

**ORIGINAL**

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Ober			√
Ziegner	√		

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**PETITION OF AMERICAN SUBURBAN )  
 UTILITIES, INC. FOR APPROVAL OF )  
 COMPLIANCE FILING AND PHASE III )  
 RATES )**

**CAUSE NO. 44676 S1**

**APPROVED: SEP 22 2021**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**Stefanie Krevda, Commissioner**

**David E. Veleta, Senior Administrative Law Judge**

On November 7, 2019, American Suburban Utilities, Inc. (“ASU”) submitted its Compliance Filing and Phase III Rates in Cause No. 44676. On December 9, 2019, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its Objection to ASU’s Phase III Compliance Filing. By Docket Entry dated January 8, 2020, the Indiana Utility Regulatory Commission (“Commission”) created this Subdocket for the purpose of addressing the OUCC’s objection to ASU’s Phase III rate submission. A prehearing conference was held on January 27, 2020, a prehearing conference was held and a prehearing conference order was issued on January 29, 2020. ASU’s rates filed with its compliance filing were approved as of the date of the prehearing conference order on an interim-subject-to-refund basis. While ASU contended that the improvements subject to the Phase III submission were in service as of November 7, 2019, construction of certain components (which did not affect the operation of the plant as designed) was not yet complete, and the schedule was therefore extended by Docket Entry dated March 4, 2020, to allow such completion. The schedule was again extended by Docket Entry dated July 2, 2020 due to the COVID-19 pandemic.

On September 30, 2020, ASU filed its Notice of Completion of Construction. On November 9, 2020, ASU filed an unopposed Motion to Modify the procedural Schedule, which the Presiding Officers granted through a Docket Entry issued on November 11, 2020. On January 21, 2021, the OUCC filed an agreed Motion to Modify the Procedural Schedule, which the Presiding Officers granted on January 29, 2021. On February 15, 2021, the OUCC filed its Second Motion to Modify Procedural Schedule, which the Presiding Officers granted on February 26, 2021.

On February 24, 2021, the OUCC filed its case consisting of the testimony of Scott A Bell, James T. Parks and Margaret A. Stull inclusive of Attachments. The OUCC filed workpapers on February 26, 2021.

On March 24, 2021, ASU filed its Responsive Testimony and Attachments including the Responsive Testimonies of Scott Lods; Jennifer Leshney, P.E.; Marcene Taylor; Katelyn Shafer; Dick R. Weigel and Elton A. Wagner. On April 7, 2021, the Presiding Officers granted ASU’s Second Motion for Administrative Notice.

On April 16, 2021, the Commission issued a Docket Entry Setting WebEx Hearing as well as a Docket Entry requesting information from ASU, which ASU responded to on April 20, 2021. On April 21, 2021, ASU filed corrections to Petitioner's Exhibits 5 and 7.

On July 16, 2021, the OUCC filed the *OUCC's Objection and Motion to Strike Portions of ASU's Reply to the OUCC's Proposed Order* ("Motion"). The OUCC objected and moved to strike part of ASU's reply brief. The Commission has previously indicated that proposed orders and post-hearing briefs are not evidence and to the extent any proposed order refers to facts not in evidence, those facts will not be considered when making a decision. *Commission Investigation of Utility Center, Inc.*, Cause No. 41187, Docket Entry (IURC Aug. 23, 2005). Therefore, the OUCC's Motion is denied.

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

1. **Notice and Jurisdiction.** Notice of the hearing in this subdocket was given and published as required by law. ASU is a public utility within the meaning of Ind. Code § 8-1-2-1(a). Under Ind. Code § 8-1-2-42 and Ind. Code § 8-1-2-42.7, the Commission has jurisdiction over changes to ASU's rates and charges. Therefore, the Commission has jurisdiction over ASU and the subject matter of this Cause.

2. **ASU's Characteristics.** ASU is a public utility incorporated under the laws of the State of Indiana and is engaged in the provision of wastewater utility service in unincorporated areas in Tippecanoe County, Indiana. ASU renders such wastewater utility service by means of utility plant, property, equipment, and related facilities owned, leased, operated, managed, and controlled by it.

3. **Existing Rates and Relief Requested.** ASU's existing basic rates and charges for wastewater utility service were established pursuant to the Commission's Order in Cause No. 44676, where ASU was authorized to increase its rates in three phases. This subdocket is to determine whether and to what extent ASU should be permitted to implement Phase III rates in light of actual customer count; actual accumulated depreciation and to reflect in rate base the CE-III Stage 2 major projects including standby chemical phosphorus removal plant.

4. **Evidence presented.**

A. **OUCC's Testimony.** OUCC witness, Scott Bell has been the Director of the OUCC's Water/Wastewater Division for more than 15 years and began working as a staff engineer for the OUCC. Mr. Bell explained that this subdocket was initiated following the OUCC's objection to ASU's November 7, 2019 Phase III compliance filing in which ASU asserted it had completed its CE-III Waste Water Treatment Plant ("WWTP") project and was entitled to its authorized Phase III rate increase.

Mr. Bell explained that in Cause No. 44272, ASU sought pre-approval under Ind. Code § 8-1-2-23 to include in its rate base expenditures for an upgrade to and expansion of the existing Carriage Estates Wastewater Treatment Plant (the "CE-III project"). Mr. Bell noted that after ASU

had submitted its rebuttal case in Cause No. 44272, ASU told the Commission that new phosphorus removal requirements from the Indiana Department of Environmental Management (“IDEM”) would apply to the Carriage Estates WWTP. Mr. Bell explained that ASU filed supplemental testimony proposing a different process from its original proposal of converting to an extended aeration activated sludge treatment process but should remain a Continuous Sequencing Batch Reactor system (“CSBR”) with an average daily flow (“ADF”) capacity of 4.0 million gallons per day (“MGD”). Mr. Bell explained that the switch to a CSBR system was expressly made to allow Enhanced Biological Phosphorus Removal (“EBPR”). Mr. Bell testified the OUCC maintained a 3.0 MGD ADF WWTP with 6.0 MGD peak wet weather flow (“PWWF”) would be sufficient. He noted that subsequently, ASU and the OUCC entered into a Stipulation and Settlement Agreement that would authorize ASU a rate base addition for the CE-III project subject to the terms of that agreement, which the Commission approved in its final order in Cause No. 44272 on April 9, 2014. Mr. Bell noted the Commission also ordered ASU to annually file CE-III project status reports.

Mr. Bell explained that in the approved settlement agreement, ASU and the OUCC agreed to a preapproved amount that was derived from one of the alternatives (Option 2) presented in Mr. Serowka’s supplemental rebuttal testimony and agreed that ASU “may choose to construct the plant improvements as proposed in its supplemental case-in-chief (referred to as ‘Option 4’ in Mr. Serowka’s supplemental rebuttal testimony).” The OUCC and ASU also agreed that “whether Petitioner constructs Option 2 or Option 4, inclusion of associated expenditure in rate base for ratemaking purposes as preapproved in this Cause requires that the constructed plant be completed and in service.” Mr. Bell testified the OUCC agreed to preapproval that included a maximum amount for ASU constructing one of the two options listed in the settlement. It explained that if ASU expended more than \$10,000,000 for completing Option 4, for instance, the rights and obligations of ASU would be affected. If the construction cost exceeds \$10,000,000 then “to the extent actual expenditures exceed the agreed amount, inclusion of such excess expenditures in rate base in future rate cases shall be addressed in the same manner that utilities must address expenditures that have not been preapproved.” The Settlement further provided that “to the extent actual construction costs are greater than the preapproved amount, it will be Petitioner’s burden to show that the amount charged by its affiliate is fair and reasonable and comparable to what an unaffiliated entity would have charged.”

Mr. Bell explained that the status of ASU’s rate base and the OUCC’s rights as a party depends on knowing the costs of the project that have been incurred through completion, and the whole cost cannot reasonably be known until the project has been completed and all costs have been incurred. Mr. Bell added that the requirement that the project be complete affects the timing and amount of accumulated depreciation that should be applied to ASU’s rate base. Mr. Bell advised that OUCC witness Margaret Stull calculated and presents the amount of accumulated depreciation that should be applied to ASU’s rate base as of October 1, 2020.

Mr. Bell explained that the preapproved amount of approximately \$10,000,000 was tied to Option 2 or Option 4 for the CE-III WWTP project. Mr. Bell believed that as ASU is only requesting to include \$10,000,000 in rate base, if ASU had completed Option 2 or Option 4 as delineated, controversies in this compliance filing would not have occurred. The only issue would be whether the plant was in fact completed and in service at the time of the compliance filing.

Mr. Bell noted that in its June 12, 2015 project status report, ASU stated that it “intends to proceed with construction of the configuration referred to as Option 4 in the Supplemental Rebuttal Testimony of Ed Serowka at an estimated total cost of \$19,900,000.00.” Again, on October 11, 2016, ASU reported that it “intends to proceed with construction of the configuration referred to as Option 4 in the Supplemental Rebuttal Testimony of Ed Serowka in this Cause No. 44272, at an estimated total cost of approximately \$19,938,273.00 (exclusive of the cost for phosphorus removal).” Mr. Bell noted that after 2016, ASU did not state in its annual reports whether it was proceeding with Option 4 and certainly did not state it had chosen to build something different than what it had been declaring in its prior reports.

Mr. Bell explained that ASU submitted Option 4 in its application for construction permit to IDEM, which IDEM issued on February 21, 2014 as Construction Permit Approval No. 20788, which approved ASU’s proposed new 4.0 MGD ADF parallel treatment system of the Carriage Estates WWTP. Mr. Bell noted the permit included construction of four new CSBR tanks for future treatment of 6.0 MGD but only three of the CSBR tanks were equipped to treat 4.0 MGD initially. The permitted design included three phosphorus removal systems including: 1) CSBRs with EBPR as the primary phosphorus removal method (biological), 2) supernatant chemical phosphorus removal, and 3) a standby chemical phosphorus removal system using the same chemical pumps, chemical tanks, and control system.

Mr. Bell noted ASU has not stated whether it has constructed Option 2 or Option 4, as those projects were described in Cause No. 44272. Moreover, ASU did not construct the CE-III WWTP project that IDEM permitted it to build pursuant to its application for an IDEM permit. Mr. Bell noted that the project being complete is an explicit agreed precondition to its being included in rate base for ratemaking purposes pursuant to the Stipulation and Settlement Agreement for preapproval in Cause No. 44272. Mr. Bell testified that because what ASU built was neither Option 2 nor Option 4, the OUCC has had to investigate and evaluate what ASU actually built as well as the total reasonable cost or value of what was actually built, whether any deviation should be considered prudent and reasonable, and whether any future expenditures should be considered part of the approved project costs. He noted this information was not part of the proof ASU offered in its preapproval and rate case. He added that if ASU had constructed Option 2 or Option 4, as proposed, the issues in its Phase III compliance filing would reasonably have been limited to simply whether ASU had spent a total of at least \$10,000,000 to build the Option. Likewise, if ASU had installed the Micro Star Tertiary filter it told the OUCC it needed for chemical phosphorus treatment, that would not be an issue. Instead, this case has required significant review and analysis because of ASU’s decision to deviate from its timeline, from its indicated and preapproved designs, and from the permit it acquired from IDEM.

Mr. Bell explained that the fact that the project was preapproved was important in the rate case, and he noted that in the final order in the rate case, the Commission relied on that fact to approve ASU’s unusually long test period.

Mr. Bell noted that ASU’s expert witness in the preapproval case provided detailed descriptions of each component part of Option 2 and Option 4 and also provided detailed cost estimates for each component part. But, as Mr. Bell explained, ASU deviated significantly from building the components of Option 2 or Option 4. He noted that what ASU did build was very

different from either Option 2 or Option 4. What was constructed reduced the size or number of components or eliminated major components it had included in its request for preapproval. As an example, Mr. Bell noted ASU did not rehabilitate its existing CSBR tanks. Likewise, ASU did not construct a biological phosphorus removal system, which had been presented in all four options it presented to the Commission in the preapproval case. Mr. Bell noted ASU also did not construct the standby chemical phosphorus removal project which he asserted was to include a \$1,020,000 Micro Star Tertiary Filter and other identified components that ASU used to justify the \$1.5 million it was approved to include in rate base for Phase III rates. OUCC witness James Parks describes the chemical phosphorus removal project in his testimony. Mr. Bell said the Commission should not approve ASU's request to include in rate base for Phase III the \$1.5 million for ASU's standby chemical phosphorus removal project. Mr. Bell noted OUCC witness Jim Parks has identified these components and is recommending that the ASU's cost associated with those components be deducted from the requested relief.

Mr. Bell also recommended the Commission deny ASU's request to include in rate base the remaining \$8,024,800 of the amount preapproved for CE-III WWTP project noting that the project actually constructed is materially different than the projects ASU based its pre-approval of expenditures. Mr. Bell also explained that OUCC witness Jim Parks identified the components not built and is recommending that ASU's cost associated with those components of \$4,280,000 not be included in the calculation of rate base as utility plant in service. Instead, the OUCC recommends the Commission find utility plant in service of \$3,744,800 for this Phase of the CE-III WWTP project.

Mr. Bell next addressed the issue of when ASU's expansion project was completed. Mr. Bell said that in the November 7, 2019 Compliance Filing in consolidated Cause Nos. 44676 and 44700, ASU stated that it "is submitting a certification that the Carriage Estates Wastewater Treatment Plant is in service...." ASU also submitted an October 18, 2019 letter from Edward J. Serowka, P.E. indicating that the "Carriage Estates III Wastewater Treatment Plant Expansion has been placed into operation and started discharging effluent to Indian Creek on Friday, October 18, 2019." This letter served as ASU's certification that the Carriage Estates III Wastewater Treatment Plant Expansion is in service. Mr. Serowka did not state in his letter whether construction of all facilities was complete or whether all components of the projects were complete and in service.

Mr. Bell pointed out that on April 24, 2019, ASU had asked IDEM for extension of the CE-III WWTP Construction Permit expiration date. Mr. Bell noted that May 17, 2019 IDEM letter granting the request stated that "Due to project delays, construction has not yet been fully completed." The IDEM letter also said that based on the request, it determined "it is necessary and justified to grant a permit time extension until June 30, 2020, to allow for the full construction completion of the project." Mr. Bell described ASU's justification for the request, which included a construction schedule and an April 24, 2019 letter from Timothy R. Balensiefer, President, TBIRD Design Service Corp., which letter declared that backfilling is on-going but should be completed in September 2019; electrical work is expected to be completed during the same timeframe; Rough site grading is expected to be completed by early October 2019; Final grading and seeding will continue until November 2019; Site preparation for pavement to begin in early Spring 2020; Final pavement will occur in Spring of 2020 and be completed by June 2020; and Sidewalks, fencing and reseeded areas affected by pavement placement would be completed by

June 2020.

Mr. Bell explained that the items listed above were not the only construction tasks that were not complete. He noted the April 24, 2019 construction schedule listed 25 construction tasks and finish dates, and all but three of them had not been completed as of April 24, 2019. Mr. Bell noted that the original construction permit (Approval No. 20788) had expired on February 21, 2019, suggesting the requested extension included the 22 items on that construction schedule that had not been completed. Mr. Bell testified that none of the items he mentioned above had been completed by November 2, 2019. Mr. Bell explained this was based on the OUCC's December 4, 2019 and March 5, 2020 on-site inspections. Mr. Bell included with his testimony pictures showing the above-mentioned items had not been completed. OUCC Attachment SAB-5.

Mr. Bell also stated that IDEM had conducted an onsite "Compliance Evaluation Inspection" on September 24, 2019 resulting in an October 1, 2019 IDEM Inspection Summary/Noncompliance Letter (See Attachment SAB-6) describing violations and indicating ASU did not have all the construction completed on the upgraded system. IDEM stated in the letter that "At the time of the inspection the facility did not have all the construction completed on the plant upgrade." Mr. Bell emphasized the letter's statement that "The new influent train including a macerator and lift station pumps were not completely constructed or operating at the time of inspection" and "the facility still had the temporary chemical phosphorus treatment system installed due to the permanent phosphorus treatment system not being completely constructed." Mr. Bell noted the letter also indicated ASU "was operating the two new SBR's manually during the day and shutting them off at night, while running the four older SBRs automatically 24/7." Also, the letter indicated ASU "was still disinfecting with chlorine following the four older SBRs through a pipe that bypasses the new UV structure and then disinfecting with the new UV system following the two new SBRs."

Mr. Bell referred to IDEM's statement that "The new influent train including a macerator and lift station pumps were not completely constructed or operating at the time of inspection" and noted that ASU's October 21, 2019 response stated ASU had been given an extension of time by IDEM's Construction Section "until June 30, 2020 to finalize all phases of construction including the final site grading and seeding." Mr. Bell noted that ASU had certified in March of 2017 that the new influent train or headworks project was complete, and that certification included a February 24, 2017 letter from Edward J. Serowka, P.E. and a February 27, 2017 letter from Keith R. O'Brien, Contract Manager, TBird Design Services Corporation. (See OUCC Attachment SAB-8.) Mr. Bell noted that based on this documentation from ASU in 2017, the Commission approved Phase II rates, which included \$1,975,200 that was placed in rate base, and customers have been paying rates that include a return on these facilities that may have not actually been in service for close to four years. Mr. Bell provided several pictures of the headworks influent structure documenting the completion status as of December 4, 2019, March 5, 2020, and October 8, 2020. Mr. Bell said this fact warrants explanation by ASU.

Mr. Bell testified the October 1, 2019 IDEM letter indicated that "at the time of the inspection the facility did not have all the construction completed on the plant upgrade." Mr. Bell considered ASU's October 21, 2019 response did not dispute that not all the construction had been completed on the plant upgrade. Mr. Bell noted that IDEM representatives photographed the

facilities during their September 24, 2019 reconnaissance inspection. Mr. Bell testified that on January 29, 2020, OUCC staff met with representatives from IDEM to obtain a status on ASU's compliance with its CE-III WWTP Construction Permit and its phosphorus construction permit, and during that meeting, the OUCC obtained copies of the pictures taken by IDEM representatives. Mr. Bell stated that OUCC Witness Jim Parks has included in his testimony pictures taken by IDEM representatives that substantiate IDEM's determination that "At the time of inspection [September 24, 2019] the permittee did not have all the construction completed on the upgraded system."

Mr. Bell stated that on December 4, 2019, OUCC staff met with ASU owner, Scott Lods, to view the CE-III WWTP project. At that meeting, OUCC staff observed the facilities that had been constructed at that time and took pictures of some of the facilities. Mr. Bell explained that due to ongoing construction and the inaccessibility to some structures, the OUCC could not observe the inner workings of the Auxiliary manhole, the Macerator structure, the new influent Lift Station and the valve vault. Mr. Bell explained that ASU had certified in 2017 that all these listed structures were completed. Mr. Bell testified that, based on the visual inspection and discussions with Mr. Lods, the OUCC concluded not all components of the CE-III WWTP project had been completed. Mr. Bell included photos with descriptions of the December 4, 2019 OUCC inspection as OUCC Attachment SAB-10. Mr. Bell explained the photographs show the state of the facilities as of that date, and they indicate the facilities were not complete.

Mr. Bell noted that on January 21, 2020, IDEM sent a letter to ASU with an attached Notice of Violation ("NOV") and Proposed Agreed Order (See OUCC Attachment SAB-11). Mr. Bell stated the NOV identified numerous violations. Mr. Bell quoted the NOV, which stated that "During inspections conducted on March 13, 2019 and September 24, 2019, IDEM's representatives observed and documented that Respondent has constructed facilities significantly different than what was approved in the original 2014 construction permit without submitting revised plans and specifications, and without obtaining a revised construction permit, in violation of 327 IAC 3-2-1 and 327 IAC 3-2-2(d)."

Mr. Bell noted the NOV also addressed ASU's failure to notify IDEM of the significant changes to the approved project stating that ASU "failed to submit the corrected information to IDEM regarding significant changes to design and capacity what were made during the WWTP expansion." The NOV also stated, "These changes would have warranted revision of the discharge limitations and treatment facility description contained in the issued NPDES Permit." Mr. Bell noted that on December 1, 2020, IDEM approved and adopted an Agreed Order where ASU agreed to pay a civil penalty of \$63,800 and agreed to develop and submit to IDEM for approval a Compliance Plan ("CP"), which identifies actions that Respondent will take to achieve and maintain compliance with the NPDES Permit. (See OUCC Attachment SAB-12).

Mr. Bell noted that on March 5, 2020, OUCC staff met with a representative from ASU to view the CE-III WWTP project and determine whether the CE-III WWTP project and phosphorus removal project were complete and in service at that time. Mr. Bell stated OUCC staff observed the facilities that had been constructed at that time and took pictures of some of the facilities. He stated that due to ongoing construction and the inaccessibility to some structures, the inter-workings of some facilities could still not be observed. Mr. Bell said that based on its visual

inspection and discussions with the utility representative, the OUCC concluded not all components of the CE-III WWTP project and the chemical phosphorus removal project had been completed. Mr. Bell included photos of the March 5, 2020 OUCC on-site inspection as OUCC Attachment SAB-13.

Mr. Bell noted IDEM also conducted an onsite reconnaissance inspection on June 24, 2020 resulting in a June 29, 2020 inspection summary letter. Mr. Bell embedded a portion of the letter in his testimony, which included a statement that “At the time of the inspection it was noted that the facility still has to finish installing second influent macerator, finish sludge pond closure through Office of Land, finish gravity sewer piping for drains for tanks, finish air piping to old sludge holding tanks, finish cat walks and stairs for new tanks, install gravel driveway, and finish final grading and seeding.” The letter also stated that “The facility was aware of the extension completion date of June 30, 2020 but noted they may not complete construction by then depending on the weather and the closure approval of the sludge holding pond.” The quoted letter also stated that “In addition to the treatment plant expansion (construction permit No. 20788), the facility is in the process completing construction associated with the installation of a phosphorus removal system through a separate construction permit, No. 22977.” Mr. Bell emphasized the letter’s statement that “The facility has completed the chemical feed building and is still in the process of installing chemical feed lines to the SBRs.” Mr. Bell said the IDEM letter and NPDES Wastewater Facility Inspection Report further documents that the CE-III WWTP project was not complete at the time of this June 24, 2020 Reconnaissance Inspection, and accordingly the Commission may properly conclude the project had not been completed on or before November 7, 2019, the date of ASU’s compliance filing.

Mr. Bell explained that IDEM conducted another “Reconnaissance Inspection” on July 7, 2020 and observed violations at that time. Mr. Bell observed that the July 16, 2020 IDEM Inspection Summary/Noncompliance Letter indicated that the “The Compliance Schedules evaluation generated an unsatisfactory rating due to the facility still conducting construction activities associated with the treatment plant expansion construction permit No. 20788 that expired on June 30, 2020.” (IDEM explained in its letter that “This is a violation of 327 IAC 3-2-1 that states in part, no person shall cause, or allow construction, installation, or modification of any water pollution treatment/control facility or sanitary sewer without a valid construction permit issued by the commissioner.”)

Mr. Bell also emphasized the statement in the letter that “At the time of inspection, the facility had not completed all construction activities associated with the treatment plant expansion construction permit No. 20788.” Mr. Bell also emphasized IDEM’s statements that “The facility was in the process of installing the second influent macerator.” and “The facility still needs to finish gravity sewer piping for drains for tanks, finish air piping to old sludge holding tanks, finish cat walks and stairs for new tanks, install gravel driveway, and finish final grading and seeding.” Mr. Bell explained that the July 16, 2020 IDEM letter further documents ASU had not completed all construction activities for the CE-III WWTP project and the standby chemical phosphorus removal project as of July 7, 2020, a full seven months after ASU’s initial compliance filing on November 7, 2019.

Mr. Bell concluded that based on the IDEM documents he reviewed and his on-site



inspection of the ASU's facilities, not all the components of the CE-III WWTP project or the chemical phosphorus removal project were complete and in service on November 7, 2019. Mr. Bell testified that because neither project was totally complete and in service, he recommended the Commission reject ASU's November 7, 2019 Compliance Filing and order ASU to provide a refund of all revenues paid as a result of the interim Phase III rate increase charged by ASU to its customers for service provided through September 30, 2020. In addition, he recommended ASU be authorized to charge Phase III rates effective as of September 30, 2020 that reflect the cost of the projects ASU actually completed, which materially differ from those projects presented in its preapproval and its rate case. Finally, as ASU has been permitted to charge the full Phase III rates indicated in its original compliance filing, subject to refund, ASU should issue an appropriate refund from September 30, 2020 to the effective implementation date of rates established by an order in this subdocket.

Mr. Bell also addresses the adequacy of ASU's records. Mr. Bell's testimony indicated ASU has not complied with the final order in consolidated Cause Nos. 44676 and 44700 because it has not maintained adequate records. He noted that in the final order, the Commission indicated its "review of the invoices provided through Petitioner's Exhibit 6, CX-2 and CX-3 also raises serious concerns regarding ASU's relationship with its affiliate companies."

Mr. Bell recited the final order in Cause Nos. 44676 and 44700, and noted the Commission said it expected ASU to "comply with NARUC's Accounting Instruction 2" and "Furthermore, in all future proceedings, Petitioner shall provide records sufficient to support all major plant investments, including, but not limited to a detailed project description, the basis or need for the project, cost estimates (including material quantities), bids, and invoices that are broken out in sufficient detail to allow an auditor adequate information to verify the reasonableness of the project and the amounts paid."

Mr. Bell noted that on January 13, 2017, ASU submitted revised affiliate agreements to the Commission's General Counsel, and in a February 15, 2017 letter from the Commission's Assistant General Counsel, Brad J. Pope, to Nickolas K. Kile, Barnes & Thornburg LLP, regarding Affiliate Contracts Nos. 2017-1, 2017-2, 2017-3, and 2017-4 between American Suburban Utilities, Inc. and First Time Development Corporation ("First Time"), dated Jan. 13, 2017, the Commission expressed its concern that compensation to First Time is set at the project caps, rather than the actual costs.

Mr. Bell explained the Commission was also concerned with the lack of transparency or verification of ASU contracts with its affiliates, that the affiliate contracts do not require the retention of detailed records regarding the work to be performed, the percentage adder appears to be excessive, and more reliable cost estimates need to be obtained. To this, Mr. Bell noted ASU responded with a March 30, 2017 letter from its counsel, which Mr. Bell attached to his testimony. (See OUCC Attachment SAB-17). Mr. Bell noted that on April 21, 2017, the Commission's General Counsel, Beth E. Heline, provided a five-page response to Mr. Kile's March 30, 2017 letter. (See OUCC Attachment SAB-18). There are several statements that are instructive for this case. The Commission's General Counsel reminded ASU of the concerns and requirements imposed by the Commission in its order and stated that "The reports, records, and accurate accounting procedures referenced in the Commission's order are necessary to protect ratepayers

and help assure that ASU and First Time are accurately reporting the costs of construction to be included in ASU's rates."

Mr. Bell stated that a meeting between the Commission and ASU occurred on April 28, 2017, after which ASU's counsel provided executed copies of Affiliate Contracts 2017-1, 2017-2 and 2017-3. Further, Mr. Bell noted that in an email dated May 1, 2017, the Commission's General Counsel stated that based on revisions to the affiliate agreements, "the Commission staff will not be recommending the opening of a proceeding regarding these contracts under Ind. Code § 8-1-2-49."

Mr. Bell considered the statement made by the Commission's General Counsel not to construe the staff decision to not open an investigation under Ind. Code § 8-1-2-49 as determination of compliance with the Commission orders or the need to provide sufficient evidence on which the Commission may base its determinations. Mr. Bell stated ASU has not complied with the explicit language on page 41 of the November 30, 2016 order which requires "First Time or any other affiliated company to submit detailed invoices for all costs..." Therefore, Mr. Bell asserted ASU's evidence in support of its Compliance filing is insufficient and inadequate, hindering the OUCC's and Commission's task of determining whether the costs to be included in rate base are reasonable and prudent. He noted ASU was reminded by the Commission's counsel of its need to comply with the Commission's directive. Mr. Bell argued that ASU's adherence to the Commission's directive to make its affiliate's costs transparent would have provided a means for the OUCC to recommend a rate base addition based on the actual costs that were incurred by its affiliate. Mr. Bell asserted ASU's insistence that it need not share the cost information of its closely held affiliated construction company is inconsistent with the flexibility it asks of the Commission, the OUCC and its own ratepayers to pay rates based on a preapproved amount for projects with components that deviate materially from what was presented to receive that approval. Mr. Bell explained that the OUCC based its valuation of what ASU didn't build on ASU's own 2013 and 2016 cost estimates that were used to justify its plan additions. Mr. Bell said that if the rate base valuations proposed by the OUCC are unacceptable to the Commission or the ASU, ASU rates should revert to its Phase 2 rates and it should seek to support its rate base additions through a rate case with cost support as described in and required by the final order in Cause No. 44676.

Mr. Bell explained that ASU not disclosing its affiliate's actual costs to construct the CE-III WWTP project, and the phosphorus removal project prevents the Commission, the OUCC and ASU's ratepayers from being assured that the rate base added represents the reasonable cost of the projects and do not include an unusual or excessive affiliate profit. Mr. Bell added any savings resulting from ASU's deviation from the preapproved projects, whether authorized or not, should benefit the ratepayers. Mr. Bell explained that the Settlement Agreement entered into by ASU and the OUCC and the Commission's orders with respect to the CE-III Plant expansion and standby chemical phosphorus removal system provided protections and assurances that are eliminated by ASU's deviation from the projects as presented and preapproved. He added that ASU's deviation from the designs on which it based its preapproval makes the utility's adherence to the cost transparency the Commission ordered both necessary and essential. Mr. Bell asserted that Mr. Parks' estimate of the values to be removed from ASU's preapproved additions to rate base are the most reasonable alternative to ASU's lack of affiliate cost transparency.

Mr. Bell noted the OUCC sought through the discovery process to determine the actual costs ASU's affiliate incurred to construct the CE-III WWTP and phosphorus removal projects, asking for detailed invoices First Time or any other contractor or supplier submitted for all costs including unit costs for (a) structures, (b) materials, (c) labor, (d) equipment, and (e) engineering. Mr. Bell explained that ASU responded that First Time invoices have already been submitted. ASU's response also included an explanation for its answer. (See OUCC Attachment SAB-20). Mr. Bell testified that in order to secure information to obtain the actual costs incurred by First Time to construct the CE-III expansion, the OUCC asked more questions (Discovery Request Nos. 2-7, 2-8 and 2-11), but ASU's responses to these three (3) data requests merely referred to the meeting with the Commission and that the Commission's concerns over the affiliate agreements were resolved and new affiliate agreements were submitted and accepted on May 2, 2017. Mr. Bell noted the Commission's order in Cause Nos. 44676 and 44700 has not been modified. Nor was the Commission's order in Cause No. 44272, which approved the settlement agreement between ASU and the OUCC.

Mr. Bell recommended the Commission deny approval of ASU's Phase III Compliance Filing and Phase III rates and order ASU refund to customers all revenues generated from implementation to September 30, 2020. In addition, he recommended ASU be authorized and directed to charge Phase III rates effective as of September 30, 2020 that reflect the cost of the preapproved project components ASU actually completed. Mr. Bell noted ASU has been permitted to charge the full Phase III rates indicated in its original compliance filing subject to refund and recommended ASU be required to issue an appropriate refund for the period from September 30, 2020 through the issuance of an order in this subdocket.

OUCC witness James T. Parks, a professional engineer and Utility Analyst II with the OUCC began his testimony by noting that in Cause No. 44272, the Commission pre-approved ASU's CE-III plant expansion for up to \$10 million pursuant to an approved settlement agreement with the OUCC, and subsequently ASU filed a rate case proposing to include that plant expansion as a rate base addition at the conclusion of the hybrid test year period, which the Commission authorized.

Mr. Parks noted that ASU already included in its Phase II rate increase \$1,975,200 leaving \$8,024,800 remaining to be added. Mr. Parks explained that with an additionally authorized \$1.5 million standby chemical phosphorus removal system, ASU seeks to add an additional \$9.52 million to rate base for improvements it asserted were completed by its affiliate, First Time, and placed in service at its Carriage Estates WWTP on or before October 18, 2019. These improvements are for the Phase 2 (CE-III WWTP project) and Phase 3 (Phosphorus Removal) facilities.

Mr. Parks testified that ASU did not construct the CE-III WWTP project for which it had received preapproval because it lacks many of the components on which the preapproval was based. Mr. Parks also testified that ASU did not construct the \$1.5 million standby chemical phosphorus removal system it had been authorized in the rate case to add to its rate base because it is materially different than what ASU relied on to justify the cost of that project. After explaining the materiality and significance of the deletions and changes ASU made to both the CE-III WWTP

project and the standby chemical phosphorus system project, Mr. Parks recommended rate base findings that reflect a decrease in the value based on ASU's own cost estimates of the component parts not constructed. Mr. Parks also testified about other matters affecting ASU's operations and its compliance with various Commission requirements.

Mr. Parks explained that in Cause No. 44272, when the Commission pre-approved ASU's CE-III plant expansion for up to \$10 million, all options were designed to provide for biological treatment and removal of phosphorus. Mr. Parks noted that by late 2013, ASU accepted it would also need to add a standby chemical phosphorus removal system to meet IDEM requirements. Mr. Parks explained that in the subsequent rate case, ASU asked for approval to include in its Phase III rates an additional \$1.5 million for the stand-by chemical phosphorus removal system increasing the total rate base addition to \$11.5 million. (Of that approved amount, ASU has already included in its Phase II rate increase \$1,975,200 of the rate base addition leaving \$8,024,800 plus \$1.5 million rate base additions to be addressed in this phase (Phase III)). Mr. Parks explained that the \$1.5 million cost for standby chemical phosphorus removal was based on information ASU provided to the OUCC in discovery in Cause No. 44676 indicating ASU would install an expensive Micro Star phosphorus removal system at a total cost of \$1.5 million. During the rate case, the OUCC requested cost support through OUCC Discovery Requests 16-52 and 16-53. Specifically, the OUCC requested the process flow schematic and design drawings for the standby chemical phosphorus removal system. Mr. Parks noted ASU's discovery response indicated \$1,230,000 of the \$1.5 million was to install a Micro Star filter (at a cost of \$1,020,000) in a new concrete channel (an additional \$210,000). Mr. Parks noted he had included the discovery responses with this information as an attachment to his testimony in the rate case. Mr. Parks added that ASU also included price information on project features that included modifying the chemical rooms in the existing Blower/Chemical building and installing two 15,000-gallon chemical storage tanks, a 1,500-gallon day tank, and chemical feed lines to the new CSBR tanks.

Mr. Parks testified that ASU did not install the chemical phosphorus removal system it indicated it would build during the rate case. Mr. Parks asserted that the Commission's rate order effectively preapproved a rate base addition of up to \$1.5 million for the Micro Star chemical standby phosphorus removal system, and most (82%) of that cost was for the brand and model of filter ASU selected and the concrete channel needed to hold it. Mr. Parks testified that what ASU's affiliated construction company built materially differs from what it indicated it would install and place in rate base at the end of its hybrid test period. He asserted the Commission's 2016 approval of that amount no longer applies because ASU's affiliate built a standby chemical phosphorus removal system that is not the same in price or quality that the Commission approved. He added, moreover, that ASU incurred its standby phosphorus removal costs through its affiliate and the actual costs incurred by that affiliate, by which a reasonable estimate of the fair value of the standby system may be determined, have not been provided.

Mr. Parks recommended the Commission deny ASU's request to include the full \$1.5 million rate base addition for standby chemical phosphorus removal plant because ASU installed a different and much less expensive standby chemical system. Mr. Parks noted that ASU never installed the \$1,230,000 major cost items (i.e., Micro Star filter and concrete channel) it used to justify the \$1.5 million phosphorus cost. He noted ASU also did not modify the chemical rooms in the existing Blower/Chemical building. He noted ASU did not install the two 15,000-gallon

chemical storage tanks or the 1,500-gallon day tank but instead installed smaller chemical tanks (315-gallon day tank and 5,000-gallon bulk tanks). He added that it also appears ASU did not install the chemical feed lines to the new CSBR tanks' Flow Divider Box.

Mr. Parks noted he did not see any chemical piping at the new CSBR tanks during the OUCC's October 8, 2020 site visit. Mr. Parks testified he saw no evidence of the chemical feed lines that were to be connected to the original CSBR tanks, and except for a schematic layout on Drawing 20-005-33, the as-built drawings do not show chemical feed lines to the six CSBR tanks (four original and two new CSBR tanks) or to the macerator structure. (Mr. Parks acknowledged the as-built Drawings still include errors and are incomplete, including with respect to the standby chemical phosphorus system.) Mr. Parks embedded into his testimony Table 1, which sets forth the cost estimate ASU provided during its rate case to the OUCC as support for ASU's requested authorization of \$1.5 million for its standby chemical phosphorus removal system.

Mr. Parks listed what remains unfinished with respect to chemical phosphorus removal under Construction Permit No. 22977 (February 21, 2019). He noted that as of the OUCC's on-site inspection conducted on October 8, 2020, ASU had not installed the wastewater laboratory, safety shower & eyewash, the laboratory office, rest room, utility room, access stairs to the bulk storage tank area, two exterior doors, and five interior doors. Mr. Parks said also missing are lighting fixtures (commercial fluorescent with 4 lamps), 115-volt (some with GFI) and 240-volt duplex wall receptacles, and four exit signs with emergency lights with battery backup. Mr. Parks noted that although these items were identified in the plans, he did not include the cost of these missing items in his proposed reduction to rate base.

Mr. Parks explained that a wastewater laboratory was one of the reasons costs increased significantly in the 2013 redesign to allow biological phosphorus removal. He explained that ASU said it had to build the onsite laboratory for process control to guarantee it could meet the phosphorus limits. ASU included building costs twice in this project. First, it included a new Control / Laboratory Building in all Options at a cost of \$355,600 (construction only) and \$477,635 (with prorated share of mobilization, contractor profit, bonds, insurance, design and inspection). Second, modification costs for the existing blower building were embedded in the Micro Star costs. This amounts to double recovery of building capital costs. ASU has not produced any documentation that the new Control / Laboratory Building was deleted from First Time's Affiliate Contract No. 2017-3 (CE-III Expansion). ASU built neither the new Control / Laboratory Building nor the laboratory it separately permitted under the phosphorus project.

In response to discovery asking when the wastewater laboratory, bathroom, and utility room would be completed, Mr. Parks noted ASU said, "The engineering and construction cost required to complete the Chemical Feed Building may be included in the next expansion to the Carriage Estates III Wastewater Treatment Plant." Mr. Parks stated these laboratory facilities should have been constructed by ASU and added that instead, like many other changes, ASU did not complete the facilities and made no adjustment to the amount the Commission had authorized be included in rate base. Likewise, Mr. Parks noted ASU has not provided transparent information about actual costs.

Mr. Parks said the equipment that ASU described and used to support that authorized the \$1.5 million rate base addition to the OUCC, and ultimately the Commission, was not the equipment ASU installed. Because ASU has not installed the equipment it used to justify its rate base addition or even make comparable improvements to the improvements it was authorized to include in its rate base, Mr. Parks testified that ASU should not be permitted to include that value in its rate base. Further, Mr. Parks asserted any improvements to secure standby chemical phosphorus removal should be evaluated for addition to rate base in its next rate case, and support for those improvements should be consistent with the Commission's directive to make costs transparent, whether incurred directly by ASU or its affiliate. He recommended the Commission deny recovery of the asserted \$1.5 million value for installation of standby chemical phosphorous removal, which the Commission described as supplemental removal. In the alternative, Mr. Parks recommended the increase to Phase III rates for the standby chemical phosphorus removal system should be based on the value of the standby chemical phosphorus removal system improvements ASU installed. Mr. Parks explained his means subtracting from the \$1.5 million authorized amount the \$1.23 million for the Micro Star filter and concrete housing for the filter, neither of which was purchased or installed. Mr. Parks estimate of the chemical phosphorus system's costs was \$263,000. Mr. Parks noted his estimate is essentially the same as the \$270,000 remaining after removing from \$1.5 million the \$1.23 million for the Micro Star filter and concrete housing. Mr. Parks explained that his estimate was based in part on cost information from equipment suppliers available from the internet for the chemical transfer and feed pumps and storage tanks.

Mr. Parks noted that ASU included a payment verification and Schedule of Values ("SOV") for the standby chemical phosphorus removal project in its Submission of Compliance Filing and Phase III Rates on November 7, 2019, and every dollar amount for the SOV's six-line items vastly differed from the amounts in the SOV in Affiliate Contract No. 2017-2 (Phosphorus Removal) filed with the Commission. He added that the only consistent amount is the \$1,500,000 total ASU indicated should be put into rate base. Mr. Parks noted that on January 24, 2020, ASU filed a payment verification correction with a new Schedule of Values matching the SOV in Affiliate Contract No. 2017-2.

Mr. Parks compared the Standby Chemical Phosphorus cost estimates ASU used to justify the rate base addition with the schedules of values ASU provided on November 7, 2019 and January 24, 2020. He noted that other than having the same total approved for the Phase III rate base addition, neither the November 7, 2019 SOV nor the revised January 24, 2020 SOV conform to the values ASU provided to justify the \$1.5 million rate base addition. The listed components and the costs for the same class of items varied widely. Mr. Parks prepared Table 2 to compare various schedules for standby chemical phosphorus removal projects presented by ASU from 2013 through ASU's corrected compliance filing.

Mr. Parks noted that ASU has never explained why the initial payment verification it filed on November 7, 2019 listed every cost wrong except to say it was a mistake by First Time. He added that later, in response to OUCC DR 5-5, ASU stated that Mr. Lods was the source of the incorrect values and was the one who prepared the incorrect Schedule of Values. Mr. Parks indicated ASU has not provided invoices for materials, equipment, and labor that support the component costs in the Schedule of Values.

Mr. Parks noted that he could not find any record of ASU submitting the Micro Star design to IDEM. He added that the Micro Star filter design ASU described to the OUCC through discovery responses on January 7, 2016 was different than the phosphorus design IDEM permitted ASU to build. Mr. Parks added that IDEM permitted all needed phosphorus facilities (biological, supernatant, and standby) in 2014 and a separate standby phosphorus removal system in 2019.

Mr. Parks stated the Affiliate Contract No. 2017-2 (Phosphorus Removal) ASU submitted to the Commission's General Counsel on January 13, 2017 did not reference any permitted design, bid, or documents. He noted it also lacks basic details such as number, sizes, capacity, and materials of pumps, tanks, controls, electrical systems, buildings, etc. on which First Time was to base its "bid." Mr. Parks added that in response to discovery, ASU stated it did not even submit a design to IDEM for the phosphorus facilities until October 30, 2017 and that it then resubmitted to IDEM on January 25, 2019. Mr. Parks argued that the Commission's 2016 approval of the \$1.5 million rate base addition for this Phase is not applicable because ASU's affiliate built a standby chemical phosphorus removal system that is not the same in price or quality that the Commission approved. Mr. Parks asserted ASU should not be permitted to place in rate base a different chemical phosphorus removal system built by an affiliate at an undisclosed cost to the affiliate.

Mr. Parks also disagreed with the premise that the schedule of values supports the requested \$1.5 million rate base addition. He stated the schedule of values is neither transparent as to the affiliate's costs; nor does it conform to the improvements ASU indicated in the course of the rate case that it would build for standby chemical phosphorus removal. He noted the costs or values were not the costs, values, and components the OUCC had an opportunity to review during the rate proceeding. Moreover, Mr. Parks noted that ASU did not provide any cost information that contradicts his proposal to allow in rate base less than the \$1.5 million it claims should be included in rate base. Mr. Parks explained that the OUCC requested information from ASU about what it cost ASU's affiliate to construct the system improvements, but it persistently declined. Mr. Parks explained that this left the OUCC with two reasonable options for recommendation – (1) ask the Commission to accept the OUCC's recommended valuation for inclusion in Phase III rates, or (2) ask the Commission to deny all recovery in Phase III of an unapproved version of the standby chemical phosphorus removal system. In the latter case, ASU would be permitted to propose its improvements in any of its rate base additions not already included in rates. Whether the Commission authorizes Phase III rates based on \$270,000 for the standby chemical phosphorus removal system or authorizes no Phase III rate base addition, the Commission should not consider any additional rate base addition unless and until ASU presents the actual costs it or its affiliate incurred acquiring the materials and equipment and installing the system (i.e., invoices from all third-party contractors, material invoices, labor records, etc.).

Mr. Parks noted ASU did not install the enhanced biological phosphorus removal system as proposed, designed, and permitted. He explained ASU had testified that EBPR would be the primary method of phosphorus removal with the standby chemical phosphorus removal system required by IDEM as the secondary system. However, ASU made a unilateral decision to delete EBPR. Mr. Parks said ASU responded to discovery that its consulting engineer made the determination (to delete EBPR) sometime around the fourth quarter of 2017. Mr. Parks said ASU stated that no records of the decision were maintained and that "ASU and its consulting engineer

discussed the advantages and disadvantages of both phosphorus removal options and the consulting engineer's final recommendation to use the chemical phosphorus removal system was accepted by ASU." Mr. Parks described this decision as a significant change of course, as the EBPR system was the primary reason costs nearly doubled for the CE-III Expansion project.

Mr. Parks explained he did not learn of this change until ASU's February 27, 2020 response to discovery that "After further study, it was determined that a biological phosphorus removal coupled with standby chemical was much more operator-intensive and that switching [to] primary chemical phosphorus was preferred." Mr. Parks added that ASU did not provide any supporting documents to justify this decision to delete EBPR, notwithstanding the OUCC's request for copies of studies or reports establishing operator requirements (e.g., labor hours, training level, on-site staffing requirements, etc.) for the two phosphorus removal options (biological with standby chemical or chemical only) and if no studies or reports existed, for ASU to identify the parameters ASU evaluated in its phosphorus removal system selection analysis. He noted the OUCC also asked ASU to provide copies of documents and communications ASU relied on to support its decision not to install the biological phosphorus removal system as designed and permitted in favor of a chemical phosphorus removal process only, but ASU failed to provide any such studies, reports or documents.

Mr. Parks noted that in Cause No. 44676, the Commission faulted ASU for unsupported dewatering claims on the Big 3 sewer project, limited monthly inspections and lack of detailed daily inspections, ultimately disallowing \$908,000 in claimed dewatering costs. He noted the Commission also faulted ASU for lack of details on project costs. Mr. Parks explained that ultimately, ASU proposed to address these concerns in part by engaging TBird Engineering to provide daily reports that should at a minimum provide documentation of what work was performed, what personnel were onsite, what materials were delivered, and what equipment was used. He added that ASU suggested that requiring TBird Engineering to provide the aforementioned details would protect ASU's project interests and provide the additional documentation directed by the Commission's order in Cause No. 44676.

Mr. Parks testified that with respect to the phosphorus project, it appears TBird Engineering prepared only a single inspection report dated October 24, 2019 and one payment verification for the entire Phosphorus project. Details about the construction are lacking. As such, the inspection report does not provide support to determine that the \$1.5 million cost claimed by ASU was actually incurred. Mr. Parks also noted that for unknown reasons, ASU constructed the new Chemical Feed Building on land owned by Scott Lods, which is north of the Carriage Estates property. Mr. Parks stated this land is not included in ASU's Utility Plant in Service and further there are operational issues associated with the location. He explained the new building is farther away from the chemical application points (original and new CSBR tanks) and beyond the recommended 100 feet limit for chemical feed piping. As a consequence, ASU may have plugging problems with the chemical feed piping long term. Mr. Parks characterized this as a design error, stating that a better site for the bulk storage tanks and pumps would have been the existing Blower Building, which is as ASU designed and permitted in 2014. He noted under the permit the design was to reuse the existing chlorination/dechlorination chemical rooms in the north end of the building with the bulk storage tanks located adjacent to the building. Mr. Parks added that based on his review of the as-built drawings no conflicts are apparent in these areas that would have



prevented construction as designed and permitted in 2014. He stated the area west of the Blower Building could also have been enclosed for weather protection or the bulk storage tanks could have been heated. Mr. Parks said these blowers could be as easily installed in a Blower Building extension to the south, as he could not find any conflicts in this area.

Mr. Parks also testified that there have been chemical phosphorus removal system problems noting that on its Daily Activity Sheets, ASU reported the metering pumps were down and it was instead manually injecting the sodium aluminate chemical. He noted it appeared the pumps failed on June 5<sup>th</sup> and were offline for 50 days. He noted ASU did not mention the phosphorus pump failures in its Monthly Reports of Operations (“MROs”) to IDEM and did not report any effluent violations. Mr. Parks explained that on October 1, 2019 Inspection Summary/Noncompliance Letter, IDEM rated plant operation unsatisfactory because of similar temporary phosphorus pump problems. IDEM noted that at the time of the inspection, “the temporary chemical Phosphorus treatment system was not operating due to chemical feed pump needing repaired.” The report indicated facility personnel were dumping in phosphorus removal chemical, which Mr. Parks explained is not an efficient treatment for phosphorus or a permitted way to introduce the chemical.

Mr. Parks provided background for the preapproval of the Carriage Estates Expansion Project in Cause No. 44272, in which the Commission preapproved expenditures of up to \$10 million dollars for the project pursuant to the settlement agreement between the OUCC and ASU. Mr. Parks explained that in the preapproval case, ASU had ultimately presented four options (Options 1 through 4) for rehabilitating and expanding its Carriage Estate Treatment Plant and entered into an agreement with the OUCC, the implementation of which was affected by the option ASU would choose to build. He added the most modest increase (Option 2) would result in an IDEM permitted plant capacity of 3.0 MGD.

Mr. Parks testified that all options were designed to provide for biological treatment and removal of phosphorus, and that ASU ultimately determined it would need to add a standby phosphorus system using chemical means. He noted the OUCC had opposed ASU’s original 2012 expansion plan due to: 1) concerns the expansion to 6.8 MGD was oversized; 2) lack of adequate cost support for the estimated costs; and 3) concerns ASU’s Affiliate, First Time, would construct the plant. In response to OUCC opposition to the higher flows and costs and in response to receiving a phosphorus limit, ASU reduced capacity to 4.0 MG with an additional CSBR tank for a future 6.0 MGD capacity and switched to a CSBR system with EBPR instead of Extended Aeration. This was Option 4, ASU’s preferred option, which it indicated was already designed and submitted to IDEM for approval on July 18, 2013.

Mr. Parks explained that the focus of the Settlement Agreement between ASU and the OUCC in the preapproval case was on Option 2 (OUCC preferred) and Option 4 (ASU preferred). Mr. Parks added that ASU had withdrawn its extended aeration plan in favor of a complete redesign to CSBR tanks expressly for EBPR, which change approximately doubled the cost from what ASU had originally proposed in its case. However, Mr. Parks noted, ASU never installed the EBPR improvements it identified to support the higher project cost.

Mr. Parks stated Option 2 would have expanded capacity to 3.0 MGD by reusing and rerating the original four tanks to treat 2.0 MGD of wastewater and adding two more CSBR tanks to treat 1.0 MGD. These new tanks would have the same dimensions, elevations and capacities as the four original CSBR tanks. There would have been six CSBR tanks in total with the same nominal 0.5 MGD capacity to provide a total capacity of 3.0 MGD.

Mr. Parks stated that in the 2015 and 2016 annual status reports the Commission in Cause No. 44272 ordered ASU to file consistently indicated ASU was building Option 4. These reports were to include engineering and construction progress, the option being built, current total cost forecast, and the funds expended. In addition, Mr. Parks stated that on February 21, 2014, IDEM issued Construction Permit No. 20788 for Option 4 authorizing ASU to replace the original CSBR tanks with four new much larger CSBR tanks with EBPR capability, supernatant chemical phosphorus removal, and standby chemical phosphorus removal. The original CSBR tanks were to be retained, rehabilitated and converted to digesters.

Mr. Parks added that in rate case (Cause No. 44676) ASU's Engineer, Mr. Serowka also testified ASU was building Option 4.

Mr. Parks added that he learned during his review of ASU's testimony in 2015 that First Time had already issued the first invoice on July 3, 2013, two weeks before First Time/ASU signed the CE-III Expansion project contract on July 18, 2013, and seven months before IDEM issued Construction Permit No. 20788 for the CE-III Expansion project.

Mr. Parks noted that after the second report in 2016, ASU no longer stated in its required annual report whether it was or was not building Option 4 or any other particular option. As ASU's last statement on the issue indicated it was proceeding to complete Option 4, Mr. Parks said that ASU continuing to construct Option 4 was a reasonable assumption and he was unaware that the OUCC had been informed that ASU had changed course. Mr. Parks said there is another reason he believed ASU was building Option 4. ASU designed and IDEM permitted Option 4. Option 4 was the only design ASU had an IDEM permit to build. Mr. Parks explained that the Indiana Administrative Code, 327 IAC 3, requires a valid construction permit be obtained before construction can begin for a new, modified or expanded WWTP. He explained that utilities may issue change orders to revise designs when encountering varying field conditions, obstructions, or other changed conditions but these are for non-significant changes, but more significant changes require permit modifications. Because ASU had not requested modifications from IDEM, the OUCC was unaware ASU's construction was not conforming to the IDEM issued construction permit.

Mr. Parks stated that to allow significant or material changes, ASU should have requested a construction permit modification and received a revised construction permit. He noted Part II – General Conditions of ASU's construction permit states significant or material changes must be authorized by IDEM and based on requests accompanied by detailed statements and revised plans. Mr. Parks stated ASU had ample time in 2017 to revise its design for 3.0 MGD in accordance with Option 2 before it started construction of the new aerobic digesters and new CSBR tanks, but ASU did not seek a permit modification. Yet, as ASU admitted in response to discovery, ASU did not

build in accordance with the construction permit (Discovery Request 4-1), and ASU had never applied for or received permit modifications (Discovery Request 4-3).

Mr. Parks noted ASU also admitted it did not construct any of the four Options it developed under the preapproval case (Discovery Requests 4-6 to 4-9), although it maintained that components it built were part of the Option 4 design. However, Mr. Parks considered what was built to most closely resemble Option 2. He explained that it has six CSBR tanks capable of biological phosphorus removal if ASU completes construction to add mixers and SCADA controls and instrumentation, the four original CSBR tanks continue to be used for wastewater treatment instead of being converted to aerobic digesters, and there are only four aerobic digesters. Mr. Parks noted, however, that many of the new facilities were sized based on the 6.0 MGD daily average flow for Option 4.

Mr. Parks noted that ASU began constructing Option 4 in July 2013 and continued for three and a half years, but in the fourth quarter of 2017 ASU made the decision to eliminate biological phosphorus removal. The higher capacity facilities include headworks (macerators (6.7 MGD firm capacity / 13.4 MGD peak), influent lift station piping and wet well (enlarged from Option 4 permitted design), influent pumps (7.3 MGD firm capacity / 10.4 MGD all pumps with space for two more 2,100 gpm pumps – 3.0 MGD each), force main to the four original CSBR tanks (6.5 MGD), 24-inch force main to two new CSBR tanks (20.9 MGD), four original CSBR tanks (2.3 MGD average / 6.9 MGD peak), two new CSBR tanks (3.0 MGD average / 9.0 MGD peak), the decanter discharge tank (34% larger than the Option 4 permitted design), UV disinfection (14.4 MGD), and effluent flow meter (20 MGD).

Mr. Parks testified that nothing in his review indicated ASU notified IDEM, the Commission, or the OUCC it was no longer building Option 4, and it appears IDEM first became aware ASU deviated from the permitted Option 4 design during Compliance Evaluation inspections on March 13, 2019 and again on September 24, 2019. Mr. Parks testified he learned ASU was building something other than Option 4 for the CE-III Expansion project when he read IDEM's October 1, 2019 Inspection Summary/Noncompliance letter. He added, however, he did not know the extent of the changes or that ASU had dropped EBPR, which was the reason ASU used to justify redesign to the higher cost CSBR system.

Mr. Parks added that in 2019, when it applied for another permit to install a standby chemical phosphorus system, ASU did not disclose the significant and material changes to the CE-III Expansion project. Instead, ASU listed the same 2014 design summary in its 2019 application. In evaluating the construction permit, Mr. Parks stated IDEM relied on ASU's no longer applicable 2014 design summary and used it for the Facility Description in Construction Permit 22977.

Mr. Parks noted ASU had deleted the underlined components but had proceeded to construct two of the four much larger CSBR tanks it permitted with IDEM. Mr. Parks explained that in March 2019 he obtained a copy of the permit application, design summary, plans, and specifications and permit from IDEM's Virtual File Cabinet, and he could not tell from that 2019 chemical phosphorus project permit that ASU had materially changed its CE-III Expansion project. Moreover, he noted the project description indicated that ASU was building Option 4 as ASU previously indicated and permitted. Mr. Parks explained it was only from the OUCC's December

4, 2019 site visit and his review of IDEM documents that he understood ASU's constructed facilities materially differed from its 2014 IDEM permit. Mr. Park's review of IDEM documents indicated ASU never sought a permit modification, never prepared or submitted revised plans and specifications to IDEM as required.

Mr. Parks added he has never encountered a similar situation where a utility deviated so substantially from the permitted design. Permit modifications are required in such instances because IDEM requires construction in accordance with a valid permit that accurately reflects the facilities being built. Mr. Parks discussed who seemed to have made the decisions to alter the project design during construction, noting that ASU indicated major decisions such as raising tank elevations and altering digester dimensions were field decisions by Mr. Serowka. Mr. Parks noted, however, that according to discovery responses there were no documents, emails, or correspondence regarding the changes. He said ASU also indicated it did not have design drawing mark-ups made by First Time, showing project changes because "Mark-up drawings were not required nor provided." And "All requests for project clarifications from ASU or First Time to the design engineer were verbal, and no written questions or responses were required nor maintained." Mr. Parks said there were also no change orders on the project, as the inspection firm, TBird Engineering noted no changes to the project in its inspection reports.

Mr. Parks declared the changes ASU made to the CE-III Expansion project are significant and include multiple deletions of components including rehabilitation of the original CSBR tanks (one of the original reasons for the project), ASU's subsequent idling of these useable CSBR treatment tanks, EBPR with mixers, supernatant phosphorus removal, the new Blower Building, the new Control/Laboratory Building, SCADA control system for the EBPR, numerous electrically operated valves, fewer new CSBR treatment tanks, changed dimensions for tanks, structures, and buildings, altered elevations, altered hydraulic profiles, changed materials, and altered pipe diameters, materials and routes.

Mr. Parks noted Affiliate Contract No. 3 does not declare which option First Time is to build as the word "option" never appears in any of ASU's affiliate contracts with First Time. He noted there are also no references to a set of design plans and specifications or to an IDEM construction permit that would define the project, which documents are required for all wastewater plant construction projects. He noted ASU attached a SOV to its Affiliate Contract, but details are absent about size, number, capacities, construction materials, or specific treatment tanks, structures, controls, and equipment to be constructed.

Mr. Parks explained that from such entries, it is impossible to know what First Time was to build. In the new CSBR tanks example, nowhere in the Affiliate Contract including the SOV does it identify such basic information as to how many new CSBR tanks are to be built, only the contract cost. There is no reference to any permitted design drawings or specifications. The SOV is therefore defective because it is not tied to any design plans and specifications or permit (which would reference plans and specifications).

Mr. Parks explained that the \$10,000,000 preapproval was tied to a better-defined project description, more specifically it was derived from Option 2, which he noted was more fully defined in Mr. Serowka's Supplemental Testimony in Cause No. 44272. Mr. Parks noted that since its

2016 Project Status Report ASU has not stated what option it constructed in any document, filing, or proceeding and in response to informal discovery, ASU stated it “needs more clarification on this question.”<sup>1</sup> Mr. Parks noted that during the OUCC’s December 4, 2019 site visit, he directly asked First Time/ASU President Scott Lods which of the Options he built, but Mr. Lods did not state which option, and indicated he did not understand the question. Mr. Parks noted that likewise, in its response to the OUCC’s objection, ASU did not state which option it built but asserted it built a 3.0 MGD plant and is therefore entitled to receive the preapproved amount.<sup>2</sup> Mr. Parks added ASU essentially asserts the Settlement Agreement with the OUCC and the Commission’s Final Orders gave it wide latitude to build whatever it wanted as long as it resulted in a 3.0 MGD plant. ASU also asserted it was not bound to the options it developed to justify its preapproval costs.

Mr. Parks compared the various features, components, the associated costs for each component for each of the options described in the preapproval case, with what was constructed. He did not consider ASU to have built any of the described Options. But in terms of the process used to treat wastewater, he considered the treatment plant expansion most closely resembles Option 2 as it relies on the existence of six CSBR tanks (although ASU deleted EBPR, EBPR mixers, and SCADA), and retains the original four CSBR tanks for wastewater treatment. Mr. Parks noted Option 2 also involved rehabilitating the existing CSBR tanks at a cost of \$1.294 million, which did not occur despite those tanks being necessary. Mr. Parks noted that in Option 4, these original tanks were to be converted to aerobic digesters.

Mr. Parks testified ASU did not construct several major components that were to be in Options 2 and 4.

Mr. Parks gave a value of the project components ASU chose to eliminate. He explained he derived these values by reviewing the Option 2 costs presented in Mr. Serowka’s testimony. Mr. Parks only deducted from the total items costing more than \$100,000 that ASU downsized, reduced in quantity, or did not install or construct at all.<sup>3</sup> He explained the components not built or installed by ASU totaled \$4,280,000 (rounded) based on ASU’s own cost estimates from the pre-approval case. Mr. Parks tabulated ASU’s estimated costs for these deleted items in Table 5.

Mr. Parks described the modifications to the four original CSBR tanks ASU proposed under Option 2, which it did not achieve. He explained that in Cause No. 44272, Mr. Serowka testified that equipment in the four original CSBR tanks needed to be replaced.

Mr. Parks pointed out that Mr. Serowka’s testimony also included a list of the equipment ASU would replace and associated costs. He explained the project used to justify the preapproved amount included removing rusted/deteriorated equipment (flow divider boxes), and installing new electric plug valves, new flow divider boxes, new decanter assemblies, new waste sludge pumps,

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1 ASU response to OUCC informal Discovery Request 3-7, dated Dec. 6, 2019.

2 “Like the Commission’s order in this Cause, what the parties agreed to was a level of expenditures which was tied to 3.0 MGD, and not a particular design such as Option 2 or Option 4.” Petitioner’s Response to OUCC Objection to Phase 3 Tariff Compliance Filing, December 19, 2019, pgs. 3 – 4.

3 See Cause No. 44272, Supplemental Rebuttal Testimony of Edward Serowka, Exhibit EJS-SR3, Dec. 11, 2013 for ASU’s Option 2 costs that the OUCC used to deduct costs for deleted components not constructed.

pipings, and fittings, and all new access bridges and stairways. Mr. Parks noted ASU did not rehabilitate the original CSBR tanks and ASU did not replace any of the major cost items but did remove the rusted flow divider boxes and installed four manual valves and waste sludge pumps. Moreover, Mr. Parks noted IDEM requires ASU to keep the original tanks for wastewater service. In fact, ASU's 3.0 MGD capacity rating is expressly contingent on ASU not converting the original CSBR tanks to aerobic digesters.

Mr. Parks noted that what ASU plans to do with the original tanks has greatly varied from rehabilitating them for continued wastewater treatment (Option 2), to converting them to aerobic digesters (IDEM permitted Option 4), to enlarging them to double their capacity (letter to IDEM on October 21, 2019), to retiring them completely from service (revised letter to IDEM on January 24, 2020 amending its October 21, 2019 letter). Mr. Parks stated that at the OUCC's December 4, 2019 site visit, Mr. Lods stated he would be raising the tank walls. (Mr. Parks said he presumed this was to enlarge the tanks and double their capacity as ASU stated in writing to IDEM by raising the 16 feet walls to match the two new CSBR tanks' 24 feet walls). But in its December 19, 2019 response to the OUCC Objection, for the first time ASU stated it would be retiring the tanks from service. Mr. Parks repeated his observation that ASU told IDEM it intends to enlarge the tanks to double capacity, and Mr. Lods told him ASU will be raising the walls, but then ASU told the COMMISSION and the OUCC that, because of those same walls, the tanks must be retired since they "are not in a condition that they can continue to serve."

Mr. Parks explained that the original CSBR tanks were never to be removed from service as ASU later said must be done as ASU's construction design presented in both the preapproval and rate cases, depended on continued use of the original CSBR tanks for either wastewater service (Option 2) or aerobic digestion (permitted Option 4). Mr. Parks stated that until ASU's December 19, 2019 response, no party had ever suggested retiring the tanks and furthermore, ASU has never presented any basis to IDEM, the COMMISSION, or the OUCC for retiring or idling the tanks. Mr. Parks suggested that if ASU had promoted such a move in its preapproval and rate cases, the OUCC would have opposed replacing or eliminating useful plant.

Mr. Parks testified there is no engineering reason to retire or idle the original CSBR tanks as they are 20-year-old concrete tanks in good condition. Mr. Parks said that based on his site visits in 2015, 2019, and 2020, the concrete appears dirty, which is typical for sewage tanks, but they are in good condition with a few spots of spalled concrete and exposed reinforcing steel (rebar) above the waterline. He noted the spalled concrete is in the baffle walls that have equal water pressures on both sides and so are in no danger of catastrophic failure. Indeed, there are many engineered openings (holes) through these same walls for wastewater to flow through to the rest of the tank. His inspection of the top half of the tank exteriors (the rest is below grade) show them to be in good condition and not cracked or leaking. Mr. Parks stated that ASU's concrete tanks should continue to provide reliable service for many more years, and while the spalled concrete should be patched, there is no reason to retire or idle the original CSBR tanks. Doing so is not in the public interest and contrary to the preapproval case. Mr. Parks noted that in Cause No. 41254, less than 20 years ago, Mr. Serowka testified on behalf of ASU that the expected life for the concrete plant is 50 years.

Mr. Parks added that his engineering experience confirms that concrete tanks provide long

service lives noting that at the Indianapolis Belmont WWTP, CWA Authority continues to use the original primary clarifiers constructed over 70 years ago in the early 1950s. At the Indianapolis Southport WWTP, CWA Authority continues to use the original treatment tanks installed in 1966 (55 years ago). Mr. Parks also suggested that ASU has not been concerned about the spalled concrete and exposed rebar, noting that OUCC analyst Larry McIntosh photographed the spalled concrete on CSBR Tank No. 3's baffle wall on March 7, 2013, and Mr. Parks saw this same spalling on September 8, 2015 and again in 2019 and 2020. He asserted ASU has taken no action to repair the spalled concrete.

Mr. Parks noted that in its October 21, 2019 response to IDEM's noncompliance letter, ASU stated it would be enlarging the four original CSBR tanks to double their capacity, but on January 24, 2020, ASU amended its response to IDEM saying it would instead remove the four original CSBR tanks from service but not demolish them so ASU will have the option of rehabilitating them. Mr. Parks explained that ASU's statement to IDEM indicates ASU has not rehabilitated the original CSBR tanks as included in Option 2 work which was one of the original reasons for the CE-III Expansion project. Mr. Parks said it is important that ratepayers not be charged for incomplete work under Option 2 as part of the CE-III Expansion project today only to be charged again for the same rehabilitation work in the future.

Mr. Parks added that the OUCC explored ASU's claim it must retire the original CSBR tanks and determined that addressing the concrete structures themselves was not part of any proposed tank rehabilitation in Cause No. 44272 or in any other proceeding. Therefore, the OUCC requested ASU support its assertion that the "tanks are not in a condition that they can continue to serve." Summarizing ASU's support for its assertion – ASU has none. Mr. Parks noted ASU does not have any studies, reports, inspections, or evaluations of the tanks condition, can't remember when the tanks were last drained and inspected, and has no support whatsoever for its claim that the tanks must be retired, first made to the COMMISSION and the OUCC on December 19, 2019 and to IDEM on January 24, 2020 that the tanks will be retired. Mr. Parks noted that the original CSBR tanks are listed on its as-built drawings as "redundant" and he believed this was the first time they had ever been so listed. Mr. Parks stated that ASU never proposed and the OUCC never agreed in Cause No. 44272 that the original CSBR tanks would no longer be used or that they would be replaced with new oversized tanks and then idled to serve as "Redundant" or back-up tanks. No such change was suggested in Cause Nos. 44272 or 44676.

Mr. Parks noted that, while ASU's states on Plan Sheet 20-005-20 that "All the Redundant CSBR equipment, including but not limited to the following, have been inspected, repaired or replaced if required so that the CSBR system is in proper operation conditions," it does not identify which equipment was inspected and found to not need repair or replacement. ASU does not specify which equipment was repaired or replaced except for the sludge pumps and flow divider boxes.

Mr. Parks testified that IDEM was concerned about the condition of the original CSBR tanks and required ASU to demonstrate the tanks were in good condition. ASU stated to IDEM on September 28, 2020 that it will keep the original CSBR tanks in good condition, implying the tanks are currently in good condition. Mr. Parks noted that as seen several times, ASU provided different accounts or explanations to IDEM than to the OUCC. He said the OUCC directly asked whether all rehabilitations, repairs and replacements were completed, and ASU's affirmative response was

qualified with the phrase “for the tanks to serve in a redundant capacity in their present condition” (emphasis added). Mr. Parks said this indicated to him that ASU has not rehabilitated the tanks as indicated in Option 2 plans. Mr. Parks concluded that based on the responses he received, ASU has not done the work totaling nearly \$1.3 million in repairs and replacement work it claimed was needed under Option 2 to justify part of the \$10 million preapproval.

Mr. Parks pointed out that IDEM requires ASU retain the original CSBR tanks for continued wastewater service in order for ASU to have a permitted capacity of 3.0 MGD. Mr. Parks explained that Ten States Standards require more than two CSBR tanks, and with only the two new CSBR tanks, ASU cannot ensure treatment continuity if one of the new tanks is out of service. To comply with Ten States Standards and address IDEM’s concerns about treatment continuity, ASU’s engineer suggested to IDEM sometime before February 26, 2020 ASU retain the existing CSBR tanks for wastewater service. Mr. Parks noted that ASU committed to IDEM to keep the original CSBR tanks in good working condition which should have been already achieved with the \$1.3 million rehabilitation of these same tanks under Option 2. In order to retain tanks to maintain its 3.0 MGD permitted capacity, ASU will need to conduct preventive and corrective maintenance, repairs, and replacements of the original CSBR tank equipment into the future. Mr. Parks repeated the position that ratepayers should not have to pay for those costs in the future and now as a rate base addition in this rate case for rehabilitation of tank equipment that never occurred.

Mr. Parks made a recommendation with respect to the cost of rehabilitation of the existing tank. He stated that because ASU has not actually incurred these costs or completed the project that was embedded in its preapproved project authorization of up to \$10 million for Option 2, the Commission should subtract \$1,294,000 (construction only) of the proposed rate base addition ASU has claimed in this Phase.

Mr. Parks also pointed out that even though ASU included CSBR tanks (expressly for EBPR) in all four options under the preapproval case and built two of the much larger Option 4 CSBR tanks, ASU failed to install everything needed to remove phosphorus biologically and to his knowledge has never achieved EBPR at Carriage Estates. Mr. Parks pointed out that ASU had proposed biological phosphorus removal for both the 3.0 MGD or 4.0 MGD WWTP options. Therefore, if the plant was sized 3.0 MGD, a standby chemical phosphorus removal system will still be required.

Mr. Parks characterized ASU’s decision to eliminate biological phosphorus removal or EBPR as unilateral. Mr. Parks pointed out that ASU could still provide biological phosphorus removal in the two oversized CSBR tanks and the four original CSBR tanks per ASU’s redesign to CSBR Tanks, as combined, these six tanks are oversized for the flow and pollutant loadings and have ample aeration volumes for EBPR’s longer treatment cycle. He explained this would allow ASU to return to the six-hour treatment cycles originally proposed, designed, and permitted by IDEM in 2014 and providing EBPR partially completes the remaining Option 2 improvements upon which the preapproval Settlement Agreement was derived. Mr. Parks noted that application of biological phosphorus removal would lower chemical and digested sludge disposal operating expenses by minimizing chemical usage and reducing digested sludge volumes.

Mr. Parks explained that the main missing components of the EBPR facilities are the



submersible mixers and the more sophisticated SCADA control and electrical systems with the associated electrical field wiring. He stated ASU should install the EBPR mixers in all six CSBR tanks along with the electrical power, instrumentation, and control systems needed for EBPR. In developing cost estimates for the work which was not completed, Mr. Parks assumed the same ASU design of four mixers per CSBR tank (24 total) at a cost of \$800,000 (construction only). His estimate was based on ASU's own estimated \$50,000 cost per mixer (eight large mixers for the new CSBR tanks) plus four smaller \$25,000 mixers for each of the four original CSBR tanks. For the 16 smaller mixers, Mr. Parks assumed their cost at 50% of the \$50,000 cost ASU included for the larger mixers.

For Option 2 site electrical (construction only), Mr. Parks noted ASU estimated \$1,725,000, which included a \$250,000 Motor Control Center, \$500,000 for a CSBR Control and SCADA panel with instrumentation, and \$400,000 for electrical field wiring (Item 18 (a) in Options 2 and 4). Because ASU did not install the more sophisticated SCADA control system, power and motor starters for the mixers, and electrical field wiring when it deleted EBPR, Mr. Parks deducted \$500,000 for this electrical work. Because ASU did not install the mixers, SCADA system, instrumentation, controls, and field wiring, it has not completed this portion of the project work. Mr. Parks recommended the Commission not include in rate base \$500,000 of ASU's estimated \$1,725,000 site electrical cost (construction only).

Mr. Parks explained that ASU testified it needed to convert the existing 206,000-gallon Chlorine Contact / Post Air tank to a supernatant decanting tank. Mr. Parks noted all options (Item 10 in Options 2 and 4) included converting this tank to chemically precipitate phosphorus and control return of the supernatant recycle stream to the head of the plant to prevent shock loadings on the WWTP. In its Option 4 permitted design, ASU included a chemical phosphorus removal system for the supernatant decanting tank. Through its case, ASU asserted the need to control the supernatant return which can be enriched with phosphorus. ASU proposed converting the existing chlorine contact tank to a supernatant decanting tank and adding a supernatant return lift station. Mr. Parks noted ASU said, "The supernatant return lift station is needed to address shocking of the plant that currently occurs and [sic] facilitates proper operation."

Mr. Parks explained that of these improvements, ASU only constructed the supernatant return lift station with a wet well volume of just 1,535 gallons, which is far less than the 206,000-gallon capacity of the Supernatant Holding Tank that ASU would put into service under all options.

Mr. Parks noted ASU had also proposed building the new Aerobic Digester Blower Building at the site of the sludge holding lagoons but did not construct this building. Mr. Parks noted ASU also proposed building the new Aeration / UV Control Building over the sludge lagoons but instead placed this building along the south property line. In fact, Mr. Parks testified ASU did not construct any building over the sludge lagoons. Therefore, he said there was no reason to include lagoon sludge removal as a project cost, pointing out that the cost of sludge disposal is an operating expense.

Mr. Parks stated that ASU should have converted the existing chlorine contact case as part of the project, as it was included in all options to prevent adverse WWTP impacts caused by supernatant recycle streams including control of the supernatant phosphorus. He noted that under Option 2, this tank was to be modified with a new tank outlet to the new CSBR Decanter Discharge

tank. Because ASU did not complete any of this work, Mr. Parks recommended the Commission disallow the full \$180,000 cost (rounded) (construction only) from the \$8,024,800 Phase III cost.

Mr. Parks noted that ASU did construct a new Aeration Control Building, but its size was greatly reduced according to the as-built drawings. Mr. Parks explained that under both Options 2 and 4, the design was for a 40 ft. by 75 ft. single story wood frame building on slab (3,000 ft<sup>2</sup>), which ASU estimated to cost \$424,500 based on \$141.50 per square foot. Mr. Parks pointed out that ASU unilaterally reduced the building size to 35 ft. by 40 ft (1,400 ft<sup>2</sup>). Using ASU's same estimated cost per square foot, Mr. Parks estimated this building should cost \$198,100 instead of \$424,500. Accordingly, he reduced the building cost \$226,000 (rounded) (construction only). Mr. Parks explained that because ASU did not construct the new Aeration / Control Building as large as it testified the building needed to be, he recommended the Commission reduce the rate base addition by \$226,000. He added it is not in the public interest for ratepayers to pay the same amount for a reduced size building.

Mr. Parks also pointed out that ASU did not install all ten new blowers it had proposed to install in the Existing Blower Building under Option 2, but instead only installed five blowers. Mr. Parks noted IDEM's 3.0 MGD capacity is contingent on ASU installing three more blowers. Because Option 2 included ten blowers that ASU estimated at \$60,000 each but ASU only installed five blowers, this work remains incomplete. He recommended the Commission disallow \$300,000 (construction only) because ASU installed half of the proposed blowers (five fewer) and stated it is not in the public interest for ratepayers to pay for blowers never installed.

Mr. Parks also pointed out that ASU did not build the New Control / Laboratory Building, which ASU included in all options (Item 15 in Options 2 and 4) at a cost of \$356,000. Because ASU never constructed this building, Mr. Parks recommended the Commission disallow the entire \$356,000 cost (rounded) (construction only).

Mr. Parks pointed out that ASU did not convert the existing Control Building for chemical phosphorus treatment, which it indicated would occur at the existing Control Building. He explained this work was actually to occur in the chemical rooms previously used for the chlorination / dechlorination equipment in the north end of the existing Blower Building. Mr. Parks explained the conversion, which was included in all options, was to add a chemical feed system for supernatant phosphorus removal (which was also permitted by IDEM in 2014 for use with the standby chemical phosphorus removal system). Because ASU never converted this building, Mr. Parks said the estimated amount used to justify the preapproved amount should not be included in rate base, and he recommended the Commission disallow the \$138,000 cost (rounded) (construction only).

Mr. Parks noted ASU has not completed any asphalt paving, the cost of which was included in all preapproval options. Therefore, Mr. Parks recommended the Commission remove the entire estimated amount of \$247,000 for asphalt paving (rounded) (construction only) because the work was never completed. Mr. Parks explained that ASU also included \$132,000 for 3,000 cubic yards of gravel for driveways and access areas plus the additional \$247,000 for asphalt paving. The gravel allowance was sufficient to cover nearly two acres of the 7.09 acres Carriage Estates WWTP site to a one-foot depth. Mr. Parks estimated only 750 cubic yards of gravel (equivalent to 1,065

tons) was added to the driveways. However, Mr. Parks said he did not include a deduction for the gravel because he did not know the depth or extent of the gravel coverage other than a rough approximation.

Mr. Parks pointed out that ASU proposed installing 14 electrically operated valves consisting of four 16-inch valves at \$23,000 each plus ten eight-inch valves estimated at \$18,400 each. But ASU only installed two of the smaller eight-inch valves. Mr. Parks testified the other 12 valves were never installed as well as the electrical field wiring and instrumentation. Therefore, he recommended the Commission not include in rate base the estimated amount of \$239,200 used to justify the preapproved amount because the electrical valve work was never completed.

Mr. Parks testified that the total value for the ten components ASU either eliminated or downsized is \$4,280,000. Mr. Parks recommended the Commission not allow that amount to be included in rate base.

Mr. Parks testified ASU does not accurately measure, record, and report effluent flows based on his observations, review of ASU's MROs and meter calibration reports. He concluded the effluent meter has been improperly reprogrammed multiple times causing higher recorded flows above actual by as much as 4.3 MGD. He testified it was particularly troubling the meter registers flow when there is no discharge. Mr. Parks testified that during the OUCC's October 8, 2020 site visit, he and OUCC witness Scott Bell observed flow readings of 1.74 MGD when no flow was leaving the WWTP. He testified the CSBR tanks, which operate in a batch mode, do not continuously discharge and ASU should only be recording flows for a maximum of 12 hours daily (worst case scenario). Mr. Parks included a table of the inaccurate meter readings and presented OUCC photographs showing the erroneous control panel displays in Attachment JTP-13.

He testified ASU's reported 2.578 MGD flow on October 8, 2020 was more than twice the actual 1.174 MGD flow he calculated from influent pump run times and the 1,150 gpm and 2,100 gpm rates for the original and new pumps respectively. Mr. Parks testified his attempts to calculate actual flows were frustrated by lack of data which ASU claims it does not record and retain despite all meters having extended data logging capabilities (e.g., every 5 to 30-minutes) for months. He noted ASU claimed it only records daily effluent flow totals and provided no influent flow meter data at all. Mr. Parks stated ASU should record and maintain this basic flow data and recommended the Commission require that ASU record and retain 5-minute flow, level, and velocity data (for influent and effluent meters) and submit it bi-monthly to the Commission and the OUCC. Mr. Parks pointed out the data is needed for ASU's infiltration and inflow ("I&I") program. Mr. Parks testified that accurate influent and effluent flows have been an issue at ASU since at least 2008. He reported IDEM issued violations for a non-functioning effluent flow meter and lack of flow proportional sampling. Mr. Parks described ASU's flow meter (Palmer-Bowlus flume with ultrasonic level sensor), noted it was not installed properly since it is not level, and testified the as-built drawing incorrectly shows the flume.

Mr. Parks testified ASU reported erroneous high November 2020 flows for periods without rain. He stated flows unexplainably doubled on November 7 to 2.076 MGD, stayed elevated, spiked by 1.4 MGD on the 18<sup>th</sup> (no rain), spiked another 1.2 MGD the next day (no rain) to 5.026 MGD, and stayed above 5.0 MGD before dropping to 0.718 MGD for no apparent reason. He

testified there were no engineering or technical reasons for such abrupt flow swings absent rain. Mr. Parks stated ASU's reported November 2020 flow of 80.814 million gallons (2.6938 MGD) was more than double the 38.457 MG volume he calculated from ASU's reported pump run times.

Mr. Parks testified he did not have confidence in ASU's effluent flows which do not have reliable inputs and stated they should not be used to determine capacity utilization until errors are corrected and safeguards put in place to prevent a reoccurrence. Mr. Parks testified November flow swings suggest incorrect meter reprogramming and said there is no reason for anyone other than the meter technician to access, reprogram, or recalibrate this meter. Mr. Parks included the 2019 and 2020 calibration reports and invoices where the BL Anderson meter technician, Mr. March, reported reprogramming had twice occurred that caused high flume level readings and higher reported flows than actual. Mr. Parks noted the meter technician recommended enhanced security to password lock the flowmeter. Due to the critical importance of accurate and dependable flow data which have been particularly important for this utility since 2013, Mr. Parks recommended the Commission require ASU to: 1) have BL Anderson password lock all flow meter programs to prevent access and reprogramming by anyone besides the BL Anderson meter technicians; 2) conduct semi-annual calibrations to confirm no improper reprogramming; and 3) that a means to tamper proof the ultrasonic level sensor should be implemented. Mr. Parks also testified that ASU should recognize these flow readings are inaccurate, determine their cause, exclude them from data used to determine plant flows and pollutant loadings, and amend the records with explanation. Finally, Mr. Parks testified ASU's automatic sampler, because it is not connected to the meter, may improperly pull effluent samples regardless if there is any flow from the CSBR tanks. He noted this is contrary to good practice and the NPDES permit requirement for representative samples and that it also defeats one of the original stated purposes of the new effluent meter. He recommended ASU integrate the sampler and the meter to pull effluent samples only when effluent is being discharged.

Mr. Parks reported that in 2013 ASU's engineer, Mr. Serowka testified the Carriage Estates project would stop sanitary sewer overflows ("SSO") at upstream manholes even during a 500-year rain event through two projects: 1) the Big 3 Sewer Project to redirect flow from Carriage Estates to the County Home WWTP; and 2) headworks expansion to more quickly discharge flow to the expanded treatment process. Mr. Parks testified that after ASU certified Phase 1 headworks completion on February 23, 2017, SSOs did not stop but occurred more often with 11 SSOs spilling 569,500 gallons of raw sewage. He reported the latest January 11, 2020 SSO occurred after ASU certified the full project in operation on October 18, 2019. Mr. Parks reported IDEM has a current enforcement action against ASU for multiple violations including the SSOs. Mr. Parks testified that after each SSO, ASU reported to IDEM that construction to increase headworks capacity had started and that it was also conducting an I&I study but for the January 11, 2020 SSO, ASU reported it was completing construction.

Mr. Parks testified that to mitigate the January 11, 2020 SSO, ASU added two six-inch portable trash pumps and diverted flow from the Kimberley Lift Station to the County Home WWTP. He reported ASU was to have demolished this lift station under the Big 3 Sewer project, but it is still imposing flows onto Carriage Estates. He stated the trash pumps should be unnecessary. He testified it did not make sense SSOs would continue if the upgrades were complete and in service as certified by ASU because the 7.3 MGD firm pumping capacity (four of five

pumps in service) exceeds ASU's historical peak flows and should have met the pumping demand. Mr. Parks testified that ASU's inability to bring the sewage into the plant is inconsistent with the pumping capacity from the completed and in-service CEII WWTP upgrade. Mr. Parks testified that in response to discovery asking ASU to explain why the new Influent Lift Station was unable to prevent the SSOs, ASU provided no explanation. Mr. Parks included photographs made 2-1/2 years after ASU certified Phase 1 headworks completion, taken during IDEM's September 24, 2019 inspection, showing unfinished construction. These photographs document only a single installed macerator (instead of the required two units), no pumps in the new wet well and unfinished discharge piping.

Mr. Parks testified the OUCC requested equipment invoices to determine purchase dates, confirm capacities, check costs, and document who purchased the equipment, but ASU refused to provide them because "ASU does not have custody of First Time's records and is not required to have custody or access to such records per the affiliate agreements." Given the continued SSO events and uncertainty regarding when equipment was installed (e.g., pumps, macerators), Mr. Parks recommended ASU provide copies of all equipment invoices and bills of lading (shipping) to the Commission and the OUCC to establish invoice and delivery dates.

Mr. Parks testified he was able to view inside the Influent Lift Station wet well and valve pit during his October 8, 2020 site visit and he stated discharge pipes for four higher capacity influent pumps are now installed as well as two new pumps, which he was able to view inside the Influent Lift Station wet well and valve pit during his October 8, 2020 site visit. Mr. Parks noted ASU still does not report influent flows on its MROs submitted to IDEM and has declined to provide any influent flow data to the OUCC for any of the influent lift stations or pumps.

Mr. Parks said ASU could address uncertainty over when it completed the Phase 1 Headworks portion of the project. It could establish the dates when equipment was purchased and delivered to the WWTP site by providing to the Commission and the OUCC copies of all equipment invoices and bills of lading (shipping). This would establish the dates invoiced and dates delivered. TBird Engineering noted delivery of materials and equipment several times in its Commercial Construction Progress Summaries as follows: "There have been addition materials purchased and are on site, yet the values for these items are not included in this pay request." Mr. Bell noted, however, that TBird never provided details regarding what was delivered (stored materials).

Mr. Parks reported he compared the 2014 and 2019 design drawings to the 2020 as-built drawings and the actual facilities. He testified ASU admitted it did not build according to the IDEM construction permits, never modified the permits, and did not construct any of the four Options ASU developed under the preapproval case. He testified the as-built drawings are not standard Record Drawings, do not use the permitted drawings, include errors, do not accurately depict what ASU built, and therefore are incomplete. He reported ASU's engineer, Mr. Serowka, created all new plan sheets making it difficult to identify all of ASU's deletions and changes. He testified ASU's changes to the project are significant but the inspection firm, TBird Engineering noted no change orders. Mr. Parks testified ASU admitted all project clarifications were verbal with no written questions or responses and mark-up drawings were not maintained even though the specifications required them to document, as construction progressed, the large number of field

changes to the design drawings.

Mr. Parks recommended the Commission order ASU to hire an independent third-party engineer to produce accurate Record Drawings and the cost be borne by ASU and not ratepayers. He testified accurate Record Drawings are important for asset management and needed for safety such as to document buried piping and electrical lines. Mr. Parks stated that incomplete Record Drawings and system information also complicates acquisition appraisals.

Margaret A. Stull, Chief Technical Advisor, presented the OUCC's recommended Phase III rates based on the OUCC's determination and recommended value of CE-III Phase 2 improvements actually constructed and completed as of September 30, 2020. Her recommended process of implementing Phase III rates requires updating accumulated depreciation from Phase II rates to the date of completion, which the OUCC submits occurred on October 1, 2020, and recognizing changes in operating revenues net of taxes and depreciation expense. Ms. Stull explained that since Phase II rates were implemented in March 2017, the OUCC's review indicates increased utility plant in service ("UPIS") of \$4,014,800, a net rate base addition of \$1,962,609, and a net increase in net operating income at present rates of \$240,041 yielding a calculated decrease in rates of 2.72%. On January 29, 2020, the Commission granted approval of a 21.87% interim Phase III rate increase, subject to refund, pending the resolution of this subdocket. Ms. Stull stated that because ASU had not completed these improvements as required by its approved Settlement Agreement with the OUCC in Cause No. 44272 and as certified in its November 7, 2019 filing, the OUCC considers a full refund of the interim rates is due to ratepayers through September 30, 2020. She also explained that because the OUCC's proposed Phase III rate change is not a rate increase, the OUCC also considers a full refund of the interim rate increase is due to ratepayers from October 1, 2020 through the date a final order is issued in this subdocket. Ms. Stull also presented the OUCC's calculation of these refunds and recommends monthly bill credits over a 12-month period.

To prepare her testimony, Ms. Stull reviewed ASU's compliance filing to implement Phase III rates filed on November 7, 2019 and reviewed ASU's compliance filing to implement Phase II rates filed on March 17, 2017. She also reviewed ASU's IURC annual reports for the years 2015 through 2019 and reviewed the final order issued on November 30, 2016 in Cause No. 44676 / 44700. Ms. Stull included OUCC Attachment MAS-1 – Phase III Rate Schedules (1-9); OUCC Attachment MAS-2 – ASU's Response to OUCC Data Request Nos. 8-1, 8-2, 8-3, 16-11, and 16-12; and OUCC Attachment MAS-3 - Calculation of Customer Refund and Analysis of customer class billing determinants.

Ms. Stull stated that ASU proposed a 21.87% across-the-board rate increase per its November 7, 2019 Phase III compliance filing, which is based on an October 18, 2019 completion date for its CE-III Phase 2 improvements and a \$7,951,450 net increase to rate base. (See Table 1: Comparison of ASU's Phase II and Proposed Phase III Rate Base). She explained the OUCC does not agree that construction of ASU's CE-III Phase 2 improvements were complete on October 18, 2019 as stated in its "In Service Certification." She also pointed out that ASU subsequently submitted a "Notice of Completion of Construction" on September 30, 2020.

Ms. Stull provided a comparison of the OUCC's and ASU's proposed rate calculations in Table 2 and recommended the OUCC's proposed rate decrease be prospective from the date of an order in this subdocket. She explained that although the OUCC recommends an increase to rate base, other components of the rate calculation have been updated, due to the phase-in process, and the result of these changes is a rate decrease. In Table 3, she also provided a comparison of the current revenue requirement under Phase II, as adjusted for the Cause No. 45032 tax investigation, with the OUCC's recommended Phase III revenue requirement. Table 3 also included a summary of the revenue requirement components.

Ms. Stull noted that Paragraph F, pages 39 - 40, of the Commission's Final Order in Cause No. 44676 discusses the implementation of Phase II and Phase III rates. She explained that the Commission required ASU to update accumulated depreciation and to account for the actual cost of the major projects to the extent actual costs do not exceed the approved amounts. She further explained that similarly, for contributions in aid of construction ("CIAC"), ASU shall provide the actual amount of CIAC and an explanation of how it arrived at that figure. Ms. Stull concluded that ASU shall update CIAC and the amortization of CIAC based on actual results.

Ms. Stull also noted that the Commission required ASU to provide the actual customer count with an explanation of how it arrived at that figure. She explained that ASU is required to update (1) operating revenues (2) depreciation expense, (3) property tax, and (4) income tax expense, but not allowed to update retained earnings in its capital structure. She concluded that ASU provided everything required except for the report with the actual and approved amount of plant for the major projects by plant account.

Ms. Stull explained the \$5,988,841 difference between ASU's proposed Phase III rate base and that recommended by the OUCC was primarily due to (1) the difference between the pre-approved cost of the CE-III Phase 2 improvements and the actual values incurred to construct the project and (2) additional accumulated depreciation due to the delay in completing construction of the CE-III Phase 2 improvements. She presented a comparison of the various rate base components proposed by ASU to that recommended by the OUCC in Table 4.

Ms. Stull described the difference between the Option 2 CE-III Phase 2 costs as approved and the value determined by the OUCC. She explained that ASU was pre-approved for \$9,999,400 of CE-III Phase 2 project costs under Option 2 plus another \$1.5 million related to phosphorus removal for a total of \$11,499,400. She indicated that \$1,974,600 of this amount (CE-III headworks) has already been included in rate base as part of the Phase II rate increase in March 2017, which leaves \$8,024,800 ( $\$9,999,400 - \$1,974,600$ ) of CE-III Phase 2 improvements for inclusion in Phase III rates along with \$1.5 million of phosphorus removal project costs. Ms. Stull stated that OUCC witness James T. Parks calculated \$4,280,000 of the approximately \$10.0 million of CE-III Phase 2 improvements were not constructed or placed into service, leaving \$3,744,800 ( $\$9,999,400 - \$1,974,600 - \$4,280,000$ ) to be included in Phase III rates. She added that of the \$1.5 million allowed for the phosphorus removal assets, Mr. Parks determined ASU only provided \$270,000 of the value of plant to be included in Phase III rates. Ms. Stull Table 5 compares the pre-approved CE-III Phase 2 costs with the value after removing the value of components not provided.

Ms. Stull explained that the \$180,064 difference between ASU's proposed Adjusted Net Operating Income and that recommended by the OUCC is primarily due to (1) increased operating revenues at current rates offset by increased utility receipts tax and income tax and (2) a reduction in depreciation expense due to the lower CE-III project costs and an increase in CIAC amortization. She provided a net operating income comparison in Table 6. Ms. Stull also explained that the OUCC's recommended operating revenues differ from those proposed by ASU because ASU's proposed operating revenues were based on September 2019 billing determinants and the OUCC's proposed operating revenues are based primarily on September 2020 billing determinants. She provided an operating revenue comparison in Table 7. Ms. Stull explained the OUCC's recommended operating expenses and taxes differ from those proposed by ASU because the OUCC's recommended depreciation expense and property tax expense are less than the amounts proposed by ASU due to the reduced CE-III Phase 2 values recommended by the OUCC. She also explained that the OUCC's amortization expense is higher due to an increase in CIAC to reflect the system development charges collected during the period October through December 2019 and that the OUCC's utility receipts tax and income tax expenses are higher due to the higher operating revenues recommended by the OUCC.

Ms. Stull discussed why the OUCC proposes a full refund is due ratepayers for the period February through September 2020. She explained that ASU implemented its proposed Phase III rate increase under the assumption that it had completed construction of the CE-III Project and placed it into service. Since the OUCC considers ASU did not complete its CE-III Phase 2 improvements until September 30, 2020, she concluded that ratepayers should not have been paying increased rates that included a return on and of improvements that were not yet completed and thus a full refund should be made to ratepayers for this period that the interim rates were in effect. In Table 8, Ms. Stull calculated a \$541,971.51 total refund through September 2020 is due to customers and provided the refund per customer class. She also provided the Phase III interim rate increase by rate class in Table 9. Ms. Stull explained how she determined the amount of refund, which took the operating revenues billed by customer class as provided by ASU and removes the amount of interim increase. She explained that the difference between the operating revenues billed and the operating revenues sans the interim rate increase yields the required ratepayer refund. Ms. Stull explained that she used this methodology to calculate the refund because there were anomalies in the billing determinant data provided by ASU wherein, among other things, the number of billings times the monthly rate did not yield the revenues as provided by ASU. Rather than use billing determinants with questionable accuracy, she considered her method to be the most straight forward approach to determine the refund.

Ms. Stull also provided testimony regarding the refund from October 1, 2020 through the issuance of a final order. She testified that because the OUCC is not recommending a rate increase, the OUCC considers that a full refund of the interim Phase III rate increase should be returned to ratepayers for the period October 1, 2020 through the date a final order is issued in this subdocket. She explained that since the date of the final order is not yet known, the OUCC cannot calculate the dollar amount of such a refund at this time. However, she calculated a refund for the period October through December 2020 of \$208,372 (OUCC Attachment MAS-3, page 2 of 10).

Finally, Ms. Stull testified that if the Commission determines a Phase III rate increase must be implemented, then ASU should be required to refund to ratepayers the difference between the



authorized increase and the interim increase for the period October 1, 2020 through the date an order is issued in this subdocket. She also recommended that the ratepayer refund be credited to customers over a 12-month period from the date a final order is issued in this subdocket and that ASU be required to submit an updated calculation of any refund due ratepayers, by customer class, through the date a final order is issued in this subdocket. She also recommended that ASU be required to submit a compliance filing reflecting the total bill credits by customer class for each month such credits were given and demonstrating the full refund has been made.

Ms. Stull recommended the Commission authorize a 2.72% Phase III rate decrease prospectively from the final order date; ASU be required to refund the interim rate increase collected from ratepayers from inception through the issuance of a final order in this subdocket; and the refund be credited to customers over a 12-month period.

**B. ASU's Responsive Testimony.** Scott L. Lods, President of ASU, testified in response to the OUCC's objections. He disagreed that the Stipulation in Cause No. 44272 required ASU to construct only Option 2 or Option 4, and he provided citations to the Stipulation and to the Order in that Cause on which he relied. He testified that ASU built a plant that provided the same capacity and function as Option 2, but that it had a superior design. He testified that FTDC built the plant for a total price to ASU of \$11.5 million, a savings of \$3.4 million (almost 25%) of what it would have cost without FTDC. He testified that the four "options" presented on rebuttal in Cause No. 44272 had been developed because ASU could never get an amount that the OUCC believed was needed to address the capacity and treatment needs. There was agreement that capacity was needed, but the OUCC did not provide an estimate for what it believed should be built. The "options" grew out of rebuttal testimony so that the Commission could decide how much was reasonably needed. He disagreed with the OUCC's approach of subtracting work or pieces of equipment from the preapproved amount. He testified the \$10 million had never been presented as an estimate of what it would cost to expand capacity to either 3.0 MGD or 4.0 MGD; instead this was the amount that ASU needed to place beyond risk so that it could attract the capital to build the plant. He quoted from a response to a Commission Docket Entry question directed to the parties in that Cause, which read in part: "[u]nder no scenario, however, does the OUCC believe that the needed upgrade could be constructed for less than \$10,000,000, regardless of how large the addition is or who builds it."

He also testified about what led ASU to change the size and design of the plant. Up to the issuance of an Order in the underlying Cause, ASU had planned to build a plant sized at 4.0 MGD with flexibility to expand to 6.0 MGD, with reflection in rates at this time of only \$11.5 million. For this to work, Mr. Lods claimed FTDC would have to do the construction, because the cost of the project (even at 3.0 MGD) would be higher without FTDC. The Commission's findings that any expansion beyond 3.0 MGD would be premature and disallowed and that a new affiliate agreement would be required that might need to include terms to which FTDC would not agree changed everything. He testified that ASU was ready to pull the plug on the project, competitively bid the improvement, and file a new rate case, which he estimated would have produced a further increase in rates of approximately \$10 per month per residential customer simply for the new plant. He testified that they looked again at the Order, concluded that perhaps the Commission's concern was less about construction up to the preapproved amount (given that the Commission had already approved \$10,000,000 back in Cause No. 44272 and that FTDC could build the plant for that

amount) and more about cost increases and future construction activities by FTDC. As such, ASU submitted construction affiliate agreements only covering the plant that were capped at the price of \$11.5 million (including phosphorus) and with the size scaled back to 3.0 MGD. This then started the process for review of affiliate agreements set forth in Ind. Code § 8-1-2-49(2)(g) that is detailed in the correspondence between ASU and the Commission cited previously in this Order. Mr. Lods testified that if at any point during this four-month process the OUCC had raised any objection or otherwise indicated that it did not agree with the decisions being made, or the terms of the affiliate agreements, or that it wanted ASU to remain with Option 4, the agreements would have been pulled and the project would have been competitively bid.

Mr. Lods also responded to Mr. Bell's claims that the plant had not been "complete" as of November, 2019. He testified that the Order in the underlying Cause authorized rates for each phase upon "certification that the new plant is in service and verification that construction costs have been incurred and paid." He explained that the IDEM inspection report attached to Mr. Bell's testimony (SAB-6) was of an inspection conducted on September 24, 2019, which was one month prior to the in-service certification. He identified the components of the project that had yet to be complete as of the in-service certification. These included clearing and retiring old sludge lagoons, the installation of a direct drainage lines from the tanks for future maintenance, a redundant influent macerator, and chemical feed lines for phosphorus directly to the tanks (rather than the headworks, which is where they had been installed). He testified that none of these interfered with the operation of the plant as it was designed.

Mr. Lods also responded to the testimony about the Micro Star Tertiary filter for phosphorus treatment. He said this filter was contemplated when the plant was still proposed for biological phosphorus treatment with a chemical backup. When ASU agreed to not-to-exceed contracts with FTDC, the design was changed to chemical phosphorus removal as the primary treatment (rather than as backup treatment to biological treatment) with the new configuration of the plant. He testified that the equipment to which Mr. Parks was referring was not listed in the schedule of values attached to the affiliate agreement, and that if Mr. Parks or Mr. Bell had had a concern about the design change, they should have raised it at that time.

In response to questions from the Presiding Officers, Mr. Lods testified that the phosphorus treatment building had been constructed on land owned by him personally so that ASU could preserve as much of its own property as possible in the event there is later a need to expand the plant. He also testified that the property will be transferred to ASU, and that he is open to suggestions as to how to determine price, including using condemnation. He also testified that additional valves had been installed in the chemical feed line connecting to the plant so that it can be washed so as to address the concerns raised by Mr. Parks.

Jennifer Leshney, P.E., Director of Engineering for Christopher Burke Engineering, LLC, also testified in response to the OUCC's objections. She testified that the plant has a capacity of 3.0 MGD, that it is in full compliance with the construction and NPDES permits that have been issued by IDEM, that it more closely resembles the preliminary design that would have been Option 4 in Cause No. 44272 (with capacity reduced to 3.0 MGD), and that construction was substantially complete as of October 18, 2019. Petitioner's Exhibit No. 2, p. 1. She testified that ASU's approach, which was to scale back Option 4 to a capacity of 3.0 MGD, was superior to

Option 2 because it preserved ability for future expansion, was a responsible decision, and it overall presented a better design. She explained the changes that were made to provide chemical phosphorus treatment. She testified that none of the items for which Mr. Parks had proposed a reduction were necessary or appropriate for the plant and that the plant is fully permitted as constructed. She also testified to the concept of substantial completion, which she defined as the point when the structure, plant work, etc. can be occupied or utilized for the purpose for which it was intended; and she provided sources that help guide the decision when a project has reached the point of substantial completion. She testified that, as applied to a wastewater treatment plant, when it is online and capable of treating the volume of wastewater it is designed to treat and comply with its limits, it is substantially complete. Applying this standard, the Carriage Estates upgrade was substantially complete on October 18, 2019. In response to the Commission's Docket Entry dated April 16, 2021, ASU provided construction documents that defined and used the term "substantial completion," in a similar fashion.

Marcene Taylor, President of Marcene Taylor, Inc. ("MTI"), also testified in response to the OUCC objections. MTI provides comprehensive construction cost planning, and Ms. Taylor is a Certified Professional Estimator. She provided a construction cost estimate based upon the September 28, 2020 as-built drawings and two site visits. Based upon the measured quantities, she estimated the plant, as built, would have cost within 5% of \$14,829,100 had it been competitively bid.

Dick R. Weigel, P.E., HWC Engineering, Inc., provided two engineering estimates that he had prepared for ASU. Petitioner's Exhibit No. 5. The first of these had been prepared in March 2017 and had been included in the various correspondence between ASU and the Commission when the affiliate agreements had been submitted. The second was based upon the as-built drawings dated September 28, 2020. The estimate for the plant based upon the as-built drawings is \$15,933,500.

Elton A. Wagner, an independent contractor for Schomburg & Schomburg Construction Incorporated ("S&S") also testified. Petitioner's Exhibit No. 6. He submits bids on wastewater treatment plant projects for S&S. He sponsored a bid that he had submitted to build the Carriage Estates upgrades in 2017, which had been included in the various correspondence between ASU and the Commission when the affiliated agreements had been submitted. He also sponsored a bid that he would submit for a wastewater treatment project that was designed as the actual plant, based on the as-built drawings. The bid to build the plant per the as-built drawings is for \$14,974,951.56.

Finally, Katelyn Shafer, accountant/financial advisor for Reedy Financial Group, P.C. sponsored ratepayer impacts from the various costs included in ASU's evidence for the Carriage Estates upgrade. She had prepared the original calculations included in ASU's Phase III submission, which was based upon the actual cost of the plant at a total of \$11,500,000. This produced a monthly rate for residential customers of \$64.82. The same worksheet in Attachment KS-2 calculates a monthly rate of \$71.34 using the estimate prepared by Marcene Taylor (\$14,829,100); Attachment KS-3 calculates a monthly rate of \$71.63 using the S&S bid (\$14,974,952); and Attachment KS-4 calculates a monthly rate of \$73.50 using the HWC estimate (\$15,933,500).

On April 16, 2021, the Presiding Officers issued a Docket Entry requesting that ASU provide certain information. On April 20, 2021, ASU filed its Response to the Docket Entry, providing certain construction documents in response to the Presiding Officer's Docket Entry. Also, ASU indicated that it had \$260,738 in System Development Charges received from January 1, 2020 through September 30, 2020.

## **6. Commission Discussion and Findings.**

**A. Preapproved CE-III Project.** The OUCC argued that ASU was required by the Stipulation and Settlement Agreement in Cause No. 44272 to build a plant designed like only either Option 2 or Option 4. This argument is controlled by the language of that Stipulation. The Commission's 44272 Order states on page 8:

The OUCC and Petitioner have stipulated that the Commission should issue an order approving the expenditures associates with the proposed CE-III Project and the inclusion of the new facilities resulting from the project in Petitioner's rate base in future rate case in an amount up to \$10,000,000, which amount is for construction only (inclusive of any allowance for funds used during construction ("AFUDC")). The parties agreed that ASU may proceed with construction of a plant with greater capacity than Option 2 (such as that included in Petitioner's proposed design – Option 4), but to the extent that Petitioner seeks to include such incremental costs in rate base in a future rate case, it will be Petitioner's burden to demonstrate the expenditures were reasonable and prudently incurred.

The language of the Commission's 44272 Order does not specify any specific project Option to be constructed, only that \$10,000,000 is the preapproval amount for the project. Additionally, the Order states that "ASU may proceed with construction of a plant with a greater capacity than Option 2." This is not limiting language, but instead is permissive language. Furthermore, Page 4, Section 5 of the Stipulation and Settlement Agreement states the following:

The Parties stipulate and agree that Petitioner's request for (i) approval of expenditures related to the CE-III Project, and (ii) inclusion of the new facilities resulting from this project in Petitioner's rate base in future rate cases, should be approved up to \$10,000,000, which amount is for construction only (inclusive of any allowance for funds used during construction ("AFUDC")). The Parties acknowledge and agree that Petitioner may choose to construct the plant improvements as proposed in its supplemental case-in-chief (referred to as "Option 4" in Mr. Serowka's supplemental rebuttal testimony). Whether Petitioner constructs Option 2 or Option 4, inclusion of associated expenditures in rate base for ratemaking purposes as preapproved in this Cause requires that the constructed plant be completed and in service.

Nowhere does the Stipulation require ASU to build either Option 2 or Option 4. The plant that was built provides the same treatment capacity as Option 2, but, as Ms. Leshney testified, "it offers more efficiency and flexibility for future expansion because of its resemblance to Option 4."

Neither Mr. Parks nor Mr. Bell testified otherwise. ASU retained full flexibility under the language of the Stipulation to build a bigger plant than Option 2. ASU “may” build Option 2; it “may” build Option 4; or it may proceed with a plant with greater capacity than Option 2 “such as that included in Petitioner’s proposed design – Option 4.” Accordingly, we reject the OUCC’s objection based upon the comparison between what was built and Options 2 and 4. The Commission finds ASU is eligible to add \$8,024,800 in rate base for Phase III for the CE-III Plant.

**B. Authorized Standby Chemical Phosphorus System Expenditure.** In Cause No. 44272, the Commission learned that ASU may need a standby chemical phosphorous removal project associated with the previously discussed CE-III Plant expansion, but this issue was deferred to ASU’s next rate case. Mr. Parks testified that the \$1.5 million amount for phosphorous removal was based on evidence ASU provided in Cause No. 44676, which indicated ASU would install a Micro Star phosphorus removal system. The broken-down costs in evidence included \$1.02 million for the Micro Star system itself and an additional \$210,000 for a new concrete channel in which to install the system.

However, in this subdocket Mr. Parks testified that what was built materially differs from what ASU indicated would be installed. He argued that the Commission’s approval no longer applies because the standby chemical phosphorus removal system built is not the same in price or quality that the Commission approved. He estimated that the phosphorous removal system actually installed cost ASU approximately \$263,000. OUCC Exhibit 2, p at 11. Mr. Parks concluded that ASU should not be permitted to include the \$1.5 million in rate base and any improvements made to secure standby chemical phosphorus removal should be evaluated for addition to rate base in its next rate case.

ASU witness Lods explained the cost estimates upon which Mr. Parks is relying are from when ASU was still planning to have biological phosphorus removal along with a chemical backup. Mr. Lods testified that several things changed at the time when he filed the affiliated agreements between ASU and First Time. After ASU agreed to a not-to-exceed contract with First Time in May 2017, they switched to chemical phosphorus removal with the reconfiguration of the CE-III Plant. Mr. Lods explained they agreed to a total not-to-exceed price for the entire project of \$11.5 million. Mr. Lods further testified that ASU/First Time divided that contract into three separate contracts for submission of the affiliate agreements. Mr. Lods testified that the equipment that Mr. Parks claims is missing is not in the schedule of values for the phosphorus removal contract. Finally, Mr. Lods argued that if the OUCC had a concern about the chemical phosphorus removal, they should have raised it at the time the affiliated agreements were filed.

We agree with Mr. Parks that the evidence provided by ASU in Cause No. 44676 specifies a Micro Star phosphorus removal system and concrete channel to install that equipment for a total cost of \$1.5 million. Unlike the preapproval of the WWTP, where the design was not specified, the evidence demonstrates that the Micro Star phosphorus removal system is a very specific piece of equipment that was preapproved. While utilization of the Micro Star system may have been rendered not needed by the redesign of the CE-III Plant itself, installation of that system was not subject to some conceptual redesign. The testimonies of both Mr. Parks and Mr. Lods confirm that the Micro Star system was not ultimately installed. Thus, the chemical phosphorus removal installed with the CE-III Plant is not consistent with the Commission’s approval. Further, ASU did

not provide any documentation of the actual cost to construct what was built. Instead, ASU offered evidence that it entered into a not-to-exceed contract for the project in question. Thus, the best evidence available of what was actually installed consists of an estimate performed by the OUCC totaling \$263,000, which should be added to rate base.

C. **Completion Date of Preapproved and Authorized Phase III Rates.** ASU submitted and served its Compliance Filing in consolidated Cause Nos. 44676 and 44700 on November 7, 2019. In that filing, ASU stated it “is submitting a certification that the Carriage Estates Wastewater Treatment Plant is in service....” ASU included an October 18, 2019 letter from Edward J. Serowka, P.E. indicating that the “Carriage Estates III Wastewater Treatment Plant Expansion has been placed into operation and started discharging effluent to Indian Creek on Friday, October 18, 2019.” This letter served as ASU’s certification that the Carriage Estates III Wastewater Treatment Plant Expansion is in service. Further, on September 30, 2020, in this Cause, ASU filed a Notice of Completion of Construction indicating the punch list items have been addressed and that construction is complete.

Scott A. Bell, Director of the OUCC’s Water and Wastewater Division testified the CE-III WWTP project and chemical phosphorus removal plant were not complete as of November 7, 2019 notwithstanding ASU’s November 7, 2019 compliance filing. Mr. Bell testified the Commission should reject ASU’s November 7, 2019 Compliance Filing and order ASU to provide a refund of all revenues paid as a result of the interim Phase III rate increase charged by ASU to its customers for service provided through September 30, 2020. The OUCC determined ASU’s plant upgrade was not complete as of the Compliance Filing based on onsite inspections conducted on December 4, 2019 and March 5, 2020 as well as IDEM reports and communications between ASU and IDEM. These included but were not limited to ASU’s April 24, 2019, request for extension of the CE-III WWTP Construction Permit expiration date, IDEM’s May 17, 2019 letter granting that request, IDEM’s October 1, 2019 Summary/Noncompliance Letter, IDEM’s June 29, 2020 Inspection Summary Letter, IDEM’s July 16, 2020 Inspection Summary/Noncompliance Letter, and many pictures taken by the OUCC at its on-site inspections, which the OUCC stated document the incomplete status of the CE-III WWTP Project and the chemical phosphorus removal system.

On April 24, 2019, ASU asked IDEM for an extension of the CE-III WWTP Construction Permit expiration date. An accompanying April 24, 2019 letter from Timothy R. Balensiefer, President, TBIRD Engineering declared that backfilling is on-going but should be completed in September 2019; electrical work is expected to be completed during the same timeframe; rough site grading is expected to be completed by early October 2019; final grading and seeding will continue until November 2019; Site preparation for pavement to begin in early Spring 2020; final pavement will occur in Spring of 2020 and be completed by June 2020; and sidewalks, fencing and reseeding areas affected by pavement placement would be completed by June 2020. IDEM’s May 17, 2019 letter granting the request acknowledged the project was not complete at that time, stating that “Due to project delays, construction has not yet been fully completed.” IDEM agreed the request was justified, adding that “it is necessary and justified to grant a permit time extension until June 30, 2020, to allow for the full construction completion of the project.” Based on the OUCC’s December 4, 2019 and March 5, 2020 on-site inspections, none of the items Mr. Balensiefer listed in his letter justifying his request had been completed at the time of those OUCC

site visits as evidenced by the pictures attached to Mr. Bell's testimony.

IDEM's October 1, 2019 IDEM Inspection Summary/Noncompliance Letter shows the project's completeness as of September 24, 2019 when IDEM conducted its onsite "Compliance Evaluation Inspection" less than one month before Mr. Serowka wrote his October 18, 2019 letter used to certify that the Carriage Estates Treatment Plant upgrade was in service. IDEM's October 1, 2019 Inspection Summary/Noncompliance Letter noted that "At the time of the inspection the facility did not have all the construction completed on the plant upgrade." The letter also concluded that "The new influent train including a macerator and lift station pumps were not completely constructed or operating at the time of inspection" and "the facility still had the temporary chemical phosphorus treatment system installed due to the permanent phosphorus treatment system not being completely constructed." IDEM also wrote ASU "was operating the two new SBR's manually during the day and shutting them off at night, while running the four older SBRs automatically 24/7." IDEM found ASU "was still disinfecting with chlorine following the four older SBRs through a pipe that bypasses the new UV structure and then disinfecting with the new UV system following the two new SBRs."

OUCC staff met with ASU owner, Scott Lods, to view the CE-III WWTP Project on December 4, 2019, and based on their visual inspection and discussions with Mr. Lods, the OUCC concluded not all components of the CE-III WWTP project had been completed. Mr. Bell included photos with descriptions of the December 4, 2019 OUCC inspection as OUCC Attachment SAB-10. We agree with the OUCC the photographs show the state of the facilities as of that date, and they indicate the facilities were not complete. The OUCC also visited the site of the CE-III project on March 5, 2020 and met with a representative of ASU. The OUCC staff observed the facilities that had been constructed at that time and took pictures of some of the facilities. Based on the visual inspection and discussions with the utility representative, again the OUCC concluded not all components of the CE-III WWTP project and the chemical phosphorus removal project had been completed.

IDEM also conducted an onsite inspection on June 24, 2020 resulting in a June 29, 2020 inspection summary letter, which supports the conclusion that the plant upgrades that ASU did construct was not complete as of its Compliance Filing. The letter stated, "At the time of the inspection it was noted that the facility still has to finish installing a second influent macerator, finish sludge pond closure through Office of Land, finish gravity sewer piping for drains for tanks, finish air piping to old sludge holding tanks, finish cat walks and stairs for new tanks, install gravel driveway, and finish final grading and seeding." The letter also stated that "The facility was aware of the extension completion date of June 30, 2020, but it noted they may not complete construction by then depending on the weather and the closure approval of the sludge holding pond." The quoted letter also stated that "In addition to the treatment plant expansion (construction permit No. 20788), the facility is in the process of completing construction associated with the installation of a phosphorus removal system through a separate construction permit, No. 22977." The Letter further stated that "The facility has completed the chemical feed building and is still in the process of installing chemical feed lines to the SBRs." The IDEM letter and NPDES Wastewater Facility Inspection Report further documents that the CE-III WWTP project was not complete at the time of this June 24, 2020 Reconnaissance Inspection. This further justifies a conclusion that the project had not been completed on or before November 7, 2019, the date of ASU's original compliance

filing.

This conclusion is further supported by IDEM's July 16, 2020 Inspection Summary / Noncompliance Letter following its July 7 Reconnaissance Inspection. At that time, IDEM observed violations by ASU stating that ASU's Compliance Schedules evaluation generated an unsatisfactory rating due to the facility "still conducting construction activities associated with the treatment plant expansion construction permit No. 20788 that expired on June 30, 2020." The letter also stated that "At the time of inspection, the facility had not completed all construction activities associated with the treatment plant expansion construction permit No. 20788." IDEM's letter also documented that "The facility was in the process of installing the second influent macerator" and "The facility still needs to finish gravity sewer piping for drains for tanks, finish air piping to old sludge holding tanks, finish cat walks and stairs for new tanks, install gravel driveway, and finish final grading and seeding." We find this July 16, 2020 IDEM letter further documents ASU had not completed all construction activities for the CE-III WWTP project and the standby chemical phosphorus removal project as of July 7, 2020, a full seven months after ASU's initial Compliance Filing on November 7, 2019.

Ms. Leshney testified that Indiana Code, American Institute of Architects ("AIA"), and Engineers Joint Contract Documents Committee ("EJCDC") standard documents define "substantial completion" as the date when construction of a structure is sufficiently completed, in accordance with the plans and specifications (Contract Documents), as modified by any complete change orders, so that it can be occupied for the use for which it was intended. Ms. Leshney opined that none of the incomplete remaining tasks listed in IDEM's June 2020 inspection affected substantial completion since they did not relate to the operation of the treatment plant as designed. While the Commission understands the meaning of substantial completion as it applies to the contract documents between the owner and contractor, the term has no relevance as to whether the CE-III Plant is completed and "in service" for ratemaking purposes and in accordance with the Commission's Order in Cause No. 44272. The OUCC's testimony indicates that significant work was not completed as of November 7, 2019 that clearly prevents the plant from operating as intended/permitted, most notably, construction of the WWTP headworks, correct installation of the chemical feed system and installation of the redundant macerator. We disagree with Ms. Leshney equating the term "substantial completion" with "in-service" and her conclusion that none of the incomplete remaining tasks listed in IDEM's June 2020 inspection affected substantial completion since they did not relate to the operation of the treatment plant as designed.

Based on the foregoing, we find that ASU had not completed its CE-III project and was not in service at the time it filed its Compliance Filing on November 7, 2019. Instead, we find that for purposes of establishing Phase III rates, ASU had completed the project it constructed and was in service by September 30, 2020, which is ASU's Notice of Completion of Construction.



**D. Authorized Rate Base.** Based upon the evidence and the determinations made above, we find that ASU’s net original cost rate base as of September 30, 2020 is as follows:

	Phase II	CE-III Stage 2 Adjustments	Phase III
Wastewater Plant in Service	\$ 24,383,125	\$ 8,024,800	\$ 32,670,925
Phosphorus Removal		263,000	
Less: Accumulated Depreciation	4,949,171	3,175,055	8,124,226
Net Utility Plant In Service	19,433,954	5,112,745	24,546,699
Less: Net CIAC	6,590,571	(202,396)	6,388,175
Advances for Construction	37,900		37,900
Net Original Cost Rate Base	<u>\$ 12,805,483</u>	<u>\$ 5,315,141</u>	<u>\$ 18,120,624</u>

**E. Net Operating Income.** Based upon the evidence and the determinations made above, we find ASU’s net operating income is as follows:

	Phase II	Pro forma Present Rates	Phase III
Operating Revenues	\$ 3,579,565	\$ 4,004,893	\$ 4,436,671
O&M Expenses	1,616,431	1,616,671	1,616,671
Depreciation/Amortization	438,691	628,023	628,023
Taxes Other than Income	254,396	268,841	275,350
Federal and State Income Tax	261,135	299,349	410,803
Total Operating Expenses	2,570,653	2,812,884	2,930,847
Net Operating Income	<u>\$ 1,008,912</u>	<u>\$ 1,192,009</u>	<u>\$ 1,505,824</u>

**F. Authorized Revenue Requirement.** The Commission updated ASU’s rate base to include the additional CIAC associated with System Development Charges as reflected in its April 20, 2021 Docket Entry Response of \$260,738, net of additional CIAC amortization of \$4,887, to yield a Net CIAC amount of \$6,388,175. Based upon the evidence and the determinations made above, we find ASU’s Phase III authorized revenue requirement is as follows:

Original Cost Rate Base		\$ 18,120,624
Times: Weighted Cost of Capital		8.31%
Allowable Net Operating Income		1,505,824
Less: Adjusted Net Operating Income		1,192,009
Net Revenue Increase Required		313,815
Divided by: Revenue Conversion Factor		72.68%
Recommended Revenue Increase		\$ 431,778
Percentage Rate Increase Required		11.08%

**G. Customer Refunds.** On November 7, 2019, ASU submitted its Phase III Compliance Filing, including an “In Service Certification” stating the Phase III improvements had been placed into operation as of October 18, 2019 and proposing a 21.87% rate increase. On January 29, 2020, the Commission issued a Prehearing Conference Order that, among other things, granted approval of a 21.87% interim Phase III rate increase, subject to refund, pending the resolution of this subdocket. On September 30, 2020, ASU subsequently filed a “Notice of Completion of Construction” which we find to be ASU’s effective date for its Phase III rates. As discussed above, the interim rates differ from the Phase III final rates approved by the Commission in this Order. Therefore, a refund is due to ASU’s customers from January 29, 2020 (implementation of interim rates) through September 30, 2020 (Phase III completion). We agree with the OUCC’s calculated refund for this period of \$541,971.51, based on billing information provided by ASU.

Additionally, ASU has continued to bill its customers the authorized interim rates from October 1, 2020 through the date of the issuance of this order. Therefore, an additional refund is due to reflect our finding with respect to accumulated depreciation and other adjustments as of September 30, 2020 and our other findings above.

ASU shall submit a compliance filing under this Cause within 30 days after the effective date of this Order for review by the OUCC and approval by the Commission’s Water/Wastewater Division. This compliance filing should include ASU’s calculation of the refund for the period October 1, 2020 through the issuance date of this Order and should be provided by customer class in a manner similar to Table 8 included in Ms. Stull’s testimony. Both the refund for the period January 29 through September 30, 2020 and the refund for the period October 1, 2020 through the issuance date of this Order should be refunded to ASU’s customers over no more than a 12 month period beginning the first billing period after ASU has submitted its compliance filing. These refunds should take the form of either a credit to each customer’s bill or an immediate cash refund. ASU may apply bill credits to existing customers and refunds to former customers who have paid the interim rate. ASU is further ordered to submit an additional compliance filing at the end of the 12 month refund period, reflecting the total bill credits provided by customer class for each month such credits were given and demonstrating the full refund has been made.

Accordingly, we find that ASU shall issue a refund of the Phase III interim rate increase, approved, subject to refund, in the Commission’s Prehearing Conference Order issued on January

29, 2020, to its customers through the date of this Order as described above. ASU shall have 30 days to submit a proposal for issuing the refund to be accomplished no later than 12 months from the date of this Order.

**H. Record Drawings.** Having accurate record drawings or as-built drawings is important for several reasons including safety. Without accurate record drawings the location of buried pipes and electrical lines is not known. This poses significant safety risk for contractors or even ASU staff when conducting work at the plant. Additionally, accurate record drawings are important for asset management and for potential future acquisition appraisals. In his testimony, Mr. Parks reported he compared the 2014 and 2019 design drawings to the 2020 as-built drawings and the actual facilities during his site visit. Mr. Parks also provided testimony showing ASU admitted it did not build according to the IDEM construction permits, never modified the permits, and did not construct any of the four Options developed under the preapproval case. Mr. Parks noted an additional complicating factor. Instead of starting with the original permitted design and showing all the changes, Mr. Serowka created new plan sheets combining both projects together under a new project. This makes it much more difficult to identify all deletions and changes. ASU's admission that it did not build according to the IDEM construction permits is very concerning and when added to the fact that its record drawings are inaccurate, we struggle with determining what ASU actually built. During cross examination Mr. Weigel, a licensed professional engineer with over 34 years of experience, stated a contractor would need to keep record drawings of what was actually built so the changes may be reflected in the final record drawings submitted to the client. Mr. Weigel also stated that if deviations from the IDEM permit were made he would need to notify IDEM and request that the change be approved before the change was made. ASU did not follow standard engineering or construction practices as described by Mr. Weigel. We agree with Mr. Parks the state of ASU's record drawings is very concerning and must be remedied. ASU shall hire an independent third-party consultant to produce accurate record drawings. Having a set of as-built drawings provided to a utility at the completion of a project is standard industry practice in which we believe the cost was included in the amount pre-approved in ASU's pre-approval case. Therefore, we agree that the cost of these record drawings shall not be included in any future rate case as additional recovery through rates. ASU shall file under this Cause a copy of the record drawings within 180 days of issuance of this Order.

**I. Effluent Flow.** Mr. Parks noted ASU does not accurately measure, record, and report effluent flows. Mr. Parks also raised a concern about ASU's effluent meter calibrations and provided evidence that the meter has been reprogrammed incorrectly multiple times resulting in recording higher flow than actual.

In his testimony, Mr. Parks highlighted the problem with the meter while he described observations made during a OUCC site visit. Mr. Parks explained the flow meter was reading flow when no flow was observed being discharged. A wastewater treatment facility must report its effluent flows to IDEM through Monthly Reports of Operations ("MRO"). The effluent flows reported by ASU for November are concerning and seem to further highlight both issues of a meter recording flow when no flow is occurring and the reprogramming of the meter by individuals other than the meter technician. In November 2020, ASU reported widely varying flows from around 1 MGD with multiple unexplained flow spikes causing flows over 5 MGD before dropping to under 1 MGD. ASU provided no reason for these spikes and drop and there was no rainfall to account

for the additional flow. Something similar happened in the flows reported for December 2020. ASU's flows were under 1 MGD then spiked higher to over 8 MGD staying there for a time and then dropping to around 1 MGD. On cross ASU's witness Jennifer Leshney had no explanation for the December spike other than a meter malfunction and admitted these readings were in error. The effluent flow readings reported by ASU show a disturbing trend of spiking flows and then corrections without explanation or rain events. Either the new meter ASU is seeking recovery of in rates is faulty or improper meter reprogramming is occurring. We agree with Mr. Parks recommendations that the effluent flow meter should be recalibrated twice a year and only be maintained and calibrated by the BL Anderson meter technician. Having the meter calibrated by only the meter technician will help alleviate some of these disturbing flow patterns.

Mr. Parks provided ASU's MROs submitted to IDEM. He noted the MRO for November 2020 indicates ASU reported treating over 80 million gallons (2.6938 MGD). Mr. Parks also provided an estimation of the volume treated based on the recorded pump run times of 304 hours. Based on pump run times, Mr. Parks analysis demonstrates ASU only treated 38 million gallons. In rebuttal Ms. Leshney took issue with Mr. Parks calculation using pump run times because he used the maximum pump flow rate rather than the lower variable flow rate. But on cross examination, Ms. Leshney agreed that using the max value actually caused Mr. Parks to overestimate the flow not underestimate it. We find Mr. Parks analysis compelling and also concerning. The effluent flow reported by ASU is much higher than the OUCC's conservative estimate based on pump run times. Getting accurate reported flows is very important. Based on the MROs submitted by ASU it appears ASU's flow is approaching the design average flow when that is not actually the case. If ASU is approaching or reaches 90%, IDEM can potentially issue a Sewer Ban Early Warning to notify the utility to begin planning a plant expansion. With ASU's inaccurate reports, it appears they are approaching the 90% threshold when in reality they are not near that mark. ASU needs to correct its effluent reporting errors and should recognize these large swings in flow reading as inaccurate and exclude them from the data used to determine plant flows. We also agree with Mr. Parks' recommendation that ASU should use the datalogging features on its influent and effluent flow meters to record influent and effluent flows in at least 5-minute intervals, retain these flow records, and submit the flow data bi-monthly to the Commission and the OUCC under this Cause. ASU shall submit its first bi-monthly compliance report 60 days from the issuance date of this Order and shall continue with bi-monthly reporting for 12 months or until the Presiding Officers believe ASU's effluent flow records are consistently accurate, whichever is later.

We are concerned that the BL Anderson meter technician, during his annual calibration, reported finding the effluent meter had been reprogrammed. Mr. Parks' testimony includes the meter technician's notes on the invoice for the certificate of calibration in 2019 that states the meter was programmed to put 10 inches in the offset and this was causing the meter to read 10 inches high. Again in 2020, the BL Anderson technician noted he found multiple programming errors and that this was the second calibration where he noticed programming changes. The technician suggested a password lock be added to the flowmeter to prevent others from making changes. Mr. Parks also recommended that the meter be password locked to prevent unauthorized reprogramming. We find this to be a sound recommendation and caution ASU to make sure the meters are password locked and that only the BL Anderson meter technician is accessing and recalibrating the meters.

Mr. Parks also raised the issue that ASU's sampler is not connected to the effluent meter to signal when the CSBR tanks are discharging. This is concerning as the sampler may pull samples when the tanks are not actually discharging. ASU's practice is to pull 24 samples from the post air tank regardless of whether there is any effluent flow. ASU's practice is troubling and will not provide accurate results. Additionally, the NPDES permit requires ASU to collect representative effluent samples. ASU's samples are not representative of the effluent flow being discharged. ASU is potentially pulling samples when effluent is not flowing and its samples are only representative of the water in the post air tank, not the effluent discharged. To fix the sampling issues, we find that ASU shall integrate the sampler and the meter to pull effluent samples only when the effluent is actually being discharged.

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

1. ASU is authorized to increase its Phase II wastewater rates and charges to produce total annual operating revenues of \$4,436,671<sup>4</sup> and net operating income of \$1,505,824, a 11.08% increase from Phase II wastewater rates.

2. Prior to implementing the rates authorized in this Order, ASU shall file the tariff and applicable rate schedules under this Subdocket for approval by the Commission's Water/Wastewater Division ("Division"). Such rates shall be effective on or after the Order date subject to the Division's review and agreement with the amounts reflected.

3. ASU shall make customer refunds as required by this Order. In compliance with Finding Paragraph 6.G. above, ASU shall submit a compliance filing presenting its calculation of the refund due to customers for the period October 1, 2020 through the date the rates authorized in this Cause are implemented. ASU is further ordered to provide customer refunds for the period January 29, 2020 through September 30, 2020, which amounts to \$541,971.51, as required by this Order. ASU shall also submit a compliance filing after the end of the 12-month refund period reflecting the total bill credits provided by customer class for each month such credits were given and demonstrating the full refund has been made.

4. ASU shall implement the accuracy and security precautions and data recording, retention and reporting requirements recommended by Mr. Parks with respect to ASU's influent and effluent flow meters as set forth in his testimony and in compliance with our Finding Paragraph 6.I. Furthermore, ASU shall make the compliance filings required by this Order.

5. ASU shall retain a third-party consultant to create accurate as-built drawings at no cost to the ratepayers in compliance with Finding Paragraph 6.H. above and make all compliance filings required by this Order.

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

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<sup>4</sup> \$4,004,893 (*pro forma* present rate operating revenues as of September 2020, OUCC Attachment MAS-1, Schedule 4) plus \$431,778 (required increase in operating revenues shown above).

**HUSTON, FREEMAN, KREVDA, AND ZIEGNER CONCUR; OBER ABSENT:**

**APPROVED: SEP 22 2021**

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

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**Dana Kosco  
Secretary of the Commission**