

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
APPLE VALLEY UTILITIES, INCORPORATED) CAUSE NO. 44551 U
FOR A NEW SCHEDULE OF RATES AND)
CHARGES FOR WATER AND WASTEWATER) APPROVED: APR 06 2016
SERVICE.)

ORDER OF THE COMMISSION

Presiding Officers:

Angela Rapp Weber, Commissioner

Gregory R. Ellis, Administrative Law Judge

On October 24, 2014, Apple Valley Utilities, Inc., ("Applicant" or "Apple Valley") filed its Small Utility Rate Application for a change in rates and charges ("Application") with the Indiana Utility Regulatory Commission ("Commission") pursuant to the provisions of Ind. Code § 8-1-2-61.5 and 170 IAC 14-1. In its Application, Apple Valley requested an increase of its current water and wastewater rates. On November 12, 2014, Apple Valley filed additional information in support of the application, including proofs of the notice it had published describing the filing of its Application as required by 170 IAC 14-1-2(b). On November 12, 2014, the Commission's Water and Wastewater Division issued a Memorandum stating that Apple Valley's application was complete.

Pursuant to Ind. Code § 8-1-2-61.5, a formal public hearing is not required in rate cases involving small utilities with fewer than 5,000 customers, unless a hearing is requested by at least ten customers, a public or municipal corporation, or by the Indiana Office of Utility Consumer Counselor ("OUCC"). During the period of November 19 through December 5, 2014, residents of Apple Valley Estates filed requests, with more than ten signatures, for a public field hearing. On December 8, 2014, the OUCC filed a request for a public field hearing in response to communications it received from customers of Apple Valley. The Commission granted the request on December 19, 2014. Pursuant to notice duly published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public field hearing was held in this Cause on March 4, 2015 at 6:00 p.m. (local time) at the Lowell Middle School, 19250 Cline Avenue, Lowell, Indiana. Approximately six customers presented oral testimony and seven provided written comments at the field hearing.

On March 30, 2015, the OUCC filed its report ("Report") with the Commission as required by 170 IAC 14-1-4(a). The Report consisted of Exhibit No. 1 for the water utility and Exhibit No. 2 for the wastewater utility. The Report detailed its review of the Application and made several recommendations to the Commission concerning the relief requested by Apple Valley. Written consumer comments were included with the Report as Exhibit No. 3. The OUCC filed workpapers related to its Report on April 1, 2015. On April 27, 2015, the OUCC filed corrections to its Report. On December 14, 2015, Apple Valley filed its response ("Response") to the OUCC's Report pursuant to 170 IAC 14-1-4(c). Apple Valley indicated that the filing of its Response was delayed due to Apple Valley's unsuccessful attempt to sell its utility operations. On January 11, 2016, Apple Valley responded to questions asked by the Presiding Officers in a docket entry dated December 28, 2015.

Based upon the applicable law and the evidence presented herein, the Commission now finds as follows:

1. **Commission Jurisdiction and Notice.** Applicant is a public utility as defined in Ind. Code § 8-1-2-1(a). The evidence presented by Apple Valley in this Cause establishes that legal notice of the filing of the Application was published in accordance with applicable law and that Apple Valley gave proper notice of the nature and extent of the relief it is seeking to its customers. The Commission thus finds that due, legal, and timely notice of this matter was given and published as required by law. Further, the Commission finds Apple Valley is an Indiana public utility, provides water service to fewer than 5,000 retail customers and does not extensively serve another utility. The Application satisfies all of the requirements of Ind. Code § 8-1-2-61.5 and 170 IAC 14-1 for treatment as a small utility. Therefore, the Commission has jurisdiction over the Applicant and subject matter of this case.

2. **Applicant's Characteristics.** Applicant is an investor-owned utility ("IOU") that provides water and wastewater utility service to approximately 270 customers in Lake County, Indiana. Apple Valley's customers include: residents of the Apple Valley Mobile Home Park, households in the Tucson Housing Subdivision, and commercial businesses.

A. **Water System.** Apple Valley obtains its source water from four wells. Well Nos. 1 and 2 are located in a pump house at the west end of the Apple Valley Mobile Home Park. Well Nos. 3 and 4 are located near the Tucson Housing Subdivision. The pumps in each of the four wells are submersible units that have a rated capacity of 85 gallons per minute. Well Nos. 1 and 2 pump water into a 2,000-gallon tank in the Apple Valley Mobile Home Park pump house. Well Nos. 3 and 4 pump water to a 2,000-gallon tank in the Tucson Subdivision pump house. The tanks operate in a pressure range of 40 to 60 pounds per square inch. Apple Valley treats its water with liquid sodium hypochlorite for disinfection and polyphosphate for the high iron content. Apple Valley's water distribution system consists of PVC water mains, hydrants, valves, and lateral service lines. Apple Valley's water customers are billed on a flat monthly rate regardless of usage because it does not have water meters in its system.

B. **Wastewater System.** Apple Valley owns and operates a Class I, semi-public wastewater treatment plant located at the eastern end of Wealthy Road in the Apple Valley Estates Mobile Home Park in Hebron, Indiana. The treatment plant is an 185,000 gallons per day ("gpd") extended aeration, single stage nitrification facility. Apple Valley disinfects the wastewater with liquid sodium hypochlorite (bleach) followed by dechlorination with sodium bisulfite. Construction of the facilities occurred in three phases. In the early 1970's, Apple Valley installed a 60,000 gpd steel wastewater package plant (the "South Tank").¹ In 1996, Apple Valley installed a 25,000 gpd package plant (the "Middle Tank"). In 1996, Apple Valley also converted the wastewater package plant's rapid sand filter to a disinfection tank (the "Chlorine Contact Tank"). In 2000, Apple Valley installed a concrete treatment basin (the "North Tank").

3. **Existing Rates and Relief Requested.** Apple Valley's existing rates and charges for both water service and wastewater service were established in the Commission's March 9, 1995 Order

¹ Package plants are pre-manufactured treatment facilities used to treat wastewater in small communities or on individual properties. U.S. Environmental Protection Agency, EPA 832-F-00-016, Wastewater Technology Fact Sheet: Package Plants (2000).

in Cause No. 39889. On August 2, 1995, the Commission approved a monthly base charge and a volumetric sewer rate based on metered water usage for commercial customers in Cause No. 40191. In its Application, Apple Valley requested an increase of 34.99% or \$22,875 above its current water rates and an increase of 45.21% or \$99,372 above its current wastewater rates.

4. **Test Period.** The test period selected for determining Apple Valley's revenues and expenses reasonably incurred in providing water and wastewater utility services to its customers includes the 12 months ending December 31, 2013. With adjustments for changes that are fixed, known and measurable, the Commission finds that this test period is sufficiently representative of Apple Valley's normal operations to provide reliable data for ratemaking purposes.

5. **Water Utility.**

A. **Apple Valley's Application.** In its Application, Apple Valley stated the rate increase for water service is to be used principally to pay the cost of operation and maintenance of the utility. Apple Valley indicated there is a need to set aside money to effectively repair and/or replace equipment as needed. Apple Valley also indicated that it would like to give employees a pay raise since cost of living raises have not been afforded for several years.

B. **OUCC's Report and Apple Valley's Response.** The OUCC explained in its Report that rates for an IOU are calculated by first determining the return on rate base. This calculation determines what the net operating income should be in order to provide an opportunity for a reasonable return to shareholders. Next, a determination is made as to the amount of the adjusted or *pro forma* net operating income based on the utility's current rates. These *pro forma* amounts are based upon the known, historical test year revenues and expenses updated to include changes that are fixed within the adjustment period (12 months from the end of the test year), known to occur (and are recurring), and measurable in amount. Subtracting *pro forma* net operating income, as determined through the adjustment process described above, from the net operating income required by the return on rate base, yields the dollar amount of the increase needed to provide a reasonable return to the shareholders. The revenue increase is then grossed up for taxes and fees related to the increased revenue. The OUCC noted that Apple Valley has not requested to earn a return on its rate base in this Cause. The OUCC further explained that rates are therefore being set so that operating revenues equal operating expenses, similar to the way rates are set for municipal or not-for-profit utilities.

i. **Annual Revenue Requirements.** In its Application, Apple Valley requested an increase in its revenues of \$22,875. The OUCC recommended a revenue increase of \$14,806 in its Report. The OUCC noted that Apple Valley proposed a gross revenue conversion factor of 129.52% to calculate its percentage increase. That conversion factor includes bad debts, IURC fee, utility receipts tax, and state and federal income taxes. The OUCC proposed a gross revenue conversion factor of 102.27%. The OUCC explained the primary difference between the two proposals is that it excluded state and federal income taxes. The OUCC further noted that Apple Valley has not requested a return on its rate base investment and its rates are being set so that revenues equal operating expenses. Therefore, Apple Valley will have no taxable income and no income tax expenses. In its Response, Apple Valley noted that the OUCC made a number of adjustments. Apple Valley accepted the OUCC's adjustments and the requested net revenue increase for water of \$14,573

or 21.99% as presented in the OUCC Water Report.² The table below summarizes the revenue requirements as presented by both Apple Valley and the OUCC:

Water		
Revenue Requirements	Utility	OUCC
Rate Base	\$ 41,221	\$ 44,530
Time: Cost of Capital	-	-
Net Operating Income Required	-	-
Less: Pro-forma Net operating Income at present rates	(17,662)	(14,477)
Increase in net Operating Income Required	17,662	14,477
Multiply By: Gross Revenue Conversion Factor	1.2952	1.0227
Requested Increase	\$ 22,875	\$ 14,806
Recommended Percentage Increase	34.99%	22.34%

ii. **Miscellaneous Recommendations.** In its report, the OUCC noted that Apple Valley's water facilities suffer from insufficient maintenance, inadequate iron sequestration, and non-operational facilities. The OUCC recommended the Commission order Apple Valley to make improvements to its operations, which should significantly improve the quality of service currently provided to its water utility customers. Those improvements include both capital improvements and operational practices that are necessary to providing safe, adequate, and reliable water utility service to its customers. The OUCC noted that the creation of a capital improvement plan is critical to the future of the Apple Valley water utility.

Apple Valley noted in its Response that in order to address the OUCC's recommendations, it retained John Phipps, P.E. from NIES Engineering, Inc. to review the water utility and the OUCC's Report and advise Apple Valley on how to proceed with any necessary capital improvements. Apple Valley is also working to retain a financial advisor capable of reviewing its books and the OUCC's Report and advising Apple Valley on how to proceed with the financial issues addressed in the Report. The other recommendations made by the OUCC, which Apple Valley agreed to include:

a. The OUCC recommended that Apple Valley reclassify two notes, one for \$102,942 and another for \$617,858 to paid-in-capital because they do not represent payable debt. They were included on the balance sheet when the utility was acquired by the current owner and payable to the prior owner. These notes pertain to the wastewater utility also. Apple Valley indicated that it has already completed the reclassification of the two notes to paid-in-capital.

b. The OUCC noted that Apple Valley's water tariff does not contain charges or fees for several non-recurring items identified in its Rules and Regulations. The OUCC identified these fees to include: a tap fee for water service, charges for the connection or reconnection of a water utility customer, late payment fees, and a returned check charge. It recommended that Apple Valley make a 30-Day filing, including all support for each charge, pursuant to 170 IAC 1-6 in order to add these fees and charges to its tariff. The OUCC further recommended

² Based upon the OUCC's adjustments, the amount of increase in revenue would be \$14,806 and 22.34%. The amount of \$14,573 or 21.99% is a mathematical error. Commission staff verified this with the OUCC on February 5, 2016.

that Apple Valley should be prohibited from imposing any non-recurring fees and charges not already included in its tariff on its customers until such fees and charges have been approved by the Commission. This will ensure water customers are being treated fairly and consistently. Apple Valley agreed to make a 30-day filing within 30 days of the issuance of a Final Order in this Cause.

c. The OUCC indicated that Apple Valley's Well Nos. 3 and 4 are currently in operation and are producing all source water. Well Nos. 1 and 2 are currently not producing water, but available for backup service. Well Nos. 1 and 2 were installed in 1972 and are now over 40 years old. The OUCC noted that Well Nos. 1 and 2 were inspected and cleaned in July 2012 and Well Nos. 3 and 4 were inspected and cleaned in July 2011. However, no inspection report documenting the procedure used, the name of the contractor, or the cost incurred was provided by Apple Valley. The OUCC further noted that during its on-site inspection of the utility, Apple Valley representative, Joe Braun, indicated the No.1 and 2 wells were acid cleaned and surge blocked by the well cleaning company to remove deposits in the casing and screen in 2012. The OUCC opined that Well Nos. 1 and 2, in their current condition, are not capable of providing water in any measurable quantity for a sustained period. The OUCC concluded that the lack of a reliable source of water from Well Nos. 1 and No. 2 is a problem because Applicant essentially has no backup supply if Well Nos. 3 and 4 or the Tucson Pump House are out of service due to mechanical failure or maintenance. Well Nos. 1 and 2 should be abandoned, unless Apple Valley can provide documentation from a professional well inspection firm that the wells can be economically rehabilitated and placed back in service.

The OUCC recommended that Apple Valley develop a capital improvement plan to remedy certain technical, managerial, and financial issues which the proposed rate increase will not sufficiently address. Apple Valley indicated, based on the OUCC recommendations, that within 180 days of a Final Order in this Cause, it will file a written capital improvement plan with the Commission. In that capital improvement plan, Apple Valley will identify capital needs of the utility for at least the next five years, including addressing iron removal and/or sequestration. Apple Valley will also address rehabilitation and/or use of Well Nos. 1 and 2 in its capital improvement plan. In addition, Apple Valley will request that the engineer preparing the capital improvement plan address American Water Works Association ("AWWA") Standards compliance as part of the review.

d. The OUCC recommended the Commission require Apple Valley to develop a financial plan to obtain the necessary funds to pay for all necessary capital improvements. The financial plan should be provided to the Commission and the OUCC within 180 days of a Final Order in this Cause. Apple Valley indicated that within 180 days of a Final Order in this Cause, it will file a written financial plan which will address (i) obtaining funds to pay for capital improvements as identified in the capital improvement plan and (ii) any other financial issues concerning Apple Valley.

e. The OUCC indicated that Astbury Water Technology, Inc. ("Astbury") provides a certified operator that monitors Apple Valley's water operations daily for a monthly fee of \$1,450. The OUCC noted that Apple Valley does not have a written contract with Astbury and recommended Apple Valley enter into a written contract with Astbury. The OUCC recommended a signed copy of the contract should be filed with the Commission and a copy provided to the OUCC within 30 days of the issuance of a Final Order in this Cause. The OUCC further noted that Apple Valley's affiliate agreements have not been updated since the original agreements were provided to the Commission in June 2000 and that the agreements are unlikely to contain accurate

information since the utility was transferred to new ownership in 2004. It recommended that Apple Valley update its affiliate agreements and provide copies to the Commission. Apple Valley indicated that within 180 days of a Final Order in this Cause, it will file a report with the Commission and the OUCC detailing its efforts at updating its affiliate agreements and conversations concerning expectations and/or agreements with Astbury.

f. The OUCC recommended Apple Valley complete a rate design and cost of service study ("COSS") within 180 days of the Final Order in this Cause to ensure that costs are being recovered from the appropriate customer classes. Presently, an unmetered residential customer, unmetered commercial customer and the unmetered sales to public authority pay the same rate of \$21.02 per month for water consumption. The OUCC noted that it is unlikely that a residential water customer in this community will use as much water as a commercial customer or the public authority. A rate design and a COSS would properly allocate the payment burden among rate classes. In its response to the Presiding Officers' December 28, 2015 Docket Entry question regarding a COSS, Apple Valley indicated that it intends to conduct a rate design and COSS as recommended by the OUCC in its Report. Apple Valley intends to retain Ted Sommer from London Witte Group to assist with evaluating its current rates and charges, conducting a rate design, and identifying the costs associated with serving each of Apple Valley's various customer classes. Apple Valley will provide the results of the accounting report and analysis in support of any future rate case.

g. The OUCC noted in its Report that Apple Valley's Well Nos. 1 and 2 pump water into a 2,000-gallon hydro-pneumatic tank in the Apple Valley Mobile Home Park Pump House and Well Nos. 3 and 4 pump water to a 2,000-gallon hydro-pneumatic tank in the Tucson Pump House. The pump houses contain piping, valves, chemicals, and chemical feed systems. The OUCC opined in its Report that Apple Valley has not properly maintained the hydro-pneumatic tanks and associated piping and valves, and is not in compliance with applicable AWWA standards and possibly the American Society of Mechanical Engineers Boiler and Pressure Vessel Codes. The OUCC recommended that Apple Valley be ordered to comply with the applicable inspection and maintenance standards for treated water storage facilities. Apple Valley should provide the Commission and the OUCC a copy of a written inspection within 60 days of the Final Order in this Cause. The OUCC also recommended the Commission require Apple Valley to retain a professional tank inspection firm to perform an assessment for the piping, valves, and hydro-pneumatic tanks. The tank inspection firm should produce a comprehensive report that describes the condition assessment, the recommended rehabilitation, and the estimated cost of the rehabilitation. This report should be provided to the Commission and OUCC within 15 days of completion. Apple Valley noted that in connection with the capital improvement plan, which it intends to file within 180 days of a Final Order in this Cause, John Phipps will perform a condition assessment for the piping, valves, and hydro-pneumatic tanks. Apple Valley will request that Mr. Phipps's firm also produce a written inspection report to be provided to the Commission and the OUCC within 15 days of completion of the report.

C. Conclusions. Apple Valley originally proposed an across-the-board increase of \$22,875 or an increase of 34.99% in its water rates. The OUCC's adjustments to Apple Valley's proposed rate increase results in a recommended increase of \$14,806 or 22.34% in rates. Apple Valley accepted the adjustments that the OUCC recommended as illustrated above. Apple Valley also agreed to recommendations of the OUCC regarding the water utility in its Response as discussed above. Apple Valley has retained a professional engineer to review its water utility operations and provide advice on how to meet the OUCC's capital and reporting recommendations. Apple Valley is

also working to retain a financial consultant to advise Apple Valley on the financial issues identified in the OUCC's Report.

6. Wastewater Utility.

A. Apple Valley's Application. In its Application, Apple Valley proposed the rate increase for wastewater service is to be used principally to pay the cost of operation and maintenance of the utility. Apple Valley indicated there is a need to set aside money to effectively repair and/or replace equipment as needed. Apple Valley also indicated that it would like to give employees a pay raise since cost of living raises have not been afforded for several years.

B. OUCC's Report and Apple Valley's Response. In same manner as the water utility, the OUCC explained how rates for an IOU are calculated for purposes of Apple Valley's wastewater utility. The OUCC noted that Apple Valley has not requested to earn a return on its rate base for its wastewater utility in this Cause. The OUCC further explained that rates are therefore being set so that operating revenues equal operating expenses, similar to the way rates are set for municipal or not-for-profit utilities.

i. Annual Revenue Requirements. In its Application, Apple Valley requested an increase in its revenues of \$99,372. The OUCC calculated a revenue increase of \$3,869 in its Report. The OUCC noted that Apple Valley proposed a gross revenue conversion factor of 129.34% to calculate its percentage increase. That conversion factor includes bad debts, IURC fee, utility receipts tax, and state and federal income taxes. The OUCC proposed a gross revenue conversion factor of 102.13%. The OUCC explained the primary difference between the two proposals is that it excluded state and federal income taxes. The OUCC further noted that Apple Valley has not requested a return on its rate base investment and its rates are being set so that revenues equal operating expenses. Therefore, Apple Valley will have no taxable income and no income tax expenses. Other differences in the adjustments are salary expense, purchased power, capital items expensed, and depreciation expense. The table below summarizes the revenue requirements as presented by both Apple Valley and the OUCC:

Wastewater Revenue Requirements	Utility	OUCC
Rate Base	\$ 129,502	\$ 38,672
Time: Cost of Capital	-	-
Net Operating Income Required	-	-
Less: Pro-forma Net operating Income at present rates	(76,830)	(3,788)
Increase in net Operating Income Required	76,830	3,788
Multiply By: Gross Revenue Conversion Factor	1.2934	1.0213
Calculated Increase	\$ 99,372	\$ 3,869
Requested Percentage Increase	45.21%	0.00%
Calculated Increase	45.21%	1.69%

In its report, the OUCC noted that Apple Valley's wastewater system faces significant challenges in the operation and maintenance of the facilities. The OUCC opined that Apple Valley

has provided a minimal level of investment in its utility plant in service since the current owner acquired the wastewater utility and due to the deteriorated condition of the wastewater treatment plant and collection system, it made a number of engineering recommendations. Those recommendations should be met before Apple Valley received any increase to its wastewater rates. The OUCC therefore proposed that no rate increase be approved for Apple Valley at this time. Apple Valley noted in its Response that the OUCC made a number of adjustments in its Report that it agreed to make. Even though the OUCC calculations would result in a rate increase of \$3,869 or 1.69%, Apple Valley agreed to the OUCC's proposal of no rate increase at this time for the wastewater utility.

ii. **Miscellaneous Recommendations.** The OUCC's Report indicated Apple Valley's wastewater treatment plant and collection system is suffering from aging of the original facilities and a lack of maintenance. The treatment plant and contact tank are both severely rusted, are beyond their useful lives, and should be replaced. Apple Valley has begun preparation for emergency repairs to one of its tanks to address holes rusted through the tank walls that are just above the water line. These repairs would be temporary until Apple Valley can inspect and assess the tanks and develop a long-term capital improvement plan for repair or replacement.

The Report also noted that that Apple Valley's commercial customers discharge a majority of the pollutant load but pay substantially less for treatment services than its residential customers. Apple Valley has not notified the Indiana Department of Environmental Management ("IDEM") that sludge hauled off-site is being land applied.³ The OUCC opined this is problematic because Apple Valley's sludge processing facilities do not meet U.S. Environmental Protection Agency ("EPA") regulations or the Ten States Standards for land application of sludge.⁴ The OUCC recommend Apple Valley be required to address operational and maintenance challenges.

In its Response, Apple Valley noted that it has retained John Phipps to review Apple Valley's wastewater utility and the Report and advise Apple Valley on how to proceed with any necessary capital improvements that the OUCC has identified. Apple Valley is also working to retain a financial advisor capable of reviewing Apple Valley's books and the Report and advising Apple Valley on how to proceed with the financial issues addressed in the Report. The other recommendations made by the OUCC include:

a. The OUCC recommended that Apple Valley reclassify two notes, one for \$102,942 and another for \$617,858 to paid-in-capital because they do not represent payable debt. They were included on the balance sheet when the utility was acquired by the current owner and payable to the prior owner. These notes pertain to the water utility also. Apple Valley indicated that it has already completed the reclassification of the two notes to paid-in-capital.

³ Land application is defined at 327 IAC 6.1-2-32 to mean the beneficial use of a biosolid, industrial waste product, or pollutant-bearing water by: (1) spraying or spreading onto the land surface; (2) injection below the land surface; or (3) incorporation into the soil.

⁴ In 1947, Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers ("GLUMRB") created a Committee on Development of Uniform Standards for Sewage Works. The Committee, composed of a representative from each of the ten states (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, and Wisconsin) and Ontario, was assigned the responsibility to review existing standards for sewage works and to investigate the possibility of preparing joint standards to be adopted by the states represented, and to report its findings to GLUMRB. Based on the initial report, GLUMRB authorized the Committee to develop recommended sewage works standards. The Ten States Standards were first published in 1951 and subsequently revised and published, most recently in 2014.

b. Similar to the water utility, the OUCC noted that Apple Valley's wastewater utility's affiliate agreements have not been updated since the original agreements were provided to the Commission in June 2000 and that the agreements are unlikely to contain accurate information since the utility was transferred to new ownership in 2004. It recommended that Apple Valley file updated affiliate agreements with the Commission and the OUCC within 180 days of the issuance of a Final Order in this Cause. Apple Valley indicated that within 180 days of a Final Order in this Cause, it will file a report with the Commission and the OUCC detailing its efforts at updating its affiliate agreements.

c. The OUCC noted that Apple Valley's wastewater tariff does not reflect any non-recurring charges or fees identified in its Rules and Regulations. The OUCC identified these fees to include: charges to connect a customer to the wastewater collection main, commonly called a tap fee; late payment fees; and a returned check charge. It recommended that Apple Valley make a 30-Day filing, including all support for each charge, pursuant to 170 IAC 1-6 in order to add these fees and charges to its tariff. Apple Valley agreed to make a 30-day filing within 30 days of the issuance of a Final Order in this Cause to obtain approval for inclusion of non-recurring charges and fees in its wastewater tariff including a tap fee, reconnection/connection charge, late fees, and returned check charge.

d. The OUCC indicated that Apple Valley's wastewater system faces several significant challenges in operation and maintenance of the facilities. The original package plant and the Chlorine Contact Tank are both severely rusted. Both of these tanks, which were installed in the early 1970s, have reached the end of their service lives and should be replaced. In response to Violation Letters from IDEM, the Apple Valley has proposed repairs to the South Tank. Some materials for tank repairs have been purchased and are on site but surface preparation, welding, and tank painting have yet to begin. These are emergency repairs to prevent sewage from leaking out of the tank and should be viewed as temporary until Apple Valley can inspect and assess the tanks and develop a long-term capital improvement plan for tank repair or replacement.

The OUCC opined that given the Apple Valley's wastewater plant's physical condition, it should be required to conduct a comprehensive wastewater treatment plant inspection and assessment conducted by a competent third party. Apple Valley should prepare a capital improvement plan for submittal to the Commission and OUCC within 180 days of a Final Order in this Cause. The OUCC recommended that as part of its capital improvement plan, Apple Valley should develop and conduct a sampling and analysis program to document the pollutant loadings from commercial customers east of I-65 and confirm raw sewage flows and loadings at the wastewater treatment plant. The OUCC noted that based on calculations using raw sewage pollutant data reported by Apple Valley on monthly reports to IDEM, it appears that commercial customers discharge a majority of the pollutant load but pay substantially less for treatment services than its residential customers.

In its Response, Apple Valley agreed to file a written capital improvement plan with the Commission within 180 days of a Final Order in this Cause. It will identify capital needs of Apple Valley for at least the next five years, including plans to comply with IDEM's digested sludge storage requirement. Apple Valley also agreed to file a written financial plan within 180 days of a Final Order in this Cause. The financial plan will address: (i) obtaining funds to pay for capital improvements as identified in the capital improvement plan; (ii) calculation of depreciation expense on net utility plant in service after eliminating customer contributions or amortization of its

contributions; (iii) evaluate the rate design as recommended by the OUCC; and (iv) any other financial issues concerning Apple Valley.

e. The OUCC recommended that Apple Valley complete a rate design and COSS within 180 days of the Final Order in this Cause to determine the proper charges for the various classes of wastewater customers. Presently, an unmetered residential customer and an unmetered commercial customer pay the same rate of \$48.58 per month. The OUCC noted that it is unlikely that a residential wastewater customer in this community will discharge as much influent flow as a commercial customer. A rate design and a COSS would properly allocate the cost among rate classes and design rates that appropriately recover these costs from each customer class. In its response to the Presiding Officers' December 28, 2015 Docket Entry question regarding a COSS, Apple Valley indicated that it intends to conduct a rate design and COSS as recommended by the OUCC in its Report. Apple Valley intends to retain Ted Sommer from London Witte Group to assist with evaluating its current rates and charges, conducting a rate design, and identifying the costs associated with serving each of Apple Valley's various customer classes. Apple Valley will provide the results of the accounting report and analysis in support of any future rate case.

f. In its Report, the OUCC recommended that Apple Valley retain a qualified tank inspection consultant to conduct a complete tank inspection to determine the condition of the interior coatings and rusted condition of the steel on the South Tank, the Middle Tank, and the Chlorine Contact Tank. Any contract with a qualified tank inspection consultant should include development of a plan to dewater, clean, inspect, and assess replacement of all steel process tanks. Assessment should include photographing the tank walls to document their condition, evaluating the interior coatings, inspecting what remains of the cathodic protection systems, and conducting leak tests. A report for each tank should be completed and submitted to IDEM, the Commission, and the OUCC for review. If tank assessments confirm the steel tanks are deteriorated beyond repair, Apple Valley should develop a plan to replace the steel package plants and Chlorine Contact Tank with new wastewater tanks. In its Response, Apple Valley indicated that it will retain John Phipps to perform a complete tank inspection to determine the condition of the interior coatings and condition of the steel on all treatment tanks. Apple Valley will request that Mr. Phipps's firm include development of a plan to dewater, clean, inspect, and assess replacement of all steel process tanks. In the event any of the inspection determines that items are in need of or beyond repair, Apple Valley will include the plan for repair and/or replacement in its inspection report and/or in the capital improvement plan. Apple Valley will request that Mr. Phipps's firm produce a written inspection report which it will provide to the Commission and the OUCC within 15 days of completion of the report.

g. The OUCC noted in its Report that Apple Valley contracts with Rensselaer Septic Tanks to haul liquid sludge off-site weekly for disposal by land application onto farmland or disposal at another wastewater treatment plant when winter frozen ground conditions exist, at considerable expense. Apple Valley's original package plants did not rely on direct land application of sludges. Rather, the original plants relied on hauling wet sludges to a larger wastewater treatment plant for co-disposal with the other treatment plant's sludges, as listed in its applications for National Pollutant Discharge Elimination System ("NPDES") and construction permits. In the 1995 and 1998 construction permits, Apple Valley indicated sludges were hauled to the North Judson Publically Owned Treatment Works. The OUCC also noted that Apple Valley's sludge holding chambers are undersized and inadequate to properly digest sludge and that aerobic digestion does not occur for the required time needed to comply with the EPA Part 503 Sludge standards applicable to

land applied sludge. Further, IDEM approved Apple Valley's construction permit applications and issued NPDES permit renewals based upon its representation that sludge was hauled off-site to another wastewater plant for proper processing. Apple Valley did not indicate any sludge would be land applied.

The OUCC recommended that Apple Valley collect, analyze, or report process control data such as sludge loadings, total solids, and volatile solids as part of its standard procedures. This data is necessary for adequate management of sludge processing facilities. If land application is to continue, Apple Valley should include in the plan an expanded aerobic sludge digestion system to provide adequate digestion capacity in conformance with EPA regulations, IDEM regulations, and Ten States Standards. Apple Valley should also include plans to comply with IDEM's digested sludge storage requirement. In its Response, Apple Valley indicated that it will collect, analyze, or report process control data such as sludge loadings, total solids, and volatile solids as part of its standard procedures.

C. Conclusions. Apple Valley originally proposed an across-the-board increase of 45.21% or \$99,372 above its current wastewater rates. After adjustments, the OUCC calculated an increase of 1.69% or an overall rate increase of \$3,869 in wastewater revenues. However, the OUCC recommended no rate increase for Apple Valley's wastewater utility due to the operational and plant deficiencies. The OUCC further recommended that Apple Valley apply for a rate increase once it has prepared a capital improvement plan addressing the deficiencies identified in the Report and prepared a rate design and COSS addressing the allocation of costs to Apple Valley's customers.

Apple Valley accepted the OUCC's recommended net revenue increase for wastewater of \$0 or 0% as presented in the Report. Apple Valley agreed to the recommendations of the OUCC regarding the wastewater utility in its Response as discussed above. Apple Valley has retained a professional engineer to review its utilities and provide advice on how to meet the OUCC's capital and reporting recommendations. Apple Valley is also working to retain a financial consultant to advise Apple Valley on the financial issues identified in the OUCC's Report.

7. Commission Discussion and Findings.

A. Water Utility. Based upon the evidence of record, we find Apple Valley's requested increase with the adjustments summarized above in Finding Paragraph 5. B. i. is adequate to cover the amount of its deficit that was recorded in the test period. Apple Valley will be able to operate at the proposed rate increase. We find a rate increase of \$14,806 or 22.34% to be reasonable and is approved.

As discussed above, we note that Apple Valley's water utility suffers from insufficient maintenance, some of which has resulted in facilities that are in need of replacement or repair. Apple Valley needs to make improvements to its operations in order to improve the quality of service currently provided to its water utility customers. Those improvements may require both capital improvements and operational practices that are necessary to providing safe, adequate, and reliable water utility service to its customers. The creation of a capital improvement plan is critical to the future of the Apple Valley water utility. We find that due to the current condition of the water utility, and as both parties have agreed, a capital improvement plan should be developed. We further find that Apple Valley should develop a financial plan, which will address obtaining funds to pay for capital improvements as identified in the capital improvement plan and any other financial issues.

Apple Valley shall submit a copy of its capital improvement plan and financial plan to the Commission and the OUCC within 180 days of the issuance of this Order.

Consistent with the recommendation of the OUCC and the agreement of Apple Valley, we find Apple Valley should retain a professional tank inspection firm to perform an assessment for the piping, valves, and hydro-pneumatic tanks. Apple Valley shall provide the Commission and the OUCC a copy of a written inspection within 60 days of the Final Order in this Cause. The firm should also produce a comprehensive report that describes the condition assessment, the recommended rehabilitation, and the estimated cost of the rehabilitation for the piping, valves, and hydro-pneumatic tanks. Apple Valley shall provide the Commission and the OUCC with a copy to the comprehensive report within 15 days of its completion of the report, which should be within 180 days of the Final Order in this Cause because it will be performed in connection with the capital improvement plan.

The OUCC recommended Apple Valley enter into a written contract with Astbury, the current operator of its water utility, or another qualified contract firm naming the certified operator within 30 days of the issuance of a Final Order in this Cause. The OUCC also recommended Apple Valley update its affiliate agreements within 180 days of the Final Order in this Cause. Apple Valley agreed to file a report with the Commission and the OUCC detailing its efforts at updating its affiliate agreements and conversations concerning expectations and/or agreements with the operator of the water utility. However, we note that Ind. Code § 8-1-2-49(2), in pertinent part, states that no management, construction, engineering, or similar contract with any affiliated interest shall be effective unless it shall first have been filed with the Commission. Accordingly, Apple Valley shall file any affiliated agreements not already filed with the Commission and update any existing affiliated agreements prior to placing the rates and charges authorized by this Order into effect. We further find that the evidence of record supports the need for Apple Valley to enter into a written contract for the operation of its water utility, whether it be by an affiliated entity or a third party. Such a contract shall be executed within 30 days of this Order. In addition, Apple Valley shall make a 30-day filing to obtain approval for inclusion of non-recurring charges and fees in its water tariff pursuant to 170 IAC 1-6 within 30 days of the issuance of the Order in this Cause.

Regarding the COSS, we note that Apple Valley serves four unmetered non-residential customers and those customers pay the same rate as the unmetered residential customers for water consumption. The water utility currently charges every customer a flat rate of \$21.02 per month, regardless of class. Based on the evidence of record, we are unable to conclude that usage patterns are the same for each class of customer for the water utility. Therefore, in order to determine the proper allocation of burden among rate classes, Apple Valley shall perform a COSS prior to its next rate case. It shall submit the COSS as part of its next water rate case.

B. Wastewater Utility. The evidence of record demonstrates that upon acceptance of the OUCC's adjustments and the recommendation that Apple Valley be granted a \$0 increase, its cash flow would be negative \$3,084 (operating income of -\$3,788 plus depreciation of \$704). If the Commission were to approve the recommended rate increase of \$0, Apple Valley's wastewater utility rates would be insufficient to meet its revenue requirements as demonstrated by the evidence. We note that Ind. Code § 8-1-2-68 does not provide the Commission with the authority to fix insufficient rates. Ind. Code § 8-1-2-68 states as follows:

Whenever, upon an investigation, the commission shall find any rates, tolls, charges, schedules, or joint rate or rates to be unjust, unreasonable, insufficient, or unjustly

discriminatory, or to be preferential or otherwise in violation of any of the provisions of this chapter, the commission shall determine and by order fix just and reasonable rates, tolls, charges, schedules, or joint rates to be imposed, observed, and followed in the future in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of this chapter.

In order for Apple Valley's wastewater utility to have a positive cash flow, it would need a rate increase of \$3,151 or 1.38%, which includes the corresponding increase to bad debt expense of \$18, the IURC fee of \$5, and utility receipt tax of \$44. This would be the minimum increase that would be needed for Apple Valley to fund the wastewater utility's operations. Accordingly, we find that Apple Valley's wastewater utility should be granted a rate increase of \$3,869 or 1.69% with the adjustments summarized above in Finding Paragraph 6. B. i. That amount is adequate to cover Apple Valley's deficit for the wastewater utility that was recorded in the test period.

Apple Valley's wastewater utility suffers from aging facilities and insufficient maintenance, some of which has resulted in non-operational facilities that are in need of repair or replacement. Apple Valley needs to make improvements to its operations in order to improve the quality of service currently provided to its wastewater utility customers. Those improvements may require both capital improvements and operational practices that are necessary to providing safe, adequate, and reliable service to its customers. The creation of a capital improvement plan is critical to the future of the Apple Valley wastewater utility, just as it is in its water utility. We find that due to the current condition of the wastewater utility, and as both parties have agreed, a capital improvement plan should be developed for Apple Valley's wastewater utility. In addition, we find that Apple Valley should develop a financial plan, which will address obtaining funds to pay for capital improvements as identified in the capital improvement plan and any other financial issues for both utilities. Apple Valley shall submit a copy of its capital improvement plan and financial plan to the Commission and the OUCC within 180 days of the issuance of this Order.

Consistent with the recommendation of the OUCC and the agreement of Apple Valley, we find Apple Valley should retain a professional tank inspection firm to perform complete tank inspections to determine the condition of the interior coatings and develop a plan to dewater, clean, inspect, and assess replacement of its steel wastewater process tanks. The firm should produce a written inspection report. Apple Valley shall file a copy of the report with the Commission and shall provide a copy to the OUCC within 15 days of completion of the report. Apple Valley will include the plan for repair and/or replacement in its capital improvement plan, which should be filed with the Commission within 180 days of the Final Order in this Cause.

Regarding the wastewater utility's affiliate agreements, the OUCC recommended Apple Valley update the agreements within 180 days of the Order in this Cause and Apple Valley agreed to update them in that time frame. However, as we noted with Apple Valley's water utility, Ind. Code § 8-1-2-49(2) states that no management, construction, engineering, or similar contract with any affiliated interest shall be effective unless it shall first have been filed with the Commission. Accordingly, Apple Valley shall file any affiliated agreements not already filed with the Commission and update any existing affiliated agreements prior to placing the rates and charges authorized by this Order into effect. In addition, Apple Valley shall make a 30-day filing to obtain approval for inclusion of non-recurring charges and fees in its wastewater tariff pursuant to 170 IAC 1-6 within 30 days of the issuance of the Order in this Cause.

Regarding a rate design and COSS, we note that an Apple Valley unmetered residential customer and an unmetered commercial customer pay the same rate of \$48.58 per month for wastewater service. The OUCC argued that it is unlikely that both classes of customers discharge the same amount of effluent and that a rate design and a COSS would properly allocate the cost among rate classes and design rates that appropriately recover these costs from each customer class. Apple Valley indicated that it intends to conduct a rate design and COSS as recommended by the OUCC in its Report. We find there is not sufficient evidence to support the conclusion that each class of wastewater customer has the same usage characteristics. Therefore, in order to determine the proper allocation of burden among rate classes, Apple Valley shall perform a COSS prior to its next rate case and submit the COSS as part of its next wastewater rate case.

Finally, we note the OUCC recommendation that Apple Valley collect, analyze, or report process control data such as sludge loadings, total solids, and volatile solids as part of its standard procedures. The OUCC indicated this data is necessary for adequate management of sludge processing facilities. Apple Valley indicated that it will collect, analyze, or report process control data such as sludge loadings, total solids, and volatile solids as part of its standard procedures. Based upon the evidence we find this planning process to be reasonable and in the public interest. Any procedures that Apple Valley develops should include plans to comply with EPA regulations, IDEM regulations, and Ten States Standards.

8. Effect on Rates. The effects of the proposed increase to the flat rates for water service will be an increase of \$4.70 per month from \$21.02 to \$25.72 based on the approved rate adjustments. The effects of the proposed increase to the flat rates for wastewater service will be an increase of \$0.82 per month from \$48.58 to \$49.40 based on the approved rate adjustments.

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

1. Consistent with the above findings, an increase of 22.34% or \$14,806 for Apple Valley's water utility service and an adjustment resulting in an increase of 1.69% or \$3,869 for Apple Valley's wastewater utility service rates and charges are hereby authorized.

2. Prior to implementing the rates authorized, Apple Valley shall file schedules of its rates and charges for its water utility and wastewater utility, under this Cause, for approval by the Commission's Water and Wastewater Division in a manner consistent with this Order and the Commission's rules for filing such schedules. When approved by the Commission's Water and Wastewater Division, such schedules shall cancel all prior rates and charges.

3. Apple Valley shall develop a capital improvement plan for both its water and wastewater utilities. Apple Valley shall also develop a financial plan, which will address obtaining funds to pay for capital improvements as identified in the capital improvement plan and any other financial issues for both utilities. Apple Valley shall submit a copy of its capital improvement plan and financial plan to the Commission and the OUCC within 180 days of the issuance of this Order.

4. Apple Valley shall retain a professional tank inspection firm to perform complete tank inspections for its water and wastewater utilities to determine the condition of its tanks and related infrastructure as discussed above in Finding Paragraphs 7.A. and 7.B. The firm should produce a

written inspection report. Apple Valley shall file a copy of the report with the Commission and the OUCC within 15 days of completion of the report, which should be no later than 180 days from the date of this Order.

5. Within 30 days of this Order, Apple Valley shall enter into a written contract for the operation of its water utility by any affiliated entity or a third party. Apple Valley shall file any affiliated agreements for its water and wastewater utilities not already on file with the Commission and update any existing affiliated agreements prior to placing the rates and charges authorized by this Order into effect. In addition, Apple Valley shall make a 30-day filing to obtain approval for inclusion of non-recurring charges and fees in its water and wastewater tariffs pursuant to 170 IAC 1-6 within 30 days of the issuance of the Order in this Cause.

6. Prior to its next rate case, Apple Valley shall perform a COSS for its water and wastewater utilities. It shall submit the COSS as part of its next water or wastewater rate case.

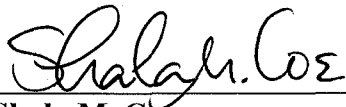
7. Apple Valley shall collect, analyze, or report process control data and develop standard procedures that comply with EPA regulations, IDEM regulations, and Ten States Standards for the handling of sludge from its wastewater utility.

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

STEPHAN, MAYS-MEDLEY, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED: APR 06 2016

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



Shala M. Coe

Acting Secretary to the Commission