

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF AMERICAN SUBURBAN)
UTILITIES, INC. FOR APPROVAL OF)
COMPLIANCE FILING AND PHASE III) CAUSE NO. 44676 S1
RATES)

OUCC's PROPOSED ORDER

The Office of Utility Consumer Counselor ("OUCC"), by counsel, hereby submits its proposed order.

Respectfully Submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



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CERTIFICATE'S OF SERVICE

This is to certify that a copy of the foregoing *Office of Utility Consumer Counselor Proposed Order* has been served upon the following counsel of record in the captioned proceeding by electronic service on May 28, 2021.

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ORDER OF THE COMMISSION

Presiding Officers:

David Ziegner, Commissioner

Stefanie Krevda, Commissioner

David Veleta, Senior Administrative Law Judge

On December 9, 2019 the OUCC filed its Objection to ASU’s Phase III Compliance Filing, which it submitted on November 7, 2019. On December 19, 2019, ASU filed its Response to OUCC Objection to Phase 3 Tariff Compliance. On December 23, 2019, the OUCC filed its Reply to Petitioner’s Response to the OUCC’s Objection to ASU’s Phase 3 Tariff Compliance Filing. The Commission issued a docket entry in Cause No. 44676 on January 8, 2020 creating this sub-docket and a legal notice of a prehearing conference and preliminary hearing to be held on January 27, 2020. Thereafter, ASU filed a January 24, 2020 correction to payment verification.

On January 29, 2020 the Commission issued its Prehearing Conference Order and on January 30, 2020 we issued a docket entry establishing an evidentiary hearing to take place on April 29, 2020 and subsequently noticed that hearing on February 4, 2020. On January 29, 2020, the Commission also granted approval of a 21.87% interim Phase III rate increase, subject to refund, pending the resolution of this sub-docket. On February 21, 2020 we received ASU’s Joint Motion to Modify the Procedural Schedule and granted that Motion on February 26, 2020. On February 28, 2020 ASU filed its Unopposed Motion to Modify Procedural Schedule, which we granted on March 4, 2020. On June 30, 2020 ASU filed an Unopposed Motion to Modify Procedural Schedule, which we granted on July 2, 2020.

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 we 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 we granted on January 29, 2021. On February 15, 2021 the OUCC filed its Second Motion to Modify Procedural Schedule (agreed), which we granted on 2/26/2021.

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, 2020 ASU filed its Responsive Testimony and Attachments including the Responsive Testimonies of Scott Lods, Jennifer Leshney, PE, Marcene Taylor, Katelyn Shafer, Dick R. Weigel and Elton A. Wagner. On April 7, 2021 we granted ASU's Second Motion for Administrative Notice 4.

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. American Suburban Utilities Inc.'s Submitted Corrections to Petitioner's Exhibits 5 and 7 on April 21, 2021.

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

1. Notice and Jurisdiction. Notice of the hearing in this sub-docket was given and published as required by law. American Suburban Utilities, Inc. (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 American Suburban Utility's rates and charges. Therefore, the Commission has jurisdiction over the parties and the subject matter of this Cause.

2. Utility'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, wherein ASU was authorized to increase its rates in three phases. This sub-docket 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

Testimony of OUCC Witness Scott Bell. OUCC witness, Scott Bell has been the director of the OUCC's water and wastewater division for more than 15 years and began working as a staff engineer for the OUCC. Mr. Bell explained that this sub-docket was initiated following the OUCC's objection to ASU's November 7, 2019 Phase III compliance filing in which it asserted it had completed its CE-III 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 IC 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 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”).¹ 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. (Cause No. 44272, Order April 9, 2014, p. 16, emphasis added.) Mr. Bell attached to his testimony ASU’s Compliance Reports (OUCC Attachment SAB-2).

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.”² (Emphasis added.) 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. If explained that 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.” (Emphasis added by the OUCC.)

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.³ Mr. Bell added that the requirement that the project be complete affects the timing

¹ Cause No. 44272, Supplemental Testimony of Edward J. Serowka (p. S5), dated March 17, 2017.

² Cause No. 44272, Stipulation and Settlement Agreement Between American Suburban Utilities, Inc. and the Indiana Office of Utility Consumer Counselor. (p. 4)

³ At the time the foregoing provision was agreed to by the parties and approved by the Commission, there was no statutory provision for forward-looking test periods. As such, when ASU sought approval to include its project in rate base, it would have been completed and all costs incurred before the Commission would have been asked to make a rate base determination. However, ASU

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, 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. 44272.⁴ 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

chose to depend on a forward-looking hybrid test period that would end many months after the rate order. The evaluation that was originally conceived to occur as part of a rate case had to be done as a compliance filing.

⁴ ASU responded on December 7, 2019 to informal discovery DR 3-7 asking ASU to indicate which option was built (1, 2, 3, or 4), that "ASU needs more clarification on this question."

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:

4. Test Period. Petitioner proposed a hybrid test period using historic data for the 12-month period ending March 31, 2015, and further historic and projected data through June 30, 2018, as authorized by Ind. Code § 8-1-2-42.7(d)(3). At the Prehearing Conference held in Cause No. 44676, the OUCC opposed Petitioner's proposed test period, contending that it is not consistent with Ind. Code § 8-1-2-42.7 ("Section 42.7") because it would extend for too long. In the Prehearing Conference Order for Cause No. 44676 issued November 18, 2015, we held:

In this case, the four major projects that Petitioner proposed to implement through phased in rates were the subject of the Commission's Order in American Suburban Utilities, Cause No. 44272, 2014 WL 1477992 (IURC Apr. 9, 2014) ("44272 Order"). The 44272 Order granted pre-approval to all four major projects. Thus, the pre-approval provides unique circumstances which help alleviate some of our concerns with having such a long test period and make the use of a hybrid test period that is greater than 12 months appropriate in this case. Furthermore, by using a hybrid test period Petitioner would avoid incurring the additional expense of filing an additional rate case to capture the preapproved major projects occurring further out in the future.

44676 Prehearing Conference Order, p. 2.

As provided in the Prehearing Conference Order, the test year to be used for determining Petitioner's projected operating revenues, expenses, and operating income shall be the 12-month period ending March 31, 2015, and further historic and projected data through June 30, 2018. This is the first case filed under Section 42.7 utilizing a hybrid test period.

(Order – Cause No. 44676, pp. 3- 4, emphasis added by the OUCC.)

Mr. Bell noted that Petitioner'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.^{5 6} 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 included 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 expansion project.

Mr. Bell next addressed the issue of when ASU's expansion project was completed. Mr. Bell said that on 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 are complete and in service.

Mr. Bell testified that the CE-III WWTP project was not complete as of November 7, 2019 notwithstanding ASU's November 7, 2019 compliance filing. Mr. Bell said the OUCC obtained several documents from IDEM indicating that not all components of ASU's CE-III WWTP and Chemical Phosphorus Removal Plant were complete and in service as of November 7, 2019. Mr.

⁵ See Cause No. 44272, Supplemental Rebuttal Testimony of Edward J. Serowka, December 11, 2013, Exhibit EJS-SR3 for the Option 2 layout, components, and costs.

⁶ See Cause No. 44272, Supplemental Testimony of Edward J. Serowka, July 19, 2013, Exhibit EJS-S2 for the Option 4 layout and components and Exhibit EJS-S3 for the Option 4 project costs. See also Cause No. 44676, Direct Testimony of Edward J. Serowka, September 4, 2015 and Exhibit EJS-10 for the Option 4 layout and costs.

Bell included pictures from the OUCC's on-site inspections December 4, 2019 and March 5, 2020 documenting the incomplete status of the CE-III WWTP Project and the Chemical Phosphorus Removal System.

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 reseeding 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 according to ASU's. He noted the April 24, 2019 construction schedule listed twenty-five (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."⁷ (See OUCC Attachment SAB-7.) 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. (See OUCC Attachment SAB-9) 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. (See OUCC Attachment SAB-7). Mr. Bell noted that IDEM representatives photographed the facilities during its 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

⁷ OUCC Attachment SAB-7, ASU Response to IDEM Inspection 2019-09-24, IDEM Concern 1e.

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 the 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 Carriage Estates 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 on 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 sub-docket.

Mr. Bell also address the adequacy of ASU’s records. Mr. Bell’s testimony also 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 Petitioner’ relationship with its affiliate companies.”⁸ On page 41 and 42 of the order the Commission made the following statement:

We believe the documentation Petitioner maintains from its affiliate lacks sufficient details for an auditor to determine the reasonableness of the amount requested for recovery. Further, we are concerned with the lack of documentation maintained by Petitioner. Therefore, Petitioner shall require First Time or any other

⁸ Commission Order in Cause Nos. 44676 and 44700, dated November 30, 2016. (p. 41)

affiliate company to submit detailed invoices for all costs including unit costs for structures, materials, labor, equipment, and engineering, which should be compared to the cost estimate or contract entered into by Petitioner to complete work. We expect to receive this level of detail regardless of whether the work performed was done under a lump sum or time and materials contract. (p. 41)

The Commission concludes that the affiliate transaction process prescribed for Petitioner in the final order for Cause No. 43294 (Jan 23, 2008) may not be adequate in insuring that the affiliated transactions are competitive, reasonable, and in the public interest. The affiliate contract between Petitioner and First Time Development Corp. is set to expire in January of 2017. The Commission shall address these issues upon the filing of Petitioner's next affiliate contract provided to the Commission for review pursuant to Ind. Code § 8-1-2-49(2)(g). (p.42)

(Emphasis added by the OUCC)

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. (p. 41) (Emphasis added by the OUCC.)

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. (See OUCC Attachment SAB-16) The following language sets out the concerns:

Affiliate Contract No. 2017-1 (Headworks), Affiliate Contract No. 2017-2 (Phosphorus Removal), and Affiliate Contract No. 2017-3 (CE-III Expansion) provide that ASU shall pay First Time the costs as reflected in the contracts' respective Schedule of Values. The Activity Descriptions in the Schedule of Values total \$1,975,200, \$1,500,000, and \$8,024,000 for each contract respectively. However, these amounts represent the project caps approved in the Final Order. While First Time may be compensated up to those amounts, its compensation should be based on the work it performs and the actual costs incurred and not set automatically at the maximum amount authorized by the Commission.

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 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." (Emphasis added by the OUCC)

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." (See OUCC Attachment SAB-19.) The General Counsel added the following disclaimer:

As a disclaimer, this staff decision does not indicate pre-determination by the Indiana Utility Regulatory Commission regarding future ASU proceedings, its compliance with Commission orders, or the need to provide sufficient evidence on which the Commission may base its determinations.

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. (See Final Order, p. 41, Cause No. 44676). Mr. Bell explained that ASU responded that First Time invoices have already been submitted. ASU's response also included an explanation for its answer that I have included as OUCC Attachment SAB-20. Mr. Bell testified that in order to secure information to obtain the actual costs incurred by First Time Development to construct the CE-III expansion, the OUCC asked more questions (DR 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 sub-docket.

Testimony of OUCC Witness James Parks. Mr. Parks 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 Development Corporation (“FTDC”), and placed in service at its Carriage Estates wastewater treatment plant (“WWTP”) on or before October 18, 2019. These improvements are for the Phase 2 (CE III Expansion) and Phase 3 (Phosphorus Removal) facilities.

Mr. Parks testified that ASU did not construct the Carriage Estates III wastewater treatment plant expansion 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.

I. Biological and Standby Chemical Phosphorus Removal

Mr. Parks explained that in Cause No. 44272, when the Commission pre-approved Petitioner’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 OUC 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 OUC requested cost support through OUC DRs 16-52 and 16-53. Specifically, the OUC 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.⁹ 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

⁹ ASU’s responses to DRs 16-52 and 16-53 were included in Attachment JTP-2 (pages 249-251) of my testimony in Cause No. 44676 filed on January 13, 2016. See Attachment JTP-1 for ASU’s responses to DRs 16-52 to 16-55, dated January 7, 2016 under Cause No. 44676.

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 SU 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. ¹⁰ 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 explained that Table 1 also identifies items not constructed or installed in whole or in part and the associated cost of those items.

Table 1 – Cost Justification for the Micro Star Filter
ASU response to DR 16-52 (Cause No. 44676 - January 7, 2016)¹¹

Component	Unit	Qty	Unit Cost	Amount	Built?
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¹⁰ See Cause No. 44272, Serowka Supplemental Rebuttal Testimony, December 11, 2013, page 17. Mr. Serowka indicated ASU would justify the phosphorus cost testifying: “The choice between chemical and biological removal obviously remains uncertain at this time and needs to continue to be studied. One of the two methods will ultimately be chosen, and ASU will be prepared to explain and justify its choice and the dollars invested in a later rate case.” (Emphasis added by the OUCC)

¹¹ Notes: (1) ASU installed one - 315-gallon day tank and three - 5,000-gallon tanks (only one was permitted). (2) It is unknown if all electrical and instrumentation was installed. (3) Chemical feed lines to the new CSBR tanks’ Flow Divider Box may not be installed.

Building Modifications of Blower/Chemical Building	SF	288	\$300	\$86,400	No
Chemical Metering Pumps	Ea.	3	\$18,000	\$54,000	2 units
Chemical Transfer Pumps	Ea.	2	\$10,200	\$20,400	2 units
1,500 Gallon Day Tank	Ea.	1	\$9,600	\$9,600	No (1)
15,000 Gallon Tanks	Ea.	2	\$48,000	\$96,000	No (1)
Micro Star Tertiary Filter	Ea.	1	\$1,020,000	\$1,020,000	No
Equip. Installation & Concrete Channel for Micro Star Filter	LS	1	\$210,000	\$210,000	No
Fittings, Pipe & Accessories	LS	1	\$42,000	\$42,000	Yes
Electrical Equip. Installation	LS	1	\$90,000	\$90,000	(2)
Install Chemical & Drain Lines	LS	1	\$150,000	\$150,000	(3)
Total				\$1,778,400	

Mr. Parks listed what remains unfinished with respect to chemical phosphorus removal under Construction Permit No. 22877 (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.¹² 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 FTDC'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 what steps needed to be taken to complete the wastewater laboratory, bathroom, and utility room in the Chemical Feed Building, ASU responded:

¹² See Cause No. 44272, Serowka Supplemental Testimony, July 19, 2013, page S7.

Due to the construction cost limits imposed on ASU by the OUCC and IURC, it was necessary to eliminate the new plant laboratory, bathroom, utility room and offices in the Chemical Feed Building and these were not shown in Plan Sheet 20-005-32, nor included in ASU's Affiliate costs for construction.¹³

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.¹⁴

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.¹⁵ 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

¹³ ASU response to DR 9-10.

¹⁴ Cause No. 44676-44700, Final Order, November 30, 2016, page 30.

¹⁵ See Cause No. 44676-44700 Final Order, November 30, 2016, page 41. "Therefore, Petitioner shall require First Time or any other affiliated company to submit detailed invoices for all costs including unit costs for structures, materials, labor, equipment, and engineering, which should be compared to the cost estimate or contract entered into by Petitioner to complete the work. We expect to receive this level of detail regardless of whether the work performed was done so under a lump sum or time and materials contract."

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 estimated of the chemical phosphorus system's costs was \$263,000:

New building (one-third of the claimed \$180,000)	\$60,000
Transfer and Metering Pumps	\$14,000 (rounded up)
Chemical tanks	\$26,000 (rounded up)
Chemical Feed Lines	\$47,000
Metering / Controls / Electrical	\$75,000
Installation at 25%	<u>\$41,000</u>
Total	\$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.¹⁶ In its Reply to ASU's Response to the OUCC's Objection to ASU's Phase III Tariff Compliance Filing, the OUCC pointed out the discrepancy:¹⁷

Instead of the Micro Star filter, Petitioner has an unfinished Plant Control, Laboratory, and Chemical Feed Building, a portion of which contains the phosphorus tanks, pumps, and feed equipment. Though it was included in Mr. Lods' verification of the costs ASU incurred and paid, this new building was not part of ASU's design for phosphorus removal provided to the OUCC in Cause No. 44676. Mr. Lods verified that the new building's scheduled value is \$900,000 of which 95% or \$855,000 has been completed.¹⁸ Complicating matters further, in its response to the OUCC's Objection, Petitioner submitted a second Schedule of Values that contradicts its Verified Schedule of Values.¹⁹ This second Schedule of

¹⁶ ASU submitted Affiliate Agreement 2017-2 (Phosphorus Removal) with a Schedule of Values to the IURC on January 13, 2017 for review and finalized on May 2, 2017 with no changes to the SOV.

¹⁷ See Cause No. 44676, OUCC Reply to ASU's Response to the OUCC's Objection to ASU's Phase III Tariff Compliance Filing, December 23, 2019, page 4.

¹⁸ Undated First Time Development Corp. CEIII Phase 3 Construction Schedule of Values ("SOV") for the Phosphorus Removal System, - page 3 of 3 of the Verification by Scott Lods, dated 24-Oct-19, which was part of Petitioner's Submission of Compliance Filing and Phase III Rates, November 7, 2019.

¹⁹ Petitioner's response to the OUCC's December 9, 2019 Objection to the Phase III Tariff Compliance Filing, filed on December 19, 2019 includes a different, undated Schedule of Values that does not match any of Petitioner's Verified costs

Values lists a much lower \$180,000 cost for the new building and costs for all other phosphorus components that are more than double Mr. Lods verified costs of \$600,000. The only cost that is the same between these two Schedules of Values is the total cost of \$1,500,000.

(Emphasis added by the OUCC)

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. 2017-2.20

Mr. Parks compared the Standby Chemical Phosphorus cost estimates ASU used to justify the rate base addition compare 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.²¹ 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.

Table 2 – Changing Costs for Supernatant-Standby Chemical Phosphorus Removal

Component	44272, Item 15 Cost Estimate Options 1-4 12/11/2013	44676, DR 16-52 Costs 01/07/2016	Phosphorus Sched. of Values 11/07/2019	Revised Phosphorus Sched. of Values 01/24/2020
Building Modifications	\$42,000	\$86,400		
New Building			\$900,000	\$180,000
Chemical Metering Pumps	\$4,000	\$54,000		
Chemical Transfer Pumps	\$8,500	\$20,400		
Chemical Equipment			\$160,000	\$275,000
1,500 Gallon Day Tank		\$9,600		
5,000 Gallon Tanks	\$8,000		\$100,000	\$285,000
15,000 Gallon Tanks		\$96,000		
Micro Star Tertiary Filter		\$1,020,000		

on page 3 of 3 of the Verification by Scott Lods, dated 24-Oct-19 which was part of Petitioner's Submission of Compliance Filing and Phase III Rates, November 7, 2019.

²⁰ See Attachment JTP-2 for copies of ASU's Payment Verification filed on November 7, 2019 and ASU's revised Schedule of Values for the Phosphorus removal project filed on January 24, 2020.

²¹ Mr. Serowka testified in Cause No. 44676 that the standby chemical phosphorus cost would be \$1.5 million yet listed \$1,778,000 in ASU's response to DR 16-52.

Equip. Installation & Concrete Channel-Micro Star Filter		\$210,000		
Piping, Valves & Fittings	\$75,000	\$42,000	\$150,000	\$170,000
Chemical Control Panel	\$40,000			
Metering Instrumentation			\$82,000	\$292,000
Electrical Equip. Installation		\$90,000		
Chemical Equip. Installation			\$108,000	\$298,000
Chemical & Drain Lines Install		\$150,000		
Total	\$177,500	\$1,778,400	\$1,500,000	\$1,500,000

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 FTDC.²² 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.²³ 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?²⁴ Mr. Parks added that IDEM permitted all needed phosphorus facilities (biological, supernatant, and standby) in 2014 and a separate standby phosphorus removal system in 2019.²⁵

Mr. Parks stated the Affiliate Contract No. 2017-2 (Phosphorus Removal) ASU submitted to the IURC 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 FTDC 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, 2019.²⁶ Mr. Parks argued that the Commission’s 2016 approval of the \$1.5 million

²² See Attachment JTP-3 for ASU’s responses to DR 1-1, DR 3-10 DR 5-5, and DR 5-6 pertaining to the listed costs in the Schedule of Values for the Phosphorus Removal project.

²³ It appears ASU never submitted design drawings to IDEM for the \$1.5 million Micro Star system. ASU has not submitted any affiliate bid for the Micro Star system linked to any set of design drawings or IDEM construction permit. It also appears that ASU’s affiliate never requested, and ASU never issued a Change Order deleting the biological phosphorus removal system and the supernatant/standby chemical phosphorus removal system that were permitted by IDEM.

²⁴ Construction Permit 22977 – Phosphorus Removal, February 21, 2019. See Attachment JTP-4.

²⁵ Construction Permit 20788 – Carriage Estates Wastewater Treatment Plant Expansion, Feb. 21, 2014.

²⁶ ASU response to DR 4-16.

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 enhanced biological phosphorus removal (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.²⁷ 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 (i.e. biological phosphorus removal), notwithstanding the OUCC's request for copies of studies or reports establishing operator

²⁷ ASU response to DR 12-3

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 T-Bird 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. 44676.²⁸

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 \$---million cost claimed by ASU was actually incurred.²⁹ 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.³⁰ As a consequence, ASU may have plugging problems with the chemical feed piping long term. Mr. Parks characterized this is 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.

²⁸ See the April 21, 2017 letter to Nicholas Kile from IURC General Counsel, Elizabeth Heline

²⁹ See the TBird construction verifications provided in response to DR 1-1 and the lone Phosphorus project inspection report, originally dated 10/24/2019, provided in response to DR 5-6 in Attachment JTP-3.

³⁰ USALCO 38 Technical Data Sheet, Bulk Storage and Feeding System, Revised 06/14/18.

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.³¹ He noted it appeared the pumps failed on June 5th and were offline for 50 day. 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.

II. Preapproval of carriage estates expansion -work never constructed or installed

Mr. Parks provided background for the preapproval of the Carriage Estates WWTP 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 Development Corporation 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 Enhanced Biological Phosphorus Removal (“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. The other three expansion options ASU presented are as follows:³²

³¹ See Attachment JTP-5 for ASU’s response to DR 9-9 (b) page 6 of 9 which is the Phosphorus log of chemical usage for June and July 2020 showing the pump outage.

³² See Cause No. 44272, Supplemental Rebuttal Testimony of Edward Serowka, Dec. 11, 2013, pages 12-17 and Attachment JTP-6 for Options 2 and 4 layouts and ASU developed costs.

- Option 1 Re-rate the plant to 2.0 MGD and make upgrades needed to replace deteriorated equipment causing operational problems.
- Option 2 Upgrade and expand the plant to a capacity of 3.0 MGD.
- Option 3 Upgrade and expand the plant to 4.0 MGD, but do not install the additional tanks that would permit the plant to be readily expanded to treat 6.0 MGD.
- Option 4 Upgrade and expand the plant to 4.0 MGD, and install the additional tanks that would permit the plant to be readily expanded to treat 6.0 MGD. This option is really a 6.0 MGD plant because nearly all major structures and piping are constructed upfront with some process equipment for one CSBR Tank and one influent lift station pump not installed.

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 enhanced biological phosphorus removal (“EBPR”), which change approximately doubled the cost from what ASU had originally proposed in its case. However, Mr. Parks noted, ASU never installed the enhanced biological phosphorus removal 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.³³ 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.³⁴ 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 enhanced biological phosphorus removal 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:

³³ ASU rated the four original CSBR tanks at 1.5 MGD and 2,502 lbs./day organic load based on only three of the four CSBR tanks in service. IDEM issued Construction Permit No. 12745 on April 20, 1999.

³⁴ Annual Project Status reports were required under the Cause No. 44272 Final Order, Item No. 5, page 16. See OUCC witness Bell’s testimony for copies of ASU’s 2015, 2016, 2017, and 2019 Project Status Reports.

Q32. Please describe the CETP-III Project.

A32. I will not repeat in total my testimony from Cause No. 44272, but ASU has decided to build what was described in my Supplemental Testimony in that Cause, and was also referred to as Option 4 in my Supplemental Rebuttal Testimony and the Stipulation and Settlement Agreement. This is the option to expand the existing CSBR plant to 4.0 MGD with additional tankage constructed to allow the expansion to 6.0 MGD with the installation of additional equipment at a later date if needed.³⁵

Mr. Parks added that he learned during his review of ASU's testimony in 2015 that FTDC had already issued the first invoice on July 3, 2013, two weeks before FTDC/ASU signed the CE-III Expansion 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 4.³⁶ 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 wastewater treatment plant.³⁷ 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

³⁵ Cause No. 44676, Direct Testimony of Edward J. Serowka, September 4, 2015, p. 16, lines 13-20.

³⁶ IDEM issued Construction Permit No. 20788 for the *Carriage Estates III Wastewater Treatment Plant Expansion* on February 21, 2014. According to the permit, this project was to expand capacity to 4.0 MGD (with three new CSBR tanks and a fourth CSBR tank – concrete only) based on plans and specifications prepared by Lakeland InnovaTech, and certified by Edward J. Serowka, P.E., with revised drawings submitted for review on January 13, 2014.

³⁷ **327 IAC 3-2-1.5** Valid permit requirement

Sec. 1.5. No person shall cause or allow the construction, installation, or modification of any water pollution treatment/control facility or sanitary sewer without a valid construction permit issued by the commissioner.

did not seek a permit modification. Yet, as ASU admitted in response to discovery, ASU did not build in accordance with the construction permit (DR 4-1), and ASU had never applied for or received permit modifications (DR 4-3).³⁸

Mr. Parks noted ASU also admitted it did not construct any of the four Options it developed under the preapproval case (DRs 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 resembles 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.³⁹ 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 IURC 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 WWTP expansion project when he read IDEM's October 1, 2019 Inspection Summary/Noncompliance letter.⁴⁰ He added, however, he did not know the extent of the changes or that ASU had dropped enhanced biological phosphorus removal, 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 materially 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:

³⁸ See Attachment JTP-7 for ASU's responses to DR 4-1 and 4-2 and for other ASU responses regarding construction permits and Options 1, 2, 3 and 4.

³⁹ ASU's response to DR 12-3.

⁴⁰ IDEM's Noncompliance letter was from a September 24, 2019 inspection by IDEM's Facility Construction and Engineering Support Section and the Compliance Evaluation Section.

The permittee received a construction permit Approval No. 20788 on February 21, 2014, to expand the WWTP to a 4.0 MGD SBR type WWTP. The upgrade included new macerators, new influent lift station, new four -tank continuous sequential batch reactor (CSBR) system (three tanks needed for CSBR to handle 4.0 MGD and fourth tank to be used as aerobic digester until the time when influent flows exceed 4.0 MGD and up to 6.0 MGD when all four tanks are to be used for CSBR), new ultraviolet disinfection system, new effluent flow meter, four new aerobic digesters, conversion of existing SBR tanks to aerobic digesters, new sludge transfer pumps, new blowers, conversion of the existing chlorine contact tank to supernatant holding tank, and new liquid sludge loading station. Final sludge is aerobically digested and land applied by a contractor.⁴¹

(Emphasis added by the OUCC)

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 permit 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 I 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 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.⁴² 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.⁴³ He said ASU also indicated it did not have design drawing mark-ups made by FTDC, showing project changes because "Mark-up drawings were not required nor provided." And "All requests for project clarifications from ASU or FTDC to the design engineer were verbal, and no written questions or responses were required nor maintained."⁴⁴ Mr. Parks said there were also no change orders on the project, as the inspection

⁴¹ Construction Permit No. 22977, Phosphorus Removal, February 21, 2019.

⁴² On multiple occasions, ASU had withdrawn construction permit applications when the design needed to be changed. ASU's withdrawal of plans and specifications, design summaries and permit applications include: 1) November 3, 1997 for the CE-II WWTP, 2) December 8, 2011 upgrade plans and request to re-rate the plant capacity to 2.0 MGD, and 3) March 3, 2018 – withdrawal of phosphorus project.

⁴³ See Attachment JTP-8 for ASU's responses to informal DRs 2-9, 2-10, 2-11 and DRs 5-1 and 12-3 regarding design changes and change orders.

⁴⁴ *Id.*, ASU response to informal DR 2-9, December 4, 2019.

firm, TBird Design Services Corporation (“TBird”) noted no changes to the project in its inspection reports.

Mr. Parks declared the changes ASU made to CE-III WWTP 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, enhanced biological phosphorus removal 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 Development Corporation. 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 schedule of values (“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. Most entries consist of only two to three sub-items without details. For example, the new CSBR tanks SOV entries were limited to the following:

2.0 NEW CSBR AERATION TANKS

2.1 Excavating / Backfilling	\$92,650.00
2.2 Install CSBR Structure	\$1,373,000.00
2.3 Install piping, valves, and equipment	\$1,160,000.00

Mr. Parks explained that from such entries, it is impossible to know what FTDC was to build. In the new CSBR tanks example, nowhere in the Affiliate Contract including the SOV does it identify such basic information as 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 Schedule of Values 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.”⁴⁵ Mr. Parks noted that during the OUCC’s December 4, 2019 site visit, he directly asked FTDC/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

⁴⁵ ASU response to OUCC informal Data Request 3-7, dated Dec. 6, 2019.

a 3.0 MGD plant and is therefore entitled to receive the preapproved amount.⁴⁶ 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 project its preapproval costs. In Cause No. 44272, ASU testified all options would cost more than the preapproved amount summarized in Table 3:

Table 3 – Preapproval Options and Costs, Cause No. 44272

Option	Capacity	Construction and Bid Cost	Engineering and Inspection	Total Estimated Cost
1	2.0	\$12,703,173	\$551,695	\$13,254,910
2	3.0	\$15,513,674	\$673,805	\$16,187,479
3	4.0	\$18,190,807	\$790,080	\$18,980,887
4	4.0/6.0	\$19,108,341	\$829,932	\$19,938,273

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 resemble 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 1 and 2 that ASU did not construct. Mr. Parks provided a Table 4 identifying these components and whether they were built.

Table 4 – Comparisons of Major Features of Options 2 and 4 for the CE-III Expansion to Facility Components Not Built by ASU

Item / Component	Option 2	Option 4	Status
Enhanced Biological Phosphorus Removal (“EBPR”) with mixers / SCADA /Lab	Yes	Yes	Not Built by ASU
No. of original CSBR tanks with EBPR	4	0 ⁴⁷	0

⁴⁶ “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.

⁴⁷ Under Option 4, the four original CSBR tanks were to have been converted to aerobic digesters and reused.

Number of new CSBR tanks with EBPR	2	448	0
Total number of CSBR tanks with EBPR	6	4	0
Original CSBR aeration volume at low water level (1,000 ft ³) for wastewater	211.3	0.0	211.3
Rehabilitate four original CSBR tanks for continued wastewater service with EBPR	Yes	No	Not Built by ASU
Convert Chlorination / Post Air tank for Supernatant Phosphorus removal	Yes	Yes	Not Built by ASU
Convert original CSBR tanks to Aerobic Digesters	No	Yes	Deleted by ASU
New Control / Laboratory Building	Yes	Yes	Not Built
Convert Control Building ⁴⁹	Yes	Yes	Not Built
Asphalt Paving	Yes	Yes	Not Built
Number of Electrically Operated Valves	14	14	2 Installed
Design Average Flow Capacity (MGD)	3.0	4.0/6.0	5.3
Peak Hourly Flow Capacity (MGD)	6.0	8.0	7.3
Organic Capacity (lbs./day BOD ₅)	5,004	6,676	8,828
New CSBR aeration volume at low water level (1,000 ft ³)	105.6	415.2 / 553.6 ⁵⁰	276.8
Total CSBR aeration volume at low water level (1,000 ft ³)	316.9	415.2 / 553.6	488.1

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.⁵¹ 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.

⁴⁸ Four much larger CSBR tanks were to be constructed but only three of the four tanks would be equipped.

⁴⁹ ASU mislabeled this building. It should be the existing Blower/Chemical Building which ASU also labels in the IDEM permitted design drawing set as the Existing Blower Building on revised Plan Sheet 13-021-02, dated 01/07/2014, and the Existing Air Blower Building on Plan Sheet 13-021-25, dated 01/03/2014.

⁵⁰ The aeration volumes (1,000 ft³) listed of 415.2 / 553.6 were for 4.0 MGD and 6.0 MGD respectively.

⁵¹ 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.

**Table 5 – Comparisons of Major Features of Options 2 and 4
to Facility Components Deleted by ASU**

Item No.		Work Not Done	Deduct Amount (rounded)
Option 2	Option 4		
4	to Aer. Digesters	Modifications of original CSBR tanks for continued wastewater service (not done)	\$1,294,000
4	5 (b)	Mixers for Biological Phosphorus removal	\$800,000
10	10	Conversion of Exist. Chlorine Contract/Post Air Tank to Supernatant Decanting Tank (not done)	\$180,000
12 (a)	12 (a)	New Aeration/ UV Control Bldg. (reduced sq. ft.)	\$226,000
13 (b)	13 (b)	Air Blowers in Existing Blower Bldg. (5 fewer)	\$300,000
14	14	New Control/ Laboratory Building (not built)	\$356,000
15	15	Convert Existing Control Building (not done)	\$138,000
18 (a)	18 (a)	CSBR Control and SCADA Panel with Instrumentation (no EBPR)	\$500,000
19 (e)	19 (e)	Asphalt Paving (no paving completed)	\$247,000
20 (h)	20 (h)	Electric 16" and 8" valves (12 valves not installed)	\$239,000
Total deduction amount (construction only for items above \$100,000)			\$4,280,000

A. Original CSBR Tanks' Equipment Rehabilitation (Not Done)

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 quoted Mr. Serowka's testimony in that Cause:

First, much of the equipment at the existing plant has reached its useful age. It is beginning to malfunction, which is causing operational issues at the plant. Many of these replacements have been requested by IDEM.⁵²

The equipment in the existing CSBR Aeration Tank has simply reached its useful age and needs replacement.⁵³

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

⁵² See Cause No. 44272, Supplemental Rebuttal Testimony of Edward Serowka, Dec. 11, 2013, page 13 and Exhibit EJS-SR3.

⁵³ *Id.*, page 14

electric plug valves, new flow divider boxes, new decanter assemblies, new waste sludge pumps, piping, and fittings, and all new access bridges and stairways. Mr. Parks noted ASU did not rehabilitate the original 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).⁵⁴ 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 IURC 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 IURC, 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 twenty-year-old concrete tanks in good condition.⁵⁵ 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. My 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

⁵⁴ See Attachment JTP-9 for ASU's responses to IDEM and discovery responses pertaining to the four original CSBR tanks.

⁵⁵ The original CSBR tanks were certified in service on July 1, 2000.

is not in the public interest and contrary to the preapproval case. Mr. Parks noted that in Cause No. 41254, less than twenty years ago, Mr. Serowka testified on behalf of ASU that the expected life for the concrete plant is 50 years.⁵⁶

Mr. Parks added that his engineering experience confirms that concrete tanks provide long service lives noting that 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. (See Figures 1 and 2 and Attachment JTP-10.)

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." See Attachment JTP-9 for ASU's communications with IDEM and ASU responses to OUCC discovery regarding the original CSBR tanks. 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 IURC and the OUCC on December 19, 2019⁵⁷ 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.

⁵⁶ Cause No. 41254, Direct Testimony of Edward J. Serowka, October 30, 1998, pages 11-12.

⁵⁷ See Petitioner's Response to OUCC Objection to Phase 3 Tariff Compliance Filing, December 19, 2019, page 3.

Mr. Park 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,⁵⁸ 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 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.⁵⁹ 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

⁵⁸ See Attachment JTP-9 for the ASU's September 28, 2020 response to IDEM Deficiency Notice regarding the condition of the four original CSBR tanks.

⁵⁹ See Attachment JTP-9 for the February 26, 2020 email from IDEM's Dale Schnaith to Ed Serowka which references Mr. Serowka's idea to keep the existing CSBR tanks as back-up tanks.

Commission should subtract \$1,294,000 (construction only) of the proposed rate base addition ASU has claimed in this Phase.⁶⁰

B. Mixers and SCADA for EBPR

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 enhanced biological phosphorus removal 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."⁶¹

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).⁶² 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.⁶³ 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

⁶⁰ Calculated starting from ASU's estimated \$1,330,600 for Item No. 4 – Modification of Existing CSBR Tanks and crediting \$10,000 for removal of the flow divider boxes, \$8,000 for four new valves, and \$19,000 for new waste sludge pumps. These were the only items that ASU completed.

⁶¹ See ASU's response to the IURC's March 8, 2016 Docket Entry regarding the standby chemical phosphorus removal system, Part B (3), March 14, 2016, page 9.

⁶² The mixer cost is calculated as 8 mixers in the two new CSBR tanks (ASU permitted design) at ASU's estimated \$50,000 cost per mixer plus 16 smaller mixers (four per original CSBR tanks) at \$25,000 each equals \$800,000.

⁶³ ASU estimated the equipment cost of \$50,000 for each submersible mixer (35.4-inch impeller, 33.5 HP, 26,200 gpm units) with a separate installation cost (not specified).

\$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).

C. Supernatant Decanting Tank

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."⁶⁴ He added that ASU's engineer elaborated on the supernatant phosphorus control needed:

6. Phosphorous removal will require better control of the plant's sludge inventory including the amount and timing of supernatant discharge back to the head of the plant. The sludge is enriched with phosphorus, which it will re-introduce into the supernatant. As a result, we must more carefully monitor and control the disposal of the sludge and supernatant. Therefore, ASU will install four (4) larger new aerobic digester tanks than previously proposed along with converting the existing four (4) CSBR tanks into new aerobic digesters. In addition, the existing chlorination / dechlorination / post air tank will be converted into a supernatant holding tank so that the supernatant can be returned to the wet well of the new influent lift station under controlled conditions. A new supernatant return lift station will be provided so that the supernatant from the new aerobic digesters and the existing two (2) circular aerobic digesters can be collected and pumped to the new supernatant holding tank. These changes to the sludge handling system are important not only for inventory control but also since the new construction will require removal of the existing sludge lagoons.⁶⁵

⁶⁴ See Cause No. 44272, Serowka Supplemental Rebuttal Testimony, December 11, 2013, page 14.

⁶⁵ See Cause No. 44272, Serowka Supplemental Testimony, July 19, 2013, page S8.

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.⁶⁶

Mr. Park 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.⁶⁷ 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.

D. Reduced size Aeration / UV Control Building

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 ft²), 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 ft²). 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.

E. Aeration Blowers

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. I recommend the Commission disallow \$300,000

⁶⁶ The Supernatant Return Lift Station wet well is 6 feet square with a 5.7 feet maximum supernatant depth. The volume is 6 ft. times 6 ft. times 5.7 ft deep time 7.48 gallons per cubic foot equals 1,535 gallons.

⁶⁷ See Attachment JTP-11 for aerial views of Carriage Estates during construction showing the sludge lagoons and tertiary pond and that the constructed facilities do not intrude on the sludge lagoons.

(construction only) because ASU installed half of the proposed blowers (five fewer).⁶⁸ It is not in the public interest for ratepayers to pay for blowers never installed.

F. Control / Laboratory Building

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).

G. Convert existing Control Building for Supernatant Chemical Phosphorus Removal

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.⁶⁹ 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 Building⁷⁰. 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).

H. Asphalt Paving

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 2 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.⁷¹)

⁶⁸ Calculated as five blowers at ASU's estimated \$60,000 equals \$300,000.

⁶⁹ Cause No. 44272, Serowka Supplemental Testimony including Exhibit EJS-S3, Carriage Estates III Estimated Costs, July 19, 2013.

⁷⁰ As listed on Plan Sheet 13-021-02 (revised -1/07/14) included in the set of permitted design drawings under Construction Permit No. 20788, February 21, 2014.

⁷¹ ASU also included costs for stone placed under all concrete structures. These costs were separately identified for each Option. Also note that gravel is invoiced based on tonnage not volume as indicated by Mr. Serowka in the Option estimates. One cubic yard of gravel weighs approximately 1.42 tons.

I. Electrically Operated Valves

Mr. Parks pointed out that ASU proposed installing 14 electrically operated valves consisting of four 16-inch valves at \$23,000 each plus ten 8-inch valves estimated at \$18,400 each. But ASU only installed two of the smaller 8-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.⁷²

J. Total Of CE-III Expansion Items Not Built or Not Provided

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 be included in rate base.

III. Flow Meters and Effluent Sampling Inaccuracies

Mr. Parks testified ASU does not accurately measure, record, and report effluent flows based on his observations, review of ASU's Discharge Monitoring Reports ("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 twelve 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 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 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.

⁷² The deduction for valves never installed is calculated as four 16-inch valves at \$23,000 each (\$92,000) plus eight valves at \$18,400 each (\$147,200) equals \$239,200.

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 18th (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.

IV. Continued Sanitary Sewer Overflows ("SSOs")

Mr. Parks reported that in 2013 ASU's engineer Mr. Serowka testified the Carriage Estates project would stop SSOs 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 eleven 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 6-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 upgrade 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 FTDC'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 your 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. able to view inside the Influent Lift Station wet well and valve pit during your October 8, 2020 site visit 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 Design Services Corporation 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).

V. Inaccurate As-Built Drawings

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-Builts 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 Design Services Corp. ("TBird") 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.

Testimony of OUCC Witness Margaret Stull. Margaret A. Stull, Chief Technical Advisor, Indiana Office of Utility Consumer Counselor ("OUCC"), 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 sub-docket. Ms. Stull stated that because American Suburban Utilities, Inc. ("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 sub docket. Ms. Stull also presented the OUCC's calculation of these refunds and recommend monthly bill credits over a twelve-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 Indiana Utility Regulatory Commission ("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 sub-docket. 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 1 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 4 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 OUCC's amortization expense is higher due to an increase in contributions in aid of construction 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 discusses 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 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 2020 through the date a final order is issued in this sub-docket. 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 2020 through the date an order is issued in this sub-docket. She also recommended that the ratepayer refund be credited to customers over a twelve-month period from the date a final order is issued in this sub-docket 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 sub-docket. 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 sub-docket; and the refund be credited to customers over a twelve-month period.

B. ASU's Responsive Testimony

Testimony of ASU witness Marcene Taylor. Marcene Taylor is President of Marcene Taylor Inc. ("MTI"), a company providing professional comprehensive Construction Cost Planning, Estimating, Budget Management, and Value Engineering solutions with an emphasis in educational/academic, institutional, healthcare, and civic facilities. Ms. Taylor formed MTI in 2010. Ms. Taylor was retained by ASU to prepare a construction cost estimate for the wastewater treatment plant expansion at the Carriage Estates Treatment Plant. This estimate was based upon preliminary and as-built drawings and project specifications prepared by Lakeland InnovaTech, as well as two site visits and discussions with project owners and engineers.⁷³

Ms. Taylor was assisted in her evaluation by two other MTI staff, Alfred Louie and Melvin D. Cowen who worked under her direction and supervision. Ms. Taylor notes that while her company uses published cost data such as R.S. Means,⁷⁴ that they "do not rely solely on such data." MTI also utilizes "estimates compiled from databases with real market data and managed with local marketplace resources."

As part of her evaluation, which is represented in Attachment MT-1 and in Workpaper MT-1, Ms. Taylor met with Mr. Lods to review the project in February 2020 and prepared an initial estimate based upon preliminary drawings dated February 14, 2020. Subsequent site visits, as well

⁷³ See Attachment MTI-1, page 4 of 40.

⁷⁴ I feel like we need an authoritative description here of what RS Means is and to describe how broadly it is (or is not) used. I have not been able to find that description online, other than at RS Means' website.

as a review of the as-built drawings dated September 28, 2020, led Ms. Taylor to develop a final construction cost estimate of \$14,829,100, which includes construction costs only.

Testimony of ASU witness Jennifer Leshney. Jennifer Leshney testified ASU retained her to respond to OUCC issues raised in this sub docket. She stated the Carriage Estates Wastewater Treatment Plant upgrade (“CEIII”) that ASU installed has a 3.0 MGD capacity and asserted the new plant is in full compliance with the construction and NPDES permits. Ms. Leshney opined the plant more closely resembles the preliminary design that was “Option 4” presented in Cause No. 44272 but with the capacity reduced to 3.0 MGD than it does “Option 2”. She asserted IDEM required a level of redundancy and process back up not initially conceived or included in the originally permitted (4.0 MGD expandable to 6.0 MGD) plant.

Ms. Leshney reported ASU developed the design, permitted and was pursuing Option 4 but funding was reduced causing ASU to scale the plant back to 3.0 MGD. She testified ASU believes strongly that expansion to 4 MGD will be required in the near future and rather than re-design to Option 2 which she asserted limited expansion, ASU salvaged the Option 4 plans to preserve the ability for future expansion. Ms. Leshney did not explain why Option 2 would have limited expansion. She claimed the plant ASU built is a better design than Option 2 because it offers more efficiency with expansion flexibility and the piping, tank, and equipment adjustments show ASU prioritized cost savings. She responded to OUCC witness Parks’ \$4.28 million rate base reductions for project elements ASU did not build by stating there is no need for any of the equipment for which Mr. Parks makes a deduction.

Ms. Leshney provided examples of future expansion flexibility including redundant macerators plus channel bypass to reduce risk of failure causing upstream sanitary sewer overflows (“SSOs”), influent and valve vault piping installed for future pumps, upsizing influent pump piping to the new CSBR tanks from 18” to 24”, upsizing the discharge tank before the UV system at no additional cost to the project, and a UV system designed for 14.4 MGD of peak flow in case simultaneous high instantaneous discharges from both CSBR tanks occurs. She opined that given the differing opinions and flow projections, the designer took the conservative approach for expansion flexibility to address continued growth or I&I challenges.

Ms. Leshney testified the original IDEM approved design (4.0 MGD expandable to 6.0 MGD) included four CSBR tanks (3 current, 1 future) each rated for 1.5 MGD.⁷⁵ She stated the plant design was reduced to 3.0 MGD, 2 CSBR tanks were constructed, and as permits were updated, IDEM required ASU to maintain the existing four CSBR tanks as a redundant back up capacity of 1.5 MGD. She asserted that the designer and ASU adjusted during final construction to provide the redundancy at no additional cost to the project. Ms. Leshney acknowledged the original CSBR tanks are no longer the primary treatment source.

Ms. Leshney acknowledged the original permit included biological phosphorus removal with a redundant chemical feed system, but because of the not-to-exceed \$11.5 million contract price ASU only installed chemical phosphorus removal. She asserted chemical feed lines were

⁷⁵ The 1.5 MGD flow rate per tank appears to be in error based on the permitted 4.0 MGD treatment capacity from 3 CSBR tanks (1.33 MGD each).

installed to the macerator structure and in use, but IDEM required ASU install additional lines directly to the CSBRs. She opined the original chemical feed system location (in the existing Air Blower Building) could not be used because the chlorine system had to be maintained until the new UV system was on-line, and the building size was inadequate for the tanks and equipment. Ms. Leshney also testified that without biological phosphorus removal, the aerobic digesters had to be enlarged to treat additional (chemical) sludge and IDEM required two additional digester blowers. She opined that ASU had fortunately sized the (existing) blower building for future expansion so the blowers could be accommodated and commented that these two changes are examples of a well thought out design and adjustments typically made during construction.

Ms. Leshney responded to OUCC witness Bell's recommendations that the Commission reject ASU's November 7, 2019 Compliance Filing and order ASU to refund all interim Phase III rate increase revenues paid by ASU customers for service through September 30, 2020. She asserted that the CEIII was substantially complete and in service when ASU filed its "In Service Certification" on October 18, 2019 and opined the overhead photograph sponsored by Mr. Lods, showing when various components were placed in service, confirms this. She testified that Indiana Code, AIA and 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 (OUCC Attachment SAB-14) affected substantial completion since they did not relate to the operation of the treatment plant as designed. She opined that when a plant is on line and capable of treating the volume of wastewater it is designed to treat and comply with the IDEM limits, it is substantially complete. Ms. Leshney did not address how substantial completion should be addressed for Options 2 and 4 project components including biological phosphorus removal that ASU deleted.

Ms. Leshney responded to OUCC witness Parks' testimony about mis-programming of ASU's effluent flow meter causing erroneously high flow readings and reported flows during zero discharge periods. She asserted Mr. Parks was not estimating flow correctly because he used pump run times and the pump's full flow capacity instead of the lower flows produced by the variable frequency drive pumps. Ms. Leshney opined that ASU accurately measures and reports effluent flows. She nevertheless acknowledged that upon discovering inaccurate flows, ASU had the flow meter tested and calibrated and installed additional influent and effluent meters for verifying flow. She tabulated the additional influent and effluent meter readings in Attachment JL-2 and opined the readings were within the expected accuracy of the Palmer Bowlus flume.

Ms. Leshney responded to OUCC witness Parks' criticism that the As-Built drawings include errors and do not accurately depict what ASU built. She disagreed with his recommendation that the Commission order ASU to hire an independent third-party engineer to produce accurate Record Drawings. She asserted this would be an unnecessary expense because ASU installed yard piping where future expansion is not expected, thereby minimizing future excavation, has extensively photo documented all buried piping, has the ability to locate and pothole piping as necessary, and no future contractor or operator would dig without first locating buried utilities.

Testimony of ASU witness Dick Weigel. Dick R. Weigel, a professional engineer (P.E.), employed by HWC Engineering, Inc. (HWC), provided written testimony and sponsored Attachments DRW-1, DRW-2, and DRW-3. His resume was included as Attachment DRW-1. Mr. Weigel testified that he prepared two engineering estimates for ASU. He stated that one construction cost estimate was prepared in 2017 for a plant expansion proposed to be built. He stated that the first cost estimate was based on plans dated November 11, 2013, with instructions to eliminate two CSBR tanks as well as other equipment to reduce the size to 3.0 MGD. Mr. Weigel stated that the construction cost estimate from 2017 was included as Attachment DRW-3. Mr. Weigel stated that he was asked to prepare a second construction cost estimate based upon as-built drawings dated September 28, 2020. He indicated that the second estimate was for a plant expansion that has already been constructed and was included as Attachment DRW-2. Mr. Weigel stated that the estimates were prepared upon his review of the plans, and his knowledge and experience. He stated that his estimates represent what it would cost for construction to build the plant described in the respective plans if it were competitively bid. Mr. Weigel described his estimates as having a range of accuracy of +/- 20%.

Testimony of ASU witness Elton Wagner. Mr. Elton A. Wagner is an independent contractor working with Schomburg & Schomburg Construction, Incorporated, located in Danville, Illinois. He has 70 years of experience in construction and generally submits bids and manages construction on wastewater treatment plants and solar projects for Schomburg & Schomburg. He testified for Petitioner regarding sponsoring a bid for a wastewater treatment plant expansion for ASU. This was submitted as Petitioner's exhibit No. 6.

Mr. Wagner stated that Schomburg has never done any work for ASU but did submit a bid for construction work for a wastewater treatment plant in 2017, and another in November 2020. These bids were attached to his testimony. He stated that he was found by ASU due to being awarded a bid on a wastewater plant that Mr. Ed Serowka was the design engineer for, and Mr. Serowka contacted him about submitting bids for the ASU work.

Mr. Wagner included a bid dated March 16, 2021 in his testimony. He explained that he prepared the original bid from plans dated November 20, 2013 on a bidding program called "The Construction Link". The revised bid was submitted using as-built drawings dated September 28, 2020 on the same bidding program. He said Schomburg would have been willing to build the plant indicated in the drawings for the amount of the bid, however the plants were already constructed.

He stated that the bid from 2017 (marked as attachment EAW-2, March 13, 2017 for \$14,498,331.88) was for a different plant design. This bid was submitted before the plant was built, and Schomburg was prepared to build pursuant to this bid. The other two bids were included as attachments (EAW-1, dated 3/16/21 for \$14,974,951.56 and EAW-3 undated but described as September 28, 2020 for \$13,984,435.54) and were largely the same plant design, although some sizes were changed as a result of an error in the original bid. The earlier bid also did not include the tertiary (polishing) lagoon removal, which he explained was the most expensive one to remove because it had apparently been out of service for over twenty years. He explained that this change was the largest dollar difference between the two bids, otherwise they are very similar.

Testimony of ASU witness Katelyn Shafer. Ms. Katelyn Shafer is an accountant/financial advisor employed by Reedy Financial Group. She is a segment manager overseeing municipal and investor-owned utilities and testified for Petitioner regarding the Phase 3 Rates for American Suburban Utilities, Inc., which were submitted to the Commission in Cause No. 44676 on November 7, 2019.

Ms. Schafer presented alternative rate calculations that would have been derived if different amounts had been booked in utility plant in service for the value of the plant upgrade. In support of her calculations, she provided three attachments each of which remove the three adjustments to UPIS used in the original calculation for the Phase 3 rates that (1) add the Wastewater Plant in Service for the CE-III Phase I Project up to the approved amount of \$1,975,200, (2) add the Wastewater Plant in Service for the CE-III Phase II Projects up to the approved amount of \$8,024,800 and (3) the Wastewater Plant in Service for the Phosphorus Removal Projects up to the approved amount of \$1,500,000. These adjustments to UPIS total a reduction of \$11,499,400.

Ms. Schafer then presented three rate calculations increasing the UPIS by for these three parts of the project by (1) the construction estimate submitted by Marcene Taylor, Inc. of \$14,829,100, (2) the bid from Schomburg & Schomburg of \$14,974,951.56, and (3) the construction estimate submitted by HWC Engineering, Inc. of \$15,933,500.

Ms. Schafer noted that the estimates from Marcene Taylor, Inc., Schomburg & Schomburg and HWC Engineering all exceed the total addition of \$11.5 million that the Phase 3 rates were originally to be adjusted, and that a new rate case would be needed almost immediately upon the decision to build the plant for one of these amounts. She states that if the three proposed additions to rate base in Phase 3 are used in the rate calculation they will generate a conservative estimate of the effect on rates. She further stated that the current rates for a single-family residence are \$64.82 per month, and that using the Marcene Taylor, Inc. estimates would produce rates of \$71.34 per month, or about \$7 per month higher. Using the Schomburg & Schomburg bid would have produced rates of \$71.63 and using the HWC Engineering estimate would have produced rates of \$73.50.

ASU Testimony of Scott Lods. Mr. Lods stated his testimony's purpose was to: 1) respond to OUCC witness Parks who subtracted costs from the preapproved amount of "Option 2" components Mr. Parks testified were not installed; 2) testify how the affiliate agreements were developed; 3) respond to OUCC witness Bell's testimony that ASU has not complied with the Commission's November 30, 2016 Order in Cause No. 44676 (i.e., provide detailed invoices); 4) respond as to the effective date of ASU's Phase III rates; and 5) address the OUCC's criticisms regarding chemical removal of phosphorus. Mr. Lods briefly introduced ASU's four other witnesses.

"Option 2" versus "Option 4" Mr. Lods testified he did not agree with OUCC witness Parks' recommended deductions from the preapproved amount for "Option 2" facilities not installed and disagreed with Mr. Parks' reading of the 2014 Stipulation between ASU and the OUCC. He faulted Mr. Parks for not recognizing the extremely significant change that occurred on November 30, 2016 when the Commission issued the Cause No. 44676 Final Order.

Mr. Lods testified he built a plant of superior design with the same capacity and function as “Option 2”. He claimed customers pay almost \$7 less per month or almost 25% because he built the plant through First Time Development Corp. (“First Time”), saving approximately \$3.4 million. He asserted no one ever disputed ASU’s need for capacity or suggested it could be addressed for less than \$11.5 million and claimed ASU could never get an “amount” from the OUCC throughout the Preapproval Case. Mr. Lods testified it had always been his goal since Cause No. 44272 to build the best plant that could be built with the funds preapproved and that it continues to be his goal to serve a growing community while minimizing customer rate impact.

He opined he could build at lower cost through First Time than through competitive bidding since: 1) First Time isn’t run like most construction companies because First Time hires workers from work release able to work up to 80 hours per week but who are in jail when not working and therefore sober; 2) ASU never backfills until job completion to avoid having to dig for repairs; 3) there are no bond requirements; and 4) there is no middle management because he considers himself a very talented construction worker able to do the surveying, purchasing, human resources, and operate the heavy equipment after hours. Mr. Lods testified that since he acquired ASU in 1997, ASU built four treatment plants and sewers using First Time to save ASU millions of dollars and keep rates within a three percent inflationary rate for the past 20 years so rates are very competitive with larger utilities.

Mr. Lods testified the four “options” in ASU’s rebuttal testimony were rough design schematics to reach certain capacities beginning with Option 1 to do the bare minimum including headworks replacement to re-rate the plant to 2.0 MGD to avoid a sewer ban. He stated all other options built upon Option 1. Option 2 added facilities to expand to 3.0 MGD with no additional facilities for a later expansion. Option 3 would increase capacity to 4.0 MGD but without the extra tankage for later expansion to 6.0 MGD. Option 4 was the expansion ASU was planning to build at 4.0 MGD with extra tankage included now for later expansion to 6.0 MGD. Mr. Lods testified ASU presented Class 5 engineering estimates for each option and were prepared to leave it to the Commission to decide the expenditure amount reasonably needed.

Mr. Lods testified the parties did not agree nor did the Commission find Option 2 could be built for \$10,000,000. Mr. Lods referenced the Commission’s February 20, 2014 Docket Entry in Cause No. 44272 asking how the Parties reached the \$10,000,000 preapproval amount derived from one of the alternatives (option 2) and why it was reasonable. ASU’s response stated if ASU built along the design of Option 2, ASU’s cost estimate was \$15,513,674 and for the larger design per Option 4, the cost estimate was \$19,938,273. ASU’s Docket Entry response noted the OUCC’s unwillingness to agree to preapproval at these amounts due to questions of upgrade size and whether there could be savings if a non-ASU affiliated entity constructed the improvements. Mr. Lods included ASU’s response that the \$10,000,000 amount was not represented to be and should not be interpreted as a reasonable cost for the total project but rather the minimum needed to attract the necessary capital and as such was purely a compromise figure, below which the parties agreed costs could not fall.

Mr. Lods testified he fully expected to have more capacity than the OUCC would agree was needed at that time because he knew his service territory and its growth. He testified he expected that costs over the preapproved amount would probably have to wait to be reflected in

rates until some of that growth occurred. Mr. Lods opined that ASU retained full flexibility to build a better plant than Option 2. He acknowledged that at the time the Stipulation was approved and up until the Commission's final order in the rate case, he planned to build Option 4, but he maintained the Stipulation did not limit ASU to two options.

Affiliate Agreement Review Mr. Lods testified that two things resulted from the Commission Order in Cause No. 44676 that changed everything: 1) the Commission specifically found that any expansion beyond 3.0 MGD was premature and would be disallowed; and 2) the Commission noted ASU's expiring affiliate agreement and that the new agreement might need to contain terms which he asserted First Time simply would be incapable of agreeing. Mr. Lods cited the Commission's findings:

We believe the documentation Petitioner maintains from its affiliate lacks sufficient details for an auditor to determine the reasonableness of the amount requested for recovery. Further we are concerned with the lack of documentation maintained by Petitioner. Therefore, Petitioner shall require First Time or any other affiliated company to submit detailed invoices for all costs including unit costs for structures, materials, labor, equipment, and engineering, which should be compared to the cost estimate or contract entered into by Petitioner to complete the work. We expect to receive this level of detail regardless of whether the work performed was done so under a lump sum or time and materials contract.

The Commission concludes that the affiliate transaction process prescribed for Petitioner in the final order for Cause No. 43294 (Jan 23, 2008) may not be adequate in insuring that the affiliated transactions are competitive, reasonable, and in the public interest. The affiliate contract between Petitioner and First Time Development Corp. is set to expire in January of 2017. The Commission shall address these issues upon the filing of Petitioner's next affiliate contract provided to the Commission for review pursuant to Ind. Code §8-1-2-49(2)(g). Pp. 41-42.

Mr. Lods testified First Time lacks the capability to submit detailed invoices per the Order and that after reading this Order language he was ready to stop First Time's work building the plant, competitively bid the remaining project to have everything else constructed by a non-affiliated company and file a new rate case. He claimed doing so would have increased rates \$10 per month per residential customer just for CE-III. He stated ASU thought the Commission's affiliate concern was less about construction up to the preapproved amount and more about cost increases and First Time's future construction activities. He testified ASU decided to divide the plant work into three projects and submit three new affiliate agreements capping the price at \$11.5 million and changing to a 3.0 MGD capacity to eliminate the Commission's over-building concern.

Mr. Lods testified the Commission's response to ASU's draft affiliate agreements (provided in OUCC Attachment SAB-16) indicated the terms with which First Time could not comply (i.e., detailed invoices and records) would need to be incorporated in revised and resubmitted affiliate agreements or else an investigation may be commenced. Mr. Lods testified he was again ready to have the project competitively bid and not constructed by First Time but

decided to try one more time because it would not be fair to the Commission or his customers to make this decision without the Commission knowing what that would mean. He stated the Commission had not been advised that First Time would no longer construct the plant or that it would be bad for customers by needlessly forcing rates significantly higher. Mr. Lods testified ASU sent the letter to the Commission (Attachment SLL-7 - March 30, 2017 letter to Brad Pope, IURC Assistant General Counsel) indicating ASU was unwilling to change the agreements and if an investigation commenced, would withdraw the agreements, and competitively bid the project. He stated the OUCC was copied as well as legislators whose districts cover ASU's service territory because the decision would have a material effect on rates their constituents pay.

Mr. Lods reported ASU received another response from the Commission (provided in Attachment SAB-18 to Mr. Bell's testimony – April 21, 2017 letter to Nicholas Kile from IURC General Counsel Beth E. Helene) but provided no discussion about the letter's content. He testified this letter led to a meeting at the Commission to discuss the concerns raised in the earlier correspondence. He reported the Commission Staff's main objection was that First Time would just bill flat amounts without reference to work done. He reported that Staff's concerns would be addressed by requiring that First Time's invoices: 1) correspond with the Schedule of Values; 2) detail percentage completion of each individual Schedule of Values item; and 3) confirm the invoices by an independent inspector prior to payment. He testified ASU made these changes and officially resubmitted the affiliate agreements and no investigation commenced. He reported the Intervenor in the rate case – Tippecanoe County Citizens Against Rate Increase, an ad hoc group representing ASU's customers – participated in the meeting. Mr. Lods also noted the OUCC was copied on but did not respond to any affiliate agreement correspondence and did not attend ASU's meeting with Commission Staff.

Mr. Lods criticized OUCC witness Bell's testimony that "ASU has not complied with the explicit language on page 41 of the November 30, 2016 Order in Cause Nos. 44676 and 44700" about the invoice detail First Time was to submit by pointing to the next page of the Order which read "The Commission shall address these issues upon the filing of Petitioner's next affiliate contract provided to the Commission for review pursuant to Ind. Code §8-1-2-49(2)(g)." Order, p. 42. Mr. Lods opined ASU addressed these concerns in the affiliate agreements and provided his interpretation that "address[ing] these issues upon the filing of Petitioner's next affiliate contract" meant if the Commission had concerns, it would commence an informal and then a formal investigation and if the OUCC had concerns, it would request an investigation. He contended the OUCC should have spoken up at the time if it had unaddressed concerns. He testified if anyone had done this, ASU would have pulled the agreements and First Time would not have built the plant. Mr. Lods then declared ASU complied with the Order's language that concerned Mr. Bell.

Mr. Lods testified ASU was pursuing Option 4 but decided to switch when it received the official affiliate agreements stamped "received" from the Commission on May 2, 2017. He opined it was not fair for Mr. Parks to say ASU didn't disclose this switch since the OUCC was copied on all correspondence and should have known fully that Option 4 was not being pursued any longer because the affiliate agreements state a plant capacity of 3.0 MGD not 4.0 MGD as would have resulted from Option 4. Mr. Lods also testified the expansion he built to take ASU to 3.0 MGD was improved over the earlier Option 2 rough design and is better for customers since it has far

greater expansion capability. He stated his objective to build as much plant as he could build for \$11.5 Million resulted in more plant than Option 2 would have been. Mr. Lods repeated that he would have withdrawn the affiliate agreements and competitively bid the project had the OUCC raised any objection or otherwise indicated disagreement with ASU's decisions, the affiliate agreements terms, or that they wanted ASU to stick with Option 4. Mr. Lods noted that on March 17, 2017, ASU filed the Phase II rate submission for the CE-III Phase 1 improvements (the ones that Mr. Parks now questions). He stated had ASU received any indication from Mr. Parks that he had issues with that submission during the time frame for the OUCC to submit objections, ASU also would have pulled out of the project and competitively bid it.

Mr. Lods admitted it was wrong changing from Option 4 to what he built because it was inconsistent with the IDEM construction permit, caused issues with IDEM which he asserted are now resolved and led to a fine which he paid. He asserted what ASU built has been IDEM approved. He opined ratepayers and service territory are better off with ASU's decision because there was no construction delay and the sewer ban risk was eliminated.

In Service Date Mr. Lods responded to OUCC witness Bell's proposal that Phase 3 rates not take effect until September 30, 2020 because the Stipulation and Settlement Agreement in Cause No. 44272 requires the constructed plant be "completed and in service." (Bell, p. 6) by referring to the Commission's Order in Cause No. 44676 requiring ASU certify the new plant is in service (Order, p. 39) and saying that ASU witness Leshney is testifying that the "in service" and "substantial completion" concepts are well recognized. Mr. Lods declared ASU has been treating wastewater with the new plant in full compliance with the IDEM effluent limits since October 18, 2019, that the new plant was in service as of the November 7, 2019 in-service certification, and that ASU also verified construction costs had been incurred and paid. Mr. Lods included Attachment SLL-12, an overhead photograph with notations of the in-service dates of the various segments.

Mr. Lods then listed the four aspects of work other than backfill which he opined did not affect plant operation that remained to be "completed" as of October 18, 2019 including: 1) clear and retire the old sludge lagoons; 2) install drain piping; 3) install a redundant influent macerator; and 4) install chemical feed lines for phosphorus treatment directly to the tanks.

Phosphorus. Mr. Lods opined it was really surprising OUCC witnesses Mr. Parks and Mr. Bell raised issues concerning the original estimates for backup chemical removal of phosphorus because he claimed that until the in-service certification, ASU had never heard anything from the OUCC about phosphorus removal. He testified the costs Mr. Parks relied on are from when ASU still planned biological phosphorus removal but after ASU agreed to a not-to-exceed contract with First Time in May 2017, ASU reconfigured the plant, switched to chemical phosphorus removal, and divided First Time's contract into three affiliate agreements. Mr. Lods testified equipment Mr. Parks claims is missing (i.e., Micro Star filter) is not in the schedule of values and if Mr. Parks or Mr. Bell had a concern about chemical phosphorus removal, they should have raised it then. Mr. Lods also responded to OUCC witness Parks' testimony that the initial payment verification ASU filed on November 7, 2019 listed every cost wrong in the schedule of values for phosphorus removal. He stated the categories were correct, but that he did not know how the mistake occurred

or where the values came from in that original invoice, but that it resulted in First Time being paid less for that first submission to which it was entitled.

6. Commission Discussion and Findings:

A. Preapproved CE-III Project.

In Cause No. 44272, ASU asked the Commission to preapprove under IC 8-1-2-23 expenditures for an expansion and upgrade to its Carriage Estates Wastewater Treatment Plant. After the OUCC had filed its case and after ASU had filed its rebuttal case, ASU revised its request and told the Commission that new phosphorus removal requirements from IDEM would apply to the Carriage Estates WWTP increasing the cost of the plant upgrade and expansion. ASU proposed four new options, all of which would accomplish ASU's explicitly stated goal of removing phosphorus from the wastewater using biological as opposed to chemical means. Biological phosphorus removal was the declared reason for ASU's need to revise its request that nearly doubled the cost of the project. Following a Settlement with the OUCC, we granted ASU preapproval for expenditures not to exceed \$10,000,000. Because we had granted ASU preapproval, in Cause No. 44676 the Commission approved ASU's hybrid test year authorizing ASU to update its rate base once it had completed its preapproved expansion and upgrade to its Carriage Estates Wastewater Treatment Plant.

Under the agreement. ASU was to be preapproved to include in rate base expenditures up to \$10,000,000 to complete Option 2, which consisted of various features presented by ASU's witness and resulted in a 3.0 MGD plant capable of meeting IDEM's anticipated phosphorus removal requirements relying on an enhanced biological phosphorus removal system. Pursuant to the settlement, ASU could elect to construct and complete its Option 4, which included many of the same features and upgrades as Option 2 including the ability to treat phosphorus biologically, except that Option 4 involved a capacity expansion to 4.0 MGD and the installation of additional tanks to permit the capacity to be upgraded later to 6.0 MGD. However, the agreement established that if Petitioner constructed either Option 2 or Option 4, the preapproval did not extend to costs in excess of \$10,000,000. The agreement specified the OUCC did not "waive any position with respect to the inclusion in rate base of Option 4 expenditures exceeding \$10,000,000 including but not limited to the reasonableness, prudence, necessity or scope of Option 4." The agreement also stated that "Whether Petitioner constructs Option 2 or Option 4, 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 OUCC argues that both the preapproval and the authorized phased-in rate increase presupposes ASU would complete Option 2 or Option 4. Neither Option 2 nor Option 4 were completed. Therefore, the project ASU completed was not preapproved by the Commission in Cause No. 44272 nor was it authorized to be included in rate base pursuant to the Commission's final order in Cause No. 44676. ASU's position in this case is tethered to the argument that its preapproval was for an amount of money - \$10,000,000, and so long as it resulted in a wastewater system that has a treatment capacity of no less than 3.0 MGD, it should be permitted to include

that amount in rate base. This argument is inconsistent with any reasonable interpretation of the settlement agreement approved by the Commission and the Commission's final orders in Cause Nos. 44272 and 44676. The Settlement Agreement we approved in Cause No. 44272 established that the preapproval did not extend beyond \$10,000,000 of expenditures. The Settlement Agreement we approved provided that "In order to include the excess expenditures in rate base for ratemaking purposes, [ASU] will have the burden to demonstrate its expenditures were reasonable and were prudently incurred." In pertinent part, the Settlement Agreement included the following language:

5. 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. However, to the extent the plant is completed and in service, the OUCC agrees that no less than \$10,000,000 of expenditures actually incurred shall be considered to have produced plant that is used and useful. The parties agree that, while Petitioner may include in its rate base expenditures of no less than \$10,000,000 spent on completing Option 4, the OUCC does not otherwise waive any position with respect to the inclusion in rate base of Option 4 expenditures exceeding \$10,000,000 including but not limited to the reasonableness, prudence, necessity or scope of Option 4. Petitioner seeks no relief at this time to the extent actual expenditures of the CE-III Project exceed the agreed preapproval amount of \$10,000,000. Whether Petitioner constructs Option 2 or Option 4, 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. In order to include the excess expenditures in rate base for ratemaking purposes, Petitioner will have the burden to demonstrate its expenditures were reasonable and were prudently incurred. Further, 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.

The OUCC maintains ASU was authorized by the approved settlement agreement to expend an amount not to exceed \$10,000,000 to complete Option 2 or Option 4, and that ASU was permitted to use its affiliate to complete the project. Without regard to our findings with respect to ASU's affiliate agreement, we agree that if ASU had completed Option 2 or Option 4 for the preapproved amount, there would be no sub-docket. The Settlement Agreement and our final order in Cause No. 44272 addressed the expected probability of ASU constructing Option 2 or Option 4 for more than \$10,000,000. While the settlement agreement included provisions for the event of

costs in excess of the preapproved amount, it included no provision for the event of ASU deleting design elements, materially deviating from its design and building something less than what it had ultimately submitted for its designs in order to secure preapproval. The OUCC showed that ASU deleted design elements (i.e., biological phosphorus removal, SCADA and electrical controls) and project components (e.g., Blower Building, Laboratory, rehabilitation of the existing CSBR tanks for continued wastewater treatment (Option 2) or conversion to aerobic digesters (Option 4), asphalt paving). The settlement agreement did not speak to ASU paying its affiliate no more than \$10,000,000 to build something materially different than Option 2 or Option 4.

While the OUCC argues that ASU presented Option 2 and Option 4 to justify its proposed preapproved expenditure and that ASU was preapproved to expend \$10,000,000 to produce Option 2 or Option 4, ASU rejects that premise. ASU argues in essence that whether it completed one of the two Options referenced in the settlement agreement is irrelevant because it was authorized an expenditure of \$10,000,000 to produce a wastewater treatment plant that has a capacity of 3.0 MGD and as it produced a plant that has that capacity. Therefore, ASU seeks to include the entirety of that amount in rate base in this Phase. ASU ignores that it deleted key project features used to justify the large project cost increase including biological phosphorus removal, existing CSBR tank rehabilitation and new plant components. ASU's own witness expert in estimating plant costs acknowledges that all 3.0 MGD plants do not cost the same amount of money to construct. In fact, her own analysis of this plant produced results that were nearly \$4 million apart relying on two different sets of drawings of the same plant. Hr. Tr. A-15.

For purposes of evaluating this compliance filing, we agree with the OUCC that the preapproval we granted in Cause No. 44272 was for expenditures of construction costs to implement Option 2 or Option 4 and not to produce a plant upgrade that is materially different than what ASU's affiliate has constructed.

What ASU installed differs materially and significantly from the options ASU presented for preapproval in its supplemental rebuttal testimony in Cause No. 44272. The Options ASU presented in its supplemental rebuttal testimony were all to have the necessary improvements to implement biological treatment for phosphorus. These improvements included installing mixers for biological phosphorus removal, converting the chlorine contact tank to a supernatant decanting tank with chemical phosphorus removal, adding air blowers to the existing blower building, a new control/laboratory building, converting the existing control building, and features on the CSBR control and SCADA panel to allow enhanced biological phosphorus removal. Either these items were not installed, or they were installed in fewer numbers and amounts. Ultimately, ASU replaced the existing plant with a new plant having the same 3.0 MGD rated capacity as Option 2, but it lacked other features particular to Option 2. Like Option 1, Option 2 included rehabilitating the existing CSBR tanks and replacing aging equipment that ASU's engineer said was failing and causing operational issues as well as new equipment that would be needed to possibly obtain a rate of the existing CSBR tanks to 2.0 MGD. ASU made it clear that Option 2 would include the Option 1 improvements plus the additional cost to expand the capacity to 3.0 MGD. Although IDEM now requires ASU to keep the existing CSBR tanks in order to achieve its rated capacity of 3.0 MGD, ASU did not make the equipment modifications to the existing CSBR tanks, which it estimated would cost \$1.3 million. Also deviating from its Option 2 and Option 4 designs, ASU did not construct the asphalt paving that was included in its design, did not install 12 of the 16"

and 8” electric valves it had included in its design and reduced the square footage of its New Aeration/UV Control Building. We agree with the OUCC that ASU did not expend funds to complete the project for which it was preapproved.

ASU’s argument that it secured preapproval for an expenditure of funds not tied to any project is also inconsistent with IC 8-1-2-23, which is the statutory basis for a preapproval. The language of IC 8-1-2-23 belies the suggestion we approved an expenditure in isolation from the project used to justify that approval:

Sec. 23. The commission shall keep itself informed of all new construction extensions and additions to the property of such public utility. and shall prescribe the necessary forms, regulations and instructions to the officers and employees of such public utility for the keeping of construction accounts which shall clearly distinguish all operating expenses and new construction. Unless a public utility shall obtain the approval of any expenditure exceeding ten thousand dollars (\$10,000) for an extension, construction, addition or improvement of its plant and equipment, the commission shall not, in any proceeding involving the rates of such utility, consider the property for inclusion in rate base, unless in such proceeding the utility shall show that such property is in fact used and useful in the public service; Provided that the commission in its discretion may authorize the expenditure for such purpose of a less amount than shown in such estimate.

(emphasis added.)

In finding that we preapproved the expenditure for the construction of Option 2 or Option 4, we are mindful that preapproval of expenditures is tied to a statutory obligation to be kept informed of all new construction extensions and additions and that the expenditure is “for an extension, construction, addition or improvement” that we reviewed and understood. Based on the presentation of evidence and the evolution of ASU’s request for preapproval, our preapproval did not extend to expenditures as substantially different from the projects presented for approval in that case as the one ASU actually completed.

The project that ASU completed was more different from Options 2 and 4, than Options 2 and 4 are different from each other. Mr. Parks’ Table 5, which compares the major components of Options 2 and 4, show that ASU mainly failed to install components that both options shared. Both Options were to have the equipment necessary for the Carriage Estates Treatment Plant to biologically remove Phosphorus, equipment that First Time and ASU did not install. Moreover, this equipment was the basis for ASU’s revision of its request for relief in its preapproval case.

Because ASU did not build what it said it would build, to the surprise of the OUCC and IDEM, the transparency of the actual construction costs incurred by its affiliate became pertinent to this phase of Petitioner’s rates. ASU’s unwillingness and asserted inability to show the actual costs incurred by its affiliate in constructing its expansion of the Carriage Estates WWTP asks the Commission to approve a rate base addition on a project that had never been evaluated with undisclosed actual construction costs.

ASU's compliance filing should be denied leaving ASU the option of including its CE-III plant expansion project as completed in its next rate case and submitting the actual costs of the plant expansion it did build in accordance with the requirements laid out by the Commission in its order. However, the OUCC does not ask us to simply reject ASU's compliance filing. Its efforts to procure ASU's affiliate First Time's actual costs suggest it may have been willing in this Phase to permit ASU to include a rate base addition not to exceed \$10,000,000 of First Time's actual reasonable and prudently incurred costs of construction -- information ASU maintains it is unable to provide. Denying ASU's Phase II rates would not prohibit ASU from filing another rate case and seeking to include its plant expansion expenditures at that time.

In its responsive testimony, ASU offered testimony by various witnesses to support a conclusion that what ASU's affiliate built would have cost at least \$11.5 million if ASU had submitted its plant project to open bidding. The OUCC's case was not based on what it would cost ASU to build what it built but focused rather on ASU's deviation from what it represented it would build as presented in its preapproval and rate cases. Notably, ASU's responsive testimony did not contest important parts of the OUCC's testimony. The OUCC pointed out that ASU did not build one of the options ASU presented to secure its preapproved expenditures. ASU does not contest that fact. ASU did not install the \$1.23 million Micro Star filter and concrete structure it indicated to the OUCC it would install in the underlying rate case. That too is uncontested by ASU. Yet ASU demands authority to include in its rate base a total of \$11.5 million paid to its affiliate who built plant based on an unpermitted design that had not even been reflected in a set of drawings until 2020.

The ASU did not offer this proof as part of its compliance filing, but it was offered in response to the OUCC's case. Consequently, unlike evidence offered to support the reasonableness of such estimates in a preapproval case, the OUCC had limited time to conduct discovery and no procedural opportunity to prepare a responsive case. The evidence ASU has presented is tantamount to securing preapproval on a project after it has been built, and without showing the actual construction costs. Only one of the estimated costs of construction was based on ASU's latest As-built drawings, and even that has flaws that make that estimate unreliable.

MTI, who ASU engaged to prepare a "construction documents cost estimate "based on preliminary drawings provided to her on February 24, 2020, first estimated a cost of roughly \$8 million. See OUCC's Cross-examination Exhibit 1. While MTI's president, Marcene Taylor called this an independent cost estimate based on the drawings available, she acknowledged her process included discussions with the project owners and engineers. Ms. Taylor said she issued the draft report in April of 2020 in advance of a final report issued on March 12, 2021, after the OUCC had filed its testimony, copies of which had been provided to MTI. Hr. Tr. A-19. Ms. Taylor testified her final estimate was based on As-Built drawings of September 28, 2020. Hr. Tr. A-22.

As the estimate was procured by ASU, as ASU had an opportunity to review the draft finding, and as ASU provided MTI the OUCC's testimony in advance of her final product, we do not consider this cost estimate to be an independent estimate. Nor is it based solely on the record drawings. Moreover, flaws in the final estimate include an apparent and likely double counting of \$634,553 of sludge and grit removal expense in both Existing Conditions and Earthwork. Hr. Tr. A 25 – A-29. Moreover, Ms. Taylor explained that her report does not verify the existence of any

equipment on site, as it was based on the as-built drawings she was provided. Hr. Tr. A-24. But Ms. Taylor could not verify that all the things that were done for instance the “Redundant CSBR tank,” explaining that “Our report is based on the drawings, not what was actually completed. Hr. Tr. A-29. Ms. Taylor further acknowledged that on her site visits she did not verify the existence of any plant identified on the as-built drawings. Ms. Taylor also acknowledged MTI requested ASU provide contact information for an equipment manufacturer so MTI could call and get pricing, but she believed the contact information was not provided requiring MTI to make assumptions about the price of the equipment. Hr. Tr. A-40 - A-41. Ms. Taylor also noted that As-built drawings do not indicate necessarily when plant or equipment has been installed, leaving the possibility of including in her estimate plant that may have pre-existed the project. Hr. Tr. A-45. Ms. Taylor acknowledged MTI did not independently evaluate whether something was new or existing. Hr. Tr. A-46. As ASU did not build one of the projects it used to justify our granting preapproval of \$10,000,000 in expenditures, the best evidence starting point to find a fair value of the plant would be First Time’s actual costs. We do not agree that ASU’s after-the-fact estimates based predominantly on as-built drawings without independently verifying the existence of new plant support a finding of value that should be considered at this late phase of a rate increase.

If we should accept the premise of ASU’s responsive case - that what was built could not have been built by anyone but ASU’s affiliate for less than the \$11.5 million it received – that does not change a very important and crucial aspect of this phase of the rate case. Whether it is a subsequent phase of the rate case or a preapproval of a project, we authorize such rate base additions because we have determined that such improvements shall be used and useful and that the expenditures will have been prudently and reasonably incurred. What ASU built through its affiliate is substantially and materially different than what we were presented when we issued our orders in Cause Nos. 44272 and 44676. ASU did not include the CSBR equipment that was to be replaced in the existing CSBR tanks (Option 2) or include plant necessary for biological phosphorus removal (all Options). There are other differences that call into question whether the plant actually built should be considered prudent. For instance, ASU paid its affiliate to install a chemical phosphorus building on property not owned by the utility and removed sludge from its lagoons to prepare the site for two buildings that were not installed there (ASU deleted the proposed Aerobic Digester Blower building entirely and relocated and downsized the CSBR Blower/UV Control building). ASU also paid its affiliate to build two large tanks – too few for Option 4 and three times the size of the tanks proposed for Option 2.

As an alternative to denying Phase II rates altogether, the OUCC has asked us to recognize the features missing from ASU’s plant and subtract from the preapproved amount the costs estimated by ASU when it presented its options and secured its preapproval. The OUCC recommends the Commission subtract from ASU’s preapproved amount the costs of the various major components as estimated by ASU when presented its various options for preapproval. The alternative to the OUCC’s proposal is to deny ASU’s rate base addition altogether, leaving it to submit its improvements as a rate base addition in its next rate case, where in accordance with our last rate order we would expect it to submit evidence of its affiliate’s actual costs, something it has said it is unable to do. The values the OUCC proposes subtracting from the \$11.5 million preapproved amount are based on estimates of cost used to justify ASU’s presentation and our preapproval of \$10,000,000 of expenditures.

We agree that the items not built or installed in lesser amounts represent costs that should be subtracted from ASU's rate base addition in this Phase. We also find that for this purpose, the best evidence of the value of these omitted items is the estimated costs ASU presented to justify its preapproval in Cause No. 44272.

B. Authorized Standby Chemical Phosphorus System Expenditure

As authorized by our underlying rate order, ASU already included in its Phase II rate increase \$1,975,200 leaving \$8,024,800 of the preapproved expenditure to be added for the underlying project. In the rate case, ASU requested authority to include in its Phase II rates an additional \$1.5 million to install a standby chemical phosphorus removal system but the phosphorus improvements were not completed until 2020 and so the standby chemical phosphorus costs should be included in Phase III rates. Therefore, ASU's requested rate base addition in Phase III is \$9.52 million for improvements it asserted were completed by its affiliate, First Time Development Corporation ("FTDC"), and placed in service at its Carriage Estates wastewater treatment plant ("WWTP") on or before October 18, 2019.

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. ASU's discovery responses, which the OUCC included in its testimony, 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). ASU also provided 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.

Just as it had not constructed a *biological* phosphorus removal system, which ASU had included in all four options it presented in its preapproval case and in Option 4 in the rate case, ASU did not construct the Standby Chemical Phosphorus Removal project as proposed. ASU did not install the \$1,020,000 Micro Star Tertiary Filter or the \$210,000 concrete channel needed to house the filter.

The OUCC testified ASU installed a different and much less expensive standby chemical system. Accordingly, Mr. Bell recommended the Commission not approve ASU's request to include in rate base for Phase III all of the \$1.5 million for ASU's Standby Chemical Phosphorus Removal project. OUCC witness Jim Parks identified the Micro Star filter and the concrete channel as two major components that ASU deleted from the project and quantified their value at a total of \$1.230 million, which was based on the cost estimates ASU provided to justify that rate base addition. Mr. Parks recommended that amount be deducted from ASU's requested rate base addition, which includes the entire \$1.5 million associated the standby chemical phosphorus equipment we authorized for this phase in our rate order.

All of ASU's rate base additions including standby chemical phosphorus removal system was secured through its affiliate and the actual costs incurred by that affiliate, by which the value of the standby system may be determined, have not been provided. While the OUCC asks us to subtract \$1.23 from the \$1.5 million leaving in rate base \$270,000 for the standby chemical

phosphorus removal system, Mr. Parks performed his own analysis of the costs of the standby chemical phosphorus removal equipment and additions First Time did install, and he estimated \$263,000 of chemical phosphorus system costs. Mr. Parks explained in his testimony that his estimated costs were based in part on cost information from equipment suppliers available from the internet for commonly available and low-cost chemical transfer pumps, feed pumps and storage tanks. 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.

In his testimony, Mr. Parks noted ASU did not modify the chemical rooms in the existing Blower/Chemical building or install the two 15,000-gallon chemical storage tanks or the 1,500-gallon day tank as fully permitted by IDEM in February 2014 for the supernatant and standby chemical phosphorus removal systems with the costs embedded in all four Options. Instead, ASU installed smaller chemical tanks (315-gallon day tank and 5,000-gallon bulk tanks) in a new building constructed on land owned by Scott Lods, north of the plant. Mr. Parks testified there are operational issues associated with the new building because of its location farther away from the chemical application points (original and new CSBR tanks) beyond the recommended 100 feet limit for chemical feed piping. He added that it also appears ASU did not install the chemical feed lines to the new CSBR tanks' Flow Divider Box. He advised 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 stated the As-Built Drawings still include errors and are incomplete, including with respect to the standby chemical phosphorus system.)

We find it troubling ASU did not inform the OUCC and the Commission that it had fully permitted all phosphorus removal systems with IDEM (biological, supernatant and standby chemical) prior to the evidentiary hearing in Cause No. 44272 and issuance of the Cause No. 44272 Final Order in 2014 and had embedded costs for these phosphorus removal systems in all Options, yet proposed an additional \$1.5 million for a separate standby chemical phosphorus removal system in the Cause No. 44676 rate case in 2016. This revelation was discussed in OUCC witness Parks' testimony and not disputed by ASU. The equipment that ASU described and used to support authorizing the \$1.5 million rate base addition to the OUCC, and ultimately the Commission, was not the equipment ASU installed. Because all phosphorus removal systems were already permitted and included in the Options and 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, ASU should not be permitted to include the whole \$1.5 million in its rate base. Accordingly, we accept the OUCC's recommendation to exclude from rate base the \$1.23 million of the \$1.5 million authorized to reflect the omission of the Micro Star Filter and the cement structure ASU never installed or built.

C. Rate Base Addition for Plant in Service Phase III Rates

The OUCC identified the components not completed at ASU's Carriage Estates wastewater treatment plant ("WWTP") and recommended the \$4,280,000 of cost associated with those components be excluded from the calculation of original cost rate base or utility plant in service. While ASU proposes to include in its rate base utility plant in service of \$9,524,000, which

includes the \$1.5 million added for standby chemical phosphorus removal, we find ASU should be authorized to include in its rate base utility plant in service of \$3,744,800 for this Phase of the CE-III WWTP expansion project and Standby Chemical Phosphorus.

D. 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. Mr. Serowka did not, however, state in his letter whether construction of all facilities was complete or whether all components of the projects were complete and in service.

The OUCC filed its Objection to ASU’s Phase III Compliance Filing on December 9, 2019. ASU filed its Response to OUCC Objection to Phase 3 Tariff Compliance on December 19, 2019, and on December 23, 2019, the OUCC filed its Reply. 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 sub-docket. On January 30, 2020 we issued a docket entry establishing an evidentiary hearing to take place on April 29, 2020 and subsequently noticed that hearing on February 4, 2020.

On February 21, 2020 we received ASU’s Joint Motion to Modify the Procedural Schedule and granted that Motion on February 26, 2020. On February 28, 2020 ASU filed its Unopposed Motion to Modify Procedural Schedule, which we granted on March 4, 2020. On June 30, 2020 ASU filed an Unopposed Motion to Modify Procedural Schedule, which we granted on July 2, 2020. On September 30, 2020 ASU filed its Notice of Completion of Construction.

After requests for extensions from both parties, the OUCC filed its case on February 24, 2021, in which 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 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, 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, 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.

There is no question that ASU did not complete its project by the date our final order in Cause No. 44676 projected of July 1, 2018, the end of the hybrid test year we authorized. In this very unusual matter, no party has challenged ASU's ability to update its rate base in accordance with the hybrid test year established in our order, and as it is not an issue that has been raised in this sub-docketed matter, we need not address that issue in this sub-docket.

On April 24, 2019, nearly a year after the end of its hybrid test year, 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 Design Service Corp. 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 bulleted 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. (OUCC Attachment SAB-5, OUCC Attachment SAB-10.)

IDEM's October 1, 2019 IDEM Inspection Summary/Noncompliance Letter (OUCC Attachment SAB-6) 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.

Here we must address a rate base item that is not strictly at issue in this Phase II increase as it relates to plant included in rate base in the prior phase of rate increase. As IDEM said in 2019 that "the new influent train including a macerator and lift station pumps were not completely constructed or operating at the time of inspection," Mr. Bell reminded the Commission 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's testimony included several pictures of the headworks influent structure documenting the completion status as of December 4, 2019, March 5, 2020, and October 8, 2020. (See OUCC Attachment SAB-9) Mr. Bell suggested this fact warrants explanation by ASU, and we agree. We find that ASU should provide clarification as to when the pumps and macerators were first installed and provide invoices to show when this equipment was purchased and delivered to the site, and we so order.

OUCC staff met with ASU owner, Scott Lods, to view the CE-III WWTP Project on December 4, 2018, 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. Mr. Bell included photos of the March 5, 2020 OUCC on-site inspection as OUCC Attachment SAB-13.

Importantly, IDEM also conducted an onsite reconnaissance 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 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."

(emphasis added.) 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.

Based on the foregoing, we find that ASU had not completed its CE-III project at the time it filed its compliance filing on November 7, 2019. However, subject to the rate base findings in this order, we find that ASU had completed its CE-III project on September 30, 2021 when it filed its Notice of Completion of Construction. However, we do find that for purposes of establishing Phase II rates, ASU had completed the project it constructed by September 30, 2020. Accordingly, we find that ASU shall issue a refund of the Phase II rate increase to its customers through September 30, 2020. ASU shall have 30 days to submit a proposal for accomplishing the refund to be accomplished no later than 210 days of this order.

E. 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:

	<u>Phase II</u>	<u>CE-III Stage 2</u>	<u>Phase III</u>
Utility Plant in Service	\$ 24,383,125	\$ 4,014,800	\$ 28,397,925
Less: Accumulated Depreciation	<u>(5,900,390)</u>	<u>(2,223,836)</u>	<u>(8,124,226)</u>
Net Utility Plant in Service	18,482,735	1,790,964	20,273,699
Less: CIAC	(6,303,969)	171,645	(6,132,324)
Less Advances for Construction	<u>(37,900)</u>	<u>-</u>	<u>(37,900)</u>
Net Original Cost Rate Base	<u>\$ 12,140,866</u>	<u>\$ 1,962,609</u>	<u>\$ 14,103,475</u>

F. Net Operating Income.

Based upon the evidence and the determinations made above, we find ASU’s net operating income is as follows:

	<u>Phase II</u>	<i>Pro forma</i> <u>Present Rates</u>	<u>Phase III</u>
Operating Revenues	\$ 3,579,565	\$ 4,004,893	\$ 3,899,012
O&M Expenses	1,616,431	1,616,888	1,616,774
Depreciation/Amortization	438,691	527,716	527,716
Taxes Other than Income	254,396	263,838	262,356
Federal and State income Tax	<u>261,135</u>	<u>347,498</u>	<u>320,167</u>
Total Operating Expenses	2,570,653	2,755,940	2,727,013
Net Operating Income	<u>\$ 1,008,912</u>	<u>\$ 1,248,953</u>	<u>\$ 1,171,999</u>

G. Authorized Revenue Requirement.

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	\$ 14,103,475
Times: Weighted Cost of Capital	8.31%
Allowable Net Operating Income	1,171,999
Less: Adjusted Net Operating Income	(1,248,953)
Net Operating Income Surplus	(76,954)
Divide by: Revenue Conversion Factor	72.680%
Required Decrease in Operating Revenues	(105,881)
Divide by: Adjustable Operating Revenues	3,895,218
Percentage Rate Decrease Required	-2.72%

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 a 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. (Parks, p 3). 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. (Parks p 26). 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. (Parks, p 76). 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. (Hr. Tr. B-16). 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 okayed before the change was made. (TR B-15). ASU did not follow standard engineering or construction practices as described by Mr. Weigel. Mr. Parks recommended ASU hire an independent third-party engineer to produce accurate Record Drawings. 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 engineer to produce accurate Record Drawings. The cost of these record drawings shall not be recoverable through rates. ASU shall submit the record drawings to the Commission and OUCC within 180 days of issuance of this order.

I. Effluent Flow

We next turn our attention to the effluent flow issues raised by the OUCC. 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. (Parks p 57).

Flow Meter – 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 a Monthly Report 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. ASU's flows were under 1 MGD then spike 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. (Hr. Tr. p B-35). 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 should 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.

Effluent Flow Reporting - Mr. Parks provided ASU's MRO submitted to IDEM. He noted the MRO indicates ASU reported treating over 80 million gallons (2.6938 MGD) in November 2020. 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. (Hr. Tr. B-33). 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.

Meter Reprogramming - 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 programed to put 10 inches in the offset and this was causing the meter to read 10 inches high. (Parks, p. 64). Again in 2020 the BL 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 other from making changes. Mr. Parks also seconds the recommendation 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.

Effluent Sampling - 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. (Parks, p. 66) 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.

J. 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 sub-docket. On September 30, 2020, ASU subsequently filed a "Notice of Completion of Construction." 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 February 2020 (implementation of interim rates) through September 2020 (Phase III completion). The OUCC has calculated the refund for this period to be \$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 2020 through the date an order is issued 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 February through September 2020 and the refund for the period October 2020 through the date an order is issued in this sub-docket should be refunded to ASU's customers over no more than a twelve (12) month period beginning the first billing period after ASU has submitted its compliance filing. These refunds should take the form of a credit to each customers' bill. 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 twelve (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.

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

1. Petitioner should decrease its wastewater rates and charges to produce total annual operating revenues of \$3,899,012⁷⁶ and net operating income of \$1,171,999, a 2.72% decrease from current wastewater rates.
2. Prior to implementing the rates authorized in this Order, Petitioner shall file the tariff and applicable rate schedules under this Subdocket for approval by the Commission's Water/Wastewater Division. Such rates shall be effective on or after the Order date subject to Division review and agreement with the amounts reflected.
3. In compliance with Finding Paragraph No. J above, ASU shall submit a compliance filing presenting its calculation of the refund due to customers for the period October 2020 through the date the rates authorized in this Cause are implemented. ASU is further ordered to provide customer refunds for the period February 2020 through the date the rates authorized in this Cause are implemented and to provide these refunds in the form of a bill credit. ASU shall also submit a compliance filing after the end of the twelve-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 should provide clarification as to when the influent pumps and macerators were first installed and provide invoices to show when this equipment was purchased and delivered to the site, and we so order.

⁷⁶ \$4,004,893 (*pro forma* present rate operating revenues as of September 2020, OUCC Attachment MAS-1, Schedule 4) less \$105,881 (required decrease in operating revenues, OUCC Attachment MAS-1, Schedule 1).

5. ASU shall take 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 our Finding I.
6. ASU shall retain a third party engineer to create accurate As-built plans at no cost to the rate payers.
7. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:

APPROVED:

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

Dana Kosco, Secretary to the Commission