

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Bennett	√		
Freeman			√
Veleta	√		
Ziegner	√		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE VERIFIED PETITION)
OF THE TOWN OF PENDLETON AND THE TOWN)
OF PENDLETON WATER UTILITY FOR) CAUSE NO. 46087
APPROVAL OF A REGULATORY ORDINANCE)
ESTABLISHING A SERVICE TERRITORY FOR) APPROVED: JUL 16 2025
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

Kristin E. Kresge, Administrative Law Judge

On June 14, 2024, the Town of Pendleton, Indiana and Town of Pendleton Water Utility (“Pendleton” or “Petitioner”), filed its Verified Petition (“Petition”) with the Indiana Utility Regulatory Commission (“Commission”) requesting approval of a water regulatory ordinance under Ind. Code § 8-1.5-6-9. On July 17, 2024, Pendleton prefiled the direct testimony and exhibits of Scott E. Reske, Pendleton Town Manager.

On August 28, 2024, the City of Anderson (“Anderson”) filed its Petition to Intervene in this Cause, which was granted in a Docket Entry dated September 6, 2024. On September 9, 2024, Anderson filed its Unopposed Motion to Amend Procedural Schedule, which was granted in a Docket Entry dated September 25, 2024.

On October 1, 2024, the Town of Ingalls (“Ingalls”), filed its Petition to Intervene, which was granted in a Docket Entry dated October 16, 2024.

On October 28, 2024, the Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled its case-in-chief, which included the testimony and exhibits from Carl N. Seals, Assistant Director of the Water/Wastewater Division of the OUCC. On October 28, 2024, Anderson filed the prefiled direct testimony and exhibits of Neal L. McKee, Director of the Anderson Water Utility, Lori A. Young, Senior Associate and Regional Manager, Fleis & Vanderbrink Engineering, Inc. (“Fleis & Vanderbrink”), and Jennifer Z. Wilson, Consulting Director, Crowe LLP (“Crowe”). On October 28, 2024, Ingalls prefiled the direct testimony of Neil Stevenson, the Town Manager and Director of Planning and Development for Ingalls.

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

On October 28, 2024, Anderson filed a separate Petition requesting approval of a water regulatory ordinance under Ind. Code § 8-1.5-6-9, which is docketed as Cause No. 46147. Part of Anderson’s request overlaps with the territory requested by Pendleton in this matter (the “Disputed

Area”). On October 28, 2024 in Cause No. 46147, Anderson filed a Motion to Consolidate 46147 and this Cause. On November 21, 2024, the Presiding Officers denied the motion, finding that for purposes of efficiency, the issue of service in the Disputed Area between Pendleton and Anderson should be consolidated and addressed in this Cause.

On November 25, 2024, the Presiding Officers issued Docket Entry requesting a zipped shapefile format showing the boundary of Pendleton’s proposed regulatory territory. On December 5, 2024, Pendleton filed its Submission of File Requested and uploaded the requested file to OneDrive.

On December 26, 2024, the Presiding Officers issued a Docket Entry setting a prehearing conference. The Prehearing Conference was held on January 27, 2025 at 1:00 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana.

On March 7, 2025, Anderson filed its corrections to the prefiled testimony of Mr. McKee and Ms. 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 Pendleton and Anderson.

The Commission held an evidentiary hearing in this Cause on March 13, 2025 at 1:30 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Pendleton, the OUCC, and intervenors were present and participated through counsel. The testimony and exhibits of all of the parties were admitted into the record without objection.

Based upon the applicable law and the evidence presented, the Commission finds:

1. Statutory Notice and Commission Jurisdiction. Notice of the hearing in this Cause was given and published as required by law. Pendleton owns and operates a municipal utility as that term is defined in Ind. Code § 8-1.5-6-1. Under Ind. Code § 8-1.5-6-9, the Commission has jurisdiction to approve a municipality’s regulatory ordinance. 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, which provides water utility service to the public inside its corporate limits and to certain customers outside its corporate boundaries.

3. Petitioner’s Requested Relief. Pendleton requests approval of a regulatory ordinance, specifically Pendleton Ordinance 24-15 (“Pendleton Regulatory Ordinance”). The Pendleton Regulatory Ordinance states Pendleton’s intention to be the exclusive provider of water service to areas within four miles of Pendleton’s corporate boundaries as described and depicted in Petitioner’s Exhibit No. 1 as Exhibit SER-1 (“Pendleton Regulated Territory”).

As noted above, water utility service within the Disputed Area will be addressed in this order. However, we will not be making a specific finding concerning Anderson's ordinance, which proposes that Anderson should be the exclusive provider in the Disputed Area; rather, that decision will be made in Cause No. 46147.

4. Summary of Evidence.

A. Pendleton's Direct Evidence. Mr. Reske described Pendleton's water utility. He testified that Pendleton is in Fall Creek Township and Green Township within Madison County. Mr. Reske stated that Pendleton has experienced an increase in population of about 27% in the last four years. This increase closely corresponds to Pendleton's growth in water customers. He testified that Pendleton's current population is estimated to be 6,000, which is an increase from the 2020 Census of 4,717. Mr. Reske stated that Interstate 69 runs through the middle of the current boundaries and that is the conduit for growth. He anticipates that Pendleton's rate of growth will increase at a great rate over time. Mr. Reske testified that the total potential population of the Pendleton Regulated Territory could be 100,000 to 120,000.

Mr. Reske testified that Pendleton's water utility serves 2,250 customer service lines. He stated that with a few exceptions current water customers are within Pendleton's boundaries. Mr. Reske stated that all customers are subject to the same water rates. He stated that some agricultural and undeveloped areas and some private residents have wells and are not connected to the water utility. Further, Mr. Reske stated that some residents in rural areas do not have service lines available for them for connection at this time. He stated that Pendleton does not intend to require existing property owners to connect to the water utility. Mr. Reske stated that new subdivision development in the Pendleton Regulated Territory will be required to connect to the water utility by existing Pendleton or Madison County ordinances.

With regards to Pendleton's current facilities, Mr. Reske testified that Petitioner has two Water Treatment Plants ("WTP"). He stated that one WTP has been in service since 1950 with an Average Day Demand of 0.8 million gallons per day ("MGD") and the other WTP has been in service since 2017 with an Average Day Demand of 1.2 MGD. Mr. Reske testified that the second WTP has three active wells and that it is designed to incorporate a mirror image add-on to double its capacity. He stated that the current capacity of Pendleton's water utility is 2.0 MGD, and with the mirror image expansion, the near-term capacity is estimated to be 3.2 MGD.

Mr. Reske testified that Pendleton has two elevated water storage tanks. One water storage tank has a capacity of 0.3 MGD and the second has a capacity of 0.8 MGD. He stated that according to a preliminary engineering report a third tank will be needed soon. Mr. Reske stated that Pendleton's facilities are interconnected through a distribution system of 248,000 linear feet of lines composed of 1 inch to 36 inch in various sizes of pipe and material. He testified that Pendleton uses a wireless, real-time metering system with connectivity throughout the existing service area. Mr. Reske stated that Pendleton's water utility staff is composed of three certified WTP operators with level 3 certifications, one of whom also has a level 5 certification. Further, Pendleton has two equipment operators. Mr. Reske stated that the water utility is supplemented by staff from Pendleton's Street Department when needed.

Regarding capacity to serve, Mr. Reske testified that Pendleton has the near-term capacity to serve the current population of the Pendleton Regulated Territory plus any immediate population growth. He stated that Pendleton's near-term excess capacity is estimated to be from 13,500 to 24,000 in population.

Mr. Reske testified that outside of Pendleton's corporate limits, there are four utilities providing water near the four-mile radius of Pendleton's corporate boundaries. These four utilities are: Ingalls, Anderson, the City of Greenfield, and South Madison Utilities. He noted that the service areas of these utilities were excluded from the Pendleton Regulated Territory.

Mr. Reske explained the special circumstances regarding Ingalls' provision of service to the State of Indiana Department of Correction's grounds located within the unincorporated area of Fall Creek Township and Ingalls. He stated that Ingalls serves the Indiana Department of Correction's Indiana Reformatory and Correctional Industrial Facility ("Correction's Facilities") and operates a well in the unincorporated area of Fall Creek Township. The well furnishes raw water to the WTP operated on the State of Indiana Department of Correction's grounds. Mr. Reske stated that Pendleton intends to allow the State of Indiana to determine the water utility provider for the Correction's Facility, if the State of Indiana continues to own it. Mr. Reske stated that Pendleton's intention is to authorize Ingalls to operate the well and the associated raw water line as long as they are owned by Ingalls and operated at its current capacity.

Mr. Reske stated that Anderson has water lines near the northeast corner of the Pendleton Regulated Territory and may be serving a small portion of the Pendleton Regulated Territory. He also noted that the City of Greenfield's water service area extends north to the south boundary of Fall Creek Township. Mr. Reske does not believe that the City of Greenfield developed any of its distribution systems or facilities within practical proximity to the Pendleton Regulated Territory. Pendleton and South Madison Utilities have an agreement to establish a service area, which will not be impacted. The Pendleton Regulated Territory does not overlap with South Madison Utilities' service area. Mr. Reske anticipates that these utilities would not be negatively impacted by the Pendleton Regulated Territory.

Mr. Reske testified that currently the intent is to charge the same rates throughout the Pendleton Regulated Territory. He stated that Pendleton anticipates creating a master water utility plan soon. Mr. Reske stated that once the master plan is complete, including estimated costs, Pendleton will review its rates. He testified that Pendleton will adjust its rates to ensure rates within the Pendleton Regulated Territory are concurrent with the cost of service. He stated that if Pendleton decides to charge customers outside the corporate boundaries different rates than customers within the corporate boundaries, the difference will not be more than 15% without Pendleton seeking Commission approval pursuant to Ind. Code § 8-1.5-3-8.3.

With regards to water main extensions, Mr. Reske testified that they will be handled on a case-by-case basis. He stated that Pendleton anticipates that water main extensions will coincide with new development, and will be conducted with the developers in a manner consistent with Indiana's Water Main Extension Rules under 170 IAC 6-1.5.

Mr. Reske testified that Pendleton serves parcels outside its current service area and that it completed a water main extension project that services an area just south of Pendleton's town boundary. He stated that the water main extension project was placed to service 177 acres being developed by AG 101, LLC; it also completes the water loop back to the new WTP. Mr. Reske testified that no economic development projects are planned within the Pendleton Regulated Territory currently, but growth in the Pendleton Regulated Territory is expected. Mr. Reske stated that the growth is expected to happen rapidly and without incentives due to the growth in Indianapolis and Hamilton County. He stated that Pendleton hopes the Pendleton Regulated Territory will encourage quality of life type community development due to pro-active planning, which will decrease construction inconveniences and increase cost-effectiveness of water service.

Mr. Reske concluded that having an exclusive area of service will allow Pendleton to plan for the expansion of its service without concern of annexation. He also stated that approval of the Pendleton Regulatory Ordinance will limit duplication of facilities and eliminate unnecessary service costs through inefficiencies. Mr. Reske testified that the Pendleton Regulated Territory brings consistency of governance by aligning with other existing service boundaries of South Madison Fire Protection Territory, Fall Creek Regional Waste District, South Madison Community School Corporation, and Pendleton/Fall Creek Township Park Service Area.

B. OUCC's Evidence. Mr. Seals testified that Pendleton appears to meet the criteria identified in Ind. Code ch. 8-1.5-6. He stated that Pendleton has sold an average of 420,799 gallons per day using water produced at its WTPs. Mr. Seals testified that based on a review of Monthly Reports of Operations filed with the Indiana Department of Environmental Management ("IDEM") for the period of July 2023 through June 2024, Pendleton's peak production from its WTPs was 1.534 MGD on October 11, 2023. He stated that the ten peaks during this period range from 1.023 MGD to 1.294 MGD, with seven instances occurring in July and August 2023.

Mr. Seals testified that Pendleton's lost water percentage over the last five years ranged from 34% to 46%. He stated that the Pendleton Preliminary Engineering Report ("Pendleton PER") and Asset Management Plan address lost water. Mr. Seals stated that the Pendleton PER notes that water losses are due to leaks and meter inaccuracies.

Mr. Seals stated that Pendleton customers using 4,000 gallons of water a month would pay \$39.96 for water service, and in the case of a 5/8 or 3/4 inch meter, an additional \$5.00 Fire Protection Capacity Charge, which would bring the total bill to \$44.96. He further stated that new customers with 5/8 or 3/4 inch meter pay a capacity fee of \$2,000 per equivalent dwelling unit ("EDU") and the actual cost of the water tap charge or \$3,000 whichever is greater. He stated that Pendleton does not have a master plan, but that it intends to invest in a master plan after the decision in this Cause.

Mr. Seals stated that Pendleton is allowed to provide water service within four miles of its corporate boundaries pursuant to Ind. Code § 36-9-2-18. Mr. Seals testified that the Pendleton Regulated Territory includes all incorporated areas of Pendleton, all unincorporated areas of Green Township encapsulated by Pendleton, the unincorporated areas of Fall Creek Township, and all unincorporated areas in Adams Township, which are all within four miles of the incorporated areas of Pendleton.

Mr. Seals testified that to the best of his knowledge Pendleton has met the filing requirements set forth in Ind. Code § 8-1.5-6-9(b). He stated that the OUCC's research and analysis indicate Pendleton is improving the water utility's operations, but he acknowledges that water loss is still a challenge. Mr. Seals stated that Anderson customers pay \$24.33 for 4,000 gallons as compared to Pendleton, where customers pay \$39.96 for the same amount. Ingall's customers would pay \$38.42 for 4,000 gallons; if these customers were considered "CR 800 South" customers, they would pay \$44.10.

Mr. Seals stated that the OUCC does not oppose approval of the Pendleton Regulatory Ordinance and that the OUCC believes Pendleton met all the requirements under Ind. Code § 8-1.5-6.

C. Ingalls' Evidence. Mr. Stevenson stated that Ingalls opposes the relief sought for the Pendleton Regulated Territory because Ingalls already serves customers in that area and it violates Ingalls' statutory rights under Ind. Code § 8-1.5-2-17(c). He also stated 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 stated that he recognizes Pendleton has similar statutory rights to develop a source of supply within the same radius. He stated that the Pendleton Regulated Territory would take away Ingalls' statutory rights and that neither Ingalls nor Pendleton should be permitted to adopt ordinances that prohibit the other from taking advantage of the statutory rights set forth by the Indiana General Assembly.

Mr. Stevenson testified that Ingalls has 40,200 feet of water mains, eight wells, two WTPs, 22 fire hydrants, and multiple other appurtenances located within the Pendleton Regulated Territory. He stated that Ingalls serves 3,500 people within the Pendleton Regulated Territory including the three major prison facilities, the Indiana State Police Post, a manufactured housing community, and individual customers. Mr. Stevenson testified that Ingalls has served customers for over 20 years and has contractual obligations to serve the state facilities. He estimated Ingalls has invested \$8 million in existing infrastructure in the area and is currently investing additional funds in infrastructure for current and future customers. Additionally, Ingalls has a \$15 million WTP, which it maintains at the state penitentiary. Mr. Stevenson testified that Ingalls is in the final phases of designing another WTP and water storage tower in anticipation of future growth and that Ingalls has invested \$400,000 in this process.

Mr. Stevenson stated that it would not be a prudent use of Ingalls' or Pendleton's ratepayer money to approve the Pendleton Regulated Territory. He stated approval of Pendleton's request to be the exclusive water service provider in the Ingalls territory would cause a duplication of infrastructure and would waste Ingalls' investment. Mr. Stevenson recommended Petitioner's request be denied.

D. Anderson's Evidence.

1. Neal L. McKee. Mr. McKee testified that Anderson has taken substantial steps to provide water service, including installing test wells and preparing preliminary engineering reports ("Anderson PER") detailing improvements to the Disputed Area. Mr. McKee stated that Anderson should be the exclusive water provider in the Disputed Area.

Mr. McKee testified that Anderson currently provides water service in and outside of Anderson's boundaries. He stated that Anderson has approximately 23,300 customers and has two WTPs, 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. Further, Anderson's distribution system consists of approximately 420 miles of water main, which ranges in size from two inch to 30 inch. In the Disputed Area, Anderson has 12 inch and larger transmission and distribution mains. Mr. McKee stated that Anderson has seven water storage tanks, which store approximately 6.5 million gallons of water, and additional ground storage of 2.6 million gallons of water with backup generation.

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

Mr. McKee also testified concerning the significant improvements that have been made recently. In 2019, he stated Anderson replaced its 4.5 MGD Lafayette Plant with a new 10 MGD WTP and has drilled four new wells in the Lafayette Wellfield to replace some that reached the end of their useful life. In addition, Anderson replaced 20,000 feet of old two-inch and three-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 stated 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 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.

Mr. McKee testified that Anderson's water territory regulatory ordinance, Ordinance No. 27-24, was adopted by the Anderson City Council on September 12, 2024. He stated that Anderson has been planning to expand its existing facilities and construct new facilities to provide service to existing customers, as well as certain 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. 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 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 the Anderson PER, which outlined the construction of certain facilities that would have the capacity necessary to serve the Proposed Anderson Service Area and Anderson's existing customers.

Mr. McKee reviewed Pendleton's Regulatory Ordinance and noted the existence of the Disputed Area. Mr. McKee testified that considering Pendleton's existing facilities map, it does not appear that Pendleton has any significant water facilities outside of its municipal boundary, and that the Pendleton Regulated Territory appears to be drawn without consideration of whether Pendleton can serve the area as it is nearly three 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. He stated as explained in more detail in Lori A. Young's testimony, the Anderson PER sets forth improvements to Anderson's water system. In particular, the Anderson PER sets forth a new south-side WTP and well fields to provide six MGD of water supply, which is intended to replace the Wheeler Plant and its associated well field. He explained that the new south side WTP and 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 southeasternmost portion of Anderson's municipal boundary. He further testified that regardless of the south side WTP's ultimate location either within or near the Disputed Area, Anderson anticipates using both the Cooper and Beerbower Properties for well sites. He also testified that Anderson has planned to run a 24-inch water main within the eastern portion of the Disputed Area; for this reason, Anderson will be able to easily extend additional facilities to serve the Disputed Area as it may develop.

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

Mr. McKee explained that Anderson has the capability and is well positioned to serve the Disputed Area because Anderson has 12 inch or larger water mains within close proximity to the Disputed Area, along with Anderson's proposed new south side WTP, new wells, and new mains. He explained that Anderson has the capacity to serve the Disputed Area, as it currently has 14 MGD in capacity, with the max day of 13.1 MGD and daily average of 10.5 MGD. He also testified that Anderson is currently undertaking an improvement project that will add an additional 4 MGD of capacity. He also testified that Anderson is seeking approvals to adjust its rates and charges and issue debt to finance improvements. Mr. McKee stated that even if the five phase increase is implemented by 2029, Anderson's rates, with the increase, will only be slightly higher than Pendleton's current rates in 2024.

He also testified that given Anderson's planning and investments, approval of Anderson to serve the Disputed Area will have a positive impact on economic development, while the approval of the Pendleton Regulated Territory will stifle economic development in the Disputed Area. In particular, he explained that given Pendleton does not appear to have facilities near the Disputed

Area, it would be cost prohibitive for many developers to pay for main extensions to the Disputed Area and would stall economic development in the area.

2. **Lori A. Young**. Ms. Young is a registered professional engineer employed by Fleis & VandenBrink, which has served as consulting engineers for Anderson for approximately 40 years. Ms. Young stated Fleis & VandenBrink prepared the Anderson PER dated March 27, 2024, which sets forth certain proposed water utility improvements for Anderson. The Anderson PER was submitted to the Drinking Water State Revolving Fund Loan Program (“SRF Program”) in March 2024 and will be used to support Anderson’s request to the Commission for approval of a rate adjustment and financing.

Ms. Young testified regarding Anderson’s existing water facilities. She explained Anderson operates three well fields, two WTPs, seven elevated storage tanks, and 420 miles worth of water mains ranging in size from two-inches to 30-inches in diameter. The Lafayette Plant was built in 2019 and is located on the north side of Anderson with water supply from 11 wells and has a peak capacity of 10 MGD and safe capacity of eight MGD. She also explained it is designed for expansion up to 14 MGD. Anderson’s Wheeler Plant has a current peak capacity of 4.7 MGD and is in downtown Anderson. The Wheeler Plant is supplied by the Norton and Ranney Well Fields. She also explained that Anderson’s seven elevated storage tanks have a storage capacity of 6.5 MGD.

She explained that Anderson has been conducting tests and activities to develop facilities within the Disputed Area. This includes a hydrogeological investigation study that began in 2017 and is still ongoing. She testified that Anderson has negotiated property access rights with landowners and executed agreements with Eagon & Associates, Inc. for the purpose of identifying locations to bolster Anderson’s water supply in conjunction with a new southside WTP. Over the last seven years, Anderson has drilled a total of 17 test wells, four of which were in the Disputed Area. She further explained that Anderson is developing new water sources and planning a new southside WTP because the Wheeler Plant, Ranney Well Field, and Norton Well Field have reached the end of their useful lives and have deteriorated over time. She also explained that some wells in the Norton Well Field have per- and polyfluoroalkyl substance levels that exceed EPA’s maximum containment levels, and therefore require remedial measures. In addition, she testified that the new southside WTP 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 several 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 WTP and well field, which are planned to provide six MGD of water supply, and she noted that Anderson has been working for over five years to locate wells in the Disputed Area. These improvements also include new water transmission mains to connect to Anderson’s existing facilities. She further noted that Anderson’s PER also sets forth other improvements to Anderson’s water system, including main replacement projects that will serve to reduce water loss, as well as other improvements currently underway to expand the Lafayette Plant’s capacity to 14 MGD, to construct two 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 four 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 the Pendleton PER filed with the IDEM in March 2024, which identified Pendleton's annual water loss for the past five years ranging from 34% to 46%, with an average of 41.4% lost water. She explained that water loss of this magnitude should be considered when determining excess capacity. She also examined other portions of the Pendleton PER, and noted that based on its figures, it would result in near-term capacity to serve only 4,100 people rather than the 14,000 people identified by Mr. Reske.

She also observed that based on the testimony of Mr. Reske, there is no evidence or indication that Pendleton has started to plan or complete any tasks needed to extend service to the Disputed Area. In her review, Ms. Young explained that the Pendleton PER only includes main and related improvements in the southern portion of Pendleton's existing municipal limits, and that Pendleton does not have any current or planned facilities in the Disputed Area.

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

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

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

Ms. Wilson described the general governance of Anderson's water utility and provided background on Anderson's water utility's financial status. She testified that Crowe prepared a Revenue Requirements Report, dated October 10, 2024 ("Revenue Requirements Report"). She further explained Anderson retained Utility Financial Solutions to prepare a cost-of-service study based upon the Revenue Requirements Report. She testified the Revenue Requirements Report was presented to the Anderson City Council along with corresponding rate and bond ordinances amending Anderson's water rates and charges and authorizing long-term debt to finance improvements to the water utility. 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 bonds and facilitate service into the Proposed Anderson Service Area.

Ms. Wilson testified in detail about the Revenue Requirements Report. She explained the Revenue Requirements Report recommends a five-phase rate increase of 121.5% to cover Anderson's water utility's expenses, including the proposed annual debt service and debt service reserve for the bonds. She also explained the phase-in structure of the proposed rate increase. Ms. Wilson also testified about the projects that would be funded by the bonds, which are expected to be financed through the SRF Program. She explained that Anderson prepared the Anderson PER, as further explained in the testimony of Ms. Young, which sets forth the projects to be financed by the bonds, among other improvements. This includes a new south side WTP, new south side wells, main improvements, and other improvements. Ms. Wilson explained that many of these improvements will be located either within or directly adjacent to the Disputed Area and will be used to facilitate water service to the Proposed Anderson Service Area, including the Disputed Area. She explained that Anderson anticipates obtaining all financial approvals for the bonds no later than September 2025.

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

Ms. Wilson also testified about the proposed rates and charges by Pendleton and Anderson to the Disputed Area. She explained that she analyzed Pendleton's Municipal Water Utility 2023 Rate Study prepared by Krohn & Associates. She explained Pendleton currently charges \$44.96 for 4,000 gallons usage, including Pendleton's fire protection charge. She also testified she analyzed the project funding scenarios presented in the Pendleton PER. The Pendleton PER projects that 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 \$52.79 per month for a 4,000-gallon user, including the fire protection charge. Ms. Wilson explained that none of the improvements detailed in the Pendleton PER include any projects to extend or facilitate service to the Disputed Area, and Pendleton does not appear to have any facilities within several miles of the Disputed Area. She further explained that the extension of Pendleton's service to the Disputed Area would require Pendleton to plan and design new facilities, complete a new PER, issue new bonds, and adopt increased rates to pay for extending service to the Disputed Area. She further testified that she does not know how much Pendleton would need to increase its rates 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 anticipates it would be expensive and could result in monthly rates in excess of \$75.00 per month for a 4,000 gallon per month user.

Ms. Wilson testified concerning 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 that in 2029 after the five phases of Anderson's rate increase proposal, 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 the projected charge of \$75.51 for 4,000 gallons included in the Pendleton PER with no grant funding.

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 per EDU if Pendleton were permitted to serve the area. She further explained that Pendleton did not provide any evidence on how it calculated its connection fee. Ms. Wilson explained Anderson's current and proposed new connection fee are both significantly lower than Pendleton's charges. In summary, Ms. Wilson explained that if the Commission were to approve the Pendleton 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 on the impact of economic development on the Disputed Area. She explained that, as noted by Pendleton in Mr. Reske's testimony, the Disputed Area is an area that is likely to experience economic development. However, she testified that Pendleton does not have any water facilities near the Disputed Area and has presented no plans, reports, or studies demonstrating if or when it will extend service to the area. On the other hand, Ms. Wilson explained that Anderson has facilities immediately adjacent to the area, and has taken significant steps to plan, finance, and construct facilities to serve the Disputed Area. Because of Pendleton's lack of planning, Ms. Wilson explained Pendleton's proposed service of the Disputed Area would negatively impact economic development, while Anderson's planning to serve the Disputed Area would enable Anderson to easily service the area at competitive rates.

E. Pendleton's Rebuttal Evidence. Mr. Reske addressed OUCG witness Mr. Seals' statement that lost water continues to be a challenge for Pendleton. Mr. Reske testified that Pendleton is 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 statistics are not due to waterline loss but may be due to calibration issues. Mr. Reske stated that if the water loss is due to waterline loss, a challenge Pendleton faces is its underlying geology, as Pendleton primarily sits atop bedrock, which makes it difficult to identify a water leak. Mr. Reske testified that once the Pendleton Regulated Territory is set, Pendleton will obtain a more detailed study of its water loss, which will include a detailed review of billing and WTP records. If the percentage of lost water is not fully determined through 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 Pendleton Regulated Territory, because they will be brand new pipes.

Regarding comparison of rates with other potential providers in the area, Mr. Reske noted that a portion of the Pendleton rate study compared Pendleton's 2023 rate and suggested rates to neighboring municipalities. Mr. Reske sponsored Petitioner's Exhibit 3 Part 1 Attachment SER 6. Mr. Reske testified that, according to the comparison chart, Pendleton's 2023 rate was one of the lower rates when compared to neighboring municipalities. He stated that Pendleton's current rate

of \$44.96 per 4,000 gallons, which includes fire protection charges, is in the middle as compared to neighboring municipalities.

Mr. Reske addressed Ingalls' witness Stevenson's concerns and testified that a portion of Ingalls' corporate boundaries were inadvertently included in the Pendleton Regulated Territory. He emphasized that Ingalls remains permitted to serve the Correction's Facilities within the Pendleton Regulated Territory. He stated Pendleton would authorize Ingalls to operate its current well and raw water line at the current capacity located within the Pendleton Regulated Territory if Ingalls owns the facilities and/or serves the Correction's Facilities pursuant to its contract. He stated that Pendleton and Ingalls are discussing a mutual agreement for Ingalls to expand its current lines, wells, and capacity.

Mr. Reske addressed Anderson's witness Young's concerns regarding the omission of water loss percentage when calculating excess capacity. He stated that Pendleton has plans to address water loss and, if necessary, reduce water loss by identifying causes of pipeline loss. Mr. Reske explained that water loss is not a fixed variable and can change from day-to-day depending on main breaks, usage, and discovering and repairing leaks. Finally, he testified that as Pendleton expands service throughout the Pendleton Regulatory Territory, the pipes will be new, which will minimize additional water loss. Mr. Reske testified that it is logical to remove water loss from the excess capacity calculation to give the true picture of the ability to serve looking forward to future expanded service.

Mr. Reske also addressed Anderson's witness Wilson's comments regarding the rates as set forth in the Pendleton PER, testifying that the Pendleton PER is just preliminary. Mr. Reske testified that Pendleton procured the Pendleton PER primarily to receive funding for replacing lead service lines and that it was not meant to address plans of expansion into the Pendleton Regulated Territory. Mr. Reske testified that he reviewed the Anderson PER and noted that it overwhelmingly focused on establishing sufficient capacity for future demand within Anderson's already existing service areas, not providing water service to and/or meeting future demand within the Proposed Anderson Service Area for which it now seeks approval in Cause No. 46147. Mr. Reske noted that the Anderson PER expressly states that Anderson's service area is not expected to change in any significant way over the next 20 years. Mr. Reske reiterated his prior testimony that once the Commission rules upon the Pendleton Regulated Territory, Pendleton will invest in its master plan, which will address future expansion into the Pendleton Regulated Territory.

With respect to Ms. Wilson's statement regarding lack of methodology identified to support Pendleton's connection fees for creating a new service, Mr. Reske testified that Pendleton does charge \$3,000 for 5/8 inch and 3/4 inch connections, and \$4,500 for a 1 inch connection. He testified that most of the connection charge is for the estimated cost of materials. He stated that the remainder of the connection fee covers the estimated cost of labor, planning, and inspections.

Mr. Reske addressed Anderson's witness McKee's statement that the Pendleton Regulated Territory boundaries do not appear to have any relation to Pendleton's existing water facilities. Mr. Reske testified that Pendleton intends for the Pendleton Regulated Territory to align with the boundaries of Fall Creek Township due to the feasibility of extending service through the area. Mr. Reske stated that the road system in Pendleton is set up in a manner that resembles spokes on a wheel that spread throughout Fall Creek Township and that Pendleton will have public rights of

way along those roads; for this reason, Pendleton will be able to place main lines and other service lines without needing to obtain private landowners' consent. Mr. Reske testified that the development will likely occur throughout most of the unincorporated areas within the Pendleton Regulatory Territory, but Pendleton does not know the timeline of the development. Mr. Reske testified that the Pendleton Regulated Territory aligns with 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 government service areas will be more efficient throughout the Pendleton Regulated Territory, reduce duplication of facilities throughout the Pendleton Regulated Territory, and promote a unified sense of community within the Pendleton Regulated Territory.

F. Stipulated Data Request Responses. Pendleton asked in Data Request 1.12 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. Anderson responded that it has planned, prepared the Anderson PER, adopted rate and bond ordinances, and filed a petition with the Commission seeking authority to adjust its rates and charges and to incur long-term debt. Anderson stated that it is now in the position to construct the facilities that can be used to provide service to the Proposed Anderson Service Area. Anderson responded that it will follow the Commission's Main Extension Rules as required under Indiana law, with regards to the terms of future main extensions.

Pendleton also asked Anderson in Data Request 1.7 for its lost water rate or documents showing Anderson's lost water rate over the past ten years. The responsive records show that Anderson's reported number of active and inactive service connections in 2015 was 27,745. In 2023, Anderson's reported number of active and inactive service connects was 24,500. The responsive records also show that Anderson's reported water loss of 38.6% in 2019 was calculated as non-revenue water (1496.847 million gallons per year ("MG/Yr")) as percent by 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.

G. Joint Evidence Submitted by Pendleton and Ingalls. Pendleton and Ingalls entered into a Stipulation and Settlement Agreement (the "Settlement Agreement"), which included Ingalls' Proposed Water Territory Map. The Settlement Agreement states that Pendleton and Ingalls agree that the territory covered by the Pendleton Regulatory Ordinance should be amended to exclude the territory identified as the Proposed Territory and marked with black crosshatches on the Ingalls' Proposed Water Territory Map.

In the Settlement Agreement, Pendleton and Ingalls agreed that all evidence that was filed in this Cause with respect to the relief provided in the Settlement Agreement was admissible and that such evidence constituted a sufficient evidentiary basis for the issuance of a Commission Order approving the Settlement Agreement. Pendleton and Ingalls agreed that Ingalls will not oppose the relief requested by Pendleton, subject to the conditions stated within the Settlement Agreement.

5. Commission Discussion and Findings.

A. Sufficiency of the Petition. Under the 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.

The Pendleton Regulatory Ordinance describes the Pendleton Regulated Territory and includes a map that depicts the Pendleton Regulated Territory as Exhibit 1. See Petitioner's Ex. 1. The Petition attached the Pendleton Regulatory Ordinance, which sets forth Pendleton's current rates and charges that will apply to all customers, including those within the Pendleton Regulated Territory. The Petition also stated that the Pendleton Regulatory Ordinance is not the subject of any other administrative or judicial proceeding. Mr. Reske appropriately updated this statement in his rebuttal testimony, noting that on October 28, 2024, after Pendleton had filed the Petition in this Cause, Anderson filed a petition with the Commission under Cause No. 46147 for approval of its own regulatory ordinance with a proposed regulated service territory that overlaps with the Pendleton Regulated Territory. We note that issues regarding the Disputed Area have been consolidated into this Cause. Finally, the Petition lists the utilities that may be impacted: Anderson, Town of Lapel, Ingalls, and the City of Greenfield.

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

B. Analysis of Settlement between Pendleton and Ingalls. Pendleton and Ingalls submitted a Settlement Agreement in which Ingalls agrees not to oppose the relief requested by Pendleton, subject to the conditions within the Settlement Agreement. Pendleton and Ingalls state that they agree that the Pendleton Regulated Territory should be amended to exclude the territory marked with black crosshatches on Ingalls' Proposed Water Territory Map and labeled as the Proposed Territory. Ingalls' Proposed Water Territory Map is attached to the Settlement Agreement as Exhibit A. See Joint Ex. 1.

Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. 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., Inc. 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.

Ingalls' witness Stevenson testified that Ingalls has an estimated \$8 million invested in existing infrastructure in the Pendleton Regulated Territory and that the Pendleton Regulated Territory includes areas Ingalls is serving and has a contractual obligation to serve. He explained that Ingalls already serves 3,500 people in the Pendleton Regulated Territory, 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 was concerned 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 Correction's Facilities and operates a WTP 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 WTP. He explained that Pendleton intends to authorize the State of Indiana to determine its provider as long as grounds are owned by the State of Indiana, and that Ingalls could continue to operate its current well and associated raw water line and expand on mutual agreement. He explained that discussions with Ingalls officials indicated their main concern is expanding service to areas within Ingalls' town boundaries. Mr. Reske further testified that Pendleton erred in its initial map of the Pendleton Regulated Territory by including a small portion of Ingalls' corporate boundaries and had corrected the map.

The Settlement Agreement requires Pendleton to amend the Pendleton Regulatory Ordinance to exclude certain territory. Pendleton and Ingalls agree that this reflects a fair, just and reasonable resolution.

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 facilities and serving its existing customers, including those with contracts, in the Pendleton Regulated Territory. Therefore, the Commission approves the Settlement Agreement. Pendleton shall modify its ordinance to exclude the agreed upon territory.

C. Public Interest Factors. Under Ind. Code § 8-1.5-6-9(c), the Commission must consider Pendleton's request for approval of its regulatory ordinance in light of the public interest factors outlined in Ind. Code § 8-1.5-6-8(g), which follow:

- (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's 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 that adopted the regulatory ordinance and any other municipalities, municipal utilities, or utilities.
- (5) Any other factors the commission considers necessary.

i. Disputed Area Between Pendleton and Anderson. We will first address the Disputed Area between Pendleton and Anderson and then address the remaining areas within the Pendleton Regulatory Ordinance. As set forth below, the evidence demonstrates that Pendleton did not establish that it should exclusively serve the Disputed Area. As noted earlier, we are not making a specific finding concerning Anderson's ordinance, which proposes that Anderson should be the exclusive provider in the Disputed Area; rather that decision will be made in the Cause No. 46147.

a. Ability to Serve the Regulated Territory. The first factor to be considered by the Commission is whether another utility can provide service within the Disputed Area. Pendleton's evidence does not demonstrate that it has the ability to provide service to the Disputed Area when compared to other utilities' ability to serve the Disputed Area.

The evidence establishes that Pendleton's road system and its ability to use the public right of ways in Fall Creek Township to install facilities is not unique to Pendleton; under Ind. Code § 8-20-1-28, municipally owned utilities are authorized to construct facilities upon, along, under, and across any public road, highway and waters outside of municipalities. For this reason, Pendleton's ability to use public right of ways does not support its request to be the exclusive service provider in the Disputed Area.

The evidence establishes that Pendleton's PER did not address plans of expansion within the Pendleton Regulatory Territory. Pendleton provided that it will not analyze the feasibility of extending service to the Disputed Area or even prepare a master plan until this Order is issued. Pendleton did not set forth any plan on how or whether it could facilitate service to the Disputed Area. In fact, the Pendleton PER recognized that Pendleton currently has several deficiencies that have resulted in water treatment and distribution system issues, IDEM violations, and/or increased maintenance. IDEM has determined that one of Pendleton's WTP is in violation due to housing the gaseous chlorine system and the fluoride feed system in the same room. Pendleton has been put on notice by IDEM that this safety hazard needs to be remedied.

In contrast to Pendleton, Anderson's evidence supports its ability to serve the Disputed Area. Adjacent to the northwest point of the Disputed Area, Anderson has large facilities, which could be extended to assist in serving the Disputed Area. Anderson has made improvements, including the large diameter water mains, the Park Road 2.0 MG tank, the Fairview Booster Station, and the Lafayette Plant and well field. Anderson has master planning related to the Flagship Industrial Park and surrounding areas. 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 extended into the Disputed Area. However, according to the Pendleton PER, Pendleton does not have any facilities within the northwestern portion of the Disputed Area.

In the eastern and southern portions of the Disputed Area, Anderson has installed water facilities including four test wells. In 2017, Anderson began a hydrogeological study to identify new and additional sources of water supply, including within the Disputed Area. When Pendleton adopted its Regulatory Ordinance, Anderson's test wells were already installed. In addition, Anderson has planned water facilities in or near the Disputed Area. Anderson anticipates using Cooper and Beerbower Properties for well sites; these properties are within or near the Disputed Area. The proximity of these properties to the Disputed Area makes the extension of Anderson's service into the Disputed Area logical and feasible. Anderson also plans to run a 24-inch water main within the eastern portion of the Disputed Area.

The evidence demonstrates that Anderson will be able to more readily extend facilities to serve the Disputed Area as it develops. Anderson has the capability to serve the Disputed Area, given that it already has 12 inch or larger water mains near the Disputed Area, along with Anderson's proposed new south side WTP, well field, and new mains. Anderson has and is planning for the capacity to serve the Disputed Area. Anderson is also undertaking an improvement project, which will add 4 MGD of capacity at the Lafayette Plant and its proposed southside WTP and well field are planned to provide 6 MGD of additional water supply. Accordingly, Anderson has demonstrated it has capacity to serve the Disputed Area. Currently, Pendleton's total system capacity is 2 MGD.

The Commission finds that Pendleton has failed to demonstrate that it is best suited to exclusively serve the Disputed Area relative to Anderson.

b. Effect on Customer Rates and Charges Within Disputed Area. The evidence reflects that Pendleton's current rates and charges for a 4,000-gallon user are \$44.96, which is inclusive of Pendleton's \$5.00 fire protection charge. The evidence also reflects that Pendleton charges new customers with a 5/8 inch or 3/4 inch meter a capacity fee of \$2,000 per EDU, as well as the actual cost of water tap or \$3,000, whichever is greater. A new connection to the Pendleton system will incur a charge of at least \$5,000. Whereas, Anderson's current rate for 4,000 gallons is \$24.31, plus a \$2.67 fire protection charge for 5/8 inch meter. Anderson's current tap fee is \$820. Thus, Anderson's current rates and charges are lower than Pendleton's, which will benefit new economic development and new customers in the Disputed Area.

Pendleton also set forth future rates based on proposed improvements unrelated to service in the Disputed Area. The Pendleton PER projects that to complete Pendleton's current lead service line replacement projects, Pendleton will need to increase its rates. Depending on the percentage of SRF Program funding, Pendleton's rates will need to be raised between \$52.70 and \$75.51 inclusive of Pendleton's fire protection charge. Pendleton's PER also recommends that after 2028, Pendleton's WTP #1 be decommissioned and Pendleton's WTP #2 be expanded, which if pursued would result in an additional rate increase. This potential increase in rates would further widen the gap between Pendleton's rates and Anderson's rates.

The Pendleton PER sets forth other potential funding scenarios that project a total monthly user rate for Pendleton's customers using 4,000 gallons at up to \$93.47 per month, not including Pendleton's fire protection charge. With Pendleton's existing fire protection charge, a customer using 4,000 gallons would be charged \$98.47 per month. The Pendleton PER does not address any plans to facilitate service to the Disputed Area. Pendleton intends to prepare a master plan in the future, at which time it will evaluate its rates to account for future plans to serve the Pendleton Regulated Territory.

Pendleton did not provide an estimate of the cost to extend service to the Disputed Area. Based on the evidence, Pendleton will also consider a future surcharge for its out-of-town customers, which would represent an unknown increase in the cost for customers in the Disputed Area. Thus, the full impact of extension to the Disputed Area to ratepayers is uncertain due to Pendleton's lack of planning.

Anderson set forth future rates and charges in the Anderson PER. Anderson has proposed a five-phase rate increase, which would result in a charge of \$47.58 per month for a 4,000 gallon per month user in 2029, if approved by the Commission.¹ Anderson also proposed a tap fee of \$2,580 and system development charge of \$900, which is less than Pendleton's aggregate charge of \$5,000 for its capacity fee and tap charge. If Anderson's pending rate case is approved, Anderson's rates will still be comparable to Pendleton's rates. If Pendleton's rates are increased in the future, Anderson's rates will once again be lower. 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 current customers.

Pendleton did not provide evidence that it conducted any analysis to determine the feasibility and cost to extend service to the Disputed Area. The rate increases suggested in the Pendleton PER do not contemplate extending service to the Disputed Area, but rather only consider currently needed projects. Based on the evidence, Pendleton's current storage capacity is not sufficient to meet its current needs for daily demand, peak demand, nor residential fire flow demand. Therefore, Pendleton will likely need additional storage capacity to serve the Disputed Area, which may necessitate future rate increases.

The evidence establishes that Anderson has a clear, comprehensive plan for rate increases that considers expansion in the Disputed Area, while Pendleton does not. Based on this, the Commission finds that Anderson is better suited to serve the Disputed Area relative to Pendleton.

c. Effect on Economic Development in Disputed Area. Both parties assert the Disputed Area is likely to attract economic development due to its location near the I-69 corridor.

As noted above, unlike Anderson, Pendleton does not have facilities near the Disputed Area and has not presented any plans, reports, or studies demonstrating if, when, or how it will extend service to the area.

¹ The Commission notes Anderson filed a Petition to issue long term debt and adjust its rates and charges in Cause No. 46171 on December 5, 2024, and the case is pending.

The Commission finds that based on Pendleton's lack of planning for facilities to serve the Disputed Area and its lack of facilities near the Disputed Area, economic development would likely be negatively impacted in the Disputed Area relative to Anderson.

d. 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. Pendleton does not have any water facilities within the Disputed Area nor is there a history of service within the Disputed Area. Anderson, however, already has water facilities within the Disputed Area. Anderson also plans on constructing new wells and a new WTP within or directly adjacent to the Disputed Area. Anderson has also negotiated land rights and rights of entry to access property within the Disputed Area for the purpose of facilitating water service in the area.

The Commission finds based on the evidence presented that Pendleton does not have a history of service in the Disputed Area.

e. Conclusion on the Disputed Area. Based on the evidence presented and the factors for consideration under Ind. Code § 8-1.5-6-8(g), the Commission finds that Pendleton has failed to provide sufficient evidence demonstrating that the Regulatory Ordinance should be approved and that Pendleton should be the exclusive water service provider in the Disputed Area. When considering the above factors, the Commission finds that Anderson relative to Pendleton is better positioned to serve the Disputed Area. The Pendleton PER does not contemplate extension to the Disputed Area, while the Anderson PER does take extension to the Disputed Area into account. Extension into the Disputed Area would cause Pendleton's rates to be higher than Anderson's rates. Economic development will likely be negatively impacted if Pendleton were granted the Disputed Area due to its lack of planning for facilities and its lack of nearby facilities. Pendleton also does not have a history of serving the Disputed Area. Overall, we find Pendleton has not provided sufficient evidence to support a determination that it should be the exclusive provider in the Disputed Area, especially when compared to Anderson's ability to serve.

ii. Remainder of Regulatory Territory. As set forth below, the evidence demonstrates that the Pendleton Regulatory Ordinance regarding the other areas of the Pendleton Regulated Territory is reasonable.

a. Other Utilities' Ability to Serve the Regulatory Territory. 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 or contest Pendleton's desire to exclusively serve the potential service areas. Accordingly, no evidence was offered to show the other utilities' ability to serve.

The evidence in the record indicates that Pendleton will be able to serve the remainder of the Pendleton Regulated Territory. Pendleton's current supply capacity is 2.1 MGD, but with the decommissioning of WTP #1 and expansion of WTP #2, capacity is estimated to be 2.6 MGD.

The evidence demonstrates that Pendleton has the near-term supply capacity to serve the remainder of Pendleton's Regulated Territory. Pendleton's evidence indicates that it has the immediate supply capacity to serve both the current population and the additional population in the remainder of the Pendleton Regulated Territory. With the planned expansion of one of its WTPs, Pendleton will have sufficient near-term excess supply capacity to handle the expansion. To ensure adequate service to new customers in the remainder of the Pendleton's Regulated Territory, the Commission encourages Pendleton complete the master plan it indicated that it would complete.

The Commission finds that Pendleton has demonstrated it is able to serve the remainder of the Pendleton Regulated Territory.

b. Effect on Rates. Pendleton has indicated that it will create a master plan for its water utility soon and review its rates at that time. Pendleton will assess whether customers outside the corporate boundaries should be charged a different rate than those customers within the corporate boundaries. If the difference in rates differs more than 15%, Pendleton committed to seek Commission approval.

Based on the evidence, the Commission finds that Pendleton's current rates, which it intends to charge in the remainder of the Pendleton Regulated Territory, are competitive to the rates for surrounding municipalities and that approving the remainder of the Pendleton Regulated Territory is unlikely to affect Pendleton's rates significantly or disproportionately compared to neighboring municipalities.

The Commission finds that the evidence presented in this Cause sufficiently addresses the effect on rates for service within the remainder of the Pendleton Regulated Territory, and finds this evidence supports approval of Pendleton being the exclusive water service provider in the remainder of the Pendleton Regulated Territory.

c. Effect on Economic Development. Pendleton expects growth in the Pendleton Regulated Territory to occur rapidly due to the proximity to Indianapolis and Hamilton County. The evidence supports that economic development is occurring and is expected to continue to occur in the remainder of the Pendleton Regulated Territory. Approval of the remainder of the Pendleton Regulatory Territory should have a positive impact on economic development in an area that is experiencing rapid growth.

Furthermore, no other utility indicated a willingness to serve this area. Pendleton will have an obligation to serve the remainder of the Pendleton Regulated Territory, which will provide developers with certainty of service. Therefore, we find the evidence supports our approval of the remainder of the Pendleton Regulated Territory.

d. History of Utility Service. Pendleton's water utility serves 2,250 customer service lines, the majority of which are in Pendleton's town boundaries, though it does serve customers outside of its town boundaries. Pendleton explained that existing residents will not be required to connect to the water utility, though new subdivisions will be required by

Pendleton or Madison County ordinance to connect to the water utility. No other utility is currently serving the remainder of the Pendleton Regulated Territory.

The Commission finds that the evidence presented sufficiently addresses the history of utility service within the remainder of the Pendleton Regulated Territory and finds this evidence supports our approval of the remainder of the Pendleton Regulated Territory.

6. Approval of the Amended Pendleton Regulated Territory. Based on our consideration of the public interest factors discussed above, we conclude that the Pendleton Regulated Territory should be amended to exclude the Disputed Area. The Pendleton Regulatory Ordinance should also incorporate the conditions set forth in Pendleton’s and Ingalls’ Settlement Agreement. Pursuant to Ind. Code § 8-1.5-6-9(d), Pendleton may modify and resubmit as a subdocket to this Cause a revised petition based on the Commission’s findings of the revised regulated territory. Because this will be a revised petition with a change in service territory, Petitioner need only include the information required by Ind. Code § 8-1.5-6-8(d)(1). Within 30 days of the filing date of a revised petition, parties may file an objection as to whether Petitioner has amended its regulated territory consistent with the Commission’s Order in this Cause and request a hearing. If no objections and request for hearing are filed, the Commission will review the revised petition and issue an order. If objections and a request for hearing are filed, Petitioner and the parties are to confer and submit an agreed upon procedural schedule within 30 days thereafter.

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

1. Pendleton’s Petition for approval of its regulatory ordinance is denied.
2. The Settlement Agreement between Pendleton and Ingalls filed March 12, 2025 is approved.
3. As set forth in this Order, Pendleton may submit a revised petition which excludes the Disputed Area and the area identified in the Settlement Agreement entered by Pendleton and Ingalls pursuant to Section 6(D). At such time, Pendleton shall submit in shapefile or geodatabase format the boundary of regulated territory reflected in its revised petition. The boundary shall exclude any currently incorporated areas of Pendleton.
4. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following itemized charges within 20 days from the date of the Order into the state general fund described in Ind. Code § 8-1-6-2(b), through the Secretary of the Commission, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges:	\$ 5,451.16
OUCG Charges:	\$ 2,732.38
Legal Advertising Charges:	<u>\$ 231.07</u>
Total:	\$ 8,414.61

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

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

APPROVED: JUL 16 2025

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

**Dana Kosco
Secretary of the Commission**