$75.00 per month. To be clear, Pendleton's PER states that its rates could increase to approximately \$75.00 per month to address an immediate health concern (i.e. lead pipes) before it even starts the process of planning and designing an expansion to its water treatment plant and extending service to the Disputed Area. Despite statements to the contrary in its Proposed Order, we simply have no idea how high Pendleton's rates would be if it were allowed to be the provider in the Disputed Area and Pendleton has failed to meet its burden of proof.

As set forth in Anderson's Proposed Order at Section 7(A)(3), page 19, given the sheer distance between Pendleton's existing facilities and much of the Disputed Area, the cost for

Pendleton or developers to extend facilities to much of the Disputed Area would likely be cost prohibitive. The Commission should adopt Section 7(A)(3) of Anderson's Proposed Order.

4. **History of Service in Disputed Area.** In Section 10(C)(iv), Pendleton sets forth its analysis on the "history of utility service" in the Disputed Area. Pendleton's Proposed Order recognizes that "Anderson has drilled four test wells within the Disputed Area, developed the Anderson PER in preparation to serve the Disputed Area, and has taken steps to finance the facilities." (Pendleton Proposed Order, p. 33). However, the Pendleton Proposed Order crucially omits that Anderson has negotiated land rights and rights of entry to access property within the Disputed Area for the purpose of facilitating water service in the area. *See* Ind. Code 8-1.5-6-8(g)(4) ("... including any contracts for utility service entered into by ... any other municipalities, municipal utilities, or utilities.")

Nevertheless, Pendleton concludes this section by claiming that:

While Anderson claims it has made investments to serve the Disputed Area, as discussed below, we do not want to encourage utilities to make significant investments in preparation of exclusively serving an area for which it is not the exclusive provider.
(Pendleton's Proposed Order, p. 33).

As discussed in Section 5 below, Pendleton's proposal ignores the fact that Pendleton has the burden of demonstrating that it should be the preferred provider based on the statutorily mandated factors in Ind. Code § 8-1.5-6-8(g). Rather than meeting its burden, Pendleton argues that it should be given authority to serve, only then will it investigate to determine if it can (and how much it will cost to) serve. That is not what the statute requires. Moreover, Pendleton's proposed conclusion "to not want to encourage utilities to make significant investments" outside municipal boundaries would render the entire statutory analysis meaningless because it: (1) ignores that the evidence demonstrated Anderson has a better ability than Pendleton to serve the Disputed

Area; (2) ignores that Anderson's proposed future rates and connection costs will be less than Pendleton's proposed future rates and connection costs; (3) ignores that economic development within the Disputed Area will be better served by having Anderson as the exclusive water provider to the Disputed Area due to the closer location of Anderson's current and planned water facilities and lesser rates; (4) ignores that Anderson has a history of utility facilities in the Disputed Area, including installing test wells, conducting hydrogeological studies, preparing preliminary engineering reports for facilities in the area, and negotiating rights of entries with landowners for the purpose of facilitating utility service in the Disputed Area; and (5) ignores the fact that Anderson's service to the Disputed Area provides a logical balance between Pendleton and Anderson, rather than having Pendleton's service territory directly abut Anderson's municipal boundary and cut Anderson off from the south and to the southwest.

Indeed, Pendleton's proposal to not want to "encourage utilities to make significant investments" outside of the boundaries would flip the standard in service territory disputes to have the Commission always defer to utilities that have not planned or estimated the feasibility of service to the area in dispute. Pendleton's proposed approach is (1) incompatible with the required statutory analysis in Ind. Code § 8-1.5-6-8(g); (2) illogical and would result in wasting Anderson's significant efforts to date to facilitate service the Disputed Area; and (3) not in the public interest.

The evidence is clear that Pendleton has no history of service in the Disputed Area and it has no current plans on how it will do so in the future. For these reasons, Anderson requests the Commission adopt the Anderson Proposed Order's discussion and findings at Section 7(A)(4), on the history of service in the Disputed Area in all respects.

5. **Other Factors Considered by the Commission.** In Section 10(C)(v), Pendleton seeks to analyze "other factors" considered by the Commission in this Cause. In doing so,

Pendleton cites to *Town of Newburgh v. Town of Chandler*, 999 N.E.2d 1015, 1018 (Ind. Ct. App. 2013) and states “state’s courts have long used a first-in-time rule, ***in the absence of other legislative direction***, to resolve disputes when two municipalities possess concurrent and complete jurisdiction of a subject matter.” (emphasis added). Pendleton’s reliance on *Newburgh/Chandler* is misplaced and should be ignored by the Commission.

Here, there is “other legislative direction,” namely Ind. Code ch. 8-1.5-6 which provides specific legislative direction for the Commission to consider when evaluating competing claims over service territory. Indeed, as recognized by *Delaware Cnty. Regional Wastewater Dist. v. Muncie Sanitary Dist.*, 151 N.E.3d 1238 (Ind. Ct. App. 2020), *Newburgh/Chandler* was abrogated by statute, as “the creation of the Regulated Territories Statutes appears to be in direct response to another territorial dispute case, *Town of Newburgh v. Town of Chandler*[.]” *Id.* at 1247. Indeed, the Court of Appeals in *Muncie Sanitary Dist.* observed:

In March 2014, the Regulated Territories Statutes became effective, vesting the Commission with the authority to resolve all issues raised in a petition to approve a regulatory ordinance, which may include addressing other utilities that are or could provide service in the area, and places the provision of service by a utility in a regulated territory under the jurisdiction of the Commission. I.C. §§ 8-1.5-6-6, -9(c).

Id. In other words, the legislature enacted Ind. Code ch. 8-1.5-6 and abrogated the *Newburgh/Chandler* “first in time” analysis.

Pendleton’s Proposed Order further seeks for the Commission to ignore the factors set forth in Ind. Code § 8-1.5-6-8(g) by claiming “We do not find it in the public interest to encourage utilities to invest significant resources into infrastructure in an area for which it is not the exclusive provider.” Again, as described above in Section 4, this ignores the factors in Ind. Code § 8-1.5-6-8(g). Pendleton admittedly has done nothing to plan or provide service to the Disputed Area, and it now effectively asks the Commission to ignore the statutory factors and defer to the

Newburg/Chandler analysis, which is what led to the adoption of Ind. Code 8-1.5-6 in the first place. Contrary to Pendleton's arguments, the Commission cannot simply ignore the legislature's statutorily-required analysis and grant exclusive rights to Pendleton simply because it adopted a regulatory ordinance before Anderson. The Commission must apply the factors set forth in Ind. Code § 8-1.5-6-8(g), and, as set forth in Anderson's Proposed Order, the evidence demonstrates that Anderson should be the exclusive water provider in the Disputed Area.

Pendleton's Proposed Order also speculates that "We must ask why Anderson did not pass its regulatory ordinance until September 2024 if Anderson has been planning on extending service and establishing a regulated territory for at least a couple of years[.]" (Pendleton's Proposed Order, p. 34). As an initial matter, one might also ask why Anderson would incur the cost to adopt and seek approval of a territorial ordinance when no other utility, including Pendleton, has facilities within miles of most of the Disputed Area. Pendleton's Proposed Order also misstates Mr. McKee's testimony. Mr. McKee testified that "For at least a couple of years, Anderson has been planning to expand its existing facilities and construct new facilities that can be used to provide service to its existing customers, as well as to certain areas within unincorporated Madison County, Indiana, all comprising the Anderson Service Area." (Direct Testimony of Neal L. McKee, p. 7, lines 11-14). In addition, Anderson already has the statutory power to provide water service outside its municipal boundary without adopting a regulatory ordinance and obtaining Commission approval. *See* Ind. Code § 8-1.5-2-3; Ind. Code §§ 36-9-2-14, 36-9-2-18. A municipality is only required to adopt a regulatory ordinance and obtain Commission approval if that municipality desires to exclude other utilities from serving within a defined area. Indeed, it is reasonable for Anderson to plan to expand its service into areas directly adjacent to its municipal boundary to an area where there are no existing water providers and is located miles away from another

municipality (besides Anderson). (See Direct Testimony of Lori A. Young, p. 16 lines 8-13; Direct Testimony of Neal L. McKee, p. 13, lines 15-16). Moreover, this is precisely the reason the Commission is to weigh the factors set forth in Ind. Code 8-1.5-6-8(g), rather than speculate about why a municipality has or has not adopted a territorial ordinance. Notably, the statute provides very specific criteria for the Commission to consider when considering a territorial ordinance, and Pendleton's "first in time" argument is not one of the criteria.

On page 35 of its Proposed Order, Pendleton further cites to Anderson's testimony to argue that Anderson's proposal would lead to wasted ratepayer funds, confusion, and duplication of efforts. Specifically, the Pendleton Proposed Order contends:

Anderson witnesses pointed out that allowing another utility to serve the Disputed Area would cause confusion, would be a duplication of efforts, and could result in higher costs, because Anderson has already planned to serve that area. However, granting Anderson's requested relief in this case would encourage other utilities to expend significant resources into serving an area they do not have the right to exclusively serve, which will cause further confusion, waste ratepayer funds, and can result in multiple utilities duplicating efforts to exclusively serve an area, as is the case here, because they are unaware of the other utility's investments

(Pendleton Proposed Order, p. 35).

However, Pendleton's proposal – not Anderson's proposal – would lead to wasted ratepayer funds and resources. Pendleton admittedly has not proposed facilities to serve the Disputed Area and would not begin to analyze the feasibility or cost to serve the Disputed Area until after the Commission decides this Cause. (Rebuttal Testimony Scott Reske, p. 7, lines 4-6; 13-15). Therefore, there are not "multiple utilities duplicating efforts to exclusively serve" the Disputed Area because Pendleton admittedly has not taken any steps to actually plan service to the area or determine the feasibility. In contrast, Anderson's Proposed Order explains the significant planning and expense Anderson has incurred in planning facilities to facilitate service to the Disputed Area. Approving Pendleton's proposal would upend and waste Anderson's years of

planning and expense simply because Pendleton sought a service territory-grab before analyzing if it were feasible for Pendleton to serve it.

As set forth more fully in Anderson's Proposed Order, the Proposed Anderson Service Area creates a logical buffer between Pendleton and Anderson's service areas, rather than having Pendleton's water territory directly abut and close off Anderson to the southern and western portions of Anderson's municipal boundary. The Commission should therefore adopt Anderson's analysis of "other factors" considered by the Commission at Section 7(A)(5) of its Proposed Order.

Conclusion

Anderson respectfully requests that the Commission deny Pendleton's request to be the exclusive water service provider of the Disputed Area, grant Anderson the right to be the exclusive water service provider in the Disputed Area. Accordingly, Anderson has tendered additions to Anderson's Proposed Order in the attached **Exhibit A** to incorporate portions of this Response, which are identified in redline. Anderson requests that the Commission adopt Anderson's Proposed Order, as filed on April 14, 2025 and clarified in this Response and the attached **Exhibit A**, and for all other appropriate relief.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following by electronic mail or US mail this 14th day of May, 2025:

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Exhibit A

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PURSUANT TO INDIANA CODE §§ 8-1.5-6-1)	
ET SEQ.)	

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Kristen Kresge, Administrative Law Judge

On June 14, 2024, the Town of Pendleton, Indiana ("Pendleton" or "Petitioner"), filed a Verified Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission") requesting approval of a water regulatory ordinance. On July 17, 2024, Pendleton prefiled the direct testimony and exhibits of Scott E. Reske.

On October 28, 2024, Intervenor, the City of Anderson, Indiana ("Anderson") filed the prefiled direct testimony and exhibits of Neal L. McKee, Lori A. Young, and Jennifer Z. Wilson. On October 28, 2024, Intervenor, the Town of Ingalls, Indiana ("Ingalls"), filed the prefiled direct testimony of Neil Stevenson. The Indiana Office of Utility Consumer Counselor ("OUCC") also filed the prefiled direct testimony of Carl N. Seals on October 28, 2024.

On November 18, 2024, Pendleton filed the rebuttal testimony and exhibits of Mr. Reske.

In Cause No. 46147, the Commission issued a docket entry on November 21, 2024 finding that the issue of the disputed water service territory between Pendleton and Anderson would be decided in this Cause.

On November 25, 2024, the Presiding Officers issued docket entry questions to Pendleton, Anderson, and Ingalls, to which the parties each filed their respective responses by December 3, 2024.

On March 7, 2025, Anderson filed its corrections to the prefiled testimony of Neal L. McKee and Jennifer Z. Wilson.

On March 13, 2025, Pendleton and Anderson filed their *Stipulation to Admit Responses to Data Requests Between Town of Pendleton and City of Anderson*.

Pursuant to notice as required under Indiana law, the Commission conducted an evidentiary hearing in this Cause on March 13, 2025, at 1:00 p.m. EST in Hearing Room 224, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Pendleton, Anderson, Ingalls, and the OUCC offered their respective testimony and exhibits, which were admitted into the record without objection. No members of the public attended or attempted to participate in the evidentiary hearing.

Based upon the applicable law and the evidence herein, the Commission now finds:

1. **Statutory Notice and Commission Jurisdiction.** Notice of the time and place of the hearings conducted by the Commission in this Cause was given as required by law. Pendleton owns a water utility as that term is defined in Ind. Code § 8-1.5-6-1(1). Pendleton requests approval of Pendleton Ordinance No. 24-15 adopted pursuant to Ind. Code § 8-1.5-6-3 on June 13, 2024 (the "Regulatory Ordinance"). Under Ind. Code § 8-1.5-6-9, the Commission has jurisdiction over the enforceability of a regulatory ordinance adopted by a municipality after December 31, 2012. Therefore, the Commission has jurisdiction over Pendleton and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Pendleton is a municipality located in Madison County, Indiana. Pendleton owns and operates a municipal water utility that provides water service to customers as explained in the verified direct testimony of Scott E. Reske.

3. **Petitioner's Requested Relief.** Pendleton requests approval of the Regulatory Ordinance which asserts Pendleton's jurisdiction to provide water service to certain areas that are within four miles of Pendleton's corporate boundaries as described and depicted in Petitioner's Exhibit SER-1 to the Verified Direct Testimony of Scott E. Reske ("Proposed Pendleton Service Area").

4. **Summary of the Evidence.**

A. **Pendleton's Direct Evidence.** Pendleton presented the direct testimony and exhibits of Scott E. Reske.

(1) **Scott E. Reske.** Mr. Reske is the Town Manager of Pendleton. Mr. Reske testified about Pendleton's water utility and its proposal to serve the Proposed Pendleton Service Area.

Mr. Reske provided background information regarding Pendleton and its municipal water utility. He testified that Pendleton has experienced an increase in its population over the last four (4) years and that the potential population of the Proposed Pendleton Service Area could be 100,000 to 120,000. Mr. Reske explained that all of Pendleton's current water customers are within Pendleton's municipal boundaries with very few exceptions.

Mr. Reske further testified that Pendleton has two (2) water treatment plants, and the older of the two has been in service since 1950 and has an average day demand of 0.8 million gallons per day ("MGD"). Its second water treatment plant has been in service since 2017 and has an average day demand of 1.2 MGD, along with three (3) active wells. He explained that Pendleton's

capacity is 2.0 MGD, with the potential to expand its near-term capacity to 3.2 MGD. He further testified about Pendleton's two elevated water storage tanks (one with 0.3 MGD capacity and another with 0.8 MGD capacity) and testified that a third tank will need to be added soon, dependent on the Commission's approval of Pendleton's relief in this Cause. He also explained the staffing makeup of Pendleton's water utility.

Mr. Reske explained the boundaries of Pendleton's proposed regulated territory. He noted it includes Pendleton's municipal boundary, the remaining unincorporated areas of Fall Creek township, and one (1) mile east into Adams Township (i.e., the Proposed Pendleton Service Area). He also explained that there was an error in the original map approved by the Pendleton Town Council that contained areas within the municipal limits of Ingalls, which he indicated would be corrected.

He also testified about Pendleton's capacity to serve the current population of the Proposed Pendleton Service Area, which he described as dependent on development variables. He also explained the road structure in the area, which he believes will help Pendleton react to new development. Mr. Reske also explained his opinion on whether there are other utilities capable of providing water service within the Proposed Pendleton Service Area. He explained there are four (4) utilities providing water near the four-mile radius of Pendleton's boundary, including Ingalls, Anderson, the City of Greenfield, and South Madison Utilities. He explained that the Proposed Pendleton Service Area incorporates an area owned by the Indiana Department of Corrections ("DOC") that is currently being served by Ingalls, and Pendleton would allow the DOC to choose to be served by either Pendleton or Ingalls. Mr. Reske noted that Anderson has water lines near the northeast corner of the Proposed Pendleton Service Area. He further explained Greenfield does not appear to have facilities in the area, and that South Madison Utilities has an agreement with Pendleton concerning service area.

Mr. Reske testified about Pendleton's rates and charges. He explained that a typical residential customer pays approximately \$39.86 per month for 4,000 gallons, which does not include Pendleton's fire protection charge. He also explained that at this time, Pendleton intends on charging those same rates to customers within the Proposed Pendleton Service Area, but once Pendleton starts and completes a master plan and plans additional improvements, Pendleton will review its rates and ensure rates coincide with cost of service, including potentially imposing up to a 15% out-of-town surcharge, or seeking Commission approval for greater than a 15% surcharge pursuant to Ind. Code § 8-1.5-3-8.3. Mr. Reske testified that water main extensions to the Proposed Pendleton Service Area will most likely be conducted by developers consistent with the Commission's main extension rules.

He also explained that Pendleton serves a few parcels outside its municipal boundary, which includes a main extension project to serve a development south of Pendleton's boundary. He testified that he anticipates growth in the area given the proximity to Indianapolis/Hamilton County. Mr. Reske also noted that Anderson has lines very near a portion of the northeast corner of the Proposed Pendleton Service Area and may be servicing a small portion of the Area, and that Ingalls is also already servicing the DOC property within the Proposed Pendleton Service Area.

He further testified that an exclusive area for water service allows Pendleton to plan for expansion without concern for annexation. He also testified that the territory would limit duplication of facilities and align with other entities' service boundaries.

B. Anderson's Direct Evidence. Intervenor Anderson presented the direct testimony and exhibits of Neal L. McKee, Lori A. Young, P.E., and Jennifer Z. Wilson.

(1) **Neal L. McKee.** Mr. McKee is the Director of Anderson's water utility. Mr. McKee testified about Anderson's existing and planned water facilities to facilitate service to an area that overlaps with Pendleton's Proposed Service Area (the "Disputed Area"), and he also explained why Anderson should be the exclusive water provider in the Disputed Area rather than Pendleton.

Mr. McKee explained that he reviewed the Proposed Pendleton Service Area and explained that it has significant overlap with areas where Anderson has already taken substantial steps to provide water service, including installing test wells and preparing preliminary engineering reports detailing improvements in the area, which include a new water treatment plant, new well fields, and new transmission mains.

Mr. McKee explained that Anderson currently provides water service in and outside of Anderson's boundaries and has approximately 23,300 customers. Anderson has two water treatment plants, including the Lafayette Plant and the Wheeler Plant. The Lafayette Plant has a capacity of 10 MGD and the Wheeler Plant has a capacity of 4.5 MGD. He explained that Anderson's distribution system consists of approximately 420 miles of water main, ranging in size from two (2) inch to thirty (30) inch. Mr. McKee explained that Anderson has twelve (12) inch and larger transmission and distribution mains located on the south, southwest, and southeast areas of Anderson at or near the Disputed Area. Anderson also has seven (7) water storage tanks that store approximately a total of 6.5 million gallons of water and an additional 2.6 million in ground storage with backup generation.

Mr. McKee also testified about Anderson's water supply. He explained that Anderson currently has two separate well fields with each well field supplying its respective treatment plant. The Wheeler Wellfield has eight (8) wells ranging in capacity from 200 gallons per minute ("GPM") to 1,000 GPM, and the Lafayette Wellfield has nine (9) wells ranging from 150 GPM to 1,400 GPM. He also explained that Anderson has backup power generators to support its water supply in the event of power outages. Mr. McKee also explained that Anderson has made significant investments to locate additional water source areas through commissioning a hydrogeological study in 2017 (which remains ongoing), identifying test well location sites, and installing test wells and test production wells. He also noted Anderson's current water rate for 4,000 gallons is \$24.31, plus a \$2.67 fire protection charge for a 5/8 meter.

Mr. McKee also testified about some of the significant improvements Anderson has made to its water system since he became its Director. He explained that in 2019, Anderson replaced its 4.5 MGD Lafayette Treatment Plant with a new 10 MGD Plant and has drilled four (4) new wells in the Lafayette Wellfield to replace some that reached the end of their useful life. In addition, Anderson replaced 20,000 feet of old two (2) inch and three (3) inch galvanized water mains around the Homewood Development, which increased water pressure and enabled the installation

of hydrants. Anderson also installed a booster station to move water from the Fairview Tank to the Park Road Tank for additional storage and increased fire protection to the southwest portion of Anderson's distribution system serving its larger industrial users. He also explained that Anderson developed an asset management plan in September 2017, along with a valve database program, a water main and service line database, and a computerized maintenance program. He also testified about Anderson's tank maintenance and leak detection program through Anderson's advanced metering infrastructure, which assists with leak detection, leak elimination, and water loss.

He also explained Anderson's water territory regulatory ordinance, Ordinance No. 27-24, which the Anderson City Council adopted on September 12, 2024. Mr. McKee included Ordinance No. 27-24 as Anderson's Intervenor's Exhibit 2 with his testimony. He explained that for at least a couple of years, Anderson has been planning to expand its existing facilities and construct new facilities that can be used to provide service to existing customers, as well as certain other areas in unincorporated Madison County ("Proposed Anderson Service Area"). In Ordinance No. 27-24, Anderson seeks to be the exclusive water service provider within the Proposed Anderson Service Area.

He testified that the Proposed Anderson Service Area was selected because it is immediately adjacent to Anderson's existing facilities and is a logical extension of Anderson's existing service. He also testified that Anderson filed its own independent case with the Commission seeking approval of Anderson's regulatory ordinance and the Proposed Anderson Service Area. Mr. McKee explained that that Anderson's Intervenor Exhibit 3 depicts the Proposed Anderson Service Area along with certain large water facilities and test well location sites. Moreover, he explained Anderson has already drilled test wells in the Proposed Anderson Service Area and completed a preliminary engineering report outlining construction of certain facilities that would have the capacity necessary to serve the Proposed Anderson Service Area, including the Disputed Area, as well as Anderson's current customers.

Mr. McKee explained he reviewed Pendleton's Regulatory Ordinance and noted the existence of the Disputed Area between Anderson and Pendleton's regulatory ordinances. Mr. McKee testified that in review of Pendleton's existing facilities map, it does not appear that Pendleton has any significant water facilities outside of its municipal boundary, and that the Proposed Pendleton Service Area appears to be drawn without regard for the feasibility of whether Pendleton can serve the area as it is nearly three (3) times the size of Pendleton's municipal boundary.

Mr. McKee explained that Anderson has both planned to serve and made investments to provide water service to the Disputed Area. As explained in more detail in Lori A. Young's testimony, Anderson has developed a preliminary engineering report ("Anderson PER") that sets forth improvements to Anderson's water system. In particular, the Anderson PER sets forth a new south-side water treatment plant and well fields to provide 6 MGD of water supply, which is intended to replace the Wheeler Plant and its associated well field. He explained that the new south side plant and south side well field are planned to be located within the eastern portion of the Disputed Area with Pendleton at an area known as the Beerbower Property, or within an area in the general vicinity of the Cooper Property which is at the southeastern most portion of Anderson's municipal boundary. He further testified that regardless of the south side plant's ultimate location either within or in close proximity to the Disputed Area, Anderson anticipates using both the

Cooper and Beerbower properties for well sites. He also testified that Anderson has also planned to run a twenty-four (24) inch water main within the eastern portion of the Disputed Area. Because of all this, Mr. McKee testified that Anderson will be able to easily extend additional facilities to serve the Disputed Area as it may develop.

Regarding the western portion of the Disputed Area, Mr. McKee explained Anderson has existing (20) inch transmission mains running along Layton Road, 67th Street, and 73rd Street, all of which are designed to serve the Flagship Industrial Park. He explained that Anderson's extension of facilities to this portion of the Disputed Area can be interconnected with Anderson's existing, nearby facilities to offer a regionalized solution to water service. He further explained that Anderson has negotiated rights of entry and obtained other informal consents to install test wells within the Proposed Anderson Service Area, including the Disputed Area.

Mr. McKee explained that Anderson has the capability of and is well positioned to serve the Disputed Area, given that Anderson already has twelve (12) inch or larger water mains within close proximity to the Disputed Area, along with Anderson's proposed new south side plant, new wells, and new mains. He explained that Anderson has the capacity to serve the Disputed Area, as it currently has 14 MGD in capacity, with the max day of 13.1 MGD and daily average of 10.5 MGD. He also testified Anderson is currently undertaking an improvement project that will add an additional 4 MGD of capacity, which went out to bid on November 26, 2024. He also testified that Anderson is seeking approvals to adjust its rates and charges and issue debt to finance improvements, and even assuming a full five (5) phase increase is implemented by 2029, Anderson's rates at that time will only be slightly higher than Pendleton's current rates in 2024.

He also testified that given Anderson's planning and investments, approval of Anderson to serve the Disputed Area will have a positive impact on economic development, while the approval of the Proposed Pendleton Service Area will stifle economic development in the Disputed Area. In particular, he explained that given Pendleton does not appear to have facilities near the Disputed Area, it would be cost prohibitive for many developers to pay for main extensions to the Disputed Area and would stall economic development in the area.

(2) **Lori A. Young, P.E.** Ms. Young is a registered professional engineer employed by Fleis & VandenBrink Engineering, Inc., formerly known as Curry and Associates, Inc. Ms. Young's engineering firm has served as consulting engineers for Anderson for approximately forty (40) years. Ms. Young explained her engineering firm prepared a preliminary engineering report dated March 27, 2024, that sets forth certain proposed water utility improvements for Anderson, which was included as Anderson's Intervenor's Exhibit 6. The PER was submitted to the Drinking Water State Revolving Fund Loan Program ("SRF Program") in March 2024 and will be used to support Anderson's upcoming request to the Commission for approval of a rate adjustment and financing.

Ms. Young testified about Anderson's existing water facilities. She explained Anderson operates three (3) well fields, two (2) water treatment plants, seven (7) elevated storage tanks, and 420 miles worth of water mains ranging in size from 2" to 30" in diameter. The Lafayette Treatment plant was built in 2019 and is located on the north side of Anderson with water supply from eleven (11) wells and has a peak capacity of 10 MGD and safe capacity of 8 MGD. She also explained it is designed for expansion up to 14 MGD. Anderson's Wheeler Plant has a current

peak capacity of 4.7 MGD and is located in downtown Anderson. The Wheeler Plant is supplied from the Norton and Ranney Well fields. She also explained that Anderson's seven (7) elevated storage tanks have a storage capacity of 6.5 MGD.

She explained that Anderson has been conducting tests and activities to develop facilities within the Disputed Area. This includes a hydrogeological investigation study that began in 2017 and is still ongoing. She testified that Anderson has negotiated property access rights with landowners and executed agreements with Eagon & Associates, Inc. for the purpose of identifying locations to bolster Anderson's water supply in conjunction with a new southside water treatment plant. Over the last seven (7) years, Anderson has drilled a total of seventeen (17) test wells, four (4) of which were in the Disputed Area. She further explained that Anderson is developing new water sources and planning a new southside treatment plant because the Wheeler Plant, Ranney Well Field, and Norton Well Field have reached the end of their useful life and have deteriorated over time. She also explained that some wells in the Norton Well Field have PFAS levels that exceed the EPA's maximum containment levels, and therefore require remedial measures. In addition, she testified that the new southside plant and wells will replace those facilities and provide additional capacity to serve existing and future customers.

Ms. Young further testified that the Anderson PER details a number of facilities that will be constructed within and used to serve the Proposed Anderson Service Area, including the Disputed Area. She testified that this includes the new southside treatment plant and well field, which are planned to provide 6 MGD of water supply, and she noted that Anderson has been working for over five (5) years to locate wells in the Disputed Area. These improvements also include new water transmission mains to connect to Anderson's existing facilities. She further noted that Anderson's PER also sets forth other improvements to Anderson's water system, including main replacement projects that will serve to reduce water loss, as well as other improvements currently underway to expand the Lafayette Plant's capacity to 14 MGD, to construct two (2) new wells in the Lafayette Well Field, and construct a new large diameter transmission main. She explained these projects will increase the Lafayette Plant's production and distribution by 4 MGD, and that Anderson's planned improvements will have sufficient capacity to serve its existing and future customers, including those in the Proposed Anderson Service Area.

Ms. Young also examined Pendleton's ability to serve the Disputed Area. Ms. Young testified that she does not agree with Mr. Reske's testimony that Pendleton's current water production capacity is 2.0 MGD, and his claims that Pendleton has the near-term capacity to serve a population of 20,000 based on a 100 GPD per capita water consumption. She examined Pendleton's preliminary engineering report filed with the Indiana Department of Environmental Management in March 2024 ("Pendleton PER"), which identified Pendleton's annual water loss for the past five (5) years ranging from 34% to 46%, with an average of 41.4% lost water. She explained that water loss of this magnitude should be considered when determining excess capacity. She also examined other portions of Pendleton's PER, and noted that based on Pendleton's PER figures, it would result in near-term capacity to serve only 4,100 people rather than the 14,000 people identified by Mr. Reske.

She also observed that based on the testimony of Mr. Reske, there is no evidence or indication that Pendleton has started to plan or complete any tasks needed to extend service to the Disputed Area. In her review, Ms. Young explained that the Pendleton PER only includes main

and related improvements in the southern portion of Pendleton's existing municipal limits, and that Pendleton does not have any current or planned facilities in the Disputed Area.

Ms. Young testified about the extensive history that Anderson has with installing water facilities to the area west of I-69 in the southern portion of Anderson's distribution system, including large diameter water mains, the Park Road 2.0 MG tank, the Fairview Booster Station, and the Lafayette Plant and well field. She also explained Anderson's master planning related to the Flagship Industrial Park and surrounding areas.

Ms. Young also explained that Anderson's provision of water service to the Proposed Anderson Service Area will positively impact economic development in the area, given Anderson's planning and actions taken to serve the Proposed Anderson Service Area. She further testified that given Pendleton's lack of evidence on if, how, or when it could extend service to the Disputed Area, approval of Pendleton to serve the Disputed Area would deter economic development. In summary, Ms. Young testified that Anderson should be the water provider in the Disputed Area.

(3) **Jennifer Z. Wilson, CPA**. Ms. Wilson is a certified public accountant and a Consulting Director with Crowe LLP ("Crowe"). Ms. Wilson explained that the purpose of her testimony is to discuss the potential impact on customer rates and charges and economic development related to the competing requests by Anderson and Pendleton to serve the Disputed Area.

Ms. Wilson described the general governance of Anderson's water utility and provided background on Anderson's water utility's financial status. She testified that Crowe prepared a Revenue Requirements Report, dated October 10, 2024 ("Revenue Report"), which was attached to her testimony as Intervenor Exhibit 8. She further explained Anderson retained Utility Financial Solutions to prepare a cost-of-service study based upon the Revenue Report. She testified that the Revenue Report was presented to the Anderson City Council along with corresponding rate and bond ordinances amending Anderson's water rates and charges and authorizing long-term debt to finance improvements to the water utility (collectively, the "Bonds"), which were attached to her testimony as Intervenor Exhibits 9 and 10, respectively. She further explained that Anderson intends on filing a rate and financing case with the Commission shortly after final passage by the City Council. In short, Ms. Wilson testified that Anderson is taking the requisite steps to have rates and charges sufficient to issue the Bonds and facilitate service into the Proposed Anderson Service Area.

Ms. Wilson testified in detail about the Revenue Report. She explained the Revenue Report recommends a five-phase rate increase of 121.5% to cover Anderson's water utility's expenses, including the proposed annual debt service and debt service reserve for the Bonds set forth in Intervenor Exhibit 10. She also explained the phase-in structure of the proposed rate increase set forth in Intervenor Exhibit 9. Ms. Wilson also testified about the projects that would be funded by the Bonds, which are expected to be financed through the SRF Program. She explained that Anderson prepared the Anderson PER, as further explained in the testimony of Ms. Young, which sets forth the projects to be financed by the Bonds, among other improvements. This includes the new south side treatment plant, new south side wells, main improvements, and other improvements. Ms. Wilson explained that many of these improvements will be located either

within or directly adjacent to the Disputed Area and will be used to facilitate water service to the Proposed Anderson Service Area, including the Disputed Area. She explained that Anderson anticipates obtaining all financial approvals for the Bonds no later than September 2025.

Ms. Wilson also testified that in her professional opinion, Anderson has a financially feasible plan for providing service to the Proposed Anderson Service Area. She explained that Anderson does not have an out-of-city surcharge, and that all customers within the Proposed Anderson Service Area will pay the same rate as Anderson's in-city customers. She also explained that for the last several years, Anderson has been planning and taking steps to construct the facilities necessary to ensure that it can provide water service to all its customers, including the Proposed Anderson Service Area.

Ms. Wilson also testified about the proposed rates and charges by Pendleton and Anderson to the Disputed Area. She explained that she analyzed Pendleton's Municipal Water Utility 2023 Rate Study prepared by Krohn & Associates, which was attached to Ms. Wilson's testimony as Intervenor Exhibit 11 ("Pendleton Rate Study"). She explained Pendleton currently charges \$44.96 for 4,000 gallons usage, including Pendleton's fire protection charge. She also testified that she analyzed the project funding scenarios presented by Commonwealth Engineering in the Preliminary Engineering Report for Pendleton, dated March 2024 ("Pendleton PER"). The Pendleton PER projects that in order to complete the projects within the Pendleton PER, Pendleton will need to increase its rates to \$75.51 per month for a 4,000-gallon user, assuming no SRF Program grant funding and including Pendleton's fire protection charge. Assuming a 75% SRF Program grant, Pendleton will need to raise its rates to \$52.70 per month for a 4,000-gallon user, including the fire protection charge. Ms. Wilson explained that that none of the improvements detailed in the Pendleton PER include any projects to extend or facilitate service to the Disputed Area, and Pendleton does not appear to have any facilities within several miles of the Disputed Area. She further explained that the extension of Pendleton's service to the Disputed Area would require Pendleton to plan and design new facilities, complete a new PER, issue new bonds, and adopt increased rates to pay for extending service to the Disputed Area. She further testified that she does not know what Pendleton would need to increase its rates to for Pendleton to serve the Disputed Area because it does not appear Pendleton has taken any steps to plan or estimate the cost of extending service to the Disputed Area. She testified that she would anticipate it to be rather expensive and could result in monthly rates in excess of \$75.00 per month for a 4,000 gallon per month user.

Ms. Wilson testified about Anderson's current and planned rates and charges for water service. She explained Anderson currently charges \$24.31 per 4,000 gallons of usage. She further testified about Anderson's proposed five (5) phase rate increase, which, after the five phases in 2029, Anderson would charge \$47.58 per month for a 4,000 gallon per month user, which is only slightly higher than Pendleton's \$44.96 monthly rate in 2024. She also explained that Anderson's projected rates are significantly lower than Pendleton's projected \$75.52 monthly user rate included in the Pendleton PER with no grant funding, particularly because it does not include the cost of extending facilities to the Disputed Area.

Ms. Wilson also testified about Pendleton's connection fees set forth in Pendleton Ordinance No. 24-11, and that each new customer in the Disputed Area would pay connection fees of at least \$5,000.00 per equivalent dwelling unit if Pendleton were permitted to serve the area.

She further explained that Pendleton did not provide any evidence on how it calculated its connection fee. Ms. Wilson explained Anderson's current and proposed new connection fee are both significantly lower than Pendleton's charges. In summary, Ms. Wilson explained that if the Commission were to approve Pendleton's proposed regulatory ordinance, the rates for the Disputed Area would be much higher than if Anderson were permitted to serve the area.

Ms. Wilson also testified the impact of economic development on the Disputed Area. She explained that, as noted by Pendleton in Mr. Reske's testimony, the Disputed Area is an area that is likely to experience economic development. However, she testified that Pendleton does not have any water facilities in close proximity to the Disputed Area and has presented no plans, reports, or studies demonstrating if or when it will extend service to the area. On the other hand, Ms. Wilson explained that Anderson has facilities immediately adjacent to the area, and has taken significant steps to plan, finance, and construct facilities to serve the Disputed Area. Because of Pendleton's lack of planning, Ms. Wilson explained Pendleton's proposed service of the Disputed Area would negatively impact economic development, while Anderson's planning to serve the Disputed Area would enable Anderson to easily service the area at competitive rates.

C. Town of Ingalls.

[Omitted from Anderson's proposed order]

D. OUCC. The OUCC presented the testimony and exhibits of Carl N. Seals.

(1) Carl N. Seals Direct Testimony. Mr. Seals is an Assistant Director of the OUCC's Water/Wastewater Division. He testified about Pendleton's request for approval of a regulated water territory.

Mr. Seals provided an overview of Pendleton's water utility. He explained that the utility currently serves approximately 2,150 customers and it has seen a 27% increase in customers since 2019. He also testified about Pendleton's water sales, capacity, and production. Mr. Seals also explained Pendleton's lost water statistics. He explained according to OUCC data Request 1-19, Pendleton's lost water percentage over the last five years ranged from a low of 34.0% in 2022 to 46.0% in 2020. He noted that Pendleton's 2023 lost water percentage was 45.8%. He also explained that the Pendleton PER suggested that the losses are likely due to a mixture of leaks and meter inaccuracies.

Mr. Seals also testified that Pendleton's current rates and charges for a 4,000-gallon user are \$44.96 per month, inclusive of a \$5.00 fire protection charge. He also explained new customers with a 5/8-inch, or 3/4-inch meter pay a capacity fee of \$2,000.00 per EDU in addition to the actual cost of the water tap charge or \$3,000.00, whichever is greater.

He also explained that Pendleton does not have a master plan, but according to Pendleton's data request response, Pendleton intends to invest heavily in a master plan once its service area is determined in this case. He also testified about the boundaries of the Proposed Pendleton Service Area. He also examined the petition requirements in Indiana Code ch. 8-1.5-6 and noted that it appeared Pendleton met these petition requirements. He also testified that Pendleton addressed the factors in Indiana Code § 8-1.5-6-8(g).

Mr. Seals also testified that while Pendleton appears to be taking steps to improve its operations, lost water continues to be a challenge for Pendleton. He also evaluated Pendleton's rates in comparison to other providers and noted that Anderson customers pay \$24.33 for 4,000 gallons, compared to Pendleton's \$39.96 for the same amount.

In conclusion, Mr. Seals stated that the OUCC does not oppose the approval of Pendleton's regulatory ordinance.

5. Pendleton's Rebuttal Evidence. In response to the Intervenor and OUCC's testimony, Pendleton provided rebuttal evidence from Mr. Reske.

(1) Scott E. Reske Rebuttal Testimony. Mr. Reske explained that the purpose of his rebuttal testimony is to address the prefiled testimony of the OUCC, Anderson, and Ingalls. Mr. Reske explained that Pendleton's Regulatory Ordinance is now the subject of another proceeding in Cause No. 46147, which is Anderson's petition for approval of its own regulatory ordinance.

Mr. Reske also sought to address the OUCC's concern about Pendleton's water loss. He testified that Pendleton is having its water loss statistics evaluated, and initial indications show that the water loss statistics may be due to calibration issues. He also testified that the topography of the area makes it difficult to readily identify leaks due to the presence of bedrock. He explained once the Commission issues a decision on Pendleton's Regulatory Ordinance, Pendleton will then start working on a study addressing Pendleton's water loss issues. He also explained that water loss is not anticipated to be an issue in extending new mains to the Proposed Pendleton Service Territory since those will be new pipes. Mr. Reske also testified that Pendleton's current rate of \$44.96 per 4,000 gallons is comparable to nearby providers.

Mr. Reske also reiterated that it would allow Ingalls to continue to serve the DOC property within the Proposed Pendleton Service Area, assuming the DOC wants to receive service from Ingalls, and would allow Ingalls to continue its current operations within the Proposed Pendleton Service Area as long as Ingalls is the owner of the facilities.

Mr. Reske also sought to address the testimony filed by Anderson. He explained that he omitted water loss percentages when testifying about Pendleton's capacity because it is variable, and that Pendleton will work on reducing water loss in a master plan once the Commission rules on Pendleton's proposed regulated territory. Mr. Reske also testified regarding Ms. Wilson's testimony concerning the Pendleton PER's proposed rates in excess of \$75.00 per month. He noted that Pendleton's PER is preliminary, and it was procured to replace existing lead service lines in Pendleton's current service area. He explained that Pendleton did not intend for the PER to address any future plans to expand into the Proposed Pendleton Service Area.

Mr. Reske attached a copy of the Pendleton PER to his testimony as Exhibit SER-8. Consistent with Witness Reske's testimony, the Pendleton PER specifically states that is focused on one study area, the Pendleton Corporation Limits (see Exhibit SER-8, Section ES.1, p. 25). The Pendleton PER described in some detail the relatively dire need for the proposed projects. In describing why Pendleton must complete the proposed improvements, the Pendleton PER specifically states:

ES.3 Project Need

As summarized in **Section 2** and **Section 3**, there are several issues/deficiencies that have resulted in water treatment plant and distribution system operational issues, IDEM violations, and/or increased maintenance.

- Lead service lines have been identified in the system with a Lead Service Line Inventory, as is outlined in the Revised Lead and Copper Rule. Many of the service lines throughout Town have been identified as likely containing lead on both the Utility and customer side of the service lines. **Lead poses a potential health risk to those who regularly consume or come in contact with the Town's water and thus must be addressed. It is likely that as the system continues to age, additional breakages will occur and allow this harmful substance to enter the water system.**
- The Validated Water Loss Audit for 2019 (**Appendix F**) found that the utility is experiencing approximately 40% losses. Many of the water mains in the system are aging and, as a result, experience frequent leaks. Older water mains need to be replaced to reduce leaks, therefore, preventing losses in the system.
- Many valves are not currently functional due to their age. If a break or leak were to occur, large portions of the system would be without water due to a lack of ability to isolate sections of the system. Valves need to be brought to the surface, replaced, or newly added to allow for proper emergency operation. **If lines are disturbed or broken and there are no means to isolate the breakage, contaminants present a significant risk to human and environmental health and safety and if the break cannot be readily repaired, the Town may lose a significant amount of water.**
- Currently, the gaseous chlorine system and the fluoride feed system are housed in the same room at WTP #1. IDEM has notified the Town that this is no longer acceptable, and the Town is required to separate the chemical feed systems to prevent a safety hazard.
- The 300,000-gallon and 500,000-gallon elevated tanks were last inspected in September 2022 by Dixon Engineering. These inspection reports can be found in **Appendix B**. Various deficiencies were noted for each tank and improvements were recommended to ensure the continued functionality and safety of the elevated tanks.
- The chlorine room does not currently meet Ten States Standards for ventilation. Chlorine gas carries a significant risk to both operator and resident health and safety. **Chlorine gas can be extremely dangerous if inhaled, and considering the proximity to residences, a leak could pose a significant risk to human health. ID 25 and 26.**

(Petitioner's Exhibit SER-8, Section ES.3, pp. 25-26) (bolding and underline in original)).

The Pendleton PER next describes the general improvements necessary as replacement of 50% of the lead service lines in the Town, water main replacement, tank repairs, chlorine and fluoride repairs at the WTP 1, and rerouting the backwash at WTP 2 to the sewer (*see Petitioner's Exhibit SER-8*, Section ES.4, p. 26). The Reske exhibit estimates that the total cost of these improvements, including soft costs, is \$14,151,000, resulting in a rate of \$75.51 per month for a 4,000 gallon per month customer if Pendleton receives no grant money (which includes a \$5.00 per month fire protection charge) (*see Petitioner's Exhibit SER-8*, p.28, 30-31). The Pendleton PER (and Mr. Reske) did not: (i) estimate potential rate impact of replacing the remaining 50% of its lead service lines; or (ii) provide any estimates of how much it will cost to extend service to the Proposed Pendleton Service Area or how much Pendleton would have to increase its rates (beyond the \$75.51 per month) to make service available in this area.

Instead, Mr. Reske argued that the Anderson PER focuses on Anderson's current service area, not into the Proposed Anderson Service Area. He reiterated that once the Commission rules on Pendleton's proposed regulated territory, Pendleton will work on a master plan which will address future expansion into the Proposed Pendleton Service Area. Mr. Reske also testified how Pendleton calculated its connection charge. He also testified regarding Mr. McKee's testimony and explained that Pendleton's proposed territory aligns with the boundary of Fall Creek Township in part due to the feasibility of extending service, which he testified was due to the road system within Fall Creek Township. He also testified that Pendleton does not know how the Proposed Pendleton Service Area will develop, though it is likely to do so. He also explained that Pendleton's territory's proposed boundary aligns with other service providers, which would be efficient for residents.

6. Docket Entry Questions. On November 25, 2024, the Presiding Officers issued several docket entry questions to Pendleton, Anderson, and Ingalls, requesting that the parties provide shapefile maps of their respective proposed territories. The parties filed their respective responses and provided shape file maps of their proposed territories.

7. Commission Discussion and Findings. In this Cause, Pendleton seeks approval of its Regulatory Ordinance requesting to be the exclusive water service provider within the Proposed Pendleton Service Area, including the Disputed Area with Anderson. Under Ind. Code § 8-1.5-6-9, a municipality may not enforce a regulatory ordinance until the Commission issues an order approving the ordinance.

Under Ind. Code§ 8-1.5-6-9(c), prior to approving the Regulatory Ordinance, we must consider the public interest factors set forth in Ind. Code § 8-1.5-6-8(g), which are:

- (1) the ability of another utility to provide service in the regulated territory;
- (2) the effect of a Commission order on customer rates and charges for service provided in the regulated territory;
- (3) the effect of the Commission order on present and future economic development in the regulated territory;
- (4) the history of utility service in the regulated territory, including any contracts for utility service entered into by the municipality; and
- (5) any other factors the Commission considers necessary.

A. **Disputed Area Between Pendleton and Anderson.** We will first address the Disputed Area between Pendleton and Anderson. As set forth below, the evidence demonstrates that Pendleton did not meet its burden to establish that it should exclusively serve the Disputed Area, and we further find that Anderson should be the exclusive water provider to the Disputed Area.

(1) **Ability to Provide Service to Disputed Area.** The first factor the Commission considers is the ability of another utility to provide service within the Disputed Area. In review of Pendleton's evidence, Pendleton did not demonstrate that it has the ability to provide service to the Disputed Area, particularly when compared to Anderson.

Mr. Reske testified about Pendleton's current 2.0 MGD capacity and Pendleton's projected customer usage into the future based on population projections from unknown sources. However, as noted by Anderson witness Ms. Young, Pendleton's figures regarding its excess capacity do not account for Pendleton's water loss. According to the most recent statistics in the record, Pendleton's water loss percentage from 2023 was 45.8%. Moreover, the Pendleton PER even recognizes that "The Utility experiences high water losses in the system" and that "[t]hese losses are likely due to a mixture of leaks and meter inaccuracies; however, such a high percentage of water loss is indicative of significant leaks in the system." (Petitioner's Exhibit SER-8, Section 2.3(C)). We find this to be significant when considering excess capacity, especially considering the population growth within Pendleton's municipal boundary in recent years. For example, as noted by OUCC witness Mr. Seals, Pendleton has seen a 27% increase in customers since 2019, and Mr. Reske testified that growth in the Disputed Area will happen rapidly. We find that omitting Pendleton's significant water loss percentages from Pendleton's excess capacity calculations overestimates Pendleton's ability to actually serve the area, particularly when considering Pendleton's past and projected growth within its municipal boundaries. If Pendleton's growth within its current boundary continues at a similar pace, we are concerned that Pendleton will not have the near-term capacity to sufficiently serve the Disputed Area, especially considering Pendleton's most recent 45.8% lost water figure.

Mr. Reske also testified that Pendleton's road system will assist in Pendleton's service to the Disputed Area in addition to Pendleton's ability to use public rights of way in Fall Creek Township to install facilities. (Rebuttal Testimony Scott Reske, p. 8, lines 11-17). However, we note that the ability to use public rights of way within unincorporated Madison County is not unique to Pendleton, as any utility (including Anderson) may install its facilities within the county right of way. *See* Ind. Code § 8-20-1-28 ("municipally owned utilities are authorized to construct . . . facilities . . . upon, along, under, and across any of the public roads, highways, and waters outside of municipalities[.]") Accordingly, we do not find the road system within unincorporated Madison County to weigh in either Pendleton or Anderson's favor when considering the ability to serve the Disputed Area.

Mr. Reske did include the Pendleton PER with his rebuttal testimony as Petitioner's Exhibit SER 8, but he also explained that "Pendleton did not intend for the PER to address any future plans of expansion" into the Proposed Pendleton Service Area. (Rebuttal Testimony of Scott Reske, p. 7, lines 5-6). Rather, he explained that Pendleton will not begin to analyze the feasibility of extending service into the Disputed Area or prepare a master plan until the Commission decides whether to approve Pendleton's Regulatory Ordinance. (Rebuttal Testimony Scott Reske, p. 7,

lines 13-15). Indeed, Mr. Reske explained that the Pendleton PER is primarily focused on replacing lead service lines within Pendleton's municipal boundary¹ and does not contemplate expansion of service into the Disputed Area. (Rebuttal Testimony of Scott Reske, p. 7, lines 4-6). That is, Pendleton did not set forth any plan on how or if it could facilitate service to the Disputed Area as it develops. Rather, Pendleton stated it will do that analysis at a later time. Not only this, but the Pendleton PER further recognizes that Pendleton currently has "several/deficiencies that have resulted in water treatment plant and distribution system operational issues, IDEM violations, and/or increased maintenance." (Petitioner's Exhibit SER-8, Section ES.3). Moreover, the Pendleton PER recognized that IDEM determined that one of Pendleton's treatment plants is in violation because the gaseous chlorine system and the fluoride feed system are housed in the same room, and IDEM has put Pendleton on notice that it must remedy this "safety hazard." (Petitioner's Exhibit SER-8, Section ES.3) ("The chlorine room does not currently meet Ten States Standards for ventilation. Chlorine gas carries a significant risk to both operator and resident health and safety.") We therefore find that Pendleton's "several/deficiencies" and existing IDEM violations and their associated risk to "resident health and safety" weighs against Pendleton's ability to serve the Disputed Area. In addition, Pendleton did not set forth any testimony regarding whether Pendleton is better suited than Anderson to serve the Disputed Area.

In contrast to Pendleton, Anderson presented substantial evidence regarding its ability to serve the Disputed Area. For the northwest portion of the Disputed Area, Anderson currently has large facilities in and around the Flagship Industrial Park that could be easily extended to serve the Disputed Area, which is directly adjacent to this area. Ms. Young testified extensively on the improvements Anderson has made in this area over the years, including the large diameter water mains, the Park Road 2.0 MG tank, the Fairview Booster Station, and the Lafayette Plant and well field. She also explained Anderson has extensive master planning related to the Flagship Industrial Park and surrounding areas. Mr. McKee also explained Anderson has existing (20) inch transmission mains running along Layton Road, 67th Street, and 73rd Street, all of which are designed to serve the Flagship Industrial Park and could be easily extended into the Disputed Area as it develops. In examining Pendleton's water facilities map in the Pendleton PER, we note that Pendleton does not have any identified water mains larger than 12 inches within miles of the northwestern portion of the Disputed Area, (See Petitioner's Exhibit SER 8, Figure ES-1, p. 27). In summary, we find that the presence of Anderson's facilities in close proximity to the western portion of the Disputed Area will put Anderson in a better position than Pendleton to serve this area.

In analyzing the eastern and southern portions of the Disputed Area, Anderson has already installed water facilities in this portion of the Disputed Area, including four (4) test wells. As explained by Anderson witnesses Ms. Young and Mr. McKee, Anderson began a hydrogeological study in 2017 to identify new and additional sources of water supply, including within the Disputed Area. Indeed, at the time Pendleton adopted its Regulatory Ordinance, Anderson's test wells had already been installed in the Disputed Area. (See Anderson Intervenor's Exhibit 6, Eagon & Associates, Inc. Hydrogeologic Study). Anderson has also planned substantial water facilities in or very near to the Disputed Area. For example, Mr. McKee explained that Anderson's new south

¹ As explained in greater detail below, the Pendleton PER only contemplates replacing 50% of its existing lead service lines at this time, and Pendleton will replace the remaining lead service lines at a later time, presumably, with an additional rate increase.

side treatment plant and south side well field are planned to be located within the eastern portion of the Disputed Area at an area known as the Beerbower Property or within an area in the general vicinity of the Cooper Property which is at the southeastern most portion of Anderson's municipal boundary. He further testified that regardless of the new south side plant's ultimate location either within or in close vicinity of the Disputed Area, Anderson anticipates using both the Cooper and Beerbower properties for well sites. In our review, both the Cooper Property and the Beerbower Property are in very close proximity to one another, and both of which are in very close proximity to or within the Disputed Area, thereby making the extension of Anderson's service into the Disputed Area a logical and feasible extension of Anderson's proposed and existing facilities. (See Anderson's Intervenor Exhibit 6, Appendix A, Significant Water Withdrawal Facilities and Parcels for Evaluation). Mr. McKee also explained that Anderson has also planned to run a twenty-four (24) inch water main within the eastern portion of the Disputed Area. (See also Anderson Intervenor Exhibit 3). Moreover, even Pendleton witness Mr. Reske recognized that Anderson has lines very near a portion of the northeast corner of the Proposed Pendleton Service Area and may be servicing a small portion of the area. (Direct Testimony of Scott Reske, p. 11, lines 20-22).

We further find that the evidence demonstrates that Anderson will be able to extend additional facilities to serve the Disputed Area as it may develop. Mr. McKee explained that Anderson has the capability of and is well positioned to serve the Disputed Area, given that Anderson already has twelve (12) inch or larger water mains very near to the Disputed Area, along with Anderson's proposed new south side plant, well field, and new mains. He explained that Anderson has the capacity to serve the Disputed Area. Indeed, Mr. McKee and Ms. Young testified that Anderson is currently undertaking an improvement project that will add an additional 4 MGD of capacity at the Lafayette Plant, which went out to bid on November 26, 2024. In addition, as explained by Ms. Young, Anderson's proposed southside treatment plant and well field are planned to provide 6 MGD of additional water supply. Accordingly, Anderson demonstrated it has more near-term capacity to serve the Disputed Area than Pendleton. In fact, Anderson's new 4.0 MGD capacity improvements to the Lafayette Plant that were bid in November 2024 are approximately double Pendleton's current total system capacity of 2 MGD, let alone Anderson's existing facilities and those other improvements listed in the Anderson PER (including the additional 6 MGD from the southside treatment plant and wells).

The evidence also reflected that Anderson's lost water percentages are better than Pendleton's lost water percentages. Ms. Young testified that she examined the Pendleton PER which identified Pendleton's annual water loss for the past five (5) years ranging from 34% to 46%, with an average of 41.4% lost water. This is consistent with the evidence presented by OUCC witness Mr. Seals, which confirmed Pendleton's water loss statistics over the last five years, including a lost water high of 46% in 2020. Pendleton's PER also recognized that "[m]any of the water mains in the system are aging and, as a result, experience frequent leaks." (Petitioner's Exhibit SER 8, ES.3). Anderson's evidence demonstrated that its lost water percentages are better than Pendleton's over the last five (5) years, with water loss ranging from a high in 2019 of 38.6% to 34% for 2023. Accordingly, based on the most recent lost water statistics in the record, Pendleton's 2023 lost water was 45.8%, while Anderson's 2023 lost water was 34%. Therefore, while both Pendleton and Anderson appear to be taking steps to reduce water loss, the evidence demonstrates that Anderson's lost water percentages are better than Pendleton's percentages.

In summary, Pendleton failed to demonstrate that it is best suited to serve the Disputed Area. Instead, Anderson demonstrated it has the better ability to provide water service to the Disputed Area. Therefore, we find the first factor set forth in Ind. Code § 8-1.5-6-8(g)(1) weighs in favor of Anderson.

(2) Effect on Customer Rates and Charges Within Disputed Area

Both Pendleton and Anderson each presented evidence of their present and future rates and charges. The evidence reflected that Pendleton's current rates and charges for a 4,000-gallon user are \$44.96, inclusive of Pendleton's \$5.00 fire protection charge. The evidence also reflected that Pendleton charges new customers with a 5/8-inch, or 3/4-inch meter a capacity fee of \$2,000.00 per EDU, as well as the actual cost of a water tap or \$3,000.00, whichever is greater. This totals to at least a \$5,000.00 charge for new connections to Pendleton's system. Meanwhile, Anderson's current rate for 4,000 gallons is \$24.31, plus a \$2.67 fire protection charge for a 5/8 meter. Anderson also currently charges a tap fee of \$820.00. Accordingly, Anderson's current rates and charges are significantly less than Pendleton's current rates and charges.

Both Pendleton and Anderson also set forth future rates based on proposed water utility improvements. For example, the Pendleton PER set forth various rate scenarios to address 50% of the required lead service line replacements within Pendleton's existing water system. The Pendleton PER projects that in order to complete the lead service line replacement projects as set forth in the Pendleton PER, Pendleton will need to increase its rates to \$75.51 per month for a 4,000 gallon user, assuming no SRF Program grant funding (i.e., 100% loan funded) and including Pendleton's fire protection charge. Even assuming Pendleton secures a 75% SRF Program grant, Pendleton will still need to raise its rates to \$52.70 per month for a 4,000 gallon user, including the fire protection charge. (See Petitioner's Exhibit SER 8, Table ES-3). Other potential rates set forth in the Pendleton PER for this project are between \$75.51 and \$52.70, depending on the percentage of SRF grant funding Pendleton may obtain (if any), and inclusive of Pendleton's fire protection charge. The Pendleton PER sets forth the "Proposed Schedule for Town System Improvements Projects," which indicates Pendleton will advertise for construction bids in August 2025 and contemplates closing on an SRF loan for these improvements in November 2025. (Petitioner's Exhibit SER-8, Table ES-3). If Pendleton anticipates closing with the SRF Program in November 2025, it presumably will need sufficient additional revenues in place at that time before it can close on the loan, which will mean a rate increase for Pendleton's customers in the near future. As set forth more extensively in Anderson's Proposed Order, Pendleton's PER sets forth a proposed rate increase in order to pay for the 50% lead service line project at up to \$75.51, and up to \$98.47 when considering the Pendleton PER's Recommended Alternative (including Pendleton's fire protection charge). (Anderson Proposed Order, Section 7(A)(2)). Further, the Pendleton PER recommends that it is necessary to expand one of its treatment plants from 1,300,000 GPD to 2,600,000 GPD in 2028. (Petitioner's Exhibit SER-8, Section 3-8; Figure 3-2). This means that Pendleton will presumably need to have an additional rate increase in 2028 (in addition to the other rate increases in the Pendleton PER) to pay for this plant expansion.

The Pendleton PER also sets forth other potential funding scenarios for its "Recommended Alternative" that project a total monthly user rate for Pendleton's customers using 4,000 gallons at up to \$93.47 per month, which does not include Pendleton's fire protection charge. (Petitioner's Exhibit SER 8, Table 6-5). Considering Pendleton's existing fire protection charge, this would put

Pendleton's monthly rate for a 4,000 gallon user at \$98.47 per month. However, as explained by Pendleton witness Mr. Reske in his rebuttal testimony, we note that the Pendleton PER does not address any plans to facilitate service to the Proposed Pendleton Service Area. (Rebuttal Testimony of Scott Reske, p. 7, lines 5-6). Rather, Mr. Reske testified that Pendleton intends on preparing a master plan at some point in the future and apparently will then evaluate its rates to account for future plans to serve the Proposed Pendleton Service Area, including the Disputed Area.

In addition to failing to provide any estimate as to the cost to extend service to the Proposed Pendleton Service Area or how much Pendleton would have to increase its rates (beyond the \$75.51 per month) to make service available in this area, Mr. Reske and the Pendleton PER also fail to estimate the future potential rate impact of replacing the remaining 50% of Pendleton's lead service lines within Pendleton's existing water system. Indeed, the Pendleton PER estimates that Pendleton will need to spend approximately an additional \$7.5 million dollars (using March 2024 cost estimates) to complete the remaining 50% lead service line replacement projects which Pendleton states "present a significant risk to human and environmental health and safety and must be addressed." (Petitioner's Exhibit SER 8, Table 5-2; Sections 3.1, 3.1(B)). While Pendleton sheds little to no light on what its future rates might be to address the remaining 50% lead service line replacements and to extend service to the Disputed Area, Mr. Reske did state that Pendleton will likely consider a future surcharge for its out-of-town customers, (Direct Testimony Scott Reske, p. 9, line 22 through p. 10, line 8) which would, of course, make it more expensive for customers in the Disputed Area and make Pendleton's service less desirable.

Anderson also set forth future rates and charges associated with Anderson's proposed improvements as set forth in the Anderson PER. For example, Ms. Wilson explained that Anderson has proposed a five-phase rate increase which would result in a charge of \$47.58 per month for a 4,000 gallon per month user at the end of the fifth phase in 2029 (assuming it were fully approved by the Commission), which is only slightly higher than Pendleton's \$44.96 monthly rate in 2024. Anderson's proposed tap fee of \$2,580.00 and system development charge of \$900.00 are also less than Pendleton current aggregate charge of \$5,000.00 for its capacity fee and tap charge. Even if we do not factor in any of the costs associated with replacing all of Pendleton's lead service lines and extending service to the Proposed Pendleton Service Area, Anderson's future rates are significantly lower than Pendleton's proposed \$75.51 or monthly rate for a 4,000 gallon user (assuming no SFR Program grant funding). In addition, Anderson witnesses Mr. McKee, Ms. Young, and Ms. Wilson all testified that the improvements set forth in the Anderson PER will be used to facilitate service in and around the Disputed Area. Further, Ms. Wilson testified that Anderson does not have an out-of-city surcharge and all customers within the Proposed Anderson Service Area will pay the same rate as Anderson's in-city customers.

Based on the evidence before the Commission, Pendleton has not presented evidence that it conducted any analysis to determine the feasibility and cost to the ratepayers for Pendleton to extend service to the Disputed Area. The evidence actually reveals that Pendleton needs to complete a series of needed projects that are described in the Pendleton PER, which Pendleton admits have no relation to its potential service to the Proposed Pendleton Service Area (including the Disputed Area). (Rebuttal Testimony of Scott Reske, p. 7, lines 4-6). According to the Pendleton PER, the cost of these projects (including soft costs) is estimated in an amount exceeding \$14,000,000 which would, in turn, require Pendleton to increase its monthly user rate for a 4,000

gallon per month customer to approximately \$75.00 per month (Petitioner's Exhibit SER 8, Table ES-3, p. 31). Likewise, the Pendleton PER's Recommended Alternative estimates a cost of nearly \$25,000,000, which would require Pendleton to increase its monthly user rate for a 4,000 gallon per month customer to over \$98.00 per month. (Petitioner's Exhibit SER 8, Table 6-5, p. 136). This alternative includes the construction of a new storage tank, as the Pendleton PER explains that Pendleton's current "storage capacity is *not* sufficient to meet the Town's needs for daily demand, peak demand, nor residential fire flow demand." (Petitioner's Exhibit SER 8, Section 4.3(A)) (bolding and italics in original). If Pendleton does not currently have sufficient storage to meet its existing needs, we anticipate that Pendleton will need to complete this additional tank construction project in order to serve the Disputed Area, which could drive Pendleton's rates to at least \$98.00 per month as noted in the Pendleton PER, notwithstanding any other future improvements for Pendleton to facilitate service to the Disputed Area.

Pendleton and Anderson's respective borrowing powers also indicate that Anderson will be able to extend and provide service to the Disputed Area at lower cost than Pendleton, as well as make other future improvements to its system at a lower rate-impact. For example, the Pendleton PER indicates that if Pendleton were to borrow \$14,151,000 for the 50% lead service line replacement projects, it will drive Pendleton's water rates to approximately \$75.51 per month, including Pendleton's fire protection charge. (Petitioner's Exhibit SER-8, Table ES-3). In addition, if Pendleton were to borrow \$24,876,000 for the 50% lead service line replacement projects plus a new water storage tank and select main replacements, Pendleton's rates would increase to \$98.47, inclusive of Pendleton's fire protection charge. (Petitioner's Exhibit SER-8, Table 6-5). In stark contrast, Anderson's current capital improvement plan of \$164,011,400 will only result in approximately a \$47.00 rate for its customers (See Intervenor's Exhibit 8, pp. 16-17). Extrapolated forward, this demonstrates that Anderson will be in a much better position to provide lower rates and charges than Pendleton as each utility incurs future debt to make improvements to its water system, including to serve the Disputed Area.

Although the improvements appear imminent based on the timeline in the Pendleton PER, Pendleton offers no plan or explanation of whether it (or its customers) can afford to fund (1) the current PER improvements to replace 50% of Pendleton's existing lead service lines; (2) the future necessary improvements to replace the remaining 50% of Pendleton's existing lead service lines; and (3) the improvements necessary to serve the Disputed Area or what its rates might be if it's request to serve was granted in this Cause. The scant evidence presented does, however, demonstrate that Pendleton will likely need to increase its rates in excess of the rates set forth in the Pendleton PER as the PER only addresses specific replacements and improvements that are needed to the existing facilities with the Town's municipal limits. While not entirely clear from its prefiled materials, it appears that Pendleton is requesting approval now to establish an exclusive territory and then it will complete future master planning to determine the cost of the facilities necessary to serve the Proposed Pendleton Service Area and the extent to which it needs to increase its rates (beyond the Pendleton PER's current estimates of \$75.00 or \$98.00 per month for a 4,000 gallon per month user). Without the support of evidence, we cannot grant Pendleton's request. Even if there were some evidence supporting Pendleton's request, the overwhelming evidence presented in this case demonstrates that Anderson will be able to facilitate service to the Disputed Area at a much lower connection cost (i.e. Anderson is \$1,500 less expensive) and at significantly reduced user rates (especially considering Pendleton's apparent desire to enact an out-town-

surcharge and future rates to complete the remaining 50% of its lead service line replacement projects).

In summary, after analyzing the water rates and charges presented by both Pendleton and Anderson, we find that Anderson's current and proposed rates and charges are less than Pendleton's rates and charges. We therefore find the second factor set forth in Ind. Code § 8-1.5-6-8(g)(2) weighs in favor of Anderson.

(3) Effect on Economic Development in Disputed Area

The Commission also considers the effect that approval of the regulatory ordinance would have on economic development in the area. Both Pendleton and Anderson recognized that the Disputed Area is likely to attract economic development due its location near the I-69 corridor and the continued expansion north from Hamilton County. (*See e.g.* Direct Testimony of Scott Reske; Direct Testimony of Neal McKee).

As recognized by Anderson witnesses Mr. McKee, Ms. Young, and Ms. Wilson, Pendleton does not have any significant water facilities in close proximity to the Disputed Area and has presented no plans, reports, or studies demonstrating if or when it will extend service to the area. In fact, Mr. Reske explained that it will not plan to do so until after the Commission decides this Cause. (Rebuttal Testimony of Scott Reske, p. 7, lines 13-15)). From an economic development standpoint, this is concerning because in examining Pendleton's water facilities map in the Pendleton PER, we note that Pendleton does not have any identified water mains larger than 12 inches within miles of the eastern portion of the Disputed Area and no water mains larger than 12 inches within miles of the northwestern portion of the Disputed Area. (See Petitioner's Exhibit SER 8, Figure ES-1). Pendleton also explained that main extensions to new subdivisions will be constructed pursuant to the IURC's Main Extension Rules. (See OUCC Attachment CNS-1, p. 8). Based on the sheer distance of the Disputed Area from Pendleton's existing facilities, we find that if we were to approve Pendleton's Regulatory Ordinance, it would be cost prohibitive for many developers to pay for main extensions to the Disputed Area, which would stall economic development in the area. In addition, as set forth in the testimony and exhibits of Neal McKee and Lori Young, Anderson has experience serving economic development projects, including but not limited to significant commercial and industrial water users at the Flagship Industrial Park and other areas. (See Intervenor Exhibit 6, Table 1.3.2).

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In contrast, given Anderson's planning, investments, and the nearby location of Anderson's large existing facilities, we find that approval of Anderson to serve the Disputed Area will have a positive impact on economic development. Accordingly, we find that based on the distance from the Disputed Area and smaller size of Pendleton's water facilities relative to Anderson's larger water facilities, that economic development would be negatively impacted if we were to approve Pendleton's regulatory ordinance. Therefore, we find that the third factor in Ind. Code § 8-1.5-6-8(g)(3) weighs in favor of Anderson.

(4) History of Service in Disputed Area

The Commission also considers the history of utility service, including any contracts regarding service, when considering a regulatory ordinance. In review of Pendleton's evidence,

Pendleton does not have any water facilities within the Disputed Area, nor is there any evidence that it has any history of service within the Disputed Area. The only evidence where Pendleton has facilities outside its boundary is a development to the south of Pendleton's boundary, which is not located within or near the Disputed Area. (See Direct Testimony Scott Reske, p. 10, line 20-p. 11 line 3). In contrast, Anderson already has already installed water facilities within the Disputed Area. For example, Anderson has installed four (4) test wells within the Disputed Area (Anderson's Intervenor's Exhibit 4) and, as described by Mr. McKee and Ms. Young, Anderson has been working since 2017 to identify water supply sources within the Disputed Area. Mr. McKee and Ms. Young also testified that Anderson planned to construct new wells and a new water treatment plant within or directly adjacent to the Disputed Area. They also explained that Anderson has negotiated land rights and rights of entry to access property within the Disputed Area for the purpose of facilitating water service in the area.

In summary, Anderson currently has test wells in the ground within the Disputed Area and has set forth plans to install permanent wells within the area and potentially a new water treatment plant. Pendleton has not installed any water facilities in the Disputed Area and has not set forth any plans to install any facilities within the Disputed Area. Accordingly, the fourth factor in Ind. Code § 8-1.5-6-8(g)(4) weighs in favor of Anderson.

(5) Other Factors Considered By The Commission

The Commission may also consider other relevant factors when considering whether to approve a regulatory ordinance. We first observe that the Proposed Pendleton Service Area simply extends four (4) miles east of its boundary and directly abuts Anderson's southern municipal boundary all along the way. (See Petitioner's Exhibit SER-2). As indicated above, there is no evidence that Pendleton has any facilities in this area, and Pendleton has not presented any evidence that it has done any analysis on whether it will be feasible (or not) for Pendleton to serve this area.

In observing the boundary of the Proposed Anderson Service Area, we note that it extends directly south from Anderson existing municipal boundary. Unlike Pendleton's proposed territory, Anderson's territory does not simply extend a full four (4) miles to the south. Rather, it logically flows from the areas within Anderson's municipal boundary south of I-69 near the interchange with State Road 9, and then proceeds eastward near I-69 until hitting South 100 West running north/south, and then runs further south until hitting U.S. 36. (See Intervenor Exhibit 3). From there, the territory extends further south down South 100 West, which is an area that is in close proximity to Anderson's proposed new south side plant and wellfields. Likewise, the area to the west of Anderson's municipal boundary is near the Flagship Industrial Park where Anderson has large existing water facilities that are directly adjacent to this portion of the Disputed Area and could be easily extended within the Disputed Territory.

We find that the Proposed Anderson Service Area strikes a workable balance between Pendleton and Anderson in this water territory dispute, which allows Pendleton to serve the areas that are logically extended from its municipal boundary in relation to its existing facilities, while also allowing Anderson to serve the areas that are logically extended from its municipal boundary and nearby large water facilities. (See Intervenor Exhibit 3). For example, there are approximately two (2) miles from the edge of Pendleton's municipal boundary until it hits the edge of the

southeastern portion of the Disputed Area,² where Pendleton will be able to serve as development may occur directly adjacent to its municipal boundary, while also permitting Anderson serve this portion of the Disputed Area which is closer to Anderson's municipal boundary and nearer to Anderson's facilities. We also find that the Proposed Anderson Service Area creates a logical buffer between Pendleton and Anderson's service areas, rather than having Pendleton's water territory directly abut and close off Anderson to the southern and western portions of Anderson's municipal boundary. Accordingly, we find that the Proposed Anderson Service Area provides a workable compromise between Pendleton and Anderson.

We therefore find that the fifth factor in Ind. Code § 8-1.5-6-8(g)(5) weighs in favor of Anderson being the exclusive water service provider to the Disputed Area.

(6) Conclusion on the Disputed Area

Based the evidence presented by the parties, we find that the public interest would not be served by having Pendleton be the exclusive water service provider in the Disputed Area. Based on the evidence, all the factors set forth in Ind. Code § 8-1.5-6-8(g) weigh in Anderson's favor to be the exclusive water service provider within the Disputed Area, not Pendleton. Anderson has demonstrated it has a better ability to serve the Disputed Area than Pendleton. Further, Anderson demonstrated that its current and projected rates and charges will be less than Pendleton's current and future rates and charges that would be assessed within the Disputed Area. We also find that the present and future of economic development within the Disputed Area will be better served by having Anderson be the exclusive water provider to the Disputed Area due to the location of Anderson's current and planned water facilities and lesser rates. In addition, we find that Anderson has a history of utility facilities in the Disputed Area, including installing test wells, conducting hydrogeological studies, preparing preliminary engineering reports for facilities in the area, and negotiating rights of entries with landowners for the purpose of facilitating utility service in the Disputed Area. Lastly, we find that the Proposed Anderson Service Area provides a logical balance between Pendleton and Anderson, rather than having Pendleton's service territory directly abut Anderson's municipal boundary and cut Anderson off from the south and to the southwest.

The Commission is troubled by Pendleton's lack of a plan or specific evidence demonstrating: (i) how it proposes to serve the Disputed Area; (ii) the cost of the facilities necessary to serve such area; (iii) the potential rate impact on Pendleton's current and future customers; and (iv) whether Pendleton and its customers can afford to borrow the money necessary (and adjust rates accordingly) to serve the area in question. Under these circumstances, we find the public interest would not be served in granting Pendleton the exclusive right to serve the Disputed Area. Moreover, the evidence demonstrated that Anderson will be able to facilitate service to the Disputed Area at a much lower connection cost (i.e. Anderson is \$1,500 less expensive) and at significantly reduced user rates (especially considering Pendleton's apparent desire to enact an out-town-surcharge).

² See Intervenor Exhibit 3; Anderson Intervenor Exhibit 6, Aquifer Systems and Significant Water Withdrawal Facilities map; *see also* Shapefiles Submitted to Commission in Response to November 25, 2024 Docket Entry.

Based on our findings above, we have determined the public interest requires that Pendleton's Regulatory Ordinance should be amended in several respects. Accordingly, Pendleton's Regulatory Ordinance should be amended to exclude the Disputed Area with Anderson. We therefore order Pendleton to adopt an amended regulatory ordinance which omits all overlapping areas with the map attached to Anderson Ordinance No. 27-24 (i.e., the Disputed Area) (the "Amended Regulatory Ordinance").

Based on the foregoing findings, Pendleton should proceed with adopting the Amended Regulatory Ordinance, consistent with our findings in this Order. Pendleton shall file under this Cause a certified copy of the adopted Amended Regulatory Ordinance with the Commission, and serve all parties to this Cause, within 90 days of the date of this Order. The Amended Regulatory Ordinance should adopt a map depicting the Amended Regulated Territory. We find Pendleton shall also provide an electronic map that defines the boundaries of the Amended Regulated Territory in shapefile, geodatabase, or mixed format in a definable coordinate system with the Commission's Water and Wastewater Division, within 90 days of the date of this Order.

[The remainder of Pendleton's request is not addressed in Anderson's proposed order]

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:

1. Pendleton failed to meet its burden that it should be the exclusive water service provider to the Disputed Area. The Commission further finds that Anderson has demonstrated it has a better ability to serve the Disputed Area than Pendleton. Accordingly, we find that Anderson should be the exclusive water service provider in the Disputed Area.

2. As set forth in this Order, Pendleton is hereby ordered to adopt an Amended Regulatory Ordinance which omits all overlapping areas with the map attached to Anderson Ordinance No. 27-24 (i.e., the Disputed Area) (the "Amended Regulatory Ordinance").

3. Pursuant to the Commission's November 21, 2024 Docket Entry in Cause No. 46147, the findings and Order of the Commission in this Cause shall be incorporated into, and become a part of, Anderson's pending request in Cause No. 46147.

4. **[All other issues omitted from Anderson's proposed order]**

5. This Order shall be effective on and after the date of its approval.

HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:

APPROVED:

**I hereby certified that the above is a true
and correct copy of the Order as approved.**

Dana Kosco
Secretary to the Commission

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