STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

OUCC'S REPLY TO ASU'S PROPOSED ORDER

The Indiana Office of utility Consumer Counselor ("OUCC") hereby provides its Reply to the proposed order submitted by American Suburban Utilities ("ASU").

ASU's characterization of the OUCC's approach is not accurate.

In its proposed order, ASU asserts that "the OUCC's approach, which is to make deductions from $10 million based upon equipment that was included in the original Option 2 estimate that was ultimately *not needed* is premised on the idea that there was evidence Option 2 could have been completed for $10 million." (emphasis added.) This does not adequately and accurately describe the OUCC's approach. First, the OUCC did not propose to exclude from rate base *all* of the equipment and construction ASU did not complete but only those deleted and modified design elements that exceeded $10,000,000 with values according to ASU's cost estimates. Mr. Parks made it clear in his testimony that he excluded from rate base only components above $100,000. Consequently, the OUCC made no deduction in the aggregate of other items included in ASU's approved Option 2 design that ASU failed to complete. Second, there is no basis for ASU's conclusion that project elements ASU did not complete were not needed. In Cause No. 44272, ASU withdrew its initial case and said it needed to construct one of the Options it developed and presented in its Supplemental rebuttal case. In fact, to secure its requested 3.0 MGD capacity, IDEM accepted ASU's recommendation to keep available for

service the original CSBR tanks that were placed in operation in July 2000. These are the very tanks ASU had asserted in its preapproval case it *needed* to spend $1.366 million on rehabilitating with new equipment, a discrete component of its Option 2 design that it did not accomplish. What ASU *did not do* was not based on a lack of need. That is, what was ultimately *not done* does not mean it was "ultimately not needed" to construct one of ASU's proposed Options in its entirety with all project components. ASU described, detailed and estimated the cost to construct the Option elements and used this to justify its requested funding. Finally, contrary to ASU's characterization, the rate base finding the OUCC has proposed does not rely on a finding as to whether the Option 2 as originally proposed could have been completed for $10,000,000. The OUCC has requested no such finding. The OUCC based its proposed findings on ASU's own estimates of the costs of selected items used to procure preapproval, which items were not constructed. It was only necessary for the OUCC to use such estimates because of ASU's decision to depart from the project designs it used to secure preapproval and ASU's decision not to require its affiliate to retain its actual cost information.

The project ASU eventually constructed was not the project preapproved and authorized by the Commission to be included in ASU's Phase III rates.

The OUCC's approach is to recognize that ASU has not constructed one of the options on which ASU was authorized for ratemaking purposes to expend up to $10,000,000. The project ASU eventually constructed was not the project preapproved and authorized by the Commission to be included in ASU's Phase III rates. The project ASU actually constructed lacks many of the components on which ASU based its need in its preapproval case including equipment upgrades to the existing CSBR tanks and addition of new process components necessary for biological phosphorus removal. ASU also failed to install the $1.23 million Micro Star Phosphorus filter and concrete structure needed to house the filter for the standby chemical phosphorus treatment that

ASU used in Cause No. 44676 to justify an additional $1.5 million expenditure authorized for Phase III rates.[1] During its post order compliance review, the OUCC determined ASU had unilaterally deleted numerous project components, many of which were common to all Options. However, rather than simply ask the Commission to deny the Phase III rate increase requiring ASU to file another rate increase to justify its project costs, the OUCC would propose ASU be permitted to include in rate base the reasonable costs its affiliate incurred to constructing the project. However, the evidence of the actual costs the affiliate incurred in producing this plant, was not provided despite the Commission's direction and the OUCC's efforts in this sub-docket or the directions the Commission gave in its final order in Cause No. 44676. Moreover, ASU's and First-Time's common president and owner, Mr. Lods asserts First Time simply does not have the ability to comply with the Commission's clear direction with respect to showing First-Time's actual costs through equipment and material invoices, documented payroll costs and subcontractor costs, which the Commission ordered ASU to maintain.[2] Absent such cost support the only reasonable alternative to estimate the costs of components ASU deleted or modified, the OUCC valued these components not constructed using the only available alternative – the same cost projections or estimates for those components that ASU used to support its request for preapproval.

[1] The $1.5 million approval for expenditure for standby chemical removal of phosphorus including the Micro Star Filter and Structure was procured by ASU in the rate case. ASU did not specifically address this issue in its proposed Discussion and Findings section. The amount remaining of the $10,000,000 preapproved amount was $8,024,000 making ASU's request for expenditures to be included in rate base in this Phase III approximately $9,524,000.

[2] In its final order, the Commission stated: "Moreover, the L3 affiliate invoices totaling approximately $70,011 were only a few of a handful of affiliate invoices received that provided more project detail than just the date of the invoice, the project name, the amount being requested, and the total amount invoiced to date for the specific project. 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." Cause No. 44676-47000 Final Order, November 30, 2016, page 41.

ASU's approach is based on the faulty premise that its preapproval is not tied to the Options it presented for preapproval.

ASU's approach, on the other hand, is based on the premise that the preapproval ASU secured through the Settlement Agreement and Cause No. 44272 Final Order was simply authorization to pay its affiliate $10,000,000 to complete any plant upgrade so long as it resulted in a 3.0 MGD hydraulic capacity. ASU's premise ignores the fact that ASU eliminated biological phosphorus removal treatment capability and did not rehabilitate the existing CSBR tanks, two major improvements that ASU included in all Options. In its revised 2013 preapproval request, ASU switched from the originally proposed extended aeration treatment process to the more expensive CSBR treatment system expressly to achieve biological phosphorus removal. This switch in July 2013 nearly doubled project costs. What ASU actually constructed does not provide biological phosphorus removal but still retained the much larger and more costly CSBR treatment tanks used to justify the expenditures for which it sought and received preapproval.

ASU asserts the Settlement Agreement in Cause No. 44272 provides for preapproval of plant upgrades other than Options 2 or 4. ASU bases this position on one sentence in section 4 of the Settlement Agreement: "To the extent Petitioner builds something with a capacity greater than Option 2 and seeks to include such incremental costs in rate base in a future rate case, it will be Petitioner's burden, as in all cases to the extent plant additions have not been preapproved, to demonstrate the expenditures were reasonable and prudently incurred."

The foregoing language is the only portion of the Settlement Agreement ASU cited in its proposed order to support its position that its preapproved expenditures of up to $10 million was not tied to any of the Options it presented in its Cause No. 44272 preapproval case. ASU's premise should be rejected. Viewing the provision on which ASU relies in the light of the settlement language

immediately preceding it makes it clearer that "something with a greater capacity than option 2" refers to Option 4:

> *4. Option 2 differs from Petitioner's proposal in its supplemental case-in-chief (referred to in Mr. Serowka's supplemental rebuttal testimony as "Option 4") in that the latter includes a capacity expansion to 4.0 MGD (instead of 3.0 MGD) as well as the installation of additional tanks that would permit the plant to be readily expanded to treat 6.0 MGD if in the future ASU installs additional equipment.* To the extent Petitioner builds something with a capacity greater than Option 2 and seeks to include such incremental costs in rate base in a future rate case, it will be Petitioner's burden, as in all cases to the extent plant additions have not been preapproved, to demonstrate the expenditures were reasonable and prudently incurred.
>
> *(emphasis added.*)

In the context of section 4, the reference to plant with a capacity of more than Option 2 can reasonably only refer to Option 4. But Section 5 of the settlement agreement establishes clearly that ASU's agreed preapproved expenditures is tied to Options 2 or 4 and no other:

> 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, prudency, 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.
>
> (emphasis added.)

Through the Settlement Agreement, the OUCC agreed that ASU should be preapproved to complete Option 2 or Option 4 for up to $10,000,000. (The OUCC also agreed that an affiliate of ASU would be permitted to construct the CE-III Project, and that for purposes of the preapproval requested in this Cause as agreed to herein, ASU has satisfied the requirements of Petitioner's existing affiliate agreement.) Nothing in the Settlement Agreement suggested ASU was preapproved an expenditure to build according to a design that was different than Option 2 or Option 4. The project ASU eventually constructed was not the project for which it was preapproved and which the Commission authorized be included in ASU's Phase III rates. ASU should not be authorized to include what its affiliate charged it to construct the project in this phase without an appropriate adjustment reflecting ASU's deviation from all of its preapproved Options.

The project ASU eventually constructed was not the project for which it was preapproved and which the Commission authorized to be included in ASU's Phase III rates. The project ASU finally finished on September 30, 2020, lacks characteristics and features (i.e., biological phosphorus removal, existing CSBR tanks rehabilitation, Micro Star Phosphorus filter, etc.) it claimed it needed to justify expenditures in its preapproval case. It is therefore inferior to the project for which ASU received the preapproval for expenditures rather than superior to Option 2 as ASU now asserts. IC 8-1-2-23 provides that "the commission shall not, in any proceeding involving the rates of such utility, consider the property acquired by such expenditures as part of the rate base, unless in such proceeding the utility

shall show that such property is used and useful in the public service . . . ." The project ASU ultimately constructed is not the project the Commission found would be used and useful in the public service.

The parties agreed that whether Petitioner constructs Option 2 or Option 4, to the extent actual expenditures exceeded 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 parties agreed that in order to include the excess expenditures in rate base for ratemaking purposes, ASU would 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 would 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 also agreed that an affiliate of ASU shall be permitted to complete the construction work on the CE-III Project, and that for purposes of the preapproval requested in this Cause as agreed to herein, ASU has satisfied the requirements of Petitioner's existing affiliate agreement. ASU agreed that satisfaction of the affiliate agreement is not a defense to any argument by the *OUCC* that, to the extent the CE-III project exceeds $10,000,000, prudency dictates the project could have been and should have been procured through some other means at a lower cost.

If ASU had built all elements it proposed for Option 2 and done so for $10,000,000, the only issue in this docketed case would have been *when* ASU completed its project. If ASU had built Option 2, and it had exceeded the preapproved expenditure amount, the settlement agreement would have addressed that contingency. But there was no contingency in the settlement agreement for what ASU did by deleting project components and altering numerous process units, buildings, piping, electrical and control systems that produced something other than Option 2 or Option 4. [3]

[3] Parks testimony, page 30

There is a very simple reason for this. The Settlement Agreement for preapproval does not address the situation ASU created for itself because it was never conceived that ASU had preapproval for expenditures to construct anything other than Options 2 or 4. ASU using its affiliate to construct a plant lacking many of the material features it presented, but paying no more than $10,000,000, was not authorized by the Settlement Agreement for preapproval. If ASU did not build its Option 2 or Option 4, ASU constructed a project that was not preapproved and the full $10 million it paid to its affiliate should not therefore be included in its Phase III rates.

The project ASU constructed is not superior to Option 2.

In support of its request to include the full $10 million in rate base, ASU now argues that what it built, while not Option 2 or Option 4, was even better than Option 2. ASU states in its proposed order that the plant that ASU built "provides the same treatment capacity as Option 2, but, as Ms. Leshney testified, 'it offers more efficiency and flexibility for future expansion because of its resemblance to Option 4.' Petitioner's Exhibit No. 2, p. 4."[4] The Commission's order in Cause No. 44676 found that a plant expansion from 1.5 MGD to 6.0 MGD was unwarranted and twice what it needed to be. Final Order, p. 29. This calls into question whether any cost associated with offering "flexibility for future plant expansion because of its resemblance to Option 4" should be considered prudent or in service. But more to the point, combined with other arguments in ASU's proposed order, ASU's argument is logically inconsistent. ASU relies on the premise that

[4] ASU asserts in its proposed order that "Neither Mr. Parks nor Mr. Bell testified otherwise." Importantly, Mr. Parks' and Mr. Bell's testimonies were filed before Ms. Leshney's in accordance with the prehearing conference order making any response to her assertion procedurally impossible. Nonetheless, Mr. Parks noted extensively what ASU's constructed project lacked when compared to the Option 2 design including but not limited to blowers, and more than $1.3 million of equipment needed to rehabilitate the existing CSBR tanks, which must remain in service to secure ASU's requested 3.0 MGD capacity rating.

Option 2 simply cannot be done for $10,000,000, stating in its proposed order that "No one has ever contended that it could have been done for that amount." ASU's proposed order also recites its response to a docket entry question, in which ASU attributed to the OUCC an opinion that presumably reflected its own. In its response to the docket entry, ASU asserted "'[u]nder no scenario, however, does the OUCC believe that the needed upgrade could be constructed for less than $10,000,000, regardless of how large the addition is or who builds it.' (emphasis added.) Petitioner's Exhibit No. 1, Attachment SLL-5, p. 2." How then could ASU construct a plant matching Option 2's 3.0 MGD hydraulic capacity and which is superior to Option 2 but for no more than $10,000,000? ASU implied this was an impossible feat. Clearly, the replacement plant ASU and First Time constructed is not materially comparable to the project Options it proposed and presented when it sought preapproval to expend up to $10,000,000.

ASU's meeting with the Commission about its affiliate agreement is a red herring.

ASU's proposed finding in its Affiliate Agreements section rests on the faulty premise that the affiliate agreements it presented to the Commission Staff somehow put the OUCC on notice it was not going to make the improvements it presented in its 3.0 MGD Option 2. ASU's own Mr. Lods acknowledged in the hearing that the Schedule of Values attached to the agreements does not make it readily apparent that ASU does not intend to construct Option 2. During cross-examination by the OUCC, Mr. Lods, President and owner of both ASU and First Time, was asked to identify what in this Schedule of Values attached to the affiliate agreement is inconsistent with Option 2 as described by ASU in Cause No. 44272. Mr. Lods said he did not know. Hr. Tr. C-38. Mr. Lods then suggested the OUCC should have "looked at that time" if it was "concerned." Id.

The OUCC had no reason to be *concerned* at that time. The OUCC had already agreed in Cause No. 44272 that ASU would be permitted to construct its Option 2 project using its affiliate

for up to $10,000,000 without any "burden to show the amount charged by its affiliate is fair and reasonable and comparable to what an unaffiliated entity would have charged." In other words, if ASU constructs the 3.0 MGD Option 2 project with all of the components it described in its preapproval case, and it pays its affiliate no more than $10 million, the affiliate agreement is simply not an issue. If anything, ASU's declaration, that it would construct to a 3.0 MGD treatment plant for no more than $10,000,000, was the opposite of concerning.

None of the documents ASU provided to the Commission, which were also copied to the OUCC, declared that ASU did not intend to complete one of the two options discussed in the settlement agreement in the preapproval case. ASU never advised the OUCC of the significant elimination of components from the Options it presented in Cause No. 44272 and that IDEM permitted as well as its decision to not install the Micro Star filter and concrete channel for phosphorus removal that ASU had estimated would cost $1.23 million. Nor does the evidence indicate this intention or decision was communicated to the Commission. Ironically, ASU asks the Commission to declare the OUCC "[sat] mute and allow[ed] the contracts to be filed and therefore fully performed before it raised an objection that it apparently knew it had more than four years earlier." If at that time ASU had already decided it would not complete either of its Option 2 or Option 4 designs or that it would not comply with its IDEM construction permit or seek a permit modification, it was ASU that chose not to make its intentions clear for years. The OUCC was not made aware that ASU built something other than its Option 2 or Option 4 projects until ASU's compliance filing in late 2019. Most importantly, the affiliate First Time having been paid no more than $10,000,000, First time's actual costs in constructing the plant are *only* relevant to the OUCC because ASU and/or First Time made the surprising choice to construct plant that did not

materially conform to either of the Options it presented and for which it received preapproval and around which the OUCC and ASU based their settlement agreement in Cause No. 44272.

ASU's argument and proposed findings with respect to its affiliate agreements also relies on the faulty premise that the Public needs to initiate an investigation to secure ASU's adherence to the Settlement Agreement it entered into with the OUCC. It does not. That agreement was the basis for the Commission's authorization for it to spend up to $10,000,000 on projects it presented in its supplemental rebuttal case in Cause No. 44272. Subsequently, in Cause No. 44676, that order approving the settlement agreement was the basis for the Commission's authorization of ASU's lengthy hybrid test year and authorization to include the balance of the $10,000,000 of the preapproved project in ASU's Phase III rates. In this sub-docket, the OUCC is not asking the Commission to investigate ASU's affiliate agreements but to recognize and enforce the terms of its orders including the rate order allowing ASU to implement Phase III rates and the preapproval order. Moreover, the Commission's evaluation of ASU's affiliate agreements is not the forum for ASU to seek a revision to the provisions of the rate order or procure an amendment or novation of an approved settlement agreement. When the Commission general counsel advised ASU the Commission's staff would not be recommending the opening of a proceeding under IC § 8-1-2-49 regarding the affiliate agreements, she made that clear:

> . . . this staff decision does not indicate a 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.

Nothing the Commission's general counsel said can be construed as authority for ASU to build something other than what it had presented in its Supplemental Rebuttal testimony and the settlement documents to secure preapproval in Cause No. 44272. Nor had ASU even made such

a request. As such, even if ASU's intentions to not construct one of the preapproved options was made clear, which it was not, ASU had no reasonable basis on which to assume the OUCC made or communicated any waiver of its rights. Moreover, by any reasonable interpretation of the Commission's directive, the issue to be addressed by Commission staff was ASU's affiliate relationship, not the design of ASU's preapproved project. After cataloguing several concerns with affiliate transactions in its final order in Cause No. 44676, the Commission noted "the affiliate contract between Petitioner and First Time Development Corp. is set to expire in January of 2017," and found "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-l-2-49(2)(g)." Nothing in the Commission's order suggested any of the requirements or findings made in its order could be altered, amended or eliminated by a brief meeting held to address the narrower issue of the transparency of ASU's affiliate relationship. Whether the Commission decided to initiate an investigation of ASU's newly minted affiliate agreement cannot affect the scope of the preapproval to which ASU had agreed. By the basic terms of its affiliate agreement, ASU had committed to secure the pre-approved expansion for $10 million, and the OUCC had agreed the affiliate agreement effective at that time was effective for purposes of preapproval of this project.

Project Completion and In Service Date

a. The approved settlement Agreement in Cause No. 44272 requires the plant to be complete, not "substantially complete."

ASU's proposed order discusses the plant in service date and claims the plant was in service as of October 18, 2019.[5] ASU goes on to claim that the plant being in service is all that is required for the Commission to allow collection of $10,000,000 in its rates. ASU attempts to equate this

[5] ASU proposed order, p. 17.

case with an old Indiana American case, where the Commission found a plant still under construction was used and useful because the parts still under construction did not substantially affect the commercial operation of the plant and service it was performing for the public. The facts of this case do not match the situation the Commission addressed in the Indiana American case. That finding is not applicable. Substantial completion would suffice to satisfy the used and useful standard as the Commission has found previously but this case requires the construction to be complete not substantially complete and the evidence provided demonstrates that the construction was not even substantially complete in October of 2019. ASU's claim the project was substantially complete and the costs should be allowed in rates is not controlling in this case and should be ignored for several reasons.

To begin with, ASU reached a settlement agreement with the OUCC that required "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."[6] (Emphasis added.) As part of the bargain reached between the parties and subsequently approved by the Commission, ASU agreed that to be included in rate base the constructed plant must be complete not substantially complete. This voluntary agreement by ASU raises the standard that must be applied to ASU's construction before the costs can be included in rates. By agreement Substantial completion is no longer a sufficient standard. ASU must be completely done with construction before the costs can be included in rates. As the OUCC noted in its testimony making sure the plant is complete before being included in rate base is an important part of the agreement. If ASU expended more than $10,000,000 for completing the project the rights and obligations of ASU and

[6] Cause No. 44272, Stipulation and Settlement Agreement Between American Suburban Utilities, Inc. and the Indiana Office of Utility Consumer Counselor.

the OUCC would be affected and would require ASU to show the "amount charged by its affiliate is fair and reasonable and comparable to what an unaffiliated entity would have charged."[7] The agreement reached between ASU and the OUCC for preapproval of the cost associated with construction of either option 2 or option 4 require the parties know the costs of the project incurred through completion. While Substantial completeness is a reason the Commission may find a project still under construction is used and useful and allow the costs into rates the Commission is not required to allow these costs into rates especially when ASU has agreed to a different standard. ASU specifically agreed to not include costs for the construction in rates until the project was "complete," not "substantially complete."

b. ASU's construction of its CE-III project was not substantially complete.

ASU's assertion that the appropriate standard is *substantial completion*" significantly understates the construction that remained undone or incomplete at the time it submitted its certificate of completion in 2019. Both IDEM and the OUCC visited the plant after the certificate was submitted, and *both* came to the determination the plant was not complete.[8] In fact, ASU also underscored the fact that the construction was not substantially complete when it sought an extension of the expiration date of the IDEM construction permit. ASU sought an extension until June 30, 2020, to allow for the full construction completion of the project.[9] IDEM conducted a Compliance Evaluation Inspection on September 24, 2019 and listed several items not completed in its October 1, 2019 Inspection Summary/Noncompliance Letter. The IDEM letter stated plant that was supposed to be in service and has been in rates since 2017 was still not constructed. This

[7] Cause No. 44676 final order.

[8] Testimony of Scott Bell, p. 13.

[9] *Id.,* Attachment SAB-3.

alone evidences a conclusion that the plant was not substantially complete. IDEM itself stated "at the time of the inspection the facility did not have all the construction completed on the plant upgrade."[10] ASU's response to IDEM did not dispute that not all construction was complete on the plant upgrade. IDEM finding the plant was not complete in October 2019 and ASU not disputing this and seeking a construction extension until June 2020 also evidences that the plant was not complete in October 2019 when ASU submitted its notice. IDEM inspected the construction again on June 24, 2020, and its inspection summary letter indicates construction was still not completed even with a deadline of June 30, 2020. IDEM noted ASU had not completed all construction activities associated with the treatment plant expansion and also had not completed the construction of the phosphorus removal system.[11]

The evidence demonstrates ASU was not finished with construction until September of 2020 almost a year after when they first filed the notice of completion. ASU has been recovering through rates costs for the construction of the treatment plant that was neither complete nor substantially complete. On October 18, 2019 the plant was not complete, and it took ASU almost another year to complete or substantially complete construction. ASU agreed to a standard of complete construction for recover of the costs associated with construction of its treatment plant and ASU should not be rewarded for making an inaccurate filing. Allowing ASU to recover these costs goes against the agreement ASU willingly entered. Since ASU was not done with construction until September of 2020, ASU should issue a refund of all revenues paid as a result of the interim Phase III rate increase for service provided through September 30, 2020.

[10] *Id.*, Attachment SAB-6.

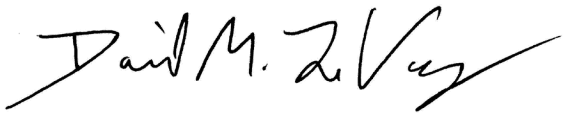
[11] *Id.,* Attachment SAB-14.

The Commission need not make a determination with respect to IDEM.

The status of ASU's IDEM construction permit at the time of the initiation of this sub-docketed proceeding remains relevant to the Commission's jurisdiction in this proceeding. In its proposed order (p. 16), ASU acknowledges "it did not comply with the construction permit IDEM had issued in 2014" but maintains "IDEM has issued a permit based on the as-built drawings dated September 30, 2020." ASU further asserted in its proposed order that "There is no longer any issue regarding whether the plant upgrades are in compliance with the IDEM permit, and so this objection has been resolved." However, no construction permit for the plant ASU constructed has been put into evidence in this sub-docketed proceeding, only the original 2019 construction permit and 2014 construction permit on which IDEM brought its enforcement action in 2020.[12] The Commission does not exercise jurisdiction over IDEM, and it need not make the pronouncement as ASU has requested in its proposed order.

Respectfully submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



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[12] Construction Permit No. 20788 (*Carriage Estates III Wastewater Treatment Plant Expansion* project) issued February 21, 2014, and Construction Permit No. 22977 (*Carriage Estates III Wastewater Treatment Plant Improvements, Phosphorus Removal* project), issued on February 21, 2019.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **OUCC'S REPLY TO ASU'S PROPOSED ORDER** has been served upon the following counsel of record in the captioned proceeding by electronic service on June 25, 2021.

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