

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

**PETITIONER, TOWN OF PENDLETON'S SUBMISSION OF EXCEPTIONS TO
INTERVENOR CITY OF ANDERSON'S PROPOSED ORDER**

The Town of Pendleton, Indiana, by counsel, respectfully submits its Exceptions to
Intervenor City of Anderson's Proposed Order.

Dated: May 14, 2025.

Respectfully submitted,

By: /s/ Jeremy L. Fetty

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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.)	

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 August 28, 2024, the City of Anderson, Indiana ("Anderson") filed a Petition to Intervene in this Cause, which the Presiding Officers granted in a docket entry dated September 6, 2024.

On October 1, 2024, the Town of Ingalls, Indiana ("Ingalls") filed its Petition to Intervene, which the Presiding Officers granted in a docket entry dated October 16, 2024.

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 12, 2025, Pendleton and Ingalls filed their Stipulation and Settlement Agreement.

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 explained that Pendleton is mostly located in Fall Creek Township, with the most western area located in Green Township, all within Madison County. He testified that Pendleton has experienced an approximately 27% increase in its population over the last four (4) years, which closely corresponds to Pendleton's growth in water customers. Mr. Reske further testified that Pendleton's current population is estimated to be 6,000, which is an increase from the 2020 Census' data of 4,717. He stated that Pendleton's boundaries include roughly 13.1 square miles, and that Interstate 69 runs through Pendleton's current boundaries, which is the conduit for growth that is emerging from Indianapolis and Hamilton County. Mr. Reske anticipated that Pendleton's rate of growth is expected to increase at a greater rate over time. He explained that, within Pendleton's current boundaries, the potential population maximum is 40,000 and that the potential population of the unincorporated area of Fall Creek Township is estimated at 80,000, which means that 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, and that customers outside Pendleton's municipal boundaries are subject to the same water rates as customers fully within Pendleton's municipal boundaries. He testified that Pendleton's water utility currently serves 2,250 customer service lines. Mr. Reske stated that Pendleton's agricultural and undeveloped areas are substantially served by private wells, and that some of Pendleton's residents have private wells and have chosen not to connect to Pendleton's water utility whereas some of Pendleton's residents in rural areas do not have service lines currently available to them for connection. He explained that it is not Pendleton's intent to require existing property owners to connect to Pendleton's water utility, though new subdivisions in the Proposed Pendleton Service Area will be required, by existing Pendleton and Madison County ordinances, to be served by treated water.

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 current capacity is 2.0 MGD, with the abilitypotential to expand its near-term capacity to 3.2 MGD because the second WTP is designed to incorporate a mirror image add-on to double its capacity. 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, the location of which will be dependent on the Commission's approval of Pendleton's relief in this Cause. Mr. Reske further explained that Pendleton's facilities are all interconnected through a distribution system of 248,000 linear feet of lines, which range in size from 1 inch to 36 inches. He testified that Pendleton uses a wireless, real-time metering system with connectivity throughout its current service area. 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 as well as any immediate population growth, which he described as dependent on development variables. Mr. Reske testified that Pendleton's near-term excess capacity is estimated to be from 13,500 to 24,000 in population depending on development variables and willingness of the existing population to connect. He also explained the road structure in the area and noted that the major and state roads projecting from Pendleton do so in a spoke and wheel manner, which ~~he believes~~ will help Pendleton react to new development in an economic, efficient and flexible manner, as opposed to a square grid layout of major roads. Mr. Reske also ~~explained his opinion on~~ testified as to whether there are other utilities capable of providing water service within the Proposed Pendleton Service Area. He explained that Pendleton is the only water utility within its corporate boundaries and the unincorporated areas of Green Township. He further testified that there are four (4) utilities providing water near the four-mile radius of Pendleton's corporate boundaries, including Ingalls, Anderson, the City of Greenfield ("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~~ Ingalls serves the Department of Corrections ("DOC") Indiana Reformatory and Correctional Industrial Facility and operates a water treatment plant located on the facility's grounds, which are in the Proposed Pendleton Service Area. He also explained that Ingalls operates a well within the unincorporated area of Fall Creek Township that furnishes raw water to the water treatment plant. He explained that discussions with Ingalls indicated their main concern is expanding water service to areas within Ingalls' town boundaries. He explained that Pendleton intends to allow Ingalls to operate its current well and associated water line within the unincorporated area of Fall Creek Township as long as Ingalls owns such facilities and they are operated at their current capacity. 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, which it intends to do soon, 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 stated that if Pendleton determined that customers outside Pendleton's corporate boundaries should be charged different rates than those within Pendleton's corporate boundaries, such rates would not differ by more than 15% without Commission approval pursuant to Ind. Code § 8-1.5-3-8.3. Mr. Reske testified that water main extensions to the Proposed Pendleton Service Area will be handled on a case-by-case basis, though noted that it is anticipated that main extensions will coincide with

new development, and that in those case water main extension will most likely be conducted withby 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 recently completed main extension project to serve a development south of Pendleton's boundary that was placed to serve 177 acres being developed. He testified that he anticipates growth in the area without incentives given the proximity to Indianapolis/Hamilton County. Mr. Reske further explained that Pendleton's economic development strategy is to encourage projects that enhance quality of life for present and future residents and noted that tax increment financing and other incentives are used for quality community development or relief of anticipated traffic issues due to population growth. He testified that Pendleton's hope is that the Proposed Pendleton Service Area would encourage quality of life type community development by pro-active planning and bringing clarity to developers, and that Pendleton's ability to pre-plan water service facilities ahead of growth by establishing a defined service area would minimize construction inconveniences and provide for more cost-effective water service. 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 also explained that Greenfield and South Madison Utilities are not providing service in the Proposed Pendleton Service Area. He anticipated that these utilities would not be negatively impacted by 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 approval of the Regulatory Ordinance would limit duplication of facilities and eliminate unnecessary service costs through inefficiencies, which is especially important due to the Proposed Pendleton Service Area's potential population of 100,000 to 120,000. He noted that the Proposed Pendleton Service Area also aligns 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 proposed 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 two (2) 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 two (2) test production test 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 four (4) wells ~~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 follows the Fall Creek Township's boundaries in Madison County. He opined that it 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 mainsfacilities to serve the Disputed Area as it may develop.

Regarding the western portion of the Disputed Area, Mr. McKee explained Anderson has existing twenty (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 twenty-four (24) inch 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 at \$47.58 than Pendleton's current rate of \$44.96s in 2024.

He also ~~opined~~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 his belief 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 Disputed 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 Anderson PER was submitted to the Drinking Water State Revolving Fund Loan Program ("SRF Program") in March 2024, is a prerequisite to obtaining funding, and will be used to support Anderson's upcoming request to the Commission for approval of a rate adjustment and financing. The Anderson PER identifies Anderson's aging infrastructure and sets forth eleven projects necessary to serve as replacements.

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. She explained that t~~he~~ Lafayette Treatment ~~P~~lant was built in 2019 and is located on the north side of Anderson with raw 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. Ms. Young further testified that Anderson's Wheeler Plant has a current peak capacity of 4.7 MGD and is located in downtown Anderson. She stated that t~~he~~ Wheeler Plant is supplied from the Norton and Ranney Well fields. While Ms. Young~~She~~ also explained that Anderson's seven (7) elevated storage tanks have a storage capacity of 6.5 MGD, the Anderson PER shows that Anderson has a water storage deficiency of 3.4 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 and now treat a maximum of 4.8 MGD as opposed to the 9.7 MGD these facilities were originally rated to produce. She also explained that some wells in the Ranney~~Norton~~ Well Field

are a public health concern because they have PFAS levels that exceed the EPA's maximum containment levels, and therefore require remedial measures within five (5) years. Ms. Young stated that the Ranney Wells have Volatile Organic Carbon contamination, which further demonstrates the need to develop replacement water sources. 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 to replace the 6 MGD of water supply from the Wheeler Plant, 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 in ten (10) regional areas within Anderson that will serve to replace aged water mains, eliminate several miles of 2" galvanized water mains, focus on replacement of lead service lines and galvanized service lines with lead connectors, and 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 gallons per day ("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 claimed explained that this 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 improvements that Anderson has with installing water facilities made to serve 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. She stated that

Anderson has had several requests from economic development interests regarding water supply in the area.

Ms. Young also ~~opined~~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 ~~claimed~~testified that allowing multiple utilities to install water facilities and provide service to the same customers in an area would create confusion and deter economic development, particularly 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, and noted that Anderson's water utility is within the jurisdiction of the Commission. 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 testified that a rate increase is required to meet the revenue requirements for Anderson's water utility's operation and maintenance expenses, taxes other than income taxes, current debt service, proposed debt service, debt service reserve funding, and annual extensions and replacement.

She explained that Anderson retained Utility Financial Solutions to prepare a cost-of-service study based upon the Revenue Report. She testified that the Revenue Report and cost-of-service study results ~~were~~as 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 is based on data for the twelve months ended December 31, 2023, December 31, 2022, and December 31, 2021. She testified that the Revenue Report recommends a five-phase rate increase of 121.5% to cover Anderson's water utility's expenses, including but not limited to 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 and submitted the Anderson PER to the SRF Program, as further explained in the testimony of Ms.

Young, which sets forth the projects to be financed by the Bonds, ~~and among other improvements. This includes: (a) the acquisition, construction and installation of new water mains and lines to replace aging infrastructure and undersized water lines; (b) the maintenance and replacement of water wells; (c) the rehabilitation, replacement, and/or construction of its water treatment plants; (d) the maintenance of its elevated storage tanks; (e) the acquisition and installation of certain water production, transmission, distribution, and treatment equipment; (f) the acquisition of real estate on which certain improvements and extensions will be constructed; and (g) the making of other site improvements. the new south side treatment plant, new south side wells, main improvements, and other improvements.~~ Ms. Wilson explained that portions of the project many of these improvements will actually be constructed in the Proposed Anderson Service Area and that Anderson proposes to install new wells in the Disputed Area and a new water treatment plant be located either within or directly adjacent to the Disputed Area. She testified that it is anticipated that these facilities 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 safe, efficient potable water and fire protection service to all its customers, including prospective customers in the Proposed Anderson Service Area. She also testified that, with the adoption of the rate and bond ordinances and subsequent approval of the same by the Commission, Anderson will have all approvals in place to construct and thereafter operate the facilities necessary to provide service to 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 that Pendleton currently charges \$44.96 for 4,000 gallons usage, including Pendleton's fire protection charge, and that these rates were recommended in the Pendleton Rate Study as Option 1. 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, presumably, the extension of Pendleton's service to the Disputed Area would require Pendleton to plan and design new facilities, complete a new preliminary engineering report ~~PER~~, issue new bonds, and adopt increased rates to pay for extending service to the Disputed Area ~~the additional principal and interest on the new bonds~~. 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~~ opined that it would 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 also 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. She testified that in Ordinance No. 38-24, Anderson is proposing to increase its tap fee to \$2,580.00 and implement a new system development charge of \$900.00. 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 about the impact the Commission's decision as to the Disputed Area may have on 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 into serve the Disputed Area. ~~Because of Pendleton's lack of planning,~~ Ms. Wilson opined that ~~explained~~ Pendleton's proposed service of the Disputed Area would negatively impact economic development, while approval of the Proposed Anderson Service Area, including Anderson's planning to serve the Disputed Area, would enable Anderson to easily service the area at competitive rates.

C. Town of Ingalls.

(1) Neil Stevenson. Neil Stevenson, Town Manager and Director of Planning of Development for Ingalls, testified that the purpose of his testimony was to oppose Pendleton's proposed relief for the Proposed Pendleton Service Area, as Ingalls already serves customers in that area and it violates Ingalls' statutory rights under Ind. Code § 8-1.5-2-17(c).

Mr. Stevenson testified about Ingalls' concern that the Pendleton Regulatory Ordinance does not exclude Ingalls' service area, as the Proposed Pendleton Service Area, as presented in Exhibit 1 attached to Petitioner's Exhibit 1, includes areas that already contain Ingalls' existing water infrastructure and current Ingalls' customers that Ingalls is contractually obligated to serve. He explained that, to the extent the Pendleton Regulatory Ordinance could be construed as prohibiting Ingalls from exercising its statutory rights to develop a source of water supply within 25 miles outside its municipal boundaries under Ind. Code § 8-1.5-2-17(c), it should be rejected. Mr. Stevenson recognized Pendleton's similar statutory right to develop source of supply within a similar radius.

Mr. Stevenson testified that Ingalls has 40,200 feet of water mains, 8 wells, two water treatment plants, 22 fire hydrants, plus multiple other appurtenances that are located within the Proposed Pendleton Service Area. Mr. Stevenson testified that the population in the Proposed Pendleton Service Area that Ingalls already serves is 3,500 people, including three major prison facilities, the Indiana State Police Post, a manufactured housing community, and several individual customers. He explained that Ingalls has been serving customers in this area for over 20 years and Ingalls has contractual obligations to continue serving the state facilities. He estimated that the investment in existing infrastructure in this area has been approximately \$8 million, and that Ingalls is building up that infrastructure with the intent to serve Ingalls' current and future customers. He testified that this amount does not include the \$15 million treatment plant Ingalls maintains, which is located at the penitentiary. He also testified that Ingalls is in the final phases of designing another treatment plant and water tower in anticipation of future growth, and that Ingalls has already invested \$400,000 in design, engineering and exploration work.

Mr. Stevenson testified that it would not be a prudent use of Ingalls or Pendleton's ratepayers' money if the Commission approves the Proposed Pendleton Service Area because Ingalls already has infrastructure in the ground. He opined that it does not make sense to allow another utility to build duplicate infrastructure to perform the same service and that approval would make Ingalls' investment over the last 20-plus years a waste.

Mr. Stevenson also addressed that Ind. Code § 8-1.5-2-17(c) gives Ingalls the right to preserve and protect its property rights for water service up to twenty-five (25) miles outside its corporate boundaries. He testified that Pendleton has the same rights under the statute. He testified that the Proposed Pendleton Service Area would extend up to the current eastern and northeastern corporate boundaries of Ingalls, which would take away Ingalls statutory rights. He stated that neither Ingalls nor Pendleton should be permitted to adopt an ordinance that would prohibit the other from taking advantage of the statutory rights set forth by the Indiana General Assembly.

Mr. Stevenson recommended that the Commission deny Pendleton's request for the Proposed Pendleton Service Area.

~~{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 and explained that, based on the information included in Pendleton's request, Pendleton has met the criteria identified in Indiana Code ch. 8-1.5-6.

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 testified that in 2023, based on Pendleton's data request response, Pendleton sold an average of 420,799 GPD using water produced at its two treatment plants, which have total individual capacities of 800,000 GPD and 1.2 MGD. He testified that his review of Monthly Reports of Operation filed with the Indiana Department of Environmental Management for the period July 2023 through June 2024 shows a peak production of both plants combined of 1.534 MGD on October 11, 2023, and that seven of the top ten peaks during that time period ranged from 1.023 MGD to 1.294 MGD, with seven of those instances occurring in July and August of 2023. He also testified about Pendleton's water sales, capacity, and production.

Mr. Seals also ~~discussed~~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 ~~testified~~explained that the Pendleton PER and its Asset Management Plan both address lost water, and 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, which includes all incorporated areas of the Town of Pendleton, all unincorporated areas in Green Township encapsulated by the incorporated areas of the Town of Pendleton, the unincorporated areas of Fall Creek Township, and all unincorporated parcels within four (4) miles of the incorporated areas of the Town of Pendleton.

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 testified that the OUCC was not aware of any facts indicating Pendleton has not met the filing requirements specified in Indiana Code § 8-1.5-6-9(b). 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 potential providers, including Ingalls rates for the "Original Service Area" customers (\$38.42) and "CR 800 South" customers (\$44.10), and further 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 and that Pendleton has met all of the requirements set out in Indiana Code ch. 8-1.5-6.

E. 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 ed the OUCC's concern about Pendleton's water loss. He testified that Pendleton is having its water loss statistics evaluated, and initial indications from nighttime baseline flow 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 more detailed study addressing Pendleton's water loss issues involving a detailed review of billing and treatment plant records and, if needed, engaging a contractor specializing in finding underground leaks. 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, which includes the fire protection charge, 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 ed the testimony filed by Anderson. He explained that he omitted water loss percentages when testifying about Pendleton's capacity because it is variable, and to give a true picture of Pendleton's ability to serve. He noted that water loss can change from day-to-day depending on main breaks, usage, and discovering and repairing leaks. He testified that, with new pipes for expanded service in the Proposed Pendleton Service Area, additional water loss will be minimized. He further testified and that Pendleton has plans to address its water loss statistics and, if necessary, reduce water loss by identifying the causes of pipeline loss. He explained that Pendleton will further address necessary steps for addressing will work on reducing water loss in a master plan once the Commission rules on and finalizes the boundaries of the Pendleton's proposed Rregulated Tterritory.

_____ 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 the Pendleton's PER is preliminary, and it was procured to receive funding for replacinge existing lead service lines in Pendleton's current service area. He explained that Pendleton did not intend for the Pendleton 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 ~~noted~~argued that the Anderson PER focuses on Anderson's current service area, not into the Proposed Anderson Service Area. He explained that it focused on establishing capacity for establishing sufficient capacity for future demand within Anderson's already existing service areas, not providing water service to and/or meeting future demand with the proposed expanded service territory. He also highlighted how Anderson's PER expressly states that Anderson's "service area is not expected to change in any significant way over the next 20 years." He reiterated that once the Commission rules on the 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, testifying that the \$3,000 for 5/8 inch and 3/4 inch connections and \$4,500 for a 1 inch connection is based largely on the estimated cost of materials. He explained that the cost of all materials, including a meter, for a new 3/4 inch or 5/8 inch connection is approximately \$2,400, and that the remainder of the connection fee covers the estimated cost of labor, planning, and inspections. 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 spoke-and-wheel layout of the road system within Fall Creek Township that enables placement of more direct main lines and service lines compared to Anderson's grid system.

He also testified that Pendleton does not know the timeline or sequence of how development will occur throughout the unincorporated areas within the ~~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, including the South Madison Fire Protection Territory, the Fall Creek Regional Waste District, the South Madison Community School Corporation, and the Pendleton/Fall Creek Township Park Service Area. He testified that

this~~which~~ would be efficient for residents within the Proposed Pendleton Service Area, reduce potential duplication of facilities throughout the Proposed Pendleton Service Area, and promote a unified sense of community within the Proposed Pendleton Service Area.

F. 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.

G. Stipulated Data Request Responses. In Pendleton's Data Request 1.12 to Anderson, it asked if Anderson intends for developers to bear the cost of main extensions, booster stations, storage tanks, or any other new facilities in the proposed Anderson service area. In terms of main extensions, Anderson stated it would follow the Commission's main extension rules.

In Pendleton's Data Request 1.17 to Anderson, Pendleton requested Anderson's lost water rate and documents showing Anderson's lost water rate over the past ten years. The records provided by Anderson demonstrate that Anderson's reported number of active and inactive service connections in 2015 was 27,745, which decreased to 24,500 by 2023. The records also show that Anderson's reported water loss of 38.6% in 2019 was calculated as non-revenue water (1496.847 MG/Yr) as percent by volume of water supplied (3,875.838 MG/Yr). According to audit information for audit year 2023, Anderson's non-revenue water amount was 1,508.792 MG/Yr and water supplied was 3,987.407 MG/Yr.

H. Joint Evidence Submitted by Pendleton and Ingalls.

On March 12, 2025, Pendleton and Ingalls filed their Stipulation and Settlement Agreement ("Settlement Agreement") with the Commission as Joint Exhibit No. 1, which included Exhibit A, Ingalls' Proposed Water Territory Map. The Settlement Agreement states that Pendleton and Ingalls agree that the territory included in the Regulatory Ordinance should be amended to exclude the territory identified on Exhibit A as the "Proposed Territory" and marked with black crosshatches.

Pendleton and Ingalls agreed that all evidence that had been filed in this Cause with respect to the relief provided in the Settlement Agreement was admissible in evidence and that such evidence constituted a sufficient evidentiary basis for the issuance of a Commission order approving the Settlement Agreement. Ingalls agreed that it would not oppose Pendleton's requested relief subject to the conditions stated in the Settlement Agreement.

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.

A. Sufficiency of the Petition. Under Ind. Code § 8-1.5-6-9(b), a municipality's petition for approval of a regulatory ordinance must contain the following information:

- (1) A description of the service territory established in the regulatory ordinance;
- (2) Proposed rates and charges for the services to be provided in the service territory;
- (3) A list of any administrative or judicial proceedings involving the regulatory ordinance; and
- (4) A list of any utilities actually or potentially affected by the regulatory ordinance.

Pendleton's Petition includes a description of the Proposed Pendleton Service Area and attached a map thereof included as Exhibit 1 to the Petition.

The Regulatory Ordinance describes the Proposed Pendleton Service Area and includes an attached map that depicts the Proposed Pendleton Service Area. Pendleton attached Ordinance No. 2023-19 to its Petition, which sets forth Pendleton's current rates and charges that will apply to all customers, including those within the Proposed Pendleton Service Area. The Petition also stated that the Regulatory Ordinance is not the subject of any other administrative proceeding. Mr. Reske updated this in his rebuttal testimony, given Anderson's filing in Cause No. 46147 for a regulatory ordinance including the Disputed Area after Pendleton filed its direct testimony in this Cause, and we since consolidated matters regarding the Disputed Area into this proceeding. Finally Pendleton's Petition lists the utilities that might be impacted by the Regulatory Ordinance, which includes Anderson, Ingalls, Greenfield, and South Madison Utilities.

Based on our review of the Petition, we find that the Petition complies with the requirements of Ind. Code § 8-1.5-6-9(b).

A.B. Public Interest Factors. 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.

C. 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~~met its burden to establish that it should exclusively serve the Disputed Area, and we further find that ~~Anderson~~Pendleton 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~~d 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, We agree that~~ Pendleton's figures regarding its excess capacity appropriately do not account for Pendleton's water loss because as Mr. Reske testified, water loss is not a fixed variable, Pendleton a. According to the most recent statistics in the record, Pendleton's water loss percentage from 2023 was 45.8%. ~~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.~~

However, Pendleton's bottom range of its lost water percentage over the past five years is not dissimilar to Anderson's lost water percentage. Mr. McKee testified that, with respect to water loss, Anderson has started a leak detection program through Zonescan, a software by Gutterman Technologies that reports through Anderson's advanced metering infrastructure system. He stated that this has been instrumental in Anderson's efforts with its water loss program, which assists with leak detection and leak elimination. Mr. McKee testified that, since 2014, Anderson has reduced its water loss from a high in 2019 of 38.6% to 34% for 2023. The stipulated water audit data, however, shows that Anderson's reported water loss of 38.6% in 2019 was calculated as non-revenue water (1496.847 MG/Yr) as percent of volume of water supplied (3,875.838 MG/Yr). According to the audit information for audit year 2023, Anderson's non-revenue water amount was 1,508.792 MG/Yr and water supplied was 3,987.407 MG/Yr. Using this same calculation, the 2023 water audit data for Anderson appears to show a water loss percentage of 37.8%.

The evidence in the record supports that Pendleton will be able to serve the Disputed Area. Mr. Reske testified that the current capacity of Pendleton's water utility is 2.0 MGD, but with the mirror image expansion of the second WTP, the near-term capacity is estimated to be 3.2 MGD. He further testified that Pendleton has two (2) elevated water storage tanks. Mr. Reske's testimony is that Pendleton's near-term excess capacity is estimated to be from 13,500 to 24,000 in population depending on the development variables and the willingness of the existing population to connect as development brings water service past their properties. Mr. Reske testified that within Pendleton's current boundaries, the maximum potential population could be up to 40,000. As for the unincorporated area of Fall Creek Township, he testified that the population of that area according to the 2020 Census is 10,232, but it has enough undeveloped area for an estimated potential population of 80,000.

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.

Anderson is critical of Pendleton’s PER and how it does not address future plans for expanded service into the Proposed Pendleton Service Area, but 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 the extending extension of~~ service into the Disputed Area ~~or by preparing~~ a master plan ~~until after~~ the Commission ~~decides whether to approve~~ establishes the final service boundaries of Pendleton’s ~~Regulatory Ordinance Proposed Pendleton Service Area~~. (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 ~~is unrelated to 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. 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, but the evidence provided focuses on its facilities within its current service area, the Disputed Area. For the northwest portion of the Disputed Area, Anderson asserts that it 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, but it is not clear whether Anderson has the future capacity to serve additional demand outside of its current service 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, which are not in the Disputed Area. She also, and explained Anderson has extensive master planning related to the Flagship Industrial Park and surrounding areas, but does not identify the Disputed Area as one of those 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 already has a identified 12-inch water mains larger than 12 inches within miles of near 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.~~

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.

Anderson's witnesses, however, have testified that Anderson is better suited to serve the Disputed Area of the Proposed Pendleton Service Area. Mr. McKee testified that based on the investments and planning Anderson has already done, Anderson is well positioned to serve the Disputed Area. He stated that Anderson already has twelve (12) inch or larger water mains within the close vicinity of the Disputed Area and that Anderson has made significant investments to develop additional water sources within the Disputed Area through negotiating rights of entry and installing and planning to install test wells in the Disputed Area. He further testified that Anderson also has the capacity to serve the area, since Anderson currently has 14 MGD in capacity, with the max day of 13.1 MGD and a daily average of 10.5 MGD, and that Anderson currently has approximately 1 MGD of available capacity even on a max day. Mr. McKee explained that the South Side Plant and South Side Well Field are planned to be located within the eastern portion of the Disputed Area with Pendleton, and, as updated in corrected testimony filed March 7, 2025, noted that the South Side Plant and the South Side Well Field will be 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. Accordingly, it is possible that the new South Side Plant and the South Side Well Field will actually be within Anderson's corporate boundaries and *not* within the Proposed Pendleton Service Area.

Furthermore, Anderson's witness Ms. Wilson testified that Anderson's plan is to finance the new (replacement) treatment plant and new wells that *might* be located in the Disputed Area with proposed 2026B Bonds (after gaining approval to submit its rate and financing case from the Anderson City Council) and Anderson plans to have all financial approvals necessary to construct the plant no later than September 2025. 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. 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.

The record evidence suggests that Anderson's planned investments in its water utility is primarily to serve its *existing* service area. For example, Anderson's witness Ms. Young testified that the Wheeler Plant and Ranney and Norton Well Fields are over 50 years old and have reached the end of their useful life with decreasing productivity over time, and the proposed southside WTP and wells in the Proposed Pendleton Service Area are intended to replace these facilities and provide additional capacity to serve Anderson's existing and future customers. Notably, the Anderson PER expressly states that Anderson's "service area is not expected to change in any significant way over the next 20 years;" and that "[t]he City of Anderson's existing and proposed water service area are the same." Anderson Intervenor's Exhibit 6, p. 15, 39). Furthermore, the stipulated evidence of documents showing Anderson's lost water rate over the past ten years show that Anderson's reported number of active and inactive service connections in 2015 was 27,745, but in 2023, Anderson's reported number of active and inactive service connections was 24,500. This suggests that Anderson's service connections are decreasing.

In analyzing the eastern and southern portions of the Disputed Area, Anderson testified that it 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 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). While Anderson may have planned infrastructure near the Disputed Area, we find that this does not necessarily prove that Anderson has planned to provide service to consumers within the Disputed Area. This also applies to Anderson's 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 do not find that the evidence demonstrates that Anderson ~~will be able to~~ is in a better position to extend additional facilities to serve the Disputed Area as it may develop as compared to Pendleton. ~~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 OUCU 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, we find that the evidence Pendleton presented in this Cause sufficiently addresses the ability of another utility failed to demonstrate that it is best suited to serve the Disputed Area and, 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 AndersonPendleton.

(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. As explained by Mr. Reske, Pendleton's 2023 Rate Water Study shows that Pendleton's 2023 rate was one of the lowest in neighboring municipalities and that Pendleton's current rate is in the middle when compared to neighboring municipalities. (See Petitioner's Exhibit SER-6). 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. Based on the evidence in the record, neither Pendleton nor Anderson impose an out-of-city surcharge. Accordingly, Anderson's current rates and charges are significantly less than Pendleton's current rates and charges. However, we do not anticipate it will stay this way.

Both Pendleton and Anderson also set forth future rates based on proposed water utility improvements. For example, the Pendleton PER sets 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 may will need to increase its rates to \$75.51 per month (inclusive of the fire protection charge) for a 4,000-gallon user, assuming no SRF Program grant funding (i.e., 100% loan funded), or 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 (inclusive of the fire protection charge) for a 4,000-gallon user with a 75% SRF Program grant, including the fire protection charge for a 4,000 gallon user. (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. However, as stated in Mr.

Reske's rebuttal testimony and the Pendleton PER, the Pendleton PER is preliminary. According to the Pendleton PER, not only are these rates "preliminary in nature", but they were presented only as an estimate and additional rate studies are necessary to determine an accurate rate. (Petitioner's Exhibit SER-8, Section ES.4(C), p. 30). According to Mr. Reske, the Pendleton PER was primarily procured to receive funding for line replacement. While the Pendleton PER identifies a need for line replacements, there is no evidence in the record to support that Pendleton will undertake these projects. Based on the evidence, we find that the Pendleton PER is preliminary, that any rate increase related to the projects set forth in the Pendleton PER is wholly uncertain, and that our decision as to whether Pendleton or Anderson should serve the Disputed Area should not be conditioned on the Pendleton PER.

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, in contrast, has proposed a five-phase rate increase, 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 in its rate case, 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 current \$44.96 monthly rate in 2024. While 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, we note that these are one-time fees. We do not think that these one-time fees are significant enough to warrant

~~a decision in Anderson's favor find that Anderson is better suited to provide service to the Disputed Area than Pendleton. 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, although 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, we question whether additional improvements will be required for Anderson to serve the Proposed Anderson Service Area, including the Disputed Area, because the Anderson PER focuses on projects necessary to replace its aging infrastructure that is past its useful life. Indeed, expansion is never mentioned in the Anderson PER, and the Anderson PER states that Anderson's "service area is not expected to change in any significant way over the next 20 years." (Anderson Intervenor's Exhibit 6, Chapter 2-1, p. 39). Taking the Anderson PER's statement on its face, it is possible that Anderson will need additional infrastructure to serve the Disputed Area above and beyond what is set forth in the Anderson PER and its testimony. Furthermore, Anderson's rate increase is necessary "to maintain the Utility in a sound financial and physical condition to render adequate and sufficient service" because its current rates are insufficient. (Anderson Intervenor's Exhibit 9). In other words, Anderson is unable to render adequate and sufficient service without this rate increase, which it does not yet have Commission approval for. Additionally, there is no suggestion in Ordinance No. 38-24 that the rate increase is necessary to expand service to the Proposed Anderson Service Area. Accordingly, it is clear that the improvements in the Anderson PER and applicable rate increase are unrelated to the expansion into the Proposed Anderson Service Area, given that the Anderson PER clearly was created with no anticipation of significant change to Anderson's service area. We therefore find that it is uncertain whether and to what extent the proposed improvements in Anderson's PER will be sufficient to serve the Proposed Anderson Service Area and that it is possible an additional rate increase will be necessary.~~

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~~Additionally, the evidence shows that neither Pendleton nor Anderson have an out-of-city surcharge, and all customers within the Disputed Area will pay the same rate as in-city customers regardless of which provider serves the Disputed Area. Although Mr. Reske stated that if, in the future, Pendleton determines that customers outside of Pendleton's corporate boundaries should be charged higher rates, it would not increase such rates above 15% without Commission approval pursuant to Ind. Code § 8-1.5-3-8.3, we find that this statement confirms that Pendleton will follow applicable law rather than confirms that Pendleton intends to implement such a surcharge. Accordingly, we find that the evidence shows that neither Pendleton nor Anderson charge, or intend to charge, an out-of-city surcharge to customers in the Disputed Area at this time. Finally, the evidence shows that neither Pendleton nor Anderson has a Master Plan applicable to service in the Disputed Area. The evidence shows that Pendleton intends to create a Master Plan after the Commission's decision in this Cause and that Anderson has a master plan related to the Flagship Industrial Park, not the Proposed Anderson Service Area or 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.~~

~~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, while Anderson's current and proposed rates and charges are less than Pendleton's current rates and charges, Anderson's proposed rates and charges are higher than Pendleton's rates and charges, which it does not currently intend to change. Furthermore, we find that neither the Anderson PER nor the Pendleton PER are tailored towards expanding service to the Disputed Area. We find that, assuming this Commission approves Anderson's requested rate increase, Anderson's rate increase is certain, since Anderson's Ordinance 38-24 says that a

financial study “indicates that the current monthly water user rates do not produce sufficient income to maintain the Utility in a sound financial and physical condition to render adequate and sufficient service.” (Anderson Intervenor’s Exhibit 9). The rate increase addressed in the Pendleton PER, however, is preliminary in nature and uncertain. Furthermore, we find that it is uncertain whether the improvements in the Anderson PER will be sufficient to serve the Proposed Anderson Service Area, including the Disputed Area, which could result in an additional, uncertain rate increase. We therefore find the second factor set forth in Ind. Code § 8-1.5-6-8(g)(2) weighs in favor of ~~Pendleton~~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 purport that economic development will be positively impacted if Anderson serves the Disputed Area instead of Pendleton because, 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, whereas Anderson does have water facilities in the vicinity. 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)). We note that Anderson has facilities in close proximity to the Disputed Area. However, we do not find that this will deter economic development in the Disputed Area because both Pendleton and Anderson acknowledge that the Disputed Area is likely to attract economic development due to 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). We agree that economic development in the Disputed Area is likely to occur given its location, and, given such location do not anticipate that the distance of the provider’s facilities from the economic development site will stall, deter, or make or break economic development projects. We also note that the evidence in the record demonstrates that Anderson’s investments thus far and planned investments are intended to replace older facilities and ensure adequate service for its existing and future customer base within its corporate boundaries and not necessarily an expanded service area. It is not clear from the record that Anderson will have sufficient capacity to serve new economic development in its proposed expanded service area in addition to the anticipated demands of its current service area—and insufficient capacity will not promote economic development. and 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).

We further find that economic development will be positively impacted if Pendleton is the provider of the Disputed Area as opposed to Anderson because Pendleton has demonstrated its willingness to serve economic development projects and is prepared to do so. Mr. Reske explained

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Pendleton's economic development strategy and its overall goal to encourage projects that enhance the quality of life for present and future residents and noted that incentives are used for quality development. As recognized by Mr. Reske, establishing a defined water service territory may minimize construction inconveniences, provide more cost-effective water service, and bring clarity to developers. The record shows that Pendleton has experience serving economic development projects. In fact, Pendleton has already served a 177-acre economic development project south of its corporate boundaries, and that project was clearly not deterred by Pendleton as the provider. While we note that this project was not in the Disputed Area and that Mr. Reske is not aware of further economic development projects at this time, we find that this experience will promote economic development projects.

Although Anderson witness Ms. Young mentioned that Anderson has been approached about economic development projects in the Proposed Anderson Service Area, she did not specifically identify any economic development projects it has been asked to serve in the Disputed Area nor explain Anderson's experience with economic development projects. Further, while Anderson serves the Flagship Industrial Park located within its existing service area and identifies it as an area from which there will be increased demand, Anderson's PER only identifies increased demand from commercial and industrial customers in or near the Flagship Industrial Park. If Anderson intended to prepare to serve future economic development in the Disputed Area, we question why the Anderson PER, dated March 27, 2024, did not address serving the Disputed Area when Anderson passed its own regulatory ordinance around six months later on September 12, 2024.

Additionally, the evidence shows that Pendleton and Anderson also explained that main extensions to new subdivisions will both follow be constructed pursuant to the IUR Commission's Main Extension Rules. (See OUC Attachment CNS-1, p. 8, Petitioner's Exhibit 5, p. 3). While Anderson's facilities are closer, we do not find that use of the Main Extension Rules will deter economic development in light of the rapid expansion that is likely to occur from Indianapolis and Hamilton County. 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 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. Given Anderson's lack of evidence in the record of serving economic development projects, we find that economic development will be negatively impacted if Anderson is the exclusive provider of the Disputed Area. We further find that economic development will not be deterred if we approve the Regulatory Ordinance. Therefore, we find that the third factor in Ind. Code § 8-1.5-6-8(g)(3) weighs in favor of AndersonPendleton.

(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, ~~neither Pendleton nor Anderson 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, The evidence shows that 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. Additionally, 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 and. 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. Despite these efforts, Anderson is not providing service with the Disputed Area and does not have a history of providing service in the Disputed Area. Having facilities in or near the Disputed Area does not mean that a utility has a history of utility service in the relevant area. Moreover, we note that Anderson's PER shows that Anderson's test wells, new wells and plant are primarily to replace existing facilities that are passed their useful life, not to serve the Disputed Area. Even if the Anderson PER supported the idea that these facilities are being constructed to serve the Disputed Area, which it does not, we do not want to encourage utilities to make significant investments into exclusively serving an area it does not yet have approval to do, as that is not in the public interest.~~

~~In summary, neither Pendleton nor Anderson has a history of providing water service in the Disputed 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 PendletonAnderson.~~

(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, ~~overlapping with Fall Creek Township which includes the Disputed Area. (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. Pendleton's witness Mr. Reske explained that the Proposed Anderson Service Area aligns with existing government service areas that also serve Pendleton residents, including the South Madison Fire Protection Territory, Fall Creek Regional Waste District, South Madison Community School Corporation, and Pendleton/Fall Creek Township Park Service Area. Mr. Reske testified that having this alignment of governmental service areas will be more efficient for residents within the Proposed Pendleton Service Area, reduce potential duplication of facilities throughout the Proposed Pendleton Service Area, and, as the Proposed Pendleton Service Area undoubtedly experiences~~

future development and voluntary annexations of the Proposed Pendleton Service Area, and promote a unified sense of community within the Proposed Pendleton Service 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.

Anderson's witness Ms. Young testified that Anderson wishes to protect its investment by having its regulatory ordinance approved by the Commission and that without such protection, neighboring utilities could provide competing service which would lead to confusion, stranded or underutilized infrastructure, and higher rates for all users. 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. However, a review of Anderson's Preliminary Engineering Report attached to Ms. Young's testimony suggests that Anderson's plans to improve and expand its facilities is tailored to serving its current customer base. Ms. Wilson testified that for the last several years, Anderson has been planning and taking steps to construct the necessary facilities to ensure that it can provide safe, efficient potable water and fire protection service to all its customers, including prospective customers in the Disputed Area. We must ask why Anderson did not pass its regulatory ordinance until September 2024 if Anderson has been planning on

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.

extending service and establishing a regulated territory for at least a couple of years, if not longer, so that its ratepayers would not bear the burden of increased rates to fund the facilities needed for such expansion only for the expansion to potentially not take place if another utility were granted exclusive rights to serve the area.

The Commission notes that historically, the “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.” *Town of Newburgh v. Town of Chandler*, 999 N.E.2d 1015, 1018 (Ind. Ct. App. 2013); citing *Taylor v. City of Fort Wayne*, 47 Ind. 274, 282 (1874) (group of citizens prevailed where it initiated proceedings to incorporate new town before city initiated proceedings to annex same territory); *Ensweiler v. City of Gary*, 169 Ind. App. 642, 645, 350 N.E.2d 658, 659 (1976) (city prevailed where it initiated annexation proceedings before group of citizens initiated proceedings to incorporate same territory as new town). In *Chandler*, the Court found that Chandler could not provide sewer service in Newburgh’s regulated area despite the fact that Chandler had already been providing service in the Newburgh regulated area, but Newburgh passed an ordinance establishing itself as the exclusive sewer service provider before Chandler did, 999 N.E.2d 1015, 1016–1017 (Ind. Ct. App. 2013). The Indiana General Assembly then passed Ind. Code § 8-1.5-6-6, which gave the Commission jurisdiction over the offering or provision by a utility in a regulated territory, including disputes over service in a regulated territory (Ind. Code § 8-1.5-6-10).

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. 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. Because we seek to encourage utilities to first petition to exclusively serve an area prior to expending significant resources, we find that the public interest would be better served if Pendleton is the exclusive provider of the Disputed Area.

We do not want to encourage utilities to invest significant taxpayer dollars into exclusively serving an area it does not yet have authority to exclusively serve. We therefore find that the fifth factor in Ind. Code § 8-1.5-6-8(g)(5) weighs in favor of ~~Pendleton~~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~~Pendleton’s favor to be the exclusive water service provider within the Disputed Area, not ~~Pendleton~~Anderson. Anderson has not demonstrated that it has a better ability to serve the Disputed Area than Pendleton. Further, ~~Anderson-Pendleton has demonstrated testified 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; it does not anticipate raising rates and will be undertaking development of a Master Plan which will include an assessment of projected rates and charges for the Proposed Pendleton Service Area. We note that Anderson's rates and charges are uncertain in light of how Anderson's PER does not account for future service outside of its corporate boundaries or potentially needing additional facilities above and beyond what is planned in the PER in order to serve future customers in its entire proposed service area. We also find that the present and future of economic development within the Disputed Area will be better served by having Anderson-Pendleton be the exclusive water provider to the Disputed Area due to the location of question of whether Anderson will have sufficient capacity to serve economic development in the Disputed Area in light of Anderson's current and planned replacement 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. while neither Anderson nor Pendleton currently appear to serve customers in the Disputed Area, there is a history of the provision of public services in the Disputed Area between Pendleton and other entities that overlap with the boundaries of Proposed Pendleton Service 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).~~

Based on our findings above, we have determined the public interest requires that Pendleton's Regulatory Ordinance should be ~~amended in several respects~~granted. Accordingly, Pendleton's Regulatory Ordinance ~~should be amended to exclude~~will include 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"). The Commission will make appropriate orders regarding the same in Cause No. 46147.~~

~~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.~~

D. Remainder of Proposed Pendleton Service Area.

(1) Other Utilities' Ability to Serve the Proposed Pendleton Service Area.

As noted above, subject to the terms of the Joint Stipulation and Settlement Agreement, Ingalls will not oppose the relief Pendleton requests and accordingly, the Commission will not address Ingalls' ability to serve the Proposed Pendleton Service Area.

Pendleton's Petition also identified the Town of Lapel and the City of Greenfield as potentially impacted utilities; however, those utilities did not intervene in this matter and accordingly, the Commission will address neither Lapel's nor Greenfield's ability to serve the Proposed Pendleton Service Area.

The OUCC expressed some concerns regarding Pendleton's lost water statistics. The OUCC's witness, Mr. Seals, explained that Pendleton's lost water percentage over the last five years ranged from a low of 34% in 2022 to 46% in 2020. He noted that the Pendleton PER and Asset Management Plan, both of which were prepared by Commonwealth Engineers, address lost water and reference Water Loss Audits required by the Indiana Finance Authority. He explained that the Pendleton PER notes that water losses are likely due to a mixture of leaks and meter inaccuracies. Pendleton's witness, Mr. Reske, also testified that Pendleton is currently addressing the water loss statistics by having its engineering firm conduct a review, and that initial indications from the nighttime baseline flow are that the lost water is not due to waterline loss and may be due to calibration issues. Mr. Reske also testified if the percentage of lost water is not fully determined through a records review, Pendleton will engage a contractor specialized in finding underground leaks. He further explained that water loss is not anticipated to be an issue with extending new water mains to new developments within the Proposed Pendleton Service Area, because they will be brand new pipes.

The evidence in the record indicates that Pendleton will be able to serve the Proposed Pendleton Service Area. Mr. Reske testified that the current capacity of Pendleton's water utility is 2.0 MGD, but with the mirror image expansion of the second WTP, the near-term capacity is estimated to be 3.2 MGD. He further testified that Pendleton has two (2) elevated water storage tanks. Mr. Reske's testimony is that Pendleton's near-term excess capacity is estimated to be from 13,500 to 24,000 in population depending on the development variables and the willingness of the existing population to connect as development brings water service past their properties. Mr. Reske testified that within Pendleton's current boundaries, the maximum potential population could be up to 40,000. As for the unincorporated area of Fall Creek Township, he testified that the population of that area according to the 2020 Census is 10,232, but it has enough undeveloped area for an estimated potential population of 80,000.

The record evidence demonstrates that Pendleton has the near-term capacity to serve the Proposed Pendleton Service Area and that, since Mr. Reske testified that early indications are that Pendleton's lost water percentages are inaccurate due to a calibration issue and not physical water loss, it is appropriate to calculate Pendleton's capacity to serve by omitting inaccurate water loss

data, especially in light of Pendleton's plans to address the matter. Pendleton's evidence indicates that it has the immediate capacity to serve both the current population and the additional unincorporated population in the Proposed Pendleton Service Area. Furthermore, with the planned expansion of WTP #2, we find that Pendleton has sufficient near-term excess capacity to handle expansion.

Pendleton's witness Mr. Reske noted that the major roads and state roads that project from Pendleton do so in a spoke and wheel manner, and this layout enhances Pendleton's ability to more economically expand water lines out from the existing distribution system versus a square grid layout of major roads, like Anderson's. Mr. Reske reiterated his prior testimony that once the Commission rules upon the Proposed Pendleton Service Area, Pendleton will invest in its Master Plan, which will address future expansion into the Proposed Pendleton Service Area.

The OUCC's witness, Mr. Seals, testified that Pendleton's Petition has satisfied the requirements set out in Ind. Code § 8-1.5-6. Mr. Seals testified that OUCC does not oppose approval of the Pendleton Regulatory Ordinance.

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

(2) Effect on Rates and Charges

The Commission must consider how approval of the Regulatory Ordinance will affect rates. Mr. Reske testified that Pendleton intends to charge the same rates to customers throughout the Proposed Pendleton Service Area. He explained that Pendleton anticipates creating a Master Plan for its water utility soon, and that it will then review its rates and, if necessary, adjust them to ensure they are concurrent with the cost of service. He further noted that, if Pendleton determines that customers outside of Pendleton's corporate boundaries should be charged different rates that customers within the corporate boundaries, the difference in the rates for customers outside Pendleton's corporate boundaries would not differ by more than 15% without Pendleton first seeking Commission approval pursuant to Ind. Code § 8-1.5-3-8.3. Although the Pendleton PER sets forth preliminary rates for a lead service line project, we find that those rates are preliminary, uncertain, and unrelated to the request herein. Therefore, we will not consider this preliminary and uncertain rate increase when determining whether Pendleton should serve the remainder of the Proposed Pendleton Service Area.

OUCC witness Mr. Seals testified that the Commission should consider the rates of neighboring utilities compared to Pendleton's rates. As noted by Mr. Reske, Exhibit SER-6, which is attached to Petitioner's Exhibit 3, shows that Pendleton's current rates are in the middle when compared to other neighboring utilities. The evidence in the record supports that Pendleton does not, at this time, intend to raise its current rates. We find that Pendleton's current rates are competitive compared to the rates in surrounding municipalities and that approving the Regulatory Ordinance is unlikely to affect Pendleton's rates significantly or disproportionately. In fact, at this time, the evidence shows that Pendleton does not intend to raise its rates. While we acknowledge that Pendleton may eventually increase its rates, we decline to deny the Regulatory Ordinance based on an uncertain rate increase.

We find that the evidence presented in this Cause sufficiently addresses the effect on rates for service within the Proposed Pendleton Service Area and find that this evidence supports our approval of the Regulatory Ordinance.

(3) Effect on Economic Development

As part of our determination, we must also consider how approval of the Regulatory Ordinance will affect economic development in the Proposed Pendleton Service Area. As explained above, it is clear that economic development is occurring and is likely to continue to occur in the Proposed Pendleton Service Area due to its proximity Indianapolis and Hamilton County, which are experiencing growth. As noted by Mr. Reske, Pendleton has already identified and worked on a 177-acre economic development project in the Proposed Pendleton Service Area. Although Mr. Reske is unaware of any additional specific planned economic development projects in the Proposed Pendleton Service Area, we do not expect that approval of the Regulatory Ordinance will have a negative impact on economic development in an area that is experiencing rapid growth. We find this to be true even if Pendleton uses the Commission's Main Extension Rules for developers because of the Proposed Pendleton Service Area's proximity to ongoing expansion. It is clear to us that Pendleton has experience dealing with economic development projects, and its strategy to incentivize developers to bring quality economic development projects to the Proposed Pendleton Service Area. We agree with Mr. Reske assertion that establishing an exclusive provider will bring clarity to developers, provide more cost-effective water service, and minimize construction inconveniences.

We find that the evidence presented in this Cause sufficiently addresses the effect of economic development within the Proposed Pendleton Service Area and further find that having an exclusive provider of water service will benefit economic development. Therefore, we find the evidence supports our approval of the Regulatory Ordinance.

(4) History of Utility Service

The Commission must also consider the history of utility service in the area. The evidence shows that Pendleton does serve some customers outside its corporate boundaries and in the Proposed Pendleton Service Area. Mr. Reske explained that Pendleton's agricultural and undeveloped areas are substantially served, and that some Pendleton residents are served, by private wells and are not connected to the water utility, and that some Pendleton residents in rural areas do not have service lines available to them. He further testified that existing customers will not be required to connect to the water utility, though new subdivisions will be required to connect to the water utility either as a result of Pendleton or Madison County ordinance.

Mr. Reske testified that the City of Greenfield and South Madison Utilities are not serving the Proposed Pendleton Service Area, and there is no evidence to contradict this. We addressed Anderson's utility lines near the northwest corner of the Proposed Pendleton Service Area above. Although both Mr. Reske and Ingalls' witness Mr. Stevenson testified that Ingalls provides service in the Proposed Pendleton Service Area, we will not address this in light of the Joint Stipulation and Settlement Agreement ("Settlement Agreement") between Pendleton and Ingalls, which is discussed below.

We find that the evidence presented in this Cause sufficiently addresses the history of utility service within the Proposed Pendleton Service Area and find this evidence supports our approval of the Regulatory Ordinance.

(5) Other Factors

As we noted above, Pendleton witness Mr. Reske explained that the Proposed Pendleton Service Area aligns with the following existing governmental service areas: South Madison Fire Protection Territory; Fall Creek Regional Waste District; South Madison Community School Corporation; and Pendleton/Fall Creek Township Park Service Area. Mr. Reske testified that having this alignment of governmental service areas will be more efficient for residents within the Proposed Pendleton Service Area, reduce potential duplication of facilities throughout the Proposed Pendleton Service Area, and, as the Proposed Pendleton Service Area undoubtedly experiences future development and voluntary annexations of the Proposed Pendleton Service Area, and promote a unified sense of community within the Proposed Pendleton Service Area.

We find that this factor weigh in favor of granting Pendleton’s requested relief.

E. Stipulation and Settlement Agreement between Pendleton and Ingalls.

Pendleton and Ingalls have submitted a Settlement Agreement in which Ingalls will not oppose the relief requested by Pendleton, subject to conditions within the Settlement Agreement. Pendleton and Ingalls state that they agree that the Regulatory Ordinance should be amended to exclude the territory labeled as the “Proposed Territory” and marked with black crosshatches on Exhibit A to Joint Exhibit 1 from the Proposed Pendleton Service Area.

Settlements presented to the Commission are not ordinary contracts between private parties. *US Gypsum v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coal. Of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather, [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coal.*, 664 N.E.2d at 406.

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. Of Ind. V. Pub. Serv. Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Before the Commission can approve the Settlement Agreement, the Commission must determine what evidence in this Cause supports the conclusion that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2 and that such agreement serves the public interest.

Mr. Stevenson testified that Ingalls has estimated \$8 million invested in existing water infrastructure in the Proposed Pendleton Service Area and that the Proposed Pendleton Service Area includes areas Ingalls is serving and has a contractual obligation to serve. He explained that

Ingalls already serves 3,500 people in the Proposed Pendleton Service Area, including three major prison facilities, the Indiana State Police Post, a manufactured housing community, and several individual customers. Mr. Stevenson testified that Ingalls has been serving customers in this area for over 20 years and must, by contract, continue to provide such service to state facilities. He further explained Ingalls' concern that Pendleton's request would prevent it from exercising its rights under Ind. Code § 8-1-2-17(c).

Mr. Reske testified that Ingalls serves the DOC's Indiana Reformatory and Correctional Industrial Facility and operates a water treatment plant located on the facility's grounds. He also explained that Ingalls operates a well within the unincorporated area of Fall Creek Township that furnishes raw water to the water treatment plant. He explained that discussions with Ingalls indicated their main concern is expanding water service to areas within Ingalls' town boundaries. He further explained that Pendleton erred in its initial map of the Proposed Pendleton Service Area by including a small portion of Ingalls' corporate boundaries and had corrected such map in Exhibit SER-2, which is attached to his direct testimony in Petitioner's Exhibit 2.

The Settlement Agreement requires Pendleton to amend the Regulatory Ordinance to exclude certain territory shown in Exhibit A to Joint Exhibit 1. Pendleton and Ingalls agree that this reflects a fair, just and reasonable resolution of their dispute. Based on the evidence in the record, we find that the Settlement Agreement serves the public interest by excluding territory currently served by Ingalls. This will allow Ingalls to continue operating its existing facilities and serving existing customers, including those with contracts, in the Proposed Pendleton Service Area. The Commission hereby approves the Settlement Agreement and requires Pendleton to amend its Regulatory Ordinance to exclude the territory shown in Exhibit A to Joint Exhibit 1.

[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 Ordinance 24-15 (the Pendleton Regulatory Ordinance) is approved subject to the following conditions:
 - A. Pendleton must amend the Pendleton Regulatory Ordinance to exclude the area identified in Joint Exhibit 1 and as stipulated by Pendleton and Ingalls.
 - B. Pendleton shall file in this docket a copy of the Regulatory Ordinance as so amended. ~~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. Pendleton shall have an enforceable regulated territory as described in Ordinance No. 24-15 and as amended subject to the above condition.

~~3. The Joint Stipulation and Settlement Agreement between Pendleton and Ingalls filed March 12, 2025, is approved. 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.~~ 4. Anderson’s request to be the exclusive provider of the Disputed Area is denied. 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

4956259.1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 14, 2025, the foregoing was served via email transmission upon the following:

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