

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
AMERICAN SUBURBAN UTILITIES, INC FOR) CAUSE NO. 45649-U
A NEW SCHEDULE OF RATES AND CHARGES.)

OUCC'S (REDACTED) PROPOSED ORDER

The Office of Utility Consumer Counselor ("OUCC"), by counsel, hereby submits its redacted proposed order and related Schedules. The OUCC's unredacted proposed order includes information provided to the OUCC pursuant to non-disclosure agreement.

Respectfully submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



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CERTIFICATE OF SERVICE

This is to certify that a copy of the *OUCC's (Redacted) Proposed Order* has been served upon the following in the captioned proceeding by electronic service on September 30, 2022.

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STATE OF INDIANA

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INDIANA UTILITY REGULATORY COMMISSION

**APPLICATION OF AMERICAN SUBURBAN
UTILITIES, INC. FOR (1) AUTHORITY TO INCREASE)
ITS RATES AND CHARGES FOR SEWER UTILITY) CAUSE NO. 45649 U
SERVICE, (2) APPROVAL OF NEW SCHEDULES OF)
RATES AND CHARGES APPLICABLE THERETO**

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S ("OUCC")

PROPOSED ORDER (Redacted)

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF AMERICAN SUBURBAN
UTILITIES, INC. FOR (1) AUTHORITY TO)
INCREASE ITS RATES AND CHARGES)
FOR SEWER UTILITY SERVICE, (2)) CAUSE NO. 45649 U
APPROVAL OF NEW SCHEDULES OF)
RATES AND CHARGES APPLICABLE)
THERE TO

ORDER OF THE COMMISSION

Presiding Officers:
Stefanie Krevda, Commissioner
David Veleta, Commissioner
Lorraine Seyfried, Chief Administrative Law Judge

On November 30, 2021, American Suburban Utilities, Inc. (“ASU” or “Applicant”), pursuant to Ind. Code § 8-1-2-61.5 and 170 IAC 14-1-1 et seq., filed its request for authority to increase rates and charges through the small utility procedure filed with the Indiana Utility Regulatory Commission (“Commission” or “IURC”).

On December 16, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its Motion for a public field hearing pursuant to authority granted by Ind. Code § 8-1-2-61.5 and other statutes. Given the size of the increase requested, \$2,854,542, and the number of consumer comments received, 37, the Commission found it was in the public interest to hold a public field hearing to allow for input from ASU’s ratepayers.

On December 20, 2021, the Commission Staff issued a Memorandum noting ASU’s application was incomplete. On December 21, 2021, ASU filed an Addenda to Application and Notice of Intent to File Information to supplement its initial application with information requested by Commission Staff and the OUCC. All of the information contained in the initial application remains as originally filed. On December 22, 2021, ASU filed its Submission of Supplemental Information for Addenda to Application consisting of ASU’s Corporate Resolution and audited 2020 financial statements provided to ASU’s lender. However, it is important to note that while labeled “audited statements”, the document was not audited.

On January 6, 2022, the Commission staff issued a Memorandum stating it reviewed the information filed on December 22, 2021, and January 5, 2022, and considers the application complete. The Commission’s memorandum also established April 5, 2022 as the date for submission of the OUCC’s report.

On February 24, 2022, the Commission provided legal notice of a public field hearing. Said field hearing occurred on March 30, 2022 at the Battle Ground Middle School Gymnasium at 6100 N. 50 W., West Lafayette, Indiana 47906, commencing at 6:00 p.m.

On April 11, 2022, the OUCC filed its case-in-chief, which included prefiled written consumer comments and the testimony and attachments of Shawn Dellinger, Carla F. Sullivan, Margaret A. Stull, and James T. Parks, including confidential testimony and attachments.

On April 14, 2022, pursuant to 170 IAC 1-1.1-4, Ind. Code § 5-14-3 et seq., and Ind. Code § 8-1-2-29, Applicant filed Applicant's Motion for Protection and Nondisclosure of Confidential and Proprietary Information. ASU indicated that portions of the OUCC's prefiled testimony and attachments contain trade secrets. On April 25, 2022, The Presiding Officers, having considered the Motion and accompanying Affidavit, find there is sufficient basis for a determination that the Confidential Information should be held as confidential by the Commission on a preliminary basis.

On May 10, 2022, ASU filed its Motion to Strike OUCC Witness Shawn Dellinger in its entirety because witness Dellinger's testimony and attachments suggest a hypothetical capital structure based on ASU's relationship with another Company, which is contrary to Indiana Law and therefore should not be admitted as evidence.

On May 11, 2022, ASU filed rebuttal, which included the written rebuttal testimony and attachments of Katelyn Shafer, Andrew A. Mix, and John R. Skomp.

On May 20, 2022, in accordance with 170 IAC 1-1.1-12, the OUCC filed an Objection and Motion to Strike portions of ASU's rebuttal case, as the testimony is untimely, lacks foundation, and, if admitted into the record, would be prejudicial to the OUCC.

On May 20, 2022, pursuant to 170 IAC 1-1.1-12, the OUCC filed its reply to ASU Motion to Strike OUCC witness Shawn Dellinger's Testimony. The OUCC asserts it does not suggest a hypothetical capital structure based on ASU's relationship with another Company. OUCC requests the opposite – that the Commission consider the reality of ASU's relationship to debt when it determines ASU's capital structure.

On May 26, 2022, The Presiding Officers notified the parties that the evidentiary hearing scheduled for June 2, 2022 was continued to July 28, 2022 at 9:30 a.m., in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana.

On May 27, 2022, Applicant filed its reply to the OUCC's response to ASU's motion to strike. On May 31, 2022, Applicant filed its response to OUCC's Objection and Motion to Strike. On June 7, 2022, OUCC's reply to ASU's response to OUCC's Objection and Motion to Strike. On July 1, 2022, after reviewing the filings submitted in this Cause, the Presiding Officers issued docket entry questions for both ASU and the OUCC. Both Parties complied with the Docket Order.

On July 13, 2022, ASU filed a redlined copy of revised page 8 of the Rebuttal Testimony of Andrew A. Mix, P.E.

On July 14, 2022, the Commission denied ASU's May 10, 2022 Motion to Strike OUCC witness Shawn Dellinger and OUCC's May 20, 2022 Objection and Motion to Strike Portions of ASU's rebuttal testimony.

On July 22, 2022, Applicant submitted a redlined copy of revised page 16 and Attachment JRS-R9 of the Rebuttal Testimony of John R. Skomp.

On July 25, 2022, in accordance with 170 IAC 1-1.1-20, 1-1.1-12, and 1-1.1-21, and the Commission's order issued on March 7, 2022, the OUCC filed its objection and moved to strike the inclusion of Attachment JRS-R9 and redlined changes made to John Skomp's pre-filed rebuttal testimony. Alternatively, the OUCC requested the Commission continue the evidentiary hearing scheduled for July 28, 2022 and set an emergency attorney conference to discuss how this matter should proceed and when the rescheduled the final hearing shall be held. On July 26, 2022, Applicant responded to OUCC's Objection, Motion for Continuance and request for Emergency Attorney Conference. On July 27, 2022, the OUCC filed its Reply in Support of its Objection and Motion for Continuance, in response to ASU Objection filed July 26, 2022.

Having considered all of the evidence presented in this proceeding, based on the applicable law and being duly advised in the premises, the Commission now finds:

1. Commission Jurisdiction and Notice. ASU is a public utility as defined in Ind. Code § 8-1-2-1(a) and qualifies for treatment as a small utility under Ind. Code § 8-1-2-61.5. ASU published legal notice of the filing of this small utility rate case as required by 170 IAC 14-1-2(b). Therefore, we find notice of this Cause was given and published as required by law. Therefore, the Commission has jurisdiction over ASU and the subject matter of this proceeding.

2. Applicant's Characteristics. Petitioner is a public utility incorporated under the laws of the State of Indiana and is engaged in the provision of wastewater utility service located primarily in unincorporated areas in Tippecanoe County, Indiana. According to its December 2021 billing records, ASU's 3,314 customers (6,654 units) consist of 2,999 residential, 71 commercial metered, 235 multifamily apartment complexes (3,033 units), six multifamily mobile home parks (544 units), one service station, one hotel/motel/B&B, and five schools (5,099 students and staff). ASU's service area is located primarily in unincorporated areas of Wabash Township in Tippecanoe County north and west of West Lafayette, Indiana. ASU owns and operates two wastewater treatment plants located at two separate sites - 1) Carriage Estates WWTP ("Carriage Estates") and 2) County Home WWTP ("County Home").

Carriage Estates, the larger of the two treatment plants, consists of the original CE-II plant (in service July 31, 2000) and the CE-III plant (in service September 30, 2020) that use continuous sequencing batch reactors ("CSBR") followed by UV disinfection and post aeration with aerobic digestion sludge treatment. ASU's Affiliate, First Time Development Corporation ("FTDC") constructed both CE plants. The CE-II plant is no longer treating wastewater. In 2021, the CE-III plant treated an average daily flow of 1.872 MGD, or 90% of the total wastewater treated by ASU. In 2021, the County Home WWTP ("County Home") treated 0.216 MGD (10% of the total flow). Historically, 94% of ASU's customers, as measured by connected housing units, discharged to the

Carriage Estates' collection sewers. ASU's Big 3 Sewer ("Big 3") project completed in 2015, was to remove three lift stations (Big Oaks, Hawthorne Ridge, and Kimberly Estates) pumping to Carriage Estates. Once in service, wastewater was to have instead flowed by gravity to County Home, lowering Carriage Estates' customer share to approximately 84%. However, the Kimberly Estates lift station remains active, and only limited flows have been diverted to County Home as shown by the Daily Activity Sheets.

The County Home WWTP also has two treatment facilities: County Home 2 ("CH-2"), a 0.1 MGD extended aeration process constructed in 2000, and County Home 3 ("CH-3"), a 1.0 MGD sequencing batch reactor ("SBR") plant designed in 2004 and constructed in 2006 in anticipation of customer growth. ASU's Affiliate, FTDC, constructed the CH-2 and CH-3 plants, but because sewage flows remained low ASU did not put the plant in service when it was constructed. In Cause No. 44676, ASU reported it would convert the smaller 0.1 MGD CH-2 plant to sludge digesters in the future. Except for aerating sludge at times, CH-3 remained empty for nearly 10 years until late 2015 when ASU placed it in service.

ASU's collection system, located north and west of West Lafayette, Indiana, is a 100% separate sanitary sewer system by design with no permitted sanitary sewer overflow ("SSO") points. ASU reports it has 64.2 miles of gravity sewers. The sewers are primarily (91.2%) PVC pipe but also include 5.6 miles of vintage clay pipe from the 1960s. The collection system includes the duplex Willowbrook lift station and its 4,795 lineal feet ("LF") 10-inch PVC force main. The Willowbrook lift station has a standby generator. ASU also reports the duplex Kimberly Estates lift station and its 3,625 LF force main along Morehouse Road are still active. In 2015, ASU had five lift stations in operation.

3. Existing Rates. Rates were approved in Cause No. 44676 pursuant to Commission Order dated November 30, 2016. They were later decreased as a result of the tax rate decrease implemented by the Tax Cuts and Jobs Act, increased as additional phases of improvements were placed into service, and finally reduced pursuant to the Commission's Order dated September 22, 2021 in Cause No. 44676-S1.

4. Relief Requested. The overall approximate percentage increase in revenues requested by ASU in its application is 69%. The rate increase is proposed to be an across-the-board increase.

5. Test Period. As provided in the Prehearing Conference Order, the test year to be used for determining Applicant's actual and *pro forma* operating revenues, expenses, and operating income under present and proposed rates is the twelve (12) months ended December 31, 2020, adjusted for changes that are fixed, known, and measurable for ratemaking purposes and that will occur within twelve (12) months following the end of the test year. The financial data for this test year, when adjusted for changes as provided in the Prehearing Conference Order, is a proper basis for fixing new rates for Petitioner and testing the effect thereof.

6. **Summary of Application.** To address issues that had been raised in Cause No. 44676, ASU has hired additional staff. In addition, ASU has added additional utility plant in service. None of the additional plant that is included in this request was constructed by First Time Development Corp. or any other affiliate of ASU. ASU's actual net operating income for the test year would produce a return on current rate base (after the disallowances resulting from Cause No. /44676 and 44676-S1) of less than 1.5%. On a pro forma basis, the return is less than 1%. The total requested increase is 69%. ASU proposed a 12.0 % return on equity, a 4.68% cost of debt, and a capital structure of 76.3% equity and 23.7% debt.

7. **OUCC Report.** The OUCC took issue with Applicant's capital structure and return on equity. The OUCC also took issue with Applicants' proposed rate base, operating revenues, and operating expenses. The OUCC offered prefilled testimony from Shawn Dellinger, Carla F. Sullivan, Margaret A. Stull, and James T. Parks.

a. **Testimony of Shawn Dellinger, Public's Exhibit No. 1.** Mr. Dellinger discussed financial aspects of ASU, including its debt and its capital structure. He discussed ASU's relationship with its affiliate L 3 Corp. as it relates to ASU's Capital Structure. He adjusted ASU's capital structure to reflect the amount of debt for which ASU is responsible. He recommended a return on equity of 9.75%. (Dellinger, p. 1.)

Mr. Dellinger briefly described ASU, noting Mr. Scott Lods is the President of ASU and the sole shareholder of ASU's stock. He stated that Mr. Lods is the President and sole shareholder of L 3 Corp, which he described as an affiliate of ASU, although Mr. Dellinger pointed out that L 3 was not listed as an affiliate on ASU's annual reports filed with the IURC since 2015. He explained L 3 is engaged in borrowing and providing capital to [ASU]. (Dellinger, pp.2-3.)

Mr. Dellinger testified that ASU proposed to base rates on a capital structure of 76.3% equity and 23.7% debt, and that ASU proposed a cost of equity of 12% and a cost of debt of 4.68%, which would result in a weighted average cost of capital of 10.26%. He explained why this was not ASU's actual capital structure. He testified that ASU's capital structure should recognize \$12.7 million of debt incurred by its affiliate L 3 in addition to the \$5.1 million of debt that was previously approved by the Commission. He stated this \$12.7 million of debt was guaranteed by ASU and resulted in the encumbering of ASU's utility assets. He further stated that L 3 indicated the purpose of a significant portion of the borrowing was to fund capital projects for ASU. He testified that ASU's proposed capital structure treats as equity money that was received through a borrowing for which ASU is ultimately responsible, and for the purpose of procuring projects included in ASU's rate base. He proposed that the correct capital structure for ratemaking purposes should be 17% equity, 81% debt and 2% ADIT (which he stated was discussed by OUCC witness Ms. Stull). (Dellinger, pp. 3-4.)

Mr. Dellinger stated that since equity is authorized a higher return than the cost of debt, the classifying of money borrowed to complete ASU's projects as equity results in a higher WACC and higher monthly rates for sewer service. He stated that ASU would be authorized a higher return because of this misclassification, and that this incorrect capital structure would result in a monthly transfer of wealth from the regulated ratepayers to the owner of ASU. He stated that Mr.

Lods owns both ASU and L 3, and that by using both entities in conjunction capital originating in debt costing between 1.28% and 4.25% in 2020 was classified by ASU as equity to justify a return of 9.5%. He stated L 3 has total borrowings of \$12,710,000 as of the end of 2020. He stated that in 2013, L 3 borrowed \$6,500,000, in 2017 L 3 converted this loan and borrowed an additional \$2,820,000. He stated that L 3 has an additional \$3,390,000 in debt that are not part of these borrowings. Further, he stated that ASU is required to obtain Commission approval to encumber its property or business and that ASU did not request this authority. (Dellinger, pp. 4-5.)

Mr., Dellinger testified that payments on L 3 debt depend on ASU's rates, and ASU guarantees this debt. He stated that ASU's audited financial statements for 2017 were prepared after the 2017 bonds were issued and reflect the auditor's opinion regarding the debts in existence at that time. He stated these audited financial statements acknowledge L 3 debt is functionally ASU's debt, by quoting from the audited financial statements that, "In order for L3 to service its debt, the Company [ASU] pays dividends to Scott Lods, who then makes capital contributions to L3 which are used to pay interest, principal and other expenses on the debt." Mr. Dellinger stated that the more recent audited and reviewed financial statements uses similar language. Mr. Dellinger then testified that ASU had paid dividends sufficient to pay the debt service on the loans in the years 2016-2020, according to the audited reports and the general ledger from 2020. He stated that the IURC annual reports did not disclose these dividends. (Dellinger, pp. 5-7.)

Mr. Dellinger testified that the amount of L 3 debt listed in the ASU audited and unaudited financial statements increased from \$12.3 million to \$12.71 million from 2017 to 2020. He stated this \$12.71 million in L 3 debt consisted of a \$6.5 million loan modified in 2017, and a \$2.82 million loan transacted in 2017, but despite the OUCC's efforts to obtain this information, the loan or loans making up the remaining \$3.4 million balance were not visible to the OUCC. He further testified that the OUCC attempted through discovery to gain visibility into the breakdown of debt held by L 3, and that the OUCC attempted through discovery and in compliance with the Commission's order in Cause Nos. 44676/44700 to obtain the audited financial statements of L 3 Corp., but ASU refused to provide any details of L 3's debt. He further testified that the OUCC secured documentation on the L 3 loans of \$6.5 million and \$2.82 million directly from the Indiana Finance Authority. He stated that the original interest rate for the \$6.5 million loan in 2013 was 0.21%, and that this borrowing utilized ASU's assets as collateral and ASU as a guarantor. He indicated that this bond transcript was attached to his testimony. (Dellinger, pp. 8-11.)

Mr. Dellinger testified that L 3 described the purpose of the borrowing of the \$6.5 million 2013 loan in an application to the IFA for volume cap financing to finance "Big 3, Klondike, Cumberland and Phase 1 Carriage Estates". He stated these projects are included in ASU's utility plant in service. He also stated that this same application described the facility as "American Suburban Utilities is a 50-year-old wastewater treatment facility located in Tippecanoe County." Mr. Dellinger also testified that this same application to the Indiana Finance Authority noted that Mr. Lods bought ASU in 1997, ASU's number of customers, how many sewer mains/lift stations currently exist. Mr. Dellinger highlighted that one page of the loan application stated, "L3 is a privately owned public wastewater treatment utility. It has been in business since 1963 and currently has 2,231 customers in West Lafayette, Indiana." Further, he noted that the Indiana

Finance Authority described L 3 Corporation or its affiliates [ASU] as “the Applicant” and states that the project shall be owned and operated by the Applicant, and that the jobs listed on the application appear to reference ASU’s employees. He stated that all these examples show that L 3 was acting as if ASU and L 3 were essentially the same entity. (Dellinger, pp. 11-12.)

Mr. Dellinger testified regarding further indications that L 3 was borrowing money on behalf of ASU. He stated that in 2017, ASU borrowed \$5.1 million and the bond transcript for this transaction shows the source of funds to be used to construct the Carriage Estates III Treatment Plant was not only ASU’s \$5.1 million tax-exempt financing, but also the money L 3 had borrowed, specifically \$1,975,200 of the 2013 Bonds and \$2,820,000 of 2018 Bonds. He stated that the \$2.82 million is the entirety of the term loan that was issued in 2017 to L 3, and that since ASU had no declared debt as of 2013, this funding must refer to the L 3 bond offerings. (Dellinger, p. 13-15.)

Mr. Dellinger set forth several excerpts from bond transcripts in which ASU backed the debt through guaranties and other promises. He stated that the 2013 bond transcript includes a guaranty agreement by ASU as well as a security agreement with ASU. He stated that Howard County Utilities, a regulated utility also owned by Mr. Lods, also had these same agreements. He testified that the continuing guaranty agreement notes that the funds L 3 borrowed will be used to finance four separate sewer/wastewater projects in West Lafayette. He stated that as guarantor, ASU guarantees payment of L 3’s bond. He also stated that this guaranty noted that ASU is an affiliate of L 3 and as such will be benefited directly by this borrowing and that because of this ASU is willing to guaranty this borrowing to induce the lender to make the loan to L 3. He stated ASU made the commitment to “absolutely and irrevocably” guarantee the lender full and prompt payment of the L 3 loan. (Dellinger, p. 15.)

Mr. Dellinger testified that ASU also entered into a security agreement in the 2013 L 3 loan documents. He explained ASU provided an assignment of collateral in and to all items of property as listed, including all assets, inventory, and equipment. He stated that these agreements impaired ASU’s ability to borrow money. He testified that ASU agreed it shall not sell, lease or encumber the collateral until this debt is paid. He further testified that under the security agreement, ASU’s assets were subject to forfeiture in the event of a default. (Dellinger, pp. 17-20.)

Mr. Dellinger testified the 2013 loan was converted in 2017. He testified that at this time the lender became Horizon Bank, and a new credit agreement was required and that the 2017 Bond still included a continuing guaranty agreement for ASU. He stated that the 2017 credit agreement combined the loans for ASU and L 3 for purposes of determining a loan to value ratio. Mr. Dellinger then testified the continuing guaranty agreement stated that ASU is currently a guarantor for the benefit of L 3 in the 2017 L 3 bond documents, that this loan is being used to finance four separate sewer/wastewater projects in West Lafayette, that ASU is affiliated with L 3 and is directly benefited by this loan and is willing to offer guarantees to induce the lender to make the loan, and that ASU “absolutely and irrevocably guarantees” the full and prompt payment of these borrowings. (Dellinger, pp. 21-22.)

Mr. Dellinger explained a negative covenant was included as part of the continuing guaranty agreement by ASU on behalf of L 3, and this covenant stated that ASU may not incur

any indebtedness without the bank consenting in writing. Mr. Dellinger then testified that the 2017 L 3 loan documents does not allow ASU to secure additional debt without the Bank's consent. (Dellinger, pp. 24-25.)

Mr. Dellinger testified that there was a negative pledge agreement by ASU in the 2017 bond documents. He stated that a negative pledge agreement prevents a borrower from pledging any assets if doing so would jeopardize the lender's security. He stated that a negative pledge clause prevents the bond issuer from taking on future debt, and that a negative pledge limits the likelihood that a particular asset will be pledged more than once. He testified that ASU pledges not to transfer or grant a lien on any property described without the written consent of the bank. He testified that the negative pledge agreement included an explanation that the bank would have been unwilling to make this loan to L 3 without the negative pledge agreement from ASU. He stated that the property described in the negative pledge agreement is County Home WWTP and Carriage Estates WWTP. (Dellinger, p. 25.)

Mr. Dellinger testified that ASU claimed ASU's assets were not encumbered by any other entities' debt in a response to discovery, which he attached to his testimony. He then testified that ASU's assets are encumbered by the \$6.5 million or \$2.82 million loan to L 3. He gave an example of the continuing guaranty agreement, where ASU guaranteed the payments "absolutely and irrevocably". He also testified that in the negative pledge agreement, ASU encumbered its assets by agreeing "it will not assign, transfer or convey any of the property, and it will not pledge, assign or grant a security interest in, or lien on, any of the property" without the prior written consent of the bank. Mr. Dellinger also testified that ASU agreed it cannot incur any additional indebtedness unless the bank agrees in writing. (Dellinger, p. 27)

Mr. Dellinger explained that the loan to L 3 is functionally a loan to ASU. He stated that on a loan nominally to L 3, the lender required audited financial statements from ASU as well as combined financial statements for ASU and L 3. He explained this also occurred on the 2017 loan to ASU, the lender required information on L 3, and combined financial statements on ASU and L 3. He stated that the lender seemingly views both entities as the same from a financing standpoint. He further testified that on the loan to L 3, the level of information extended to ASU's operations, as the lender required "quarterly reports evidencing customer counts and effluent test results of each of the Borrower [L 3] and American Suburban Utilities". He then discussed the nearly identical reporting requirements in the 2017 ASU loan. (Pub. Ex. 1, pp. 27-29.)

Mr. Dellinger testified that the OUCC requested the annual reporting documents required by the lender as provided in the order for Cause No. 44676/44700, both informally and then in discovery. He stated that the OUCC asked for the combined financial statements required by the lender. He stated that in response to OUCC Data Request 4-1(c), ASU stated that there are no combined financial statements of L 3 and ASU. He stated that in subsequent discovery, ASU stated the Commission's order requiring these reports was based on a term sheet proposal from 2015, and in later discovery, ASU stated that the requirement for combined financial statements of L 3 and ASU were an "oversight" and the concept of combined financial statements is "not applicable to L 3 and ASU". Mr. Dellinger testified that in response to a further data request from the OUCC, ASU provided the combined financial statements that they submitted to the lender.

This document was marked confidential, and Mr. Dellinger stated that he discusses that document in a confidential section of his testimony. (Dellinger, pp. 30-31.)

In addressing ASU's Weighted Average Cost of Capital, Mr. Dellinger testified that it was reasonable to conclude that the entire \$12.71 million of L 3 loans indicated on the unaudited 2020 ASU financial statements was borrowed for the benefit of ASU's operations. He testified that the entirety of L 3's \$12.71 million of loans be counted as debt of ASU and therefore replace equity in the capital structure. He then testified that this would change the capital structure from a proposed 23.72% debt and 76.28% equity to 82.83% Debt and 17.17% equity. (Dellinger, pp. 31-32.)

Mr. Dellinger then testified that he disagreed with the cost of debt proposed by ASU. He stated that the loans for L 3 have adjustable interest rates, but that the most recent data we have is that the rates ranged from 1.28%-4.25%. He proposed to use the midpoint of those numbers, or 2.77%, as the cost of debt for this portion of the debt. He stated that combined with the existing \$5.1 million, this results in a weighted interest cost of 3.305%. He stated that using a capital structure of 82.8% debt and 17.2% equity, a cost of equity of 9.75% and a cost of debt of 3.305%, ASU's weighted average cost of capital considering only debt and equity is 4.41%. Mr. Dellinger then incorporated accumulated deferred income taxes of \$511,744, as discussed by OUCC witness Ms. Stull, into the capital structure to arrive at a proposed WACC of 4.31%. (Dellinger, pp. 32-33.)

In discussing the effect of an inaccurate capital structure on existing rates, Mr. Dellinger testified that ASU's capital structure and WACC should have reflected the encumbering of ASU's assets with L3 debt in the November 30, 2016 Final Order in Cause 44676/44700. He stated that during the pendency of that case, ASU had already guaranteed payment on the 2013 loan of \$6.5 million, and there was also a loan of \$2.35 million from 2004 and \$470,000 from 2002. He stated that there were thus at least \$9.32 million in loans to L 3 at that time, but the capital structure in that case only reflected \$5.1 million in long-term debt. He stated that he found nothing in the record of that cause regarding these debts, and that these documents were not provided by ASU, but obtained as public records from the Indiana Finance Authority. He stated that if the \$9.32 million was incorporated into ASU's capital structure in that Cause, the capital structure would have been 94.1% debt and 5.9% equity. He estimated the WACC should have been 3.69% instead of the 8.31% ultimately granted. He stated that simply by treating the \$9.32 million borrowed at a cost of approximately 2.59% as equity costing 9.5%, ratepayers were burdened with an additional \$644,012 annual revenue requirement. He further stated that if the actual debt of L 3 at the time was \$12.3 million as it was in 2017, then the capital structure would have had a negative equity balance in 2016. (Dellinger, pp. 33-36.)

Mr. Dellinger testified regarding the return on equity component. He stated that ASU requested a 12% ROE, but that ASU provided no support for this request. He stated that he disagreed with a 12% ROE, because it is inconsistent with other utilities ROE's in Indiana. He looked at other recent cases where the Commission issued an order that involved an ROE, and also considered the ROE the Commission set for ASU previously. He stated that over the past three years, there have been three final orders that included a determination of ROE's for wastewater or

water/wastewater utilities in Indiana. These orders had an average ROE of 9.53% and a range of 9.0%-9.8%. He stated that the current ROE for ASU is 9.5%, which was approved by the Commission in 2016. He stated that since the date of the order establishing this ROE, revenues are higher, the asserted capital structure is less levered, and the interest rate environment was broadly equivalent. He stated that these factors indicate there should be no increase to ASU's ROE, and that the ROE should be slightly lower than the last determination. He proposed a Return on Equity of 9.25% under those circumstances. (Dellinger, pp. 40-42.)

Mr. Dellinger explained how a more levered capital structure should affect ROE, and that a more leverage capital structure should result in a higher ROE than a less leveraged capital structure. He stated that based on the OUCC's proposed capital structure, the capital structure is more leveraged now than what the OUCC believed it was in 2016. He stated that in order to account for this additional leverage in the capital structure, he included a 50-basis point increase, and this results in a ROE of 9.75%. He then stated that ASU should not receive a higher ROE due to IDEM fines and because ASU was ordered to issue a refund in a previous subdocket. He further testified that the Commission may exercise its discretion to set ROE's based on considerations in Cause 43526. Mr. Dellinger ultimately proposed an ROE of 9.75% based on a capital structure of 17% equity, 81% debt, and 2% ADIT. He stated that if the Commission considers ASU to have a capital structure that is predominantly equity, then the ROE should be significantly lower. (Dellinger, pp. 42-43.)

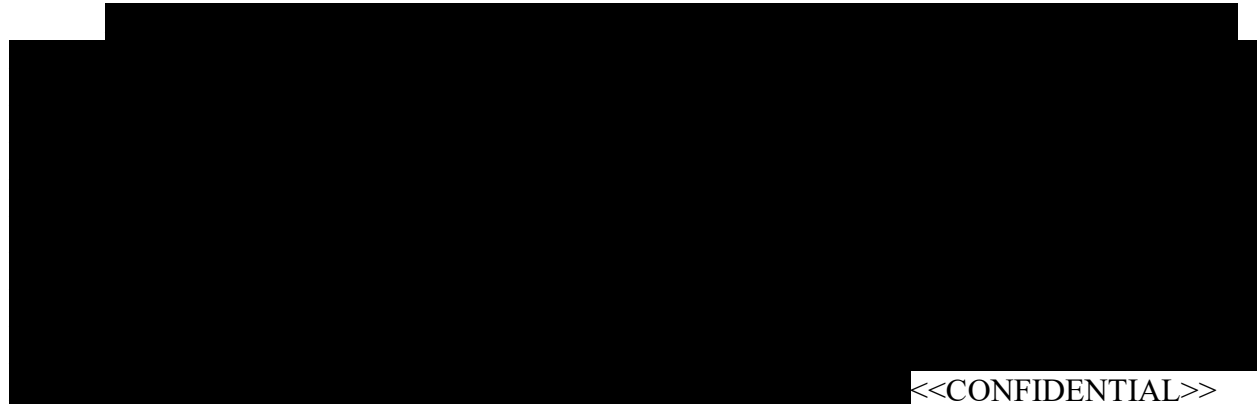
Mr. Dellinger then summarized his recommendations. He recommended the Commission find that ASU's capital structure consists of 81% debt, 17% equity and 2% ADIT. He recommended that based on that capital structure, the Commission find that ASU has a WACC of 4.31%. He recommended that the Commission require ASU to make L 3's cost of debt transparent. He further recommended that the Commission require ASU to file a cause seeking permission to encumber its assets with respect to L 3's borrowings. (Dellinger, pp. 43-44.)

Confidential Testimony of Shawn Dellinger, Public's Exhibit No. 1-C.

<<CONFIDENTIAL>>

[REDACTED]

[REDACTED]



<<CONFIDENTIAL>>

b. Testimony of Carla F. Sullivan, Public's Exhibit No. 2. Ms. Sullivan's testimony first addressed test year operating expense adjustments. Ms. Sullivan recommended a \$939,201 decrease to ASU's \$4,086,976 test year operating expense, resulting in *pro forma* operating expense of \$3,147,775. Ms. Sullivan stated the OUCC accepts Applicant's adjustment to remove test year rate case amortization expense and its IURC fee adjustment. The OUCC recommended its own adjustment to salaries and wages, pension, purchased power, miscellaneous expenses, depreciation expense, property taxes, payroll taxes, federal income taxes, state income taxes, and utility receipts taxes. The OUCC also recommended normalization of sludge removal expense and the elimination of expenses that are capital in nature, non-allowed or non-recurring, expenses related to IDEM penalties, and purchased power expense related to the Kimberly Lift Station. (Sullivan, pp. 1-6.)

Ms. Sullivan explained ASU's *pro forma* salaries and wages expense is based on 30,108 payroll hours. However, ASU payroll hours totaled 23,757 and 28,198 during the test and post-test year, respectively. Furthermore, ASU's payroll hours were significantly lower in 2016, 2017, and 2018 than they were in 2015, which was the test year for Cause No. 44676. (Sullivan, pp. 7-11.)

Ms. Sullivan stated ASU did not adequately explain why its operations require such a significant increase in the number of labor hours. The OUCC made several inquiries to determine

what tasks ASU's field and office personnel perform including the amount of time spent on each task. Based on responses to OUCC discovery, ASU's management does not have job descriptions for its employees, does not track what tasks are being performed by its employees, and does not know how much time is needed to accomplish the tasks performed by its employees. ASU did not provide written job descriptions, differentiate between duties and tasks of consultants and employees, or identify any projects that ASU staff worked on during the test year. (Sullivan, p.8.)

Ms. Sullivan stated she determined *pro forma* salaries and wages expense should be based on 21,090 payroll hours, which is ten full-time employees, two part-time employees and 40-over-time hours. The OUCC's *pro forma* salaries and wages adjustment should have been a \$9,242 reduction to test year's salaries and wages expense resulting in \$814,485 *pro forma* salaries and wages expense. However, the OUCC declined to make the recommended adjustment and accepted test year's \$823,727 salaries and wages expense as *pro forma*. (Sullivan, p. 11.)

Ms. Sullivan stated ASU expensed \$156,139 for employee benefits during the test year, which included \$120,881 for pension expense, \$20,580 for health reimbursement expenses, and \$14,678 for employee relations. ASU offers employees a 401(k)-profit sharing plan (a defined contribution pension plan). The maximum cost of the pension plan to ASU is 6% of salaries and wages expense, \$49,424. Therefore, Ms. Sullivan recommended a \$71,457 decrease to test year pension expense of \$120,881 resulting in *pro forma* pension expense of \$49,424. (Sullivan, p.12.)

Ms. Sullivan stated employee relations expenses include various employee benefit programs and expenses. During the test year, ASU paid \$14,678 of employee relations expenses, including \$4,500 for a wellness program, \$3,000 for team building activities (\$200 x 15 employees), \$6,700 for Christmas bonuses (\$300 x 22 employees plus \$100 for postman), and \$478 for other miscellaneous expenses. Ms. Sullivan recommended removing \$9,700 from test year operating expenses, \$3,000 for team building activities and the \$6,700 of Christmas bonuses, resulting in *pro forma* employee relations expense of \$4,978. (Sullivan, p. 12.)

Ms. Sullivan stated the OUCC recommends a \$24,654 decrease to \$68,564 of test year sludge removal expense, resulting in *pro forma* sludge removal expense of \$43,910. Ms. Sullivan explained, during the test year, ASU hauled sludge to Merrell Bros. regional biosolids center, which cost 144% more than land application. In response to OUCC data request, ASU stated weather conditions prevented land application. The OUCC calculated *pro forma* sludge removal expense by taking a four-year average of the amount of sludge removed from ASU's system and multiplying the value by the amount Merrell Bros. charges for land application, thus eliminating the high cost of storage. *Pro forma* sludge removal expense also includes Merrell Bros. charges for testing and pumping. (Sullivan, pp. 13-16.)

Ms. Sullivan recommended a \$4,177 decrease to test year purchased power to eliminate purchased power expense related to the Kimberly Estates Lift Station, which was to have been removed as part of the Big 3 project. However, Ms. Sullivan also recommends an increase of \$9,189 to purchased power, \$1,619 to sludge removal, \$2,232 to chemicals, and \$2,223 to miscellaneous expenses for postage to account for increase cost due to growth. (Sullivan, pp. 16-17.)

Ms. Sullivan's testimony then explained her \$97,456 decrease to test year contractual services-engineering expense of \$109,618 resulting in *pro forma* contractual services-engineering expense of \$12,162. Ms. Sullivan recommended removing expenses related to eight different providers including Ed Serowka, AngleRight Solutions LLC, Jennifer Leshney, P.E. of Christopher B. Burke Engineering, LLC, Cornerstone Design, Marjorie Potvin, TBird Design, Vester and Associates, Inc., and Williams Creek Management Corp. (Sullivan, pp. 18-25.)

Ms. Sullivan recommended a \$18,000 decrease related to Ed Serowka's \$24,000 annual contract. Ms. Sullivan stated the ASU / Serowka contract simply states ASU will pay Mr. Serowka \$2,000 a month until he is no longer physically or mental capable of performing the duties assigned by ASU. However, six of the eight tasks assigned to Mr. Serowka can be performed by ASU staff or are nonrecurring. (Sullivan, p. 18-25.)

Ms. Sullivan recommended a \$2,250 decrease related to AngleRight Solutions LLC. AngleRight Solutions LLC modified and downloaded CAD drawings during the test year. However, the CAD drawings were for the Carriage Estates Wastewater Treatment Plant ("CE-III Project") and are included in the preapproval. (Sullivan, p. 20.)

Ms. Sullivan recommended a \$3,962 decrease related to Jennifer Leshney, P.E. of Christopher B. Burke Engineering, LLC. Ms. Leshney provided expert witness testimony for Cause No. 44676-S1. The expense was the direct result ASU trying to implement its phased rate increase before it had completed its project. Recovery of this expense from ratepayers is not appropriate. (Sullivan, p. 21.)

Ms. Sullivan recommended a \$6,650 decrease related to Cornerstone Design. Cornerstone Design was contracted to create plans for a new office complex. This expenditure does not represent a recurring annual operating expense and was removed from test year expenses as non-recurring. Ms. Sullivan also recommended a \$8,660 decrease related to Marjorie Potvin. Marjorie Potvin created plans and drawing for ASU's facilities, a non-recurring expense. (Sullivan, pp. 1-23.)

Ms. Sullivan also recommended a \$35,974 decrease related to TBird Design, a \$10,954 decrease related to Vester and Associates, Inc., and a \$9,560 decrease related to Williams Creek Management Corp. as these expenses are capital in nature or nonrecoverable. (Sullivan, pp.23-25.)

Ms. Sullivan explained her \$160,423 decrease to test year contractual services-legal expense of \$197,906 resulting in *pro forma* contractual services-legal expense of \$37,483. Ms. Sullivan recommended removing expenses related to three different providers including Barnes & Thornburg, Gutwein LLP Attorneys, and Withered Burns & Persin, LLP. (Sullivan, p. 24.)

Ms. Sullivan explained Barnes & Thornburg invoices were thoroughly redacted; however, it appears ASU paid \$14,126 for work related to environmental penalties imposed by Indiana Department of Environmental Management ("IDEM"). Expenses related to IDEM violations should not be recovered through rates. ASU also paid Barnes & Thornburg \$101,896 for work performed in Cause No. 44676. The revenue requirement for rate case expense in Cause No. 44676 was set in that case and has been fully recovered through amortization. Despite full recovery, ASU will still be collecting the related revenue requirement in rates until an order has been issued in

this Cause. Most importantly, the compliance issue arose because ASU tried to implement its phased rate increase before it had completed its project. It is inappropriate for ASU to recover its related legal expense from its ratepayers. (Sullivan, pp. 24-25.)

Ms. Sullivan testified ASU paid Gutwein LLP Attorneys \$15,411 for legal services related to IDEM violations and are therefore not recoverable. Ms. Sullivan stated an additional \$28,990, paid to Withered Burns & Persin LLP, was removed from test year operating expense, as the basis of this expense was not provided. (Sullivan, pp. 25-26.)

Ms. Sullivan discussed her \$12,550 decrease to test year Contractual Service-Testing. Ms. Sullivan stated testing services previously performed by S&D Testing are now provided by ASU staff. Sherri Crandell, president of S&D Testing, was added to ASU's payroll during the test year and is included in *pro forma* salaries and wages. Ms. Crandell will perform the tasks and duties previously performed by S&D Testing. (Sullivan, p. 25.)

Ms. Sullivan explained her \$112,062 decrease to test year contractual services-other expenses of \$187,956 resulting in a *pro forma* expense of \$75,894. Ms. Sullivan removed expenses related to two providers. First Time Development Corp. ("FTDC") and Kokopelli LLC ("Kokopelli"). Ms. Sullivan testified ASU purchased from FTDC the jet vac truck it used to provide service to ASU. As such, tasks previously performed by FTDC will fall to ASU staff. Ms. Sullivan removed \$29,390 as nonrecurring expenses. Ms. Sullivan also testified ASU submitted a one-page invoice for work done by Kokopelli. ASU was unable to provide support for the charges. Therefore, she removed \$82,672 from test year expenses associated with Kokopelli as non-recurring. (Sullivan, pp. 25-26.)

Mr. Sullivan explained her \$39,089 decrease to test year's \$60,083 rental of building/real property expense yielding *pro forma* rental of building/real property expense of \$20,994. The \$20,994 consists of \$2,105 paid to Omega Rail Management and \$18,889 paid to Mr. Lods. Mr. Sullivan stated ASU's *pro forma* lease expense is overstated because it includes square footage not reasonably needed to operate the utility. Ms. Sullivan explained, in its Order, dated November 30, 2016, the Commission disallowed rent expense in that case and stated ASU did not support the additional space and limited the utility to 2,664 square feet at the rate of \$4.50 per square foot per year, yielding an annual lease rate of \$11,988. Since that time, the main floor has increased from 864 square feet to 1,407 square feet. Therefore, Ms. Sullivan recommended ASU be authorized to a revenue requirement that permits it to rent 3,207 square feet, which consist of the expanded main floor (1,407 square feet) and the garage space (1,800 square feet). (Sullivan, pp. 26-28.)

Ms. Sullivan addressed her recommended \$10,204 decrease to test year Miscellaneous expense, which is associated with Scott Lods' travel and meeting expense. Ms. Sullivan stated she removed expenses related to the 2020 CONEXPO-CON/AGG and IFPE expo and the 2020 National Association of Home Builders-International Builders Show, which were both held in Las Vegas. Ms. Sullivan stated she removed the cost of these two conferences because they do not sufficiently relate to the provision of sewer service. Ms. Sullivan stated she removed additional travel and meeting expenses, which were not identified and for which no support was provided. Ms. Sullivan also removed the cost of a Christmas party. She stated she removed this expense from

pro forma operating expenses as inappropriate expenses for ratepayers to fund through higher rates. (Sullivan, pp. 28-29.)

Ms. Sullivan addressed the \$20,900 paid to IDEM during the test year. Among the expenses is a \$10,800 payment towards a \$63,800 civil penalty assessed in an IDEM Agreed Order. Ms. Sullivan removed the \$10,800 expense because ratepayers should not be responsible to pay ASU's civil penalties associated with violations of its IDEM NPDES Permit. (Sullivan, p. 30.)

Ms. Sullivan explained her recommended \$42,274 increase to test year property tax expense. Although ASU provided documents to support *pro forma* property tax expense of \$246,925, Ms. Sullivan removed the tax liability associated with the 17.486 acres owned by Scott Lods. According to the affiliated, triple net lease, executed between Scott Lods and ASU, ASU is required to pay property taxes on the land it occupies. Property taxes on parcel No. 79-06-10-251-004.000-022 covers 17.486 acres. ASU occupies a very small percentage of the 17.486 acres. Ratepayers should not be responsible to pay property taxes on acreage that is neither owned by ASU nor used for the provision of utility service. (Sullivan, pp. 30-31.)

Ms. Sullivan explained her recommended \$77,259 decrease to test year utility receipts taxes to remove the expense from ASU's *pro forma* operating expenses. Finally, Ms. Sullivan discusses ASU's gross revenue conversion factor. ASU proposed a gross revenue conversion factor of 135.3579% based on a 0.1296408% IURC fee and a 1.46% utility receipts tax. Ms. Sullivan recommended a gross revenue conversion factor of 133.2743% based on a 0.1276080% IURC fee and no utility receipts tax since the tax was repealed effective July 1, 2022. (Sullivan, p. 32.)

c. **Testimony of Margaret A. Stull, Public's Exhibit No. 3.** OUCC Witness Margaret Stull began her discussion of rate base by noting that the Commission's final order in Cause No. 44676-S1 authorized an \$18,120,624 original cost rate base as of September 30, 2020 that included all the allowed costs for the pre-approved major projects, including Big 3, Klondike Road, and the CE-III wastewater treatment plant expansion. She noted it did not include any other changes to rate base from March 31, 2015 through September 30, 2020. (See OUCC Attachment MAS-1.) Ms. Stull noted that in its small utility rate application ASU used a historical test year ended December 31, 2020 and explained that when an historical test year is used, the rate base cut-off is the last day of the test year -- in this case, December 31, 2020. (Stull at p. 3)

Ms. Stull explained that ASU based its proposed rate base on its historical December 31, 2020 account balances¹ adjusted for (1) a decrease in allowable costs for CE-III phosphorus removal in Cause No. 44676-S1 and (2) a paycheck protection program ("PPP") loan received by ASU in 2020. She explained that the primary driver for the increase to rate base is a \$7,787,164 increase to utility plant in service, of which \$4,258,501 was contributed to ASU, resulting in a \$3,528,663 (\$7,787,164 - \$4,258,501) increase to net utility plant in service primarily due to the

¹ Rate base accounts include (1) utility plant in service, (2) accumulated depreciation, (3) contributions in aid of construction, (4) amortization of contributions in aid of construction, and (5) advances for construction.

(1) Cumberland Road addition (\$1,372,592), (2) the purchase of construction and other equipment (\$1,198,231) and (3) the purchase of vehicles (\$445,206). (See OUCC Attachment MAS-2.) Ms. Stull did not accept ASU's proposed rate base finding and recommended a *pro forma* original cost rate base of \$19,349,046, which was based on test year rate base at December 31, 2020 adjusted to reflect adjustments she proposed. (Stull at p. 4.)

Ms. Stull clarified that she was not able to review all transactions recorded to rate base from March 30, 2015 through December 31, 2020. Ms. Stull testified ASU did not provide its general ledgers for the years 2015, 2016, and 2017 in response to the OUCC's data request issued on February 18, 2022.² (OUCC Attachment MAS-4). She explained that while the OUCC requested and received asset ledgers for this period, the asset ledgers provided were not generated by ASU's accounting system and were not complete as they did not initially include asset retirements. She stated the asset registers provided also did not include an asset number or other identifier for each asset added to utility plant in service (See OUCC Attachment MAS-5.). Ms. Stull explained that an asset ledger only provides details for the utility plant in service component of rate base. Without general ledgers, she was unable to review the transactions recorded to construction work in process,³ accumulated depreciation, contributions in aid of construction, or advances for construction. (Stull at p. 5.)

Ms. Stull testified ASU did provide a list of all assets currently in service. She noted the OUCC requested ASU "provide a list of all assets, by account number, currently in operation as of December 31, 2020" in OUCC Data Request No. 14-9. ASU's initial response was "This data was provided in Data Request 5-21 to 5-26," which was the request for asset registers for 2015 through 2020. ASU then supplemented its response and provided a listing that included asset numbers (which were not included in the asset registers) but did not provide by account number as requested. Further, the listing provided begins with a "carry forward balance from 2006" of \$10,210,111. No detail was provided for the assets comprising this balance, which represents approximately 25% ($\$10,210,111 / \$39,656,311$) of the total assets ASU asserts are in service. (See OUCC Attachment MAS-6.) (Stull at p. 6.)

Finally, Ms. Stull noted that the balance of the asset listing provided (\$39,656,311) does not tie to the balance in utility plant in service as of December 31, 2020 as reflected in ASU's general ledger (\$41,863,969). She added that ASU does not properly account for asset disposals.

2 OUCC DR 5-15, 5-16, and 5-17 asked ASU to list all general ledger transactions, both balance sheet and income statement accounts including key descriptions (i.e., dates, amounts, account numbers). ASU objected noting that the information is archived and that it would be considerable work to pull this information together. On March 31, 2022, the OUCC requested ASU supplement its response with the information requested. ASU provided a supplemental response on April 8, 2022 that included a PDF of the transactions only for 2015.

3 Costs recorded to construction work in process are generally transferred to utility plant in service with a lump sum entry. The details of the costs included in this lump sum entry are only available in the construction work in process account.

For these reasons, she did not consider this listing to be a reliable list of assets currently in service. (Stull at p. 6.)

Ms. Stull noted that ASU proposes utility plant in service (“UPIS”) of \$40,458,089, which ASU determined by reducing the \$41,863,969 UPIS balance at December 31, 2020 by \$1,237,000⁴ to reflect the reduction in authorized CE-III phosphorus removal costs ordered in Cause No. 44676-S1 and by \$168,880 to reflect a forgivable COVID-19 payroll protection program (“PPP”) loan received in 2020. (Stull at p. 7.)

Ms. Stull did not accept ASU’s proposed value and instead recommended utility plant in service of \$37,201,349 (OUCC Attachment MAS-7) after making several additional adjustments to UPIS. She (1) excluded major project costs in excess of the Commission’s authorization in Cause Nos. 44676 and 44676-S1; (2) excluded certain costs incurred for the Cumberland Road project; (3) excluded equipment not necessary for the provision of utility service; (4) identified asset retirements; (5) identified capital costs incorrectly expensed during the test year; (6) removed the Kimberly Estates lift station; and (7) excluded non-allowed UPIS. (Stull at p. 7.)

Ms. Stull explained that in Cause No. 44676 and the Cause No. 44676 S1 subdocket, the Commission had limited the costs allowed for the Big 3 project, the Klondike Road Project and the CE-III project. (Stull at p. 8-9.)

Ms. Stull explained that the engineering, easements, and dewatering costs included in the costs pre-approved in Cause No. 44272 were not part of the preapproved costs. Ms. Stull explained that the three projects had received preapproval in Cause No. 44272, for less than all costs and the Commission found that inclusion in rate base of the additional costs would be “addressed as other rate base additions that have not been approved.” (April 9, 2014 Final Order in Cause No. 44272 at p. 15.) Ms. Stull asserted Cause No. 44676 was that “future rate case.” Ms. Stull asserted the Commission included these costs in its authorization of the Big 3 project but excluded them from the costs authorized for the Klondike Road project and the CE-III project. (Stull at p. 9.)

Ms. Stull explained that in this case, ASU sought to include in its proposed utility plant in service in this case additional costs for projects already included in rate base. It had included project costs above the amounts that were included in ASU’s rate base for those projects as authorized in Cause No. 44676. (Stull at p. 9.)

Ms. Stull explained that she did not include additional costs for major projects that had already been included in rate base. She explained that she included the costs incurred for the Big 3 project to the extent those costs were authorized by the Commission for inclusion in rate base in Cause No. 44676. But she did not include the additional costs ASU asserts it incurred for the Klondike Road project or the CE-III project as those costs were not authorized by the Commission in ASU’s last rate case, Cause No. 44676.

⁴ The Commission initially authorized \$1,500,000 for phosphorus removal costs included in the CE-III project. This amount was reduced to \$263,000 in Cause No. 44676-S1. Total reduction is \$1,237,000 (\$1,500,000 - \$263,000).

Ms. Stull testified that with respect to the Klondike Road project, ASU's last rate case in Cause No. 44676 was ASU's opportunity to justify its rate base for those projects to the extent they exceeded the preapproved amounts. And she noted that it took advantage of that opportunity noting that the amount authorized to be included in rates in Cause No. 44676 was substantially more than the amount that had been preapproved. She noted that the Commission found in that later case that "the total \$1.716 million cost shall not be included in Phase II rate base until Petitioner has certified that the Klondike Road Project has been placed in service."⁵ (*Emphasis added.*) (See November 20, 2016 Final Order in Cause No. 44676 at 29.) Ms. Stull asserted that the plain language of the Commission's order in Cause No. 44676 established that \$1,716,000, less retirement costs, represents the total approved by the Commission for recovery of the Klondike Road project. (Stull at p. 9.)

For the CE-III project, Ms. Stull testified that in the final order in Cause No. 44676, the Commission found "The total amount to be included in rate base for the CE-III project is \$11.5 million." (*Emphasis added.*) (See Final Order dated November 30, 2016 in Cause No. 44676 at page 30.) ASU had included \$1,975,200 of CE-III project costs in rate base in Cause No. 44676 Phase II rates implemented in March 2016. In Cause No. 44676-S1, the Commission found what remaining CE-III costs should be included in rate base. The Commission found "ASU is eligible to add \$8,024,800 in rate base for Phase III for the CE-III Plant." (See Final Order dated September 21, 2021 in Cause No. 44676-S1 at page 37.) Regarding the cost of phosphorus removal, the Commission further found "the best evidence available of what was actually installed consists of an estimate performed by the OUCC totaling \$263,000, which should be added to rate base." (*Id.* at page 38.) Adding the \$1,975,200 of CE-III project costs included in Phase II rates results in total authorized CE-III project costs of \$10,263,000 (\$1,975,200 + \$8,024,800 + \$263,000). Ms. Stull testified that through its several orders, the Commission established that \$10,263,000 represents the amount of the CE-III project that should be included in rate base. (Stull at p. 9-10.)

Ms. Stull testified that the costs ASU recorded for these major projects, which it seeks to include in its rate base exceed what the Commission's authorized ASU to include in its rate base. She testified that the asset registers provided in response to OUCC discovery (OUCC Attachment MAS-8), show ASU recorded costs in excess of the amounts authorized by the Commission for each of the above major projects included in rate base in Cause No. 44676. Ms. Stull asserted these excess amounts should not be added to ASU's rate base. She added that the Commission should order ASU to remove these excess costs from its general ledger to ensure these costs are not included in utility plant in service in any future ASU rate cases. (Stull at p. 11.)

Ms. Stull noted that according to the asset registers and general ledgers provided in response to OUCC discovery, as of December 31, 2020 ASU incurred \$1,372,592 of costs for its

⁵ In Cause No. 44272, the case that pre-approved the Klondike Road project, \$725,000 of construction costs were pre-approved by the Commission. These costs were exclusive of engineering, easements, and dewatering costs, meaning those costs could be presented for recovery in addition to the pre-approved construction costs. In Cause Nos. 44676, the project's scope had changed, and construction costs were now \$1,716,000.

Cumberland Road project, which is \$572,592 more than the \$800,000 pre-approved in Cause No. 44272. (Final Order dated April 9, 2014 in Cause No. 44272 at p. 12.) Of the \$1,372,592, Ms. Stull explained the OUCC recommends recommended exclusion of the \$70,000 change order added to the contract with Atlas Engineering, which Mr. Parks discussed, and exclusion of the \$100,000 ASU paid to settle a dispute with West Ridge Apartments due to (OUCC Attachment MAS-10) actions taken by its contractor, Atlas Excavating, that caused damages to West Ridge Apartments. Finally, Ms. Stull excluded \$20,385 related to the purchase of .23 acres of land located at 3350 West 250 North (OUCC Attachment MAS-11). Ms. Stull explained land is not located near the Cumberland Road main extension route or necessary to install a main extension. She also pointed to a lack of evidence that ASU owns this parcel of land as the parcel is not included in the list of real estate owned by ASU provided in response to OUCC discovery (OUCC Attachment MAS-12). (Stull at p. 12-13.)

Ms. Stull testified that the costs included in rate base in this case do not represent the total amount expended by ASU for the Cumberland Road project. She noted that ASU incurred an additional \$186,918 in 2021 on this project, primarily through its contract with contractor, Atlas Excavating. (See OUCC Attachment MAS-9.) She testified these costs were incurred after the rate base cut-off and will presumably be included by ASU in rate base in ASU's next rate case. (Stull at p. 13.)

Ms. Stull recommended a \$1,369,414 decrease to utility plant in service to eliminate construction and other equipment the OUCC asserted was either not used or necessary to provide safe, reliable utility service to ASU customers. More particularly, Ms. Stull recommended the removal of \$1,121,424 of various construction equipment, including excavators, a Mack semi, a 66' straight boom, and a telehandler. She also recommended removal of two (2) camera trucks purchased from an affiliate, First Time Development Corporation ("FTDC"), at a cost of \$170,000. Finally, she recommended the removal of \$77,990 of miscellaneous equipment including trenchers, landscape rakes, and a drum roller. (See OUCC Attachment MAS-14.)

Ms. Stull explained that asked ASU to explain how each item covered under its insurance policy as "contractor's equipment" was used to provide sewer utility service, what circumstances required the use of the equipment, and the amount of time each piece of equipment was used from 2018 through 2021. But ASU provided generic responses, which did not explain why ASU needed so much specialized equipment. More importantly, ASU could not provide any information regarding how often this equipment was used as it "does not keep track of this." (See OUCC Attachment MAS-13.) (Stull at p. 14.)

Ms. Stull explained that most of the equipment the OUCC recommends removing is either heavy equipment typically used in construction projects or specialized equipment that would not be used on a regular basis. She noted ASU just completed several major capital projects, including main extensions and treatment plant expansions and that despite owning this equipment, ASU used various construction contractors, including its own affiliate, to perform this work, as has been its practice in prior years. Ms. Stull added that in making an emergency sewer repair in the test year, rather than relying on its own equipment and personnel, ASU hired a contractor. Ms. Stull ASU has not demonstrated it uses the specialized equipment it has purchased to perform sewer

utility related work on any consistent or regular basis that would justify the purchase of this equipment. She asserted that if a piece of specialized equipment is needed, it would be more cost effective for ASU to rent the equipment rather than purchase it. For these reasons, the OUCC does not consider it reasonable to include this equipment in rate base. (Stull at p. 15.)

Ms. Stull explained that in total, ASU acquired \$1,591,231 of construction and other equipment from March 31, 2015 through December 31, 2020. The OUCC accepts the inclusion of \$171,182 in utility plant in service for a Case tractor, a scissor lift, and an extended hoist, among other things. She explained that the OUCC also accepted a “jet vac” truck acquired from FTDC at a cost of \$50,000. Finally, the OUCC did not recommend the removal of construction and other equipment purchased before March 31, 2015. (See OUCC Attachment MAS-14.) Ms. Stull also recommended the removal of all depreciation expense recorded to accumulated depreciation for the recommended asset removals from March 31, 2020 through December 31, 2020. (See OUCC Attachment MAS-20.) (Stull at p. 15.)

Ms. Stull testified ASU does not consistently record asset disposals when it sells, replaces, or otherwise disposes of its assets and when ASU does record an asset disposal, whether ASU correctly removes the original cost of the asset from UPIS⁶, as it should, is not indicated. Ms. Stull said she identified assets ASU failed to remove from service. She noted that in 2011 and 2012, ASU added the US 231 Bypass gravity sewer main and the Copper Beech lift station. These assets were no longer in service after completion of the Cumberland Road project approved in Cause No. 44272, which was placed in service on November 19, 2020. I recommend the removal of \$910,409 costs to reflect the retirement of these assets (OUCC Attachment MAS-15). (Stull at p. 16.)

Ms. Stull also identified vehicles, computers and other assets that were retired but not removed from utility plant in service. Ms. Stull explained she identified the vehicles because they are not included in the list of vehicles covered by ASU’s vehicle insurance policy. She concluded the vehicles were sold or otherwise disposed of and should be removed from utility plant in service. (See Attachment MAS-16.) Ms. Stull removed \$324,378 of vehicles from UPIS. Ms. Stull testified that ASU purchases computers on a regular basis. She noted from March 31, 2015 through December 31, 2020, ASU purchased at least seven (7) computers at a cost of \$8,125, but she found no transactions reflecting the retirement or disposal of computers since ASU’s last rate case. (See OUCC Attachment MAS-17.) She recommended removing \$5,080 of computers from UPIS to reflect the retirement of identified computer purchases prior to 2015. (Stull at p. 17.)

Ms. Stull testified that other office equipment, as well as miscellaneous tools and equipment, should be retired, including machines to fold and insert customer billings into envelopes, paper shredders, and welders. She noted ASU purchased multiple versions of this equipment over the past 10 years but the assets being replaced do not appear to have been removed

⁶ ASU uses the composite or group depreciation method. Under this method, the original cost of the asset is removed from both UPIS and accumulated depreciation when an asset is disposed of.

from utility plant in service. She therefore removed \$34,977 of other equipment from UPIS. (Stull at p. 17.)

Ms. Stull noted that the OUCC recommended excluding test year operating expenses the costs are related to capital projects and should otherwise be capitalized. She noted OUCC witness Carla Sullivan recommended \$60,966 reduction to operating expenses to eliminate operating expenses that are capital in nature. The projects related to the CE-III project, the Klondike Road project, the Belle Terra main extension, the Big 3 project, and two projects that are not yet in service. (Stull at p. 17.)

Ms. Stull included \$5,200 of these costs in her recommended utility plant in service as they are related to construction management work performed by TBird on the Belle Terra main extension project. She explained that the remaining costs were incurred on projects that are either not complete (construction work in process) or that have already exceeded the amount the Commission found should be allowed in rate base. (Stull at p. 18.)

Ms. Stull explained that the Kimberly Estates Lift Station is an issue in this case because in Cause No. 44676, ASU argued that three lift stations were too old to be fixed, too costly to be replaced, and operating these lift stations caused maintenance issues. She explained that the Big 3 project was designed, among other things, to eliminate these lift stations and the attendant operating costs. She added that on 12/31/2015, ASU recorded the retirement of all three of these lift stations, including the Kimberly Estates lift station (\$22,960). On January 1, 2017, ASU reversed the entry it recorded to retire this lift station, adding it back to utility plant in service. (Stull at p. 18.)

She noted the Mr. Parks discusses why the OUCC disagrees with the continued use of the Kimberly Estates lift station and recommends ASU demolish this lift station as originally planned and at no additional cost to the rate payer. She explained that the Big 3 project costs approved by the Commission included the cost to physically remove the Kimberly Estates lift station and, therefore, the removal of this lift station has already been included in rate base. Accordingly, Ms. Stull did not include the costs of the Kimberly Estates lift station in her recommended rate base. (Stull at p. 19.)

Ms. Stull recommended excluding four assets ASU recorded to rate base since its last rate case. She explained that two of these assets are not necessary to the provision of safe, reliable sewer utility service, including a fishing boat (\$801) and a stationary bike (\$854). She explained the other two assets do not meet the threshold established for capitalizing assets (\$750) as stated in ASU's capitalization policy, including Pendaflex file rails (\$38/box) and a printer (\$300) (Attachment MAS-19). (Stull at p. 20.)

ASU propose accumulated depreciation of \$9,069,684, which it determined by reducing the \$9,100,609 December 31, 2020 balance by \$30,925 to reflect the change in 2020 depreciation expense recorded due to the reduced phosphorus removal costs (September 22, 2021 Final Order, Cause No. 44676-S1). To calculate the reduction to accumulated depreciation, ASU assumed one year of depreciation expense for this asset as the asset was determined to be used and useful and

in service on September 30, 2020.⁷ ASU removed \$37,500 ($\$1,500,000 \times 2.5\%$) from accumulated depreciation and added \$6,575 ($\$263,000 \times 2.5\%$). The net effect is a \$30,925 reduction ($\$37,500 - \$6,575$) to accumulated depreciation. To reflect the effect of her proposed UPIS adjustments Ms. Stull recommend accumulated depreciation of \$7,691,303. (OUCC Attachment MAS-20). (Stull at p. 21.)

Ms. Stull accepted ASU's proposed \$10,350,028 of net contributions in aid of construction based on the December 31, 2020 balances - \$11,593,275 of total contributions offset by \$1,243,247 of accumulated amortization. (Stull at p. 21.)

ASU proposes \$25,138 of advances for construction based on its December 31, 2020 balances. Ms. Stull accepted ASU's advances for construction, but she testified she did not believe ASU properly follows the Commission's main extension rules or accounts for advances for construction correctly. She noted Mr. Parks discusses ASU's need to comply with the Commission's rules for sewer main extension. (Stull at p. 22.)

ASU proposes \$309,007 of working capital based on the FERC 45-day method, which calculates 12.5% (45 days /360 days) of *pro forma* operating expenses, excluding expenses known to be paid in arrears such as purchased power expense and most taxes. She explained this calculation estimates the investment ASU needs to make in cash working capital to operate the utility between the time utility service is provided to customers and the receipt of customer revenues. Ms. Stull noted ASU did not include working capital in its proposed rate base in that Cause. Ms. Stull did not accept ASU's proposed working capital and recommended working capital of \$214,166 based on the OUCC's recommended operating expenses. Ms. Stull also noted ASU only adjusted its *pro forma* operating expenses to exclude purchased power expense but she recommended an additional adjustment to *pro forma* operating expenses to include payroll taxes. She explained that while taxes are generally paid in arrears, payroll taxes are an exception. Payroll taxes are remitted to the government on a weekly or bi-weekly basis and therefore should be included in the determination of working capital. (Stull at p. 23.)

ASU proposes a \$222,428 increase to test year depreciation expense of \$783,643, resulting in *pro forma* depreciation expense of \$1,006,071, which it calculated based on its \$40,458,089 proposed gross utility plant in service and then removed \$215,245 of land, which is not depreciable. ASU then applied the Commission's 2.5% composite depreciation rate⁸ to the net depreciable UPIS of \$40,242,844 ($\$40,458,089 - \$215,245$) yielding a *pro forma* depreciation expense of \$1,006,071. Ms. Stull explained she agreed with the composite depreciation rate used

⁷ Based on a review of ASU's IURC annual reports, ASU's policy is to record a full year of depreciation expense for all assets, regardless of when the asset was placed in service (OUCC Attachment MAS-21).

⁸ 2.5% is the Commission's composite depreciation rate for a sewer utility with a treatment plant.

by ASU, but the various utility plant in service adjustments recommended by the OUCC required her recommendation. (Stull at p. 24.)

Ms. Stull also identified errors in ASU's calculation of its depreciation expense. She noted the test year depreciation expense ASU used in its calculation is net of CIAC amortization. As ASU proposed no adjustment to reflect annual CIAC amortization, this error effectively eliminates the effect of amortizing CIAC. She recommended a \$124,126 decrease to test year depreciation expense of \$1,048,779, resulting in *pro forma* depreciation expense of \$924,653. (See OUCC Schedule 6, Adjustment No. 17.), which she based on her recommended gross utility plant in service of \$37,201,349 and then also removed \$215,245 of land. She then applied the Commission's 2.5% composite depreciation rate to the net depreciable UPIS of \$36,986,104 (\$37,201,349 - \$215,245) yielding a *pro forma* depreciation expense of \$924,653. Table MAS-9 presents a comparison of the parties' depreciation expense calculation. (Stull at p. 24.)

Ms. Stull recommended CIAC amortization expense of a \$(289,832), which is a \$24,447 decrease from test year CIAC amortization expense of \$(265,385). (See OUCC Schedule 6, Adjustment No. 18.) She calculated her recommended amortization expense by applying the 2.5% composite depreciation rate to the \$11,593,275 CIAC balance at December 31, 2020, resulting in annual amortization expense of \$289,832. (Stull at p. 25.)

Ms. Stull recommended a net depreciation expense of \$634,821 (\$924,653 - \$(289,832)), compared to test year net depreciation expense of \$783,994 (\$1,048,779 - \$265,385). Table MAS-9 presents a comparison of the parties' depreciation expense proposals.

ASU proposes a \$222,428 increase to test year depreciation expense of \$783,643, resulting in *pro forma* expense of \$1,006,071. ASU based its *pro forma* depreciation expense on its \$40,458,089 proposed gross utility plant in service and then removed \$215,245 of land, which is not depreciable. ASU then applied the Commission's 2.5% composite depreciation rate⁹ to the net depreciable UPIS of \$40,242,844 (\$40,458,089 - \$215,245) yielding a *pro forma* depreciation expense of \$1,006,071. (Stull at p. 25.)

Ms. Stull agreed with the composite depreciation rate used by ASU, but her recommended depreciation expense differed from ASU's proposal due to the various utility plant in service adjustments recommended by the OUCC. Ms. Stull also recognized errors in ASU's calculation of its depreciation expense. She explained that the test year depreciation expense ASU used in its calculation is net of CIAC amortization. As ASU proposed no adjustment to reflect annual CIAC amortization, this error effectively eliminates the effect of amortizing CIAC. Ms. Stull recommended a \$124,126 decrease to test year depreciation expense of \$1,048,779, resulting in *pro forma* expense of \$924,653. (See OUCC Schedule 6, Adjustment No. 17.)

Ms. Stull based her *pro forma* depreciation expense on gross utility plant in service of \$37,201,349 and then also removed \$215,245 of land. Applying the Commission's 2.5% composite depreciation rate to the net depreciable UPIS of \$36,986,104 (\$37,201,349 - \$215,245)

⁹ 2.5% is the Commission's composite depreciation rate for a sewer utility with a treatment plant.

yielded a *pro forma* depreciation expense of \$924,653. Table MAS-9 presents a comparison of the parties' depreciation expense calculation. (Stull at p. 25.)

The OUCC recommended CIAC amortization expense of a \$(289,832), which is a \$24,447 decrease from test year CIAC amortization expense of \$(265,385). (See OUCC Schedule 6, Adjustment No. 18.) (Stull at p. 24-25.)

Ms. Stull calculated CIAC amortization expense by applying the 2.5% composite depreciation rate to the \$11,593,275 CIAC balance at December 31, 2020, resulting in annual amortization expense of \$289,832. (Stull at p. 25.)

Ms. Stull calculated net depreciation expense of \$634,821 (\$924,653 - \$(289,832)), compared to test year net depreciation expense of \$783,994 (\$1,048,779 - \$265,385).

ASU proposes present rate *pro forma* operating revenues of \$4,155,942. This is a decrease of \$261,676 from Applicant's test year revenues of \$4,417,618. ASU proposes three adjustments to its test year operating revenues. The first two adjustments increase revenues by \$11,934 to reflect test year customer growth. The third adjustment to test year revenue decreases revenues by \$279,877 to reflect the Commission's order in Cause No. 44676-S1, which reduced the rates billed during most of the test year.

Ms. Stull agreed ASU's adjustments are necessary but disagreed with ASU's customer growth assumptions and the calculation of its Cause No. 44676-S1 revenue adjustment. Ms. Stull recommended present rate *pro forma* operating revenues of \$4,527,433. This is a decrease of \$46,737 from test year revenues of \$4,574,170. She recommended six revenue normalization adjustments to capture test year and post-test year customer growth along with an adjustment to account for the difference between Applicant's interim Phase III rates and the final Phase III rates approved in Cause 44676-S1.

To reflect the reduction in test year rates resulting from the Commission's Final Order in Cause No. 44676-S1, ASU proposed a decrease of \$279,877 to reflect the difference between ASU's interim phase III rates billed during the test year and the final approved phase III rates authorized in Cause No. 44676-S1. According to KS-1¹⁰, ASU took \$4,326,808 of "Final Approved Phase III rates" authorized in Cause No. 44676-S1 and subtracted \$4,606,685 of "Interim Phase III Rates" revenues to calculate a \$279,877 decrease to operating revenues to reflect the Commission's final Phase III revenues approved in Cause No. 44676-S1.

ASU's response to OUCC Data Request No. 3-1 showed ASU calculated the final approved phase III rates by multiplying "Adjustable Operating Revenues" of \$3,895,218 by the 11.08% Phase III percentage rate increase authorized by the Commission in Cause No. 44676-S1. This resulted in \$4,326,808 of authorized revenues (\$3895218 x 111.08%) (See OUCC Attachment MAS-22, page 3 of 4.) To calculate the interim Phase III revenues used in its

¹⁰ KS-1 is provided at the bottom of the tab labeled "Schedule 4 Pro Forma IS" in the Excel version of ASU's small utility rate application.

adjustment, ASU used the revenues from Exhibit C of its Phase III Rate Calculation submitted on November 7, 2019.¹¹ Adding together the unmetered and metered sales revenues reflected in this document yields \$4,606,685 (\$4,434,815 + \$171,870). (See OUCC Attachment MAS-22, page 4 of 4.)

While she accepted an adjustment is necessary, she did not agree with ASU's calculation of the adjustment. Ms. Stull testified that ASU calculation is flawed as the calculation is based on incorrect numbers or numbers that have no relation to the test year adjustment being calculated. First, she noted ASU used an incorrect amount to reflect the final approved phase III rates in Cause No. 44676-S1. Ms. Stull explained that it was not necessary to calculate this amount as it is plainly reflected in the Commission's Final Order in that Cause (p. 41). The amount of final Phase III operating revenues is \$4,436,671, not the \$4,326,808 reflected in ASU's calculation. Second, Ms. Stull disagreed with the amount ASU used to represent interim Phase III revenues collected during the test year. ASU used a number calculated in its Phase III compliance filing in Cause No. 44676-S1. Instead, the amount should be based on actual revenues recorded during the test year.

To capture the reduction in test year rates due to the Commission's Final Order in Cause No. 44676-S1, Ms. Stull recommended an adjustment that corrects test year operating revenues to reflect the authorized changes in rates that occurred during and after the test year. Ms. Stull calculated a decrease of \$266,591. (Stull at p. 29.)

Ms. Stull explained what rates were in effect during and after the test year noting that during the test year, the Phase II authorized rates were in effect for January and February customers billings.¹² In its January 29, 2020 Prehearing Conference Order in Cause No. 44646-S1, the Commission authorized a 21.87% interim Phase III rate increase over Phase II rates, subject to refund. Therefore, customer billings from March through December of 2020 were billed at the interim Phase III rates. On September 22, 2021, the Commission issued its Final Order in Cause No. 44676-S1, authorizing an 11.08% increase over Phase II rates. (Stull at p. 29.)

Ms. Stull increased January and February revenues by 11.08% to reflect the Commission's Final Order in Cause No. 44676-S1. Similarly, she reduced March through December revenues by 8.85% to reflect the decrease to the interim Phase III rates billed during that period. Table MAS-10 summarizes this calculation.

Ms. Stull proposed six (6) adjustments totaling \$220,346 to reflect both test year and post-test year customer growth.

¹¹ In ASU's response to DR 3-1, Attachment 1, it appears to have included the wrong page from its "calculation of...interim Phase III rates that was submitted in Cause No. 44676." I located the correct page showing the amounts used by ASU in this adjustment and included in my OUCC Attachment MAS-22.

¹² While the Commission's January 29, 2020 Preheating Conference Order in Cause No. 44676-S1 was issued prior to the issuance of February 2020 billings, ASU did not begin billing the Phase II interim rates until March 2020.

Ms. Stull recommended a \$50,218 increase to residential revenues to reflect customer growth during the test year, which she derived by determining the annual number of customer billings that would result if ASU's 2,912 residential customers at December 31, 2020 had been customers for the entire year (Attachment MAS-24). This resulted in total billings of 34,944 from which she subtracted the 34,094 of actual test year billings to determine 850 additional billings that would result from normalizing test year customer growth. Ms. Stull multiplied the 850 additional test year billings by the current residential flat monthly rate of \$59.08 to calculate a residential revenue increase of \$50,218. (See OUCC Schedule 5, Adjustment No. 1.)

Ms. Stull also recommended a post-test year residential customer growth adjustment of \$61,680, which she derived by calculating the increase in residential customers during the 12-month period following the test year. To determine that amount, she subtracted the number of customers at December 31, 2020 from the number of customers at December 31, 2021 (Attachment MAS-24). Based on this analysis, Ms. Stull determined ASU added 87 residential customers as of December 31, 2021 resulting in 1,044 additional annual billings due to post-test year customer growth. She then multiplied the additional post-test year billings by the current residential flat rate of \$59.08, resulting in \$61,680 of additional residential revenues. (See OUCC Schedule 5, Adjustment No. 2.)

Ms. Stull recommended a \$19,766 increase to multi-family revenues to reflect customer growth during the test year. Ms. Stull explained that if ASU's 3,115 multi-family customers as of December 31, 2020 had been customers all year, there would have been total billings of 37,380 or an additional 413. Ms. Stull multiplied these 413 additional billings by the current multi-family flat monthly rate of \$47.86 to calculate a multi-family revenue increase of \$19,766. (OUCC Schedule 5, Adjustment No. 4.)

Ms. Stull testified that it is necessary to quantify ASU's accumulated deferred income taxes at December 31, 2020 because it is a source of zero cost capital that should be recognized in ASU's capital structure. However, she noted ASU did not reflect any accumulated deferred income taxes ("ADIT") in the balance sheet included in its filing. (Stull at p. 36.)

Ms. Stull asserted ASU has not properly accounted for its ADIT as ASU does not record or keep track of its deferred tax liabilities. She noted that a review of ASU's IURC annual reports show no accumulated deferred income taxes for the years 2018, 2019, or 2020. While ASU's test year general ledger reflects \$351,981 of accrued deferred income taxes, this amount is included in the \$762,673 of current accrued taxes reflected in its 2020 IURC annual report and in its filing. Although it is required by both the NARUC Uniform System of Accounts as well US GAAP, In response to discovery, Ms. Stull noted ASU stated it does not separately record deferred and current income tax expense. Ms. Stull explained that in Cause No. 45032-S15, part of the Commission's tax investigation

initiated after passage of the Tax Cuts and Jobs Act of 2017 ("TCJA"), the Commission found ASU's accumulated deferred income taxes was \$533,026 at December 31, 2017.

Ms. Stull stated that ASU's books and records do not correctly reflect its accumulated deferred income taxes, and based on her review of ASU's general ledgers, it does not appear ASU ever recorded its accumulated deferred income taxes as of December 31, 2017.

Ms. Stull testified it is unclear what ASU's ADIT balance was as of December 31, 2020. Because ASU did not reflect an ADIT balance in its general ledger, Ms. Stull asked for the calculation of deferred federal and state income taxes for 2020. ASU's response referred the OUCC to its response to DR 11-6 discussed above. (See OUCC Attachment MAS-25.) (Stull at p. 38-40.)

Ms. Stull testified that ASU's ADIT balance may be calculated for the purposes of this case. She noted ASU's response to discovery suggested there should be no timing differences so that ASU's ADIT balance at December 31, 2020 would be the balance at December 31, 2017 less the amortization of excess ADIT through December 31, 2020. Ms. Stull testified the ADIT balance at December 31, 2020 should be \$511,744. She added that amount was included in the capital structure recommended by OUCC witness Shawn Dellinger.

Ms. Stull added that, while ASU stated it endeavored to eliminate any *timing* differences between book income and taxable income, there may still be *permanent* differences, one of which would be caused by the \$2.5 million of contributions in aid of construction ("CIAC") ASU received since TCJA, which made contributions in-aid-of construction taxable. If the taxation of CIAC is considered a permanent difference, and there are no other differences between book income and tax income. Ms. Stull added that the methodology she used to calculate ADIT would still be reasonable because permanent differences do not generate ADIT.

Ms. Stull explained that excess accumulated deferred income taxes ("Excess ADIT") refers to the excess accumulated deferred income taxes that resulted from the reduction of the federal income tax rate to 21% as a result of TCJA. She noted ASU did not include any amortization of excess ADIT in its filing. Ms. Stull explained that in Cause No. 45032-S15 the Commission found ASU's excess ADIT at December 31, 2017 to be \$212,828 and ordered ASU to reduce its rates to reflect \$7,094 ($\$212,828 / 30$ years) of excess ADIT amortization. She added the Commission determined the appropriate amortization period for excess ADIT was 30 years based on the remaining life of ASU's utility assets as of December 31, 2017. Ms. Stull asserted ASU has not properly accounted for its ADIT and has not recorded the amortization of its excess ADIT. She testified ASU should properly account for its ADIT. (Stull at p. 38-40.)

Ms. Stull calculated ASU's pro forma present rate federal and state income taxes setting forth her calculations of *Pro forma* present rate federal and state income tax adjustments in Schedule 6, Adjustment No. 19. Ms. Stull explained that, other than the differences in various proposed revenue and expense items, there is no difference between her calculations of state income taxes and ASU's calculations. Ms. Stull recommended *pro forma* present rate state income tax expense of \$55,826 and *pro forma* present rate federal income tax expense of \$227,530. (See OUCC Schedule 6, Adjustment No. 19.)

d. Testimony of James T. Parks, Public's Exhibit No. 4. Mr. Parks testified ASU sought a rate increase of approximately 69% to generate \$2,854,542 in additional revenues to produce pro forma revenues of \$7,010,484. He testified the Commission's Final Order in Cause No. 44676-S1 authorized an \$18,120,624 original cost rate base as of September 30, 2020, which included all allowed costs for the pre-approved major projects, including Big 3 Sewer, Klondike Road Sewer, and the CE-III wastewater treatment plant expansion, but did not include any other rate base changes during the March 31, 2015 through September 30, 2020 period. He reported ASU seeks a \$3,201,622 rate base increase to produce a *pro forma* original cost rate base of \$21,322,246 on December 31, 2020 including \$1,372,592.08 for the Cumberland Road Sewer project. Other major capital additions include construction equipment purchased from ASU's Affiliate, First Time Development Corporation ("FTDC"), and vehicles. (Parks at 1-2.)

Kimberly Estates. Mr. Parks testified the Kimberly Estates lift station should be removed. He testified ASU requested removal in 2012, the Commission preapproved it in 2014 under Cause No. 44272, IDEM permitted it in the Big 3 Sewer project in 2014, ASU certified the Big 3 project complete and in service in August 2015, and it was added to ASU's rate base in Cause No. 44676 in 2016. He reported ASU requested preapproval for the Big 3 project to eliminate a sewer and three lift stations including Kimberly Estates that ASU repeatedly testified were too old to fix, were maintenance issues, and were too costly to replace. Mr. Parks noted Kimberly Estates pump and power failures caused three sanitary sewer overflows ("SSOs") and reported ASU's 2021 Daily Activity Sheets show periods when only one of two pumps operated which may signal pump, electrical or control issues. He reported the Kimberly Estates lift station was installed in the 1960s and does not have standby power. Mr. Parks testified ASU has not replaced the deteriorated sewer along County Road North 50 West. Mr. Parks testified the Commission preapproved the Big 3 project for \$2,100,000 specifically to eliminate the three lift stations. (See April 9, 2014 Final Order, Cause No. 44272, pp. 13-16.) He testified only one of the three lift stations, Hawthorne Ridge, had been physically removed, Big Oaks remains in place (out of service and without pumps) but Kimberly Estates still operates daily in routine service. (Parks pp. 7-16.)

Mr. Parks testified ASU stated the Big 3 project planning parameters were to remove three lift stations and that its policy is to eliminate lift stations when economically possible as determined by cost of operation, power, maintenance, risk of employees being called out at night, complaints, interrupted service from power outages and breakdowns, and increased capacity to serve new areas. Mr. Parks testified ASU can easily meet its policy by just finishing the Big 3 work for which it has already been compensated. Mr. Parks testified that by now, all three lift stations should be retired and physically removed and provided evidence that removals were detailed on the Big 3 project plans. Mr. Parks testified specific lift station removal costs were not identified in either Mr. Beyer's Testimony in Cause No. 44272 nor in First Time Development Corp.'s Schedule of Values but that HWC Engineering listed \$30,000 and for the Cumberland Sewer project in this cause, ASU stated the comparable Copper Beech lift station removal cost was \$53,675. Mr. Parks estimated Kimberly Estates 2021 annual operating and maintenance costs at over \$15,500 for labor, power, and parts. (Parks, pp. 12-15, see also Attachment JTP-5.)

Mr. Parks reported that in its 2013 Cause No. 44272 rebuttal argument for Big 3 preapproval, ASU witness Beyer estimated replacing instead of retiring both Big Oaks and Kimberly Estates would cost \$1,506,250. Mr. Parks calculated Kimberly Estates replacement would be \$800,000 using Mr. Beyers 2013 estimate updated to 2023 dollars. Id. Mr. Parks testified the Commission directed ASU to record Utility Plant in Service (“UPIS”) retirements of \$59,182 for Big Oaks (\$2,112), Kimberly Estates (\$22,960) and Hawthorne Ridge (\$34,110). Mr. Parks stated these retirements were made, but in 2017 ASU reversed the Kimberly Estates retirement by returning \$22,960 to rate base. Mr. Parks testified that in 2015, ASU informed IDEM it removed Kimberly Estates from service and diverted 150,000 gpd from Carriage Estates to County Home. He reported ASU stated in its Emergency Response Guide that “These three (3) lift stations will be removed from service by the end of 2015.” He also reported that in its 2015 IURC Annual Report, ASU noted “The Big 3 sewer project was originally designed to take out 3 existing lift stations. After completing the Big 3 project we determined that it would be useful to leave the Kimberly Estates lift station in service so that flow could be diverted to CE WWTP if needed.” Mr. Parks testified ASU provided no information or analysis about the usefulness or cost of retaining this lift station and that it has avoided Big Oaks and Kimberly Estates demolition costs. Mr. Parks stated it is inaccurate to say the Kimberly Estates lift station is used “only if needed.” He testified normal practice is exactly the opposite, because ASU operates Kimberly Estates every day and rarely routes flow to the Big 3 Sewer. (Parks, pp. 15-17.)

Mr. Parks testified physical removal of both lift stations is long overdue and was to have been done in 2015 when Big 3 project expenditures were approved. He testified continued Kimberly Estates lift station operation is “unnecessary and wasteful” and recommended the Commission direct ASU to finally retire the Kimberly Estates lift station from service and to physically remove the Big Oaks wet well and the Kimberly Estates lift station pumps, electrical system, controls, and wet well at no additional cost to ratepayers. He reported ASU and First Time Development never finished the removal work or prepared Record Drawings. Mr. Parks testified removal is needed today to prevent ratepayers from having to pay to replace it in the future. Id. Mr. Parks testified the Big 3 Sewer has low utilization because wastewater is still pumped to Carriage Estates by Kimberly Estates and only one new customer connected to the Big 3 Sewer since 2015. Mr. Parks reported that in 2015, ASU testified there was an immediate Big 3 Sewer benefit because “ASU will now be able to divert 150,000 gpd from the Carriage Estates Plant to the County Home Plant.” In discovery under Cause No. 44272, ASU also stated redirecting flow would have minimal impact on either plant, noting County Home’s available 900,000 gpd capacity. Mr. Parks estimated current flows in the Big 3 Sewer are 1% or lower of the carrying capacities calculated by ASU’s engineer Mr. Serowka in Cause No. 44676. (Parks, pp. 17-19.)

Relocation of ASU Sewer Assets Mr. Parks testified the Kimberly Estates lift station, force main and sewers conflict with the 2024-2025 Morehouse Rd. Reconstruction project. Without easements, ASU ratepayers will have to fund force main relocation even though the lift station and force main were to have been retired. Mr. Parks testified ASU did not provide any information in its Small U filing, but the OUCC learned of the project from a \$10,953 one-page invoice for the Morehouse Rd. Sanitary Sewer Relocation project. Mr. Parks testified that based on his review of plans, ASU has designed new 5’ to 10’ deeper sewers to reroute wastewater flowing north to instead

flow south. ASU shows a new force main south from the existing Kimberly Estates lift station. He testified this new force main confirms ASU intends to keep the Kimberly Estates lift station in service which eventually requires costs to rehabilitate or replace it. Mr. Parks testified ASU's proposed plan contradicts previous testimony in 2012, 2013 and 2015 that the lift station was "too old to fix", a maintenance issue, and costly to replace. He also testified that keeping Kimberly Estates does not conform with ASU's delineated service areas for County Home and Carriage Estates. (Parks, pp. 19-21.)

Mr. Parks testified ASU should not keep Kimberly Estates because it is neither prudent nor reasonable to incur capital costs beyond those already incurred for the Big 3 Sewer and to incur unnecessary and wasteful lift station O&M costs to continue routing Hadley Moors and Kimberly Estates sewage to Carriage Estates. He testified these costs can be and should be immediately eliminated by retiring Kimberly Estates. Mr. Parks testified there are two options for conveying and treating Hadley Moors and Kimberly Estates subdivisions flows: 1) Gravity flow (no pumping) through the Big 3 Sewer to County Home as preapproved, designed, IDEM permitted and placed in service in 2015; and 2) Kimberly Estates lift station pumping to Carriage Estates. Mr. Parks testified the second option requires annual O&M expenses and future Kimberly Estates replacement. He testified the lowest cost option is Option 1 - gravity flow via the Big 3 Sewer to County Home since there are no O&M costs and it avoids replacing the Kimberly Estates lift station. He noted it eliminates future SSOs caused by power failures and pump malfunctions. Mr. Parks prepared a 30-year Life Cycle Cost Analysis ("LCCA") showing Option 1's present value was zero and Option 2's present value was \$1.1 million. He testified this confirmed his recommendation that the Commission order ASU to finish the Big 3 project by finally retiring Kimberly Estates and physically removing both Big Oaks and Kimberly Estates. For ASU's Morehouse Rd. sewer relocation, Mr. Parks, recommended ASU not replace the force main and instead remove the lift station. He also recommended that the relocated sewer for Kimberly Estates subdivision and possibly the Soleado subdivision be routed north to the Big 3 Sewer for gravity conveyance to County Home. (Parks, pp. 22-24.)

Absence of Big 3 Sewer Record Drawings Mr. Parks testified ASU has not prepared Big 3 Sewer Record Drawings showing construction changes. In 2015 discovery, ASU stated it would create the Record Drawings in 2016. He testified ASU provided scanned March 13, 2014, design drawings it purported were Record Drawings but there are missing sheets, they are not labeled as Record Drawings, they have no certification date, and have no engineer's stamp. He also testified ASU's purported Record Drawings do not have any notations of actual surveyed manhole locations, pipe lengths, invert or rim elevations, and all sewer segment and manhole information on both the purported Record Drawings and design drawings match exactly without variation, which is extremely unlikely. He contrasted the dated, stamped, and certified Record Drawings for the Klondike Road Sanitary Sewer project that listed corrections to nearly every pipe length and elevation. Mr. Parks testified that the OUCC has previously testified about ASU's failure to prepare Record Drawings. (Parks, pp. 24-25.)

Mr. Parks recommended the Commission order ASU to hire an independent third-party engineer / surveyor at no additional cost to ratepayers to produce accurate Record Drawings

because ASU has been unwilling or unable to do so, either by ignoring project standards to document changes as they occurred, ineffective project management or simply for ASU to reduce costs. He also stated lack of Record Drawings may indicate the constructed sewer does not meet the designed plan and profile. Mr. Parks testified now is the best time to complete the long overdue Record Drawings because Mr. Lods, as sole ASU and FTDC owner, is best positioned for Record Drawings preparation since he has all design drawings, permits, material invoices, shop drawings, and knowledge about field changes. (Parks, p. 26.)

Tree Mitigation for the Big 3 Sewer Project. Mr. Parks testified ASU paid two invoices during 2020 for wetland and forested floodway mitigation work for the Big 3 Sewer project. Mr. Parks testified ASU did not discuss wetlands in Cause Nos. 44272 or 44676 but wetland restoration was part of the Big 3 project with restoration work called out on design drawings. He testified specific costs were not identified in either Mr. Beyer's testimony in Cause No. 44272 or in FTDC's Schedule of Values but HWC Engineering listed \$120,000 for restoration and wetland planting. He recommended disallowing ASU's inclusion of the \$9,560 in invoices as a recurring expense because they are not Big 3 project engineering but were FTDC contracted obligations included in the \$2,351,074 of rate base allowed by the Commission for the Big 3 Project in Cause No. 44676. (Parks, pp. 26-28.)

Cumberland Road Project Mr. Parks testified ASU cited downstream capacity issues when it sought preapproval in Cause No. 44272 (2012) of \$1,969,311 for the Cumberland Road project to be constructed in 2015 to eliminate the Copper Beech lift station (installed in the 2000s) and force main (2011). The OUCC opposed it as unneeded, proposed two lower cost alternatives and recommended ASU prepare a Master Plan. Based on ASU's 2014 Sewer Projects Stipulation and Settlement Agreement with the OUCC, the Commission preapproved construction up to \$800,000. Mr. Parks testified that even though the Commission ordered ASU to notify the IURC and OUCC of project completion and actual costs, ASU did not do so. Mr. Parks noted ASU reported Final Completion was November 19, 2020 but did not discuss the project or its five-year delay in its Small U filing. He noted ASU explained in Cause No. 44676 the delay was because the developer connecting to the sewer decided not to move forward. Mr. Parks testified it appears the Cumberland Road project should have been considered a main extension. He testified ASU reported adding \$1,368,154.58 to its Asset Register on August 1, 2020 which exceeded preapproval but was the same amount paid to Atlas Excavating, Inc. ("Atlas"). He testified recording the cost on August 1, 2020 is incorrect since it predates both Substantial and Final Completion dates and is contradicted by Atlas' Pay Applications. He testified work began in November 2019 but stopped after March 2020 when only 54% of the sewer had been built. Work resumed in August 2020 and was reported complete in November 2020. (Parks, pp. 28-31.)

Mr. Parks testified it appeared work stopped when West Ridge Apartments, LLC ("West Ridge") claimed excavation in the temporary easement affected soil conditions under its planned apartments. To resolve the claim ASU made a \$100,000 Mutual Release and Settlement Agreement payment to West Ridge. He testified ratepayers should not fund the payment which should have instead been paid by Atlas' or ASU's insurance. He noted ratepayers already pay through rates for ASU insurance and Atlas' insurance imbedded in project costs. He recommended

disallowing the \$100,000 payment in the Cumberland Road project because it is not prudent or reasonable to add it to rate base. (Parks, p. 32.)

Mr. Parks testified ASU did not support Cumberland Road project costs in its Small U filing including the excess above the \$800,000 preapproved amount. He testified the sewer route and tie in points appeared to be the same, but Atlas installed less sewer (4,051 LF instead of 5,027 LF) and 12 of 14 manholes preapproved in Cause No. 44272.. Mr. Parks testified ASU selected Atlas in November 2019. He testified Atlas included dewatering at \$374,000 but ASU negotiated a lower \$1,300,000 contract with no dewatering. He testified ASU provided no information but approved a \$70,000 change order in Pay Application No. 5 as Item 12 – Additional Mobilization/Demobilization. In discovery, ASU did not support the change order, instead referring the OUCC back to Pay Application No. 5. In Pay Application Nos. 6 through 10, Atlas revised Item 12’s description to “Dewatering” even though Dewatering line item 8 was already listed at zero cost. He noted that in Cause No. 44676, ASU failed to support its Big 3 dewatering claim and similarly for the Cumberland Road project, ASU provided no support for the \$70,000 dewatering change order. Due to this lack of support, he recommended disallowing ASU’s dewatering claim and including \$70,000 in rate base. (Parks, pp. 34-35.)

Mr. Parks recommended the Commission approve \$1,177,356.80 of rate base addition through December 31, 2020, for the Cumberland Road project limited to the \$1,113,965.30 paid to Atlas Excavating plus \$64,241.50 for engineering and easement acquisition supported by invoices minus ASUs’ \$850 overpayment correction. He testified ASU included two invoices (\$1,627) from the Gutwein Law Firm involving the purchase of 0.23 acres at 3350 W 250 N (address of ASU’s rented office owned by Mr. Lods) plus a property purchased at North 300 West (\$19,170.78). The 0.23 acres purchase appears to be unrelated and the \$20,797.78 should not be included in rate base for the Cumberland Road project. Id. at 33. Mr. Parks testified ASU identified \$186,918.45 in five additional Atlas and TBird charges in 2021 for the Cumberland Road project and in response to discovery, ASU stated “No further charges for the Cumberland Road project are expected.” (Parks, pp. 36.)

Mr. Parks noted three other Cumberland Road project concerns including not having Record Drawings which has been a continuing problem. His second concern is he could not find any record ASU conducted IDEM required sewer testing including: 1) leakage tests (infiltration/exfiltration), 2) sewer deflection tests, and 3) manhole leakage tests. He reported in discovery, ASU provided 24 pages of signed and dated testing results for the Klondike Road Sewer but only two undated and unsigned pages for Cumberland Road. He testified his third concern is it appears no inspections occurred after March 20, 2020 when construction stopped. In discovery, ASU provided 57 daily inspection reports to March 20, 2020 but TBird did not mention any work stoppage, West Ridge’s dispute, scope changes, field directives, or quality control inspections. Based on these three concerns, Mr. Parks recommended the Commission order ASU to hire an independent third party at no additional cost to ratepayers to survey actual locations and elevations of all Cumberland Road assets built and for ASU to complete Record Drawings. He recommended ASU provide copies of the IDEM required testing for all three sewer projects (Big 3, Klondike

Road, and Cumberland Road). Finally, he recommended ASU provide copies of TBird's daily inspection reports days after project work resumed in August 2020. (Parks, pp. 36-38.)

Sewer Main Extensions Mr. Parks testified the Commission's sewer main extensions rules apply to ASU and that ASU stated "To the best of its knowledge, ASU follows the spirit of the main extension rules" but did not explain what it meant by the "spirit of the main extension rules." ASU's response to discovery (DR 9-10) asking "As required by the Commission's main extension rules, does ASU provide a three-year revenue allowance per EDU to developers/customers who require a main extension before utility service can be provided?" was as follows:

Generally, no. As Petitioner indicated in the main extension agreements that have been produced, Petitioner is a small utility. Paying three times the annual revenue for each connection would require capital investment that Petitioner does not readily have available. Further, it would increase the rate base and ultimately the rates for ASU customers. Accordingly, main extensions to serve new developments are generally regarded as special contracts in this regard. To Petitioner's knowledge, no developer has ever raised an objection. Further, ASU does not gross up for income taxes on contributed plant, which requires a contribution of capital for all main extensions.

Mr. Parks reported that the OUCC asked additional questions about ASU's compliance with the Commission's rules for sewer main extensions. (OUCC Data Request 9-11 and 9-12). He asked, if no separate three-year revenue allowance is provided to the developer/builder/customer, is the value of the three-year revenue allowance factored into the cost of the upsizing or any other costs or fees due under the main extension agreements entered into by ASU? ASU did not provide an answer and merely said to refer to OUCC DR 9-11. Mr. Parks also testified he asked ASU to state the total amount of 3-year revenue allowances paid to or provided to developers/builders/customers during each of the calendar years 2015 through 2021. Again, ASU's only response was to refer the OUCC back to its DR 9-10 response. Mr. Parks stated that based on ASU's answers, he concluded ASU is not complying with the Commission's rules for sewer main extensions. Mr. Parks recommended the Commission order ASU to comply with the main extension rules - 170 IAC 8.5-4. (Parks, pp. 38-40.)

2020 Kokopelli Asphalt Maintenance Invoice Mr. Parks testified about a one-page \$82,672.11 Kokopelli accounting for 44% of consulting expense "Other" recorded during the test year. He testified the invoice was for an emergency sewer repair at 3725 US 52 but lacked basic information making it not possible for an auditor to determine the nature or extent of actual work completed. Mr. Parks recommended disallowing most costs because they appear inflated and are unsupported. Mr. Parks testified invoices should indicate when and where work was performed, describe the work such as length of pipe repaired, identify all materials purchased, state labor hours and rates charged, and list equipment used, hours and hourly rates. Mr. Parks testified ASU provided some information in discovery but failed to support any of the labor, equipment, materials, and subcontractor costs. He testified the dates the work was performed are still unclear. (Parks, pp.40-41.)

Mr. Parks testified Kokopelli's Invoice No. 402, dated February 20, 2020, predated the work by a month, but Kokopelli stated ASU called them on March 20, 2020, and that "By March

25, 2020, we were able to contain the inflow of water and sediment to make necessary repairs.” He testified it took five days to control groundwater, but Kokopelli did not state the duration of repair work or restoration. Mr. Parks testified ASU reported nothing beyond it took “Approximately 2 weeks starting 20-Mar-20.” Mr. Parks stated ASU provided no other detail an auditor could use to understand the work and to determine whether charges were reasonable and prudent. He testified ASU did not report how it learned of the problem and ASU was unsure if it had televised the sewer but stated it “believes that the line may have been televised at some time prior to the collapse, however no record can be located.” Id. Mr. Parks testified that upon closer review of other invoices, he found a FTDC invoice indicating televising took place on January 16, 2020, at the same address with the notation that it was “due to complaint sink hole.” He reported on January 17, 2020, FTDC again televised “to inspect lines at US 52” but listed no specific address. (Parks, pp. 41-43.)

Mr. Parks testified Kokopelli did not provide any repair information such as pipe type, length or whether it repaired or replaced the pipe. He testified ASU indicated it was a 14-inch clay pipe installed in the 1960s but did not indicate length repaired or replaced. He stated the pipe was likely replaced and noted Kokopelli purchased something from a pipe supplier in Lafayette for \$365. Mr. Parks testified Kokopelli listed costs for twelve-line items totaling \$82,672.11 but provided no breakdown, no basis for each charge, and had no supporting invoices. He reported Kokopelli later stated “Further documentation is not available at this time due to a building flood in 2021 causing a complete loss of records and receipts.” Similarly, ASU did not describe the repairs or provide invoices supporting the line-item charges. He testified ASU stated its response was “To be provided; Kokopelli staff is currently on spring break” deferring wholly instead to its contractor for a response. He testified this strongly suggested ASU does not require, obtain, or maintain adequate records to support its claimed costs and that ASU accepted Kokopelli’s one-page \$82,672.11 invoice without internal procedures to review, verify, and document the charges. He testified ASU’s inaccurate continuing property records, poor recordkeeping, and lack of records have been an issue in past cases with the Commission in Cause No. 44676 concluding its own review of invoices brought into question the adequacy of ASU’s records. He testified the Commission stated it expects “Petitioner to comply with NARUC’s Accounting Instruction 2. 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.” (Emphasis added by the OUCC) Mr. Parks testified ASU has a particular obligation to show its sewer repair expense is reasonable due to these past recordkeeping problems. (Parks, pp. 43-47.)

Mr. Parks testified Kokopelli’s charges are not reasonable and appear excessive to repair a 14-inch sewer only 13 feet deep within a right-of-way with good access. He noted Kokopelli contended with groundwater, a 4-inch gas main, a fiber optic cable, and traffic control. He disputed ASU’s claim the embankment toe was ten feet below US 52, noting that using a DNR website, he determined the ditch line elevation is less than four feet lower. He explained he analyzed repair cost reasonableness by determining sewer length repaired or replaced to calculate an overall cost

per LF metric. He criticized both ASU and Kokopelli for not knowing the length, a basic parameter, and stated Kokopelli's and ASU's failure to list the length and lack of support for invoiced charges should result in disallowance. He testified it is not administratively efficient to conduct repeated discovery and still not know the length. Mr. Parks bracketed the range of sewer replacement costs per LF for two pipe length assumptions: 1) short length of 20 feet and 2) longer length of 80 feet. Under the short length scenario, he calculated the cost at over \$4,100 per LF that he characterized as excessive at 13 to 16 times above ASU's typical \$200 to \$300 per LF costs to install sewers twice as deep. *Id.* At the longer length, he calculated \$1,033 per LF which also appears excessive at 3 to 4 times ASU's average cost. (Parks, pp. 47-48.)

Mr. Parks testified he also reviewed line-items, many of which were not reasonable, including a \$11,877 charge for a trench box that Kokopelli abandoned in place, a \$16,838 Vac Truck camera charge, and \$26,974 for unspecified Kokopelli labor charges equivalent to a six-man crew. He testified to excavate a 10- to 14-foot-deep trench, the RS Means manual indicates a two-man crew of one laborer and one excavator operator is required with excavation taking half a day. He also questioned what workers did for five days until groundwater was resolved. Mr. Parks testified despite being given the opportunity, ASU had not supported the Kokopelli charges. He testified the \$82,762.11 invoice is not reasonable based on his knowledge of repair work, typical costs and ASU's recent deep sewer installation costs. He recommended the Commission disallow the invoice as an operating expense as it is neither supported nor shown to be recurring. However, he noted if the Commission includes it in rates as a pro forma operating expense, he recommended limiting the rate base addition to \$25,000 for this repair work. (Parks, 49-51.)

Required Blowers at Carriage Estates Mr. Parks noted under the Agreed Order, IDEM required ASU to prepare a Blower Compliance Plan to purchase and install three blowers at Carriage Estates at no additional ratepayer cost to secure IDEM's approval to rate the CEIII WWTP for 3.0 MGD. He testified ASU submitted its plan on March 1, 2021, a permit application on July 30, 2021, and IDEM issued the permit on August 13, 2021. He reported ASU's estimated blower cost at \$500,000 with construction to start on January 17, 2022, and completion by September 30, 2022. Mr. Parks testified construction had not started. He also reported ASU requested IDEM delete two aerobic digester blowers which IDEM rejected. Mr. Parks testified ASU received four bids in November 2021 but rejected them because they exceeded the Engineer's Estimate. He testified ASU reported it ordered all three blowers and its own work force will install them. (Parks, pp. 51-52.)

Infiltration and Inflow ("I&I") Program Mr. Parks described IDEM's enforcement action brought against ASU on January 28, 2020, under Agreed Order 2019-26314-W entered into on December 1, 2020 requiring ASU to develop and implement an I&I program because of eleven sanitary sewer overflows ("SSOs"). In its plan, ASU proposed a two phase I&I Study to locate and eliminate I&I and prevent SSOs. Mr. Parks reported ASU submitted Report Number One, Infiltration and Inflow Abatement Program to IDEM on September 30, 2021 and informed IDEM that it is currently working on its Sanitary Sewer Operation, Maintenance, and Repair Program Report for submittal no later than June 30, 2022. (Parks, pp. 53-54.)

Carriage Estates Effluent Meter. Mr. Parks described flows and unauthorized effluent meter reprogramming. He summarized his Cause No. 44676 S1 testimony that ASU does not accurately measure, record, and report effluent flows. He discussed meter calibrations and provided evidence of ASU's multiple incorrect meter reprogramming. He stated 2020 effluent flow data is unreliable due to software reprogramming and ultrasonic level sensor repositioning as well as ASU recording flow with zero discharge occurring. He testified the errors were almost always such that ASU reported higher than actual flows. Mr. Parks graphed ASU's reported daily effluent flows (Figure 3) from January 1, 2017 to December 31, 2021 and 2021 daily influent flows showing wide variations in 2020 and 2021. He noted the OUCC observed erroneous effluent flow readings including elevated flows when no discharge was occurring during a site visit in Cause No. 44676 S1. (Parks, pp. 54-56.)

Mr. Parks summarized ASU's reported effluent flows in Table 4 that from 2020 to 2021 showed a significant 25.6% reduction after meter recalibration by the meter technician, who also password locked the flow meter so it could not be accessed and reprogrammed. He noted that in Cause No. 44676 S1, the Commission directed ASU to recalibrate its effluent meter twice a year, but ASU had failed to do so. Mr. Parks summarized the meter recalibrations and the issues noted by the meter technician in Table 5. Mr. Parks recommended the Commission remind ASU to comply with its order to recalibrate the effluent meter twice annually. He also recommended the Commission require ASU to route flow from the Kimberly Estates and Hadley Moor subdivisions to County Home by retiring and removing the Kimberly Estates lift station as ASU indicated was the goal of the Big 3 project. He testified this will divert 150,000 gpd to County Home and reduce Carriage Estates effluent flow by a similar amount dropping Carriage Estates 2021 average daily flow from 1.872 MGD to 1.722 MGD. (Parks, pp. 56-57.)

8. Applicant's Rebuttal Case. On rebuttal, American Suburban offered verified rebuttal testimony from John R. Skomp, Andrew A Mix, and Katelyn Shafer.

a. Rebuttal Testimony of John R. Skomp, Applicant's Exhibit No. 1-R. Mr. John R. Skomp filed rebuttal testimony for the Applicant. Mr. Skomp was formerly a partner at Crowe Horwath LLP, which was and is a certified public accounting and consulting firm. Mr. Skomp worked as a part of Crowe's utility consulting business for over twenty-five years. Prior to joining Crowe, Mr. Skomp was employed at the Commission and the OUCC. He stated that he is not currently a CPA, but was previously a CPA. He stated the purpose of his testimony was to respond to the OUCC's testimony, with the majority of his testimony focused on the testimony of OUCC Witness Mr. Dellinger. (Skomp, pp. 1-3.)

Mr. Skomp stated that Mr. Dellinger recommended a WACC of 4.31%, based upon a capital structure of 17% equity, 81% debt, and 2% ADIT. He argued that the capital structure Mr. Dellinger used was a hypothetical capital structure. He stated that hypothetical capital structures have been forbidden at the Commission for as long as he can remember. He stated that the OUCC did not cite any legal authority or Commission precedent to support Mr. Dellinger's Capital Structure. He further testified that there is a contrary authority that what Mr. Dellinger has proposed is not allowed in Commission rate proceedings or is unlawful. He stated that it is well

known that hypothetical capital structures in ratemaking proceedings are not allowable and are deemed to be unlawful by court rulings. As an example, Mr. Skomp discussed an Indiana Bell supreme court case. (Skomp, pp. 3-4.)

Mr. Skomp testified that Mr. Dellinger's claim that the debt is "functionally" the debt of ASU was not correct. He noted that Mr. Dellinger attached certain audited financial statements of ASU, and that each of these CPA opinions was "clean", meaning "the financial statements referred to above present fairly, in all material respects, the financial position of American Suburban Utilities as of December 31, [2016-2019], and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America." Mr. Skomp stated that the financial statements for 2020 were not audited but were reviewed, and it, too, contains the conclusion of the CPA that there are not "material modifications that should be made to the accompanying 2020 financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America." He stated these declarations are important, and that they mean that the financial statements have been either audited or reviewed in accordance with GAAP, and none of these financial statements show the L-3 debt as a liability of ASU. (Skomp, pp. 5-6.)

He stated Mr. Dellinger based his claim that L3 debt is "functionally" the debt of ASU on two factors, that ASU has guaranteed the debt and that ASU has pledged not to encumber its assets without the lender's approval, what is known as a negative pledge. He stated that neither of these loan conditions make this debt "functionally" the debt of ASU. Mr. Skomp testified that there are three problems with Mr. Dellinger's conclusion. First, that the audited financial statements of ASU were prepared pursuant to GAAP, and is discussed in a footnote disclosure but is not recorded as a liability on ASU's balance sheet. Second, Mr. Skomp stated that it has long been understood in Commission practice that guaranties of debt are not considered or treated the same as "functional" or actual debt of a utility. Third, Mr. Skomp testified that contrary to Mr. Dellinger's statements and assumptions, ASU dividends have not been the source of payments of the debt service on this debt "from 2016 through 2020". He stated that Mr. Lods has infused more equity into ASU each and every one of those years discussed by Mr. Dellinger. He stated that ASU has not provided a dividend of its retained earnings and all of the net income from 2016 through 2020 has been reinvested in retained earnings. At the same time, other paid in capital has also increased from 2016 through 2020. (Skomp, pp. 6-8.)

Mr. Skomp testified that Mr. Dellinger was inaccurate when he testified that ASU has paid dividends to Mr. Lods from 2016-2019 sufficient for L-3 to pay debt service on its loans. He stated that Mr. Dellinger was relying on the audited or reviewed financial statements and is either misreading them or failing to understand them. He stated Mr. Dellinger focused only on the items labeled "dividends" and ignored other information that showed the "net amount" of capital contributions in each of those years. He stated that ASU did not pay enough in dividends in any year to contribute any amount towards the payment of L3's debt service obligation. (Skomp, pp. 8-10.)

Mr. Skomp testified that ASU assets are not pledged as security for the debt. He stated that ASU has actually pledged not to encumber its assets. (Skomp, p. 10.)

Mr. Skomp testified that the OUCC was aware of this structure whereby money was borrowed at the shareholder level and infused as equity into ASU. He stated it was the result of an OUCC recommendation that it was done this way. He stated that this structure has been known by the OUCC since ASU's first rate case following Mr. Lods acquisition of the common stock, which was filed in 1998. He stated that in the Cause No. 41254 as originally filed, the capital structure would have been between 80% to 90% debt and 10% to 11% equity. [ASU] was told by Mr. Edward Kauffman and Ms. Rita Baldwin of the OUCC that the OUCC would not support such a leveraged capital structure, and [ASU] therefore withdrew that request. He noted that the leveraged capital structure that the OUCC told [ASU] they would never accept is roughly the same capital structure Mr. Dellinger is attempting to force onto ASU. Mr. Skomp testified that he personally told Mr. Kauffman that the money would have to be borrowed at the shareholder level and infused as equity. Ultimately [ASU] and the OUCC reached a settlement that included a term that ASU would seek to investigate a more balanced capital structure. He stated that ASU had a problem locating a bank that was willing to loan part of the money at the utility level and part of the money at the shareholder level, and as such the money was borrowed by Mr. Lods through other companies that he owned. Mr. Skomp testified that when [ASU] filed the Phase 2 in Cause 41254, the OUCC initially objected on the grounds that the OUCC was not satisfied that ASU has adequately investigated borrowing at the utility level, and discussions ensued. Mr. Skomp stated that the settlement entered into plainly acknowledges that the OUCC fully understood that the money for the improvements had been borrowed by L-3, ASU's shareholder. (Skomp, pp. 10-12.)

Mr. Skomp discussed Cause No. 44272, the preapproval case. He stated that in response to a docket entry in that Cause, ASU explained that the settlement amounts where the amounts required to secure the required capital (i.e. financing). He testified that Mr. Lods simply could not obtain the external capital without some level of assurance that ASU would be able to pay a fair return on investment on some preapproved minimum amount of investment. Mr. Skomp stated that since Mr. Lods acquisition of ASU, there has been only one shareholder of ASU, whether the stock was held by L-3 or Mr. Lods personally. He stated that when ASU stated that it needs some level of assurance to attract needed capital, that means assurance so the shareholder can secure the debt to infuse the equity to complete the project, and he asserted that the OUCC has been aware of this from the start. (Skomp, pp. 12-13.)

Mr. Skomp then testified that the rate case was filed as Cause No. 44676 (later consolidated with 44700). By this time, ASU was able to attract financing where a party was willing to take two positions on its loan, one position at the shareholder level through L3 and another at the utility level. ASU was able to file a financing case in order to achieve a more balanced capital structure at the utility level and take the debt percentage to approximately 30%. Because the utility was no longer 100% equity, the two-class equity calculation provided previously no longer applied. (Skomp, pp. 13-14.)

Mr. Skomp then stated that Mr. Dellinger testified that ASU was required by the Order in Cause Nos. 44676/44700 to supply the Commission the financial statements that the lender required of L-3 in the loan that closed in 2017. Mr. Skomp testified that this does not appear to be

a reasonable reading of the Commission's order since the Order was issued before the loan. He said what was actually being referenced was a term sheet that was in the record. (Skomp, p. 14.)

Mr. Skomp then testified that he did not agree with the Cost of Equity that Mr. Dellinger recommended. He stated that Mr. Dellinger used a simple average of three cost of equity findings from the Commission, but that he included an outlier in his average, which drove the cost of equity to a lower rate. He stated that if that order is excluded, then Mr. Dellinger's cost of equity recommendation would begin with a simple average of 9.8%. He stated that when he layers on that Mr. Lods has personally guaranteed ASU's debt, that ASU suffered a write off of over one million dollars related to the Big 3 sewer, that the OUCC is recommending another one million dollars plus of disallowances again, ASU is plainly riskier than either of the two utilities represented by that simple average. He stated that Mr. Lods has guaranteed not only L3's debt but ASU's debt, which is very unique. He further testified that the lender for L3's debt has now released ASU from its guaranty. Mr. Skomp testified that Mr. Lods is assuming a much greater risk than is normally assumed in private utility ownership. (Skomp, pp. 15-16 (revised).)

Mr. Skomp testified that Mr. Dellinger did not correctly compute ASU's WACC. Mr. Skomp stated that Mr. Dellinger discussed and treats the "interest rate" on the debt as if that is equal to the "overall cost" of the debt. Mr. Skomp testified that that is not the case, and other costs that are incurred by Mr. Lods or his companies that are a direct result of or a requirement of the financing must be included. (Skomp, p. 16.)

Mr. Skomp testified that there are other costs that would have to be included if the Commission were to accept Mr. Dellinger's use of a hypothetical capital structure. He stated that he previously demonstrated the false nature of Mr. Dellinger's assumption that ASU paid dividends to Mr. Lods from 2016 through 2022 in order to fund the debt service on L3's outstanding debt, and that Mr. Dellinger ignored part of the cost of debt that would be incurred if that type of transaction was or is used to fund debt payments. He stated that ASU is a C Corporation, and to the extent that dividends are paid to a shareholder, those dividends are taxed at the individual level to that shareholder. As an example, he stated that if \$1 million dollars were needed for debt service payments, ASU would need to dividend \$1.58 million to its shareholder to allow the shareholder to make a \$1 million debt service payment. Mr. Skomp stated that in this hypothetical example, the overall cost rate for the debt would now be closer to 7.5% instead of the 2.77% suggested by Mr. Dellinger. (Skomp, pp. 17-19.)

Mr. Skomp testified that the OUCC has known about the shareholder debt since Mr. Lods first filing with the Commission. This shareholder debt began as a result of the OUCC's statement that they would not support the Petitioner's request to place the debt on ASU's books. (Skomp, pp. 19.)

b. Rebuttal Testimony of Andrew A. Mix, Applicant's Exhibit No. 2-R. Mr. Mix's testimony began with a discussion on salaries and wages expense. Mr. Mix believes Ms. Sullivan's position is flawed in many respects. First, Ms. Sullivan assumed and then utilized the hours that ASU paid its employees as hours actually worked. This assumption is incorrect. Any employee who is employed "full time" is paid for 2080 hours/year, but they do not "work" 2080 hours/year.

Said another way productivity hours are not the same as wage hours. For example, employees receive time off for paid holidays, paid vacation time, paid sick days, etc. While paid time off may be considered “labor hours” the hours are not actually spent performing work on behalf of the utility. *Id.* at 3.

Second, the 2020 test year is not representative of normal payroll levels. ASU temporarily laid off a substantial amount of its staff early in 2020 due to the COVID-19 pandemic. Nor can you properly determine the number of employees needed in 2022 by analyzing the past seven (7) years of equivalent employee hours (2015 thru 2021), especially when the equivalent employee hours were calculated on wages (2080 hrs/year) instead of productivity. ASU’s system and customers have changed since 2015. For one, the system is significantly larger than in 2015. In addition, ASU started to implement its infiltration and inflow (I&I) program in 2022. The program will result in a significant increase in manhours to inspect and maintain the collection system. *Id.* at 4-5.

ASU used The Northeast Guide for Estimating Staffing at Publicly and Privately Owned Wastewater Treatment Plants (the “Guide”) and EPA 305-B-05-002: Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems to estimate the number of labor hours a system like ASU could expect. *Id.* at 6-7. ASU determined it requires 36,018 hours, or 24 full time employees, to properly operate and maintain its collection and treatment systems as they exist today and to meet their current NPDES discharge permits as well as design and start an I&I maintenance program. Mr. Mix states that even with this raise in salaries and wage expense, ASU will still be operating on less hours than that determined to be needed under the U.S. EPA standards. *Id.* at 8.

Mr. Mix clarified the services provided by S&D Testing and Mr. Crandall, and Ms. Crandall. Ms. Crandall, who is the president of S&D Testing is also an hourly ASU employee. Ms. Crandall’s duties as an hourly paid employee are for lab work. ASU has contracted with S&D Testing for the service of a certified operator, as IDEM requires that the treatment system operate under the supervision of an Indiana Certified Plant Operator. Ms. Crandall is not a licensed certified operator. Her company, S&D Testing, provides Mr. Crandall, who has a Class IV Indiana Operator License No. WW015007. Mr. Crandall has been in charge of the plants for twenty-four years. Ms. Crandall is not performing the same tasks as S&D Testing. *Id.* at 46.

Mr. Mix’s testimony then addressed employee benefits stating employees are giving up a lot when they are called out on Christmas morning to clear a sewer backup or cannot celebrate New Year’s Eve since they are fixing a water main break in below zero winter conditions. This is especially important for ASU since it has to hire and retain employees in one of the fastest-growing areas in Indiana where there are many job opportunities for employees that provide greater pay and benefits. *Id.* at 10-11.

Mr. Mix’s testimony moved on to support \$68,564 in sludge removal cost. Mr. Mix stated sludge handling is an extremely complicated and regulated process which starts at the wastewater treatment plant. A wastewater treatment plant must maintain a cell residence time (CRT) which optimizes the process, thus allowing proper nitrification. If the sludge CRT is too long, then the

plant's nitrification efficiency will decrease and violate the plant's NH₃N discharge limits. Therefore, the operator must decide when and how much to waste. *Id.* at 12.

ASU has two (2) land application permits, one for the Carriage Estates III Plant and one for the County Home IV Plant. Sludge can be only applied on farmland for a short period of time. This is before the crops are planted in the spring and after the crops are harvested in the fall. Another factor that has to be considered is the size of the aerobic digester tanks. The aerobic digester tanks at the Carriage Estates III Plant have sufficient capacity to hold sludge until weather permits it to be directly land applied by Merrell Bros. However, the digesters at County Home IV have experienced difficulties holding until the sludge can be land applied due to their smaller size. The weather season (i.e., fall, winter, and spring) matters but it also depends on when sludge needs to be removed, which varies with accumulation from wastewater processing because it is based not only on the weather but on the treatment process and the size of the aerobic digesters. Mr. Mix stated \$68,564 in sludge expense is a reasonable and prudent expense to keep the plants' treatment process operating at its optimum to assume quality effluent which meets the plants' NPDES Permit. *Id.* at 13-14.

Next, Mr. Mix addressed the removal of the Kimberly Estates Life Station. Mr. Mix testified that, during the removal planning process, ASU recognized that the Kimberly Estates Lift Station could be useful in emergency situations at the County Home Plant. *Id.* at 15. ASU's estimate annual operating expenses of \$2,900 (Annual Purchase Power: = \$1,200 Annual Parts and Miscellaneous expenses: = \$1,700). Therefore, a decision was made to keep the lift station in emergency standby service because the cost of doing so is minimal.

Then Mr. Mix testified that ASU did not include tree and vegetation planting in the Big 3 Project construction estimate. The tree and vegetation plantings, which began in spring of 2018, required "all restoration areas shall be monitored annually for a minimum of 5 consecutive years until the "Performance Standards" specified have been attained." Therefore, the mitigation permit expired at the end of 2021 subject to it meeting the permit's success criteria. ASU contracted with Williams Creek Management for the tree mitigation services. The contract was entered into after the underground contractor completed the Big 3 project and left the jobsite.

Mr. Mix testified that the Klondike Roundabout Project relocated sanitary sewers in Klondike Road in response to a Tippecanoe County's Highway Department Road improvement project. ASU spent \$40,945 on the Klondike 2020 Roundabout Project. The Klondike 2020 Roundabout Project is not the same project as the Klondike Sanitary Sewer Project, which was preapproved. The County plans to construct a roundabout at the intersection of Klondike and Cumberland Roads. ASU preconstructed a section of sanitary sewer beneath the ROW of the proposed roundabout prior to any other construction in order to save construction costs by constructing in "open field" rather than congested conditions.

Mr. Mix moved on to explain the Morehouse Road right of way. He said it is important to stress that no part of the Morehouse Road Construction Project is in this rate case. While he agrees the existing sewers are in the Morehouse Road right of way and must be relocated, ASU has no intention to relocate the existing Kimberly Estates Lift Station Force Main which is located in Morehouse Road east side right of way. It should be noted that installing sewers and force mains

in road right of ways was a common practice at the time these were installed. In fact, at that time, many sewers and force mains were actually installed under roadways which causes problems now in trying to remove I&I. Current ASU management made it a policy to install new sewers and force mains, whenever possible, in utility owned easements.

Mr. Mix's testimony then explained why ASU paid \$82,672 to Kokopelli to repair a U.S. 52 sewer collapse. Kokopelli's invoice No. 402 dated February 20, 2020, documents the costs for the emergency repair of a sewer line. The OUCC objected to the lack of detail contained on the invoice and recommended the cost be capitalized. Mr. Mix testified that, although not presented in the same format and detail of a planned construction project, the invoice for this emergency work is in standard format for emergency work. Months of planning and investigation go into a planned project. In an emergency sewer collapse, normal, careful, logical and sequential engineering processes are abandoned in exchange for expediency. There is no time to prepare plans, specifications, work plans, site inspections, utility locates, obtain competitive bids, etc. The only thing that can be done is marshal all available assets to attack the problem and fix it.

Mr. Mix said that in some cases, like the U.S. 52 sewer collapse, it requires calling in reinforcements to assist ASU. While ASU has equipment, personnel and expertise to complete many sewer repairs in house, given the location of the excavation, the additional complication of the slope between the road and the bottom of the ditch, and the excavator reach required to complete the repair, ASU did not have equipment capable of digging deep enough to satisfactorily complete this particular job. He asserted a decision was made by management to employ an outside underground contractor, Kokopelli, to complete the actual repair. ASU staff installed, maintained, and monitored a system of sanitary bypass pumps and lines around the excavation.

Mr. Mix then explained why Kokopelli's invoiced ASU \$11,877 for trench boxes. Trench boxes are primarily used to safeguard utility personnel while completing excavation chores within an excavation region. They also provide support for equipment used in the excavation process and help to protect existing infrastructure from damage during excavation and potentially limiting the extent of the excavation. In this particular case, a trench box was utilized for the safety of the workers inside a potentially unstable excavation, which is common practice. The box was originally supposed to be rented. However, upon completion of the sewer repair, the contractor had difficulties removing the trench box. In Mr. Mix's professional opinion, the trench boxes could not be removed due to the settlement/deposition of soil during the previous work. Rather than risking further damage to the road, erosion of the slope, and exposing workers to greater risk, a decision was made by ASU to leave the trench box in place and backfill around it.

He said that for comparison, ASU reached out to suppliers to get a quote for a similar trench box, and located one, brand new at a price of \$14,850 in 2022 dollars. He said that given all the known facts regarding this emergency, Kokopelli's invoice of \$11,877 for the trench box is reasonable. The Commission must send a strong message that responding to and repairing equipment under emergency conditions is one of the most important functions that a utility can do to protect the public safety and public health. Given all these considerations ASU believes \$82,672.11 is recoverable.

Mr. Mix then explained why ASU paid Atlas Excavating \$70,000 for “dewatering”. The \$70,000 charge was for demobilization and mobilization of the project. ASU felt it was prudent to “shut down” the project until more was known after the Governor’s March 19, 2020 “Stay at Home” order was issued. ASU believes that in subsequent Atlas invoices, “demobilization” was changed to “dewatering” due to a typographical or auto-correct error that was not caught.

Mr. Mix then explained ASU’s \$100,000 payment to West Ridge Apartments. The payment was to settle a case involving a subcontractor (Atlas) allegedly excavating beyond the permanent easement, into the temporary easement. A dispute related to whether the excavation within the temporary easement area occurred, whether excavation within the temporary easement area was permitted by the terms of the easement, and whether such excavation, if it occurred, caused West Ridge to incur additional costs of construction would have otherwise been required. Atlas reimbursed ASU for its share by removing the Copper Beech lift station, which was not in the Cumberland Sewer contract, at no charge as part of the settlement, an estimated benefit of \$53,675.

Mr. Mix explained ASU’s \$1,627 payment to Gutwein Law. ASU paid Gutwein Law \$1,627 for legal service to acquire a 100’ by 100’ (0.23 acres) parcel that was originally owned by Indiana-American Water Co. (“IAWC”). IAWC purchased the land for a possible future water storage facility. The Casons owned a large tract of land around this 0.23-acre parcel. It is ASU’s understanding that this 0.23-acre parcel was key to their development plans for the larger parcel. Despite great effort over a prolonged period, the Casons could not negotiate a purchase with Indiana-American. ASU worked out an agreement that if ASU could purchase the land, ASU would then transfer it to the Casons in exchange for the Casons granting easements across the parcel for the construction of the Cumberland sewer. ASU was able to negotiate a deal with IAWC, and then proceeded to procure the necessary easements. An additional benefit is that this deal shortened the length of the Cumberland Sewer by approximately 160 L.F. and eliminated the need for two manholes, a cost savings of approximately \$61,440.

Mr. Mix responded to the OUCC’s concerns related to as-built plans, testing, and inspections for the Big 3 and Cumberland Sewer Projects. Mr. Mix noted that all projects are built and in service and the OUCC did not raise any objection until after ASU filed its compliance filing. ASU understands these drawings can be an excellent resource; unfortunately, in the cases of the Big 3 Sewer Project these drawings were not completed, nor were they paid for due to extraordinary circumstances, which include among other things the COVID-19 global pandemic. The Big 3 Sewer was a deep construction project with significant dewatering requirements and as such, the tests were conducted after each length of pipe was laid and for each manhole after it was set, and it was placed in service immediately. Due to the difficulty in construction, there was insufficient time and manpower to keep records. He said the Cumberland Sewer was constructed during the COVID-19 Pandemic and due to the “stay at home rules”, both the contractor and ASU had to deviate from this normal procedure to complete the project due to short staffing. In addition, the pandemic caused issues with TBird’s staffing and they could not provide any inspectors for the project after March 20, 2021. ASU feels that it will be a waste of assets to prepare as built plans and test the sewer after the fact, and it provides no benefit to its customers. If the OUCC

wanted these drawings to be completed, they should have sought them in an earlier filing. At this point, it is too late.

Mr. Mix addressed the OUCC's concerns related to the effluent flume indicating a flow of between 1 and 20 gpm during non-decant cycles (i.e., No-flow). The Palmer-Bowlus flume utilizes an ultrasonic level transmitter to measure the water level in the flume, and the flow is then calculated given the geometry of the flume. The expected accuracy of the ultrasonic level meter is +/- 0.2% of the total range of level of liquid in the flume. The expected accuracy of a Palmer-Bowlus Flume is 3-5% under normal operating conditions and increases to 5-6% at the low end of the flow range. The BL Anderson technician actually completing the calibration of the ultrasonic level transmitter in March 2022 has confirmed that the very low, yet non-zero, reading was typical for installations of this type and that they consider this to be within the expected parameters. He said the ultrasonic level transmitter requires calibration from time to time. The effluent flume was calibrated by BL Anderson within a flow range of 0 to 7000 GPM based on the expected high and low flows of the decant cycle. Based on the 0-7000 gpm range of decant flows, the expected accuracy is greater than 210 gpm. Data collected at 5-minute intervals since November 2021 at the effluent flume indicate routinely a flow of between 1 and 20 gpm during non-decant cycles (i.e., No-flow). This reading is well within the expected accuracy of the flume.

He noted the Commission issued its order in Cause No. 44676-S1 on September 22, 2021. Per the order, ASU will calibrate the effluent flume at Carriage Estates WWTP two times per year. ASU calibrated the meter almost exactly 6 months from the order issue date and plans to do the same approximately September 20, 2022. ASU's Carriage Estates WWTP NPDES Permit only requires effluent meter calibration once every 12 months. ASU believes that the ultrasonic level transmitter is correctly calibrated and the influent magnetic meters are reading correctly; however, the effluent meter system is still consistently reading approximately 25-30% lower than expected.

Mr. Mix asserted that in ASU's research, ASU discovered that the problem was not with the effluent meter but with the primary measuring flume system. The effluent flow could not be properly measured because at the measuring point in the flume, the flow was turbulent and not laminar, and the flow velocity was excessive. Taken together, these two facts resulted in an incorrect flow reading. ASU has consulted several flow meter manufacturers and after consultation with them, has decided to install a Teledyne ISCO Signature Area Velocity Flowmeter System for testing purposes. If the tests are successful, then ASU will purchase and install the unit in the plant's effluent line. If the tests fail, other options will be considered.

Mr. Mix noted Ms. Stull recommended the removal of \$1,121,424 of various construction equipment including excavators, a Mack semi, a 66' straight boom, a telehandler, two (2) camera trucks purchased from affiliate, First Time development Corporation ("FTDC"), and miscellaneous equipment including trenchers, landscape rakes and a drum roller. He said Ms. Stull based her opinion in part on her observation over many years that utilities roughly the size of ASU do not typically include in utility plant in service the level of construction equipment ASU has included in its proposed rate base finding. He testified ASU performed an analysis regarding equipment purchase price, yearly depreciation, insurance, and rate of return (ROI) and compared this with the rental fee for a similar piece of equipment. He said ASU determined that even if the

equipment it owns is operated infrequently, the cost to rent is over six times more expensive for the same equipment. Mr. Mix said this equipment readily available significantly improves the efficiency of ASU's field staff which, he believes, is understaffed. The equipment ASU includes in Cost of Service is no different than the equipment available to Municipal Plants since they can readily and, in emergencies, use similar equipment from the Public Works or Street Departments. The municipal sewer ratepayers pay for it, but generally in other ways. Mr. Mix recommends the Commission accept the cost for this equipment in the Cost of Service.

Mr. Mix agreed with Mr. Parks' assessment of the additional blower installation. However, he stated the additional blowers have been ordered and delivery is expected in May 2022 for the smaller unit and June 2022 for the larger units. Additionally, the variable frequency drive ("VFD"), field piping, and blower accessories for the project are on site and awaiting installation once the blowers arrive. These are not off-the-shelf items, and they have considerable lead time. ASU's second I&I report, along with the Preventative Maintenance Program for the collection system, is still on schedule to be sent to IDEM on or before June 30, 2022.

Mr. Mix noted Ms. Stull removed all of the existing force main installed as part of the US 231 project; however, a significant portion of this 10-inch diameter force main remains in service after the completion of the Cumberland Sewer project. Mr. Mix stated he completed an analysis of the lengths of force main still in service versus abandoned in place. He found that approximately 5,399 L.F. of 10-inch diameter force main was abandoned (STA. 0+00 to STA. 53+98.56). Of this, approximately 34 L.F. was considered deep construction (STA. 45+42 to STA. 45+76) and the balance, 5,365 L.F. was considered shallow construction. Utilizing the Schedule of Values for the project (\$160/L.F. for deep construction and \$65/L.F. for shallow construction), Mr. Mix calculated the value of the abandoned force main as \$354,165. The booked value of the entire US 231 project was \$900,887. Therefore, Mr. Mix believes that \$546,722 (\$900,887-\$354,165) worth of this force main remains in service and should be included in the rate base.

c. **Rebuttal Testimony of Katelyn Shafer, Applicant's Exhibit No. 3-R.** Ms. Shafer begins her rebuttal testimony by quoting the Final Order in Cause No. 44271. Specifically, Petitioner's request for approval of expenditures for the CE-III Project is approved up to \$10,000,000, for the Klondike Road Project up to \$725,000, for the Cumberland Road Project up to \$800,000 and for the Big 3 Sewer Project up to \$2,100,000. Once any one of the Proposed Improvements is in service, the associated expenditure as approved may be included in rate base for ratemaking purposes in Petitioner's subsequent rate proceedings.

To the extent the actual expenditures exceed the preapproved amounts, inclusion of such excess expenditures in rate base in future rate cases shall be addressed in the same manner as rate base additions that have not been pre-approved.

Ms. Shafer testified that the OUCC attempted to read additional limits into the Commission's order through its testimony. Ms. Shafer stated ASU witness Mr. Mix testifies as to why expenses the OUCC is rejecting should be allowed.

Ms. Shafer then stated Mr. Mix's testimony explains ASU's requested \$239,424 increase to test year's salaries and wages expense of \$832,727 resulting in *pro forma* salaries and wage expense of \$1,063,151 is reasonable and should be accepted.

Ms. Shafer also states Ms. Sullivan's decreases to employee benefits should be rejected because, as Mr. Mix explains, ASU's recommended salaries and wage expenses is reasonable. Ms. Shafer recommended the Commission accept ASU's \$16,161 increase of test year employee benefits expense, resulting in a *pro forma* expense of \$172,300. Ms. Shafer explained that, if the OUCC maintains test year salaries and wage expense, then there should be no adjustment to test year pension expense. Including a pension adjustment is inconsistent with maintaining test year salaries and wage expense. Ms. Shafer also stated Mr. Mix explains why team building and Christmas bonuses are reasonable and necessary.

Ms. Shafer then testified that Mr. Mix explains why Ms. Sullivan's adjustment to sludge removal expense is unreasonable. ASU still maintains rates should be adjusted to account for \$68,564 in sludge removal expense for those times when land application is prohibited and the sludge needs to be taken to a biosolids processing plant. As explained by Mr. Mix, instances where land application will not be allowed are expected to recur. Although ASU cannot state specifically when these instances will happen, this does not preclude the expense as nonrecurring. Ms. Shafer cited *In re PSI Energy, Inc.*, 1996 WL 767535 (1996):

We are not persuaded that by including an ongoing level of fuel litigation expenses in rates we will be including "nonrecurring expenses." As we have noted on several occasions, all expenses are to some degree non-recurring - that is, almost by definition, the same lawsuits and arbitration proceedings that were going on in the test year will not continue throughout the term the rates are in effect. In this case, while the Exxon litigation and Amax arbitrations that occurred during the test year have been resolved, the record indicates that it is probable that future fuel litigation will in fact occur, because PSI faces three contract reopeners in the next three years. For these reasons, we believe that including an ongoing level of expense in rates for fuel litigation is reasonable and in customers' interests.

Ms. Shafer then testified that Kimberly Estates Lift Station will remain in operation for emergency situations as discussed by Mr. Mix. However, ASU has voluntarily reduced the amount of purchased power to be included in rates to be representative of emergency usage. Ms. Shafer recommend the Commission approve \$1,200 in purchased power and \$1,700 in annual Parts and Miscellaneous expenses resulting in annual operating expenses of \$2,900 in rate base for the emergency use of the Kimberly Estates Lift Station.

Ms. Shafer disagreed with Ms. Sullivan's removal of expenses related to Mr. Serowka. As explained by Mr. Mix, ASU operates at lower staffing levels than would be expected for a wastewater utility of its size. Just because an employee can perform the duty of another does not mean they have the time to, nor does that mean management has decided that this is the best use of the employee's time. Ms. Sullivan's adjustments should be rejected.

Regarding Ms. Sullivan’s removal of contractual services-engineering, Ms. Shafer testified ASU will capitalize expenses related to AngleRight Solutions, Marjorie Potvin, and TBird Design. ASU will move expenses related to Vester and Associates, Inc. to construction work in progress (“CWIP”) and remove expenses related to CornerStone Design.

Regarding Ms. Sullivan’s removal of contractual services-legal, Ms. Shafer testified ASU is willing to amortize legal costs over five years. Ms. Shafer then stated when filing as a small utility application, ASU did not plan to seek rate case expenses. ASU seeks authority to defer rate case expense to be recovered in a subsequent proceeding because ASU has incurred considerably more rate case expense than anticipated.

Ms. Shafer’s testimony continues with a discussion about building rental fees. What ASU initially included is understated for building rental expense. Building rental fees and related property taxes should be \$77,869. However, even with the increased amount to be included in rates, it will be offset by the adjustments ASU has made in other areas.

Concerning Mr. Lod’s travel expenses, Ms. Shafer testified it is important for Mr. Lods to be knowledgeable of new products and techniques because he is a “hands on” owner. The best way to remain knowledgeable is to attend conventions. Ms. Shafer agrees the \$10,800 IDEM violation should not be included for rate recovery. Also, she asserted ASU complied with Indiana House Bill 1002’s requirement and removed utility receipt tax from *pro forma* operating expenses.

Ms. Shafer then expressed AUS’s disagreement with the OUCC’s recommended \$19,346,223 rate base and \$37,201,349 utility plant in service (“UPIS”). ASU proposes \$39,804,638 UPIS.¹³ Ms. Shafer agrees \$692,994 of the OUCC’s recommended \$1,274,845 should be retired and eliminated from the rate base calculation. The remaining \$581,851 should remain in rate base as explained by Mr. Mix. Ms. Shafer also states the Kimberly lift station is still in service and therefore should remain in UIPS. Ms. Shafer testified ASU’s accumulated depreciation should be \$8,377,437.¹⁴ Ms. Shafer also testified working capital should be \$302,967 and depreciation should be \$699,903.

Ms. Shafer’s testimony addressed ASU’s adherence to the main extension rules. Ms. Shafer stated more than half of ASU’s total growth in UPIS since ASU’s last rate case was in extension

13 UPIS per application	\$40,458,089
Plus: Reclassifications	43,136
Less: Accepted Non-Allowed UPIS	(3,593)
Less: Accepted Asset Disposals	(692,994)
Total UPIS	\$39,804,638
14 Accumulated Depreciation per application	\$9,069,684
Plus: A/D associated with Reclassifications	1,078
Less: A/D associated with Accepted Non-Allowed UPIS	(322)
Less: A/D associated with Accepted Asset Disposal	(692,994)
Total Accumulated Depreciation	\$8,377,437

main. Each dollar that ASU would refund to real estate developers would increase net original cost rate base and would be reflected as a reduction to Advances for Construction. A quick review of the percentage of growth in UPIS since the last case shows that approximately \$4,000,000 of the overall growth is contributed mains.

Given ASU's small size and growth levels, she asserted ASU rightfully believes these are abnormal and extraordinary circumstances that warrant a departure from the main extension rules under the "Special contract" exception. Under 170 IAC 8.5-4-39(a)(4) of the "Special contract" exception allows the utility to enter into a special contract when "there are abnormal or extraordinary circumstances." Subsection (b) of the "Special contract" exception provides for Commission oversight should ASU and a developer be unable to agree on the terms and conditions of the special contract. So even if required, ASU is in compliance with the main extension rules.

Ms. Shafer stated ASU agrees with OUCC's calculation to normalize test year operating revenues due to the decrease in rates from Phases III interim rates and Phase III final rates. ASU does not agree with the normalization adjustments to test year operating revenues for bill count. The final order in Cause No. 44676 and 44676-S1 already incorporates the units billed through September 2020; therefore, operating revenue should not be adjusted further than the original application submission. That would result in double counting for January – September 2020 growth normalization. Schedule 5 – Revenue Adjustments, as prescribed by the OUCC, accounts for the change in number of bills for October, November, and December 2020.

Ms. Shafer also disagreed with OUCC's normalization adjustments to post test-year operating revenue for customer bill counts. Ms. Stull calculates the post-test year adjustment by simply taking the year end customer count, less the year beginning customer count and multiplying by 12. That is not how the customer growth adjustment is addressed in the Small-U application, which accounts for customer growth month-to-month. ASU's customer base fluctuates widely since much of its customer base is around the City of West Lafayette. The Small-U methodology is the appropriate method. Using the growth normalization revenue adjustments within the Small U Application, the following adjustments are calculated, Residential: \$28,890, Multi Family: \$51,593.

Ms. Shafer testified sewer processing costs will increase with growth. Mr. Shafer increased sludge removal expense by \$1,120, purchase power by \$4,091, chemicals by \$989, and postage by \$985.

Ms. Shafer acknowledged an error in ASU's depreciation expense and the recording of \$7,094 increase to accumulated depreciation in taxes ("ADIT"). Ms. Shafer also reclassified invoices for Vester and Associates, Inc. The invoices were inadvertently expenses but should have been included in construction work in progress ("CWIP").

Finally, Ms. Safer testified JET Vac was not and is not a one-time expense. ASU previously paid its affiliate for this service, which under the affiliate agreement at the time was costs plus 10%. Now that ASU owns the JET Vac, the services it provides will still occur and the costs associate with operating are still incurred. ASU adjusted out the plus 10%, which was paid to the

affiliate, in the application. Ms. Sullivan has wrongly removed this cost as it is a recurring cost properly included in rates.

9. Commission Discussion and Findings.

a. **Weighted Average Cost of Capital and Fair Return.** To determine a “fair rate of return,” the Commission generally calculates a composite “cost of capital” by adding together the weighted costs of various components of the utility's capital structure, e.g., its long-term debt, preferred stock, and common stock. The resulting figure, when expressed as a percentage of the utility's combined debt and equity accounts, is then compared to the utility's existing rate of return. This serves as an initial point of reference in establishing a “fair rate of return” for utility operations. (Ind. Code §8–1–2–6; *see generally Indiana-Am. Water Co. v. Indiana Off. of Util. Consumer Couns.*, 844 N.E.2d 106, 122 (Ind. Ct. App. 2006), *referencing Gary–Hobart Water Corp. v. Indiana Util. Regulatory Comm'n*, 591 N.E.2d 649, 653. (1982 Ed.); *see also Indianapolis Water Co. v. Pub. Serv. Comm'n of Indiana*, 484 N.E.2d 635 (Ind. Ct. App. 1985).) Thus, before the Commission can calculate a fair return the Commission must determine a utility’s capital structure.

In ASU’s Application, ASU stated that the total amount of capital was \$21,501,918 on December 31, 2020, consisting of \$16,401,918 (76.28%) of Common Equity and \$5,100,000 (23.72%) of Long-term Debt. The Cost Rate of Common Equity was given as 12.00%, and the Cost Rate of Long-term Debt was given as 4.68%. The weighted average cost of capital (“WACC”) was given as 10.26%. ASU provided details on what it claimed was its long-term debt. ASU claimed its long-term debt was a single issuance, from Horizon Bank, issued in 2017 and maturing in 2037. ASU claimed it was a total carrying value of \$5,100,000, an annual interest expense of \$238,680, and a cost of long-term debt of 4.68%. (See Applicant’s Schedule 8 – Capital Structure.)

OUCW Witness Dellinger disagrees with ASU’s capital structure, and how it recognizes debt. Mr. Dellinger’s testimony emphasized ASU’s relationship with its affiliate L 3 Corp. as it relates to ASU’s Capital Structure. Overall, he adjusted ASU’s capital structure to reflect the amount of debt for which ASU was “effectively responsible” and recommended a return on equity of 9.75%. (Public’s Ex. 1, Direct Testimony of Shawn Dellinger (herein referred to as “Dellinger Testimony”) at p. 1.)

i. **Capital Structure.** Mr. Dellinger testified that ASU proposed to base rates on a capital structure of 76.3% equity and 23.7% debt, and that ASU proposed a cost of equity of 12% and a cost of debt of 4.68%, which would result in a weighted average cost of capital of 10.26%. Mr. Dellinger explained he did not agree with ASU’s proposed capital structure finding. He testified that ASU’s capital structure should recognize \$12.7 million of debt incurred by its affiliate L 3 in addition to the \$5.1 million of debt that was previously approved by the

Commission. Mr. Dellinger explained in detail the reasons the debt should be included in ASU's capital structure. Notably, he testified the \$12.7 million of debt was to fund capital projects to ASU, through loans guaranteed by ASU, encumbering ASU's assets to secure the loans. (Dellinger Testimony at pp. 3-4.)

Mr. Dellinger testified that ASU's proposed capital structure treats as equity money that was received through a borrowing for which ASU is ultimately responsible, and for the purpose of procuring projects included in ASU's rate base. He proposed that the correct capital structure for ratemaking purposes should be 17% equity, 81% debt and 2% ADIT (which he stated was discussed by OUCC witness Ms. Stull). (Dellinger Testimony at pp. 3-4.)

Mr. Skomp claims that Mr. Dellinger's use of information from various sources would be a hypothetical capital structure, which is forbidden by the Commission. Mr. Skomp contended that because Mr. Dellinger is taking the long-term debt of another entity and claiming it is the "functional" debt of another utility, that creates a hypothetical derived capital structure. (Skomp Rebuttal, pp. 3-4.)

The question before the Commission is straightforward, albeit based on confusing facts. Whether the \$12.7 million in debt is the debt of ASU to be recognized in its capital structure, or whether it is solely the debt of a third-party entity and therefore should be excluded from ASU's capital structure.

A. Explanation of a "Hypothetical Capital Structure" Generally.

Hypothetical capital structures occur in two ways for ratemaking purposes. One, when the utility's actual debt-equity ratio may be deemed to be inefficient and unreasonable, because it is unbalanced, such as having too much equity and not enough debt, thereby necessitating an inflated rate of return. (See A. Priest, *Principles of Public Utility Regulation* (1969) at p. 214.) When the capital structure is unbalanced, a utility commission might adopt a hypothetical ideal capital structure for ratemaking purposes to protect ratepayers with a more reasonable and less expensive capital structure. *Id.* See also *Potomac Edison Company v. Public Service Commission*, 279 Md. 573, 369 A.2d 1035, 1040 (1977).

Second, a hypothetical capital structure occurs for ratemaking purposes when a utility is part of a holding company system where the utility's book capital structure and capital costs may not be a true reflection of the utility's capital costs with respect to a particular operating company. *Id.* At times a utility commission may use a parent corporations capital structure, or commissions implore adoption of a "double leveraging formula" to account for a utility's status as a subsidiary in a holding company system. See *New England Tel. & Tel. Co. v. Pub. Utilities Comm'n*, 390 A.2d 8, 39 (Me. 1978). The U.S. Supreme Court explained leveraging as the advantage gained by junior interests (equity) through the rental of capital (debt) at a rate lower than the rate of return which they receive in the use of that borrowed capital. *Securities and Exchange Commission v. Central-Illinois Securities Corp.*, 338 U.S. 96, 150, n. 49, 69 S.Ct. 1377, 1405, 93 L.Ed. 1836

(1949). By leveraging their investment with debt, stockholders may effectively “own” a corporation which is worth much more than their original investment.

The use of leverage may have considerable effect on utility rates as it uses debt capital to earn an overall rate of return in excess of the cost of such capital. These additional earnings over cost inure to the benefit of the stockholders who are thus “levered” above what they might otherwise receive in the absence of debt financing. (Brown, “Double Leverage: Indisputable Fact or Precarious Theory?”, 93 *Pub.Util.Fort.* 26, (May 9, 1974). Double leveraging exists when a holding company employs leverage to purchase the equity of a subsidiary. (See Copeland, *Double Leverage One More Time*, 100 *Pub.Util.Fort.* 19, 20 (August 18, 1977).) The principle behind the application of double leveraging adjustments by utility commissions is to account for the parent's alleged use of its low-cost debt to purchase stock in its subsidiary, upon which it may earn a higher rate of return than it pays for the debt. *New England Tel. & Tel. Co. v. Pub. Utilities Comm'n*, 390 A.2d 8, 41 (Me. 1978).

Several states allow for a double leveraging adjustment, including Iowa, which explains that shareholders are allowed to earn a return on investment at what it currently costs a utility company to attract that equity in the stock markets – the market cost of equity. *Hawkeye State Telephone Company*, 2 P.U.R. 4th 166, 180-81 (Iowa State Commerce Comm.1973). “However, when there is a parent-subsidiary relationship, where there is debt issued by both parent and subsidiary, there exists a form of financial pyramiding known as ‘double leverage.’ If we were to ignore this double leverage and allow the subsidiary a return on its ‘apparent’ equity investment in utility plant equal to the market cost of equity, this could result in the parent's shareholders earning more on their investment in the company than the market cost of equity.” *Id.* The Iowa Commission explained that permitting this double leveraging without an adjustment not only results in greater earnings to the actual equity holder than is proper, but also has the public policy concern of discriminating against those companies who do not engage in double leveraging. *Id.*

B. *This is not a Hypothetical Capital Structure.* Mr. Skomp does not denote which of these two scenarios he claims the OUCC is trying to implement as a hypothetical capital structure, he merely claims that recognizing the \$12.7 million debt would be tantamount to a hypothetical capital structure. But clearly, neither of the scenarios above are similar to the very specific factual pattern in this case.

Mr. Skomp cited in his testimony *Pub. Serv. Comm'n of Ind. v. Indiana Bell Tel. Co.*, 235 Ind. 1, 29, 130 N.E.2d 467, 480 (1955) as a basis that hypothetical capital structures are not allowed in Indiana. It is important to note that the discussion regarding the capital structure in *Indiana Bell* was never described as “hypothetical” in the Court of Appeals decision. In justifying its denial of Indiana Bell’s proposed rate increase, the Commission stated that it had computed Indiana Bell’s allowable return on capital based on the capital structure of its parent corporation (AT&T) rather than Indiana Bell itself. The Commission determined that if Indiana Bell had adopted the capital structure of its parent company, as opposed to its own, it would have saved \$334,935 in federal taxes which Indiana Bell had paid. Therefore, the Commission disallowed the amount in recovery. The Court of Appeals found that the Commission’s determination was arbitrary and assumed a tax saving under a capital structure which did not exist. *Pub. Serv. Comm'n of Ind. v. Indiana Bell Tel.*

Co., 235 Ind. 1, 29–30, 130 N.E.2d 467, 480 (1955). The capital structure was not discussed as a means of determining a fair return, but instead the case was about what was *actually paid* in taxes. There is clearly a distinction here.

In later rulings the Court of Appeals held the Commission can consider parent-subsidary relationships in determining whether that relationship helps alleviate risk. *Indiana-Am. Water Co. v. Indiana Off. of Util. Consumer Couns.*, 844 N.E.2d 106, 125 (Ind. Ct. App. 2006). A utility’s ability to attract capital is undisputedly enhanced due to its affiliation with a “large international water company.” *Id.* Additionally, the Commission must consider and determine tax savings accruing to a utility because it is consolidated by a parent company. *City of Muncie v. Pub. Serv. Comm’n*, 177 Ind. App. 155, 159, 378 N.E.2d 896, 899 (1978). Again, the idea being to look at what the utility is *actually paying* and benefiting from.

Here, the OUCC highlights what ASU is actually paying, what debt is recognized by ASU. Indeed, the OUCC highlights that ASU and L 3 are one in the same. This is not the same as presuming a parent company’s capital structure, or just imposing a more balanced capital structure using hypothetical numbers. Indeed, testimony and exhibits show repeatedly that ASU recognizes the \$12.7 million as its own debt. This conclusion is supported by the fact that loan applications interchangeably use L 3 and ASU, with L 3 describing itself as a sewer utility, whose address and phone number are ASU’s, whose employees are ASU’s employees, and whose capital is the same as ASU. (See OUCC Attachment SD-1, p. 436; see also Skomp Cross Exam., D-11:16 - D-13:15; see also Cross Exhibit 33, the Application for Tax Exempt Volume Cap Financing to the Indiana Finance Authority pp. 208-212.)

More directly, L 3 lists as the source of repayment on the bonds, “revenues of users of project”, meaning ASU’s ratepayers will repay the bonds. (See Skomp Cross Exam. D-13:15- D-12:18; see also Cross Exhibit 33, the Application for Tax Exempt Volume Cap Financing to the Indiana Finance Authority p. 212.) L 3 has not even been listed as an affiliate on the Commission annual reports prepared by ASU since 2015. Even though L 3 is obviously at a minimum an affiliate, no Commission authority was sought when L 3 borrowed this money, pledging ASU’s assets, with ASU signing the guaranty on the loans, for providing ASU capital, using ratepayer dollars to repay the loans.

This situation is unique, and wholly different from *Indiana Bell*, *City of Indianapolis*, *NIPSCO*, or other cases described in ASU’s Motion to Strike. L 3 is essentially a shell company, with the explicit purpose to fund ASU with capital. This is inherently different from a parent company that leverages its capital to its subsidiary. While such closely held business questions are rare at the Commission, such questions arise often in determining when the liability of one corporation becomes a liability of a separate corporation. The Indiana Court of Appeals has explained when a court can hold one corporation liable for another corporation’s debt; with courts considering various factors, including whether the corporations shared common principal corporate officers, directors, and employees; whether the business purposes of the corporations were similar; and whether the corporations were located in the same offices and used the same telephone numbers and business cards. See generally, *Oliver v. Pinnacle Homes, Inc.*, 769 N.E.2d 1188 (Ind. Ct. App. 2002).

This Commission need not “pierce the corporate veil” to see that for all intents and purposes L3 is ASU. Other jurisdictions recognize this practice of piercing the corporate veil between utility corporation and non-utility divisions. For example, the Colorado Commission found, “We conclude that it is within the power of the PUC to pierce corporate structures of corporations which also operate nonutility divisions or subsidiaries to impute a capital structure for the utility operation, which is reflective of the capitalization actually backing the utility operation.” *Peoples Nat. Gas Div. of N. Nat. Gas Co. v. Pub. Utilities Comm'n*, 193 Colo. 421, 426, 567 P.2d 377, 380 (1977). This idea specifically refutes the idea that a utility commission is implementing a hypothetical structure when a commission pierces corporate structures, but is instead reflecting the actual capital structure of the utility taking into account corporate structures. Again, the Indiana Court of Appeals has already given the Commission authority to look at such relations in setting rates and establishing risk. *Indiana-Am. Water Co. v. Indiana Off. of Util. Consumer Couns.*, 844 N.E.2d 106, 122 (Ind. Ct. App. 2006).

ASU’s own audited reports reflect it owes this debt. However, even if the Commission believed that L 3 was wholly separate and unique from ASU, ASU recognizes this debt as its own obligation. ASU was a “loan guarantor,” a “loan party” to the debt, and ASU encumbers its assets for the debt. Attachment SD-3, the 2017 Bond Transcripts from the Indiana Finance Authority (“IFA”), is a letter to IFA from Barnes & Thornburg, as ASU’s bond counsel. In that letter, bond counsel lists ASU as a “guarantor” and a “loan party” in the 2013 loan. (See SD-3-Part II, p. 309.) That letter identifies documents that had to be submitted to IFA to secure the loan, including the Continuing Guaranty Agreement made by ASU in favor of the Bank, and the Negative Pledge Agreement, made by ASU in favor of the Bank. ASU is guaranteeing the loan and encumbering its assets in the negative pledge. (See SD-3-Part II, pp. 309-310.) Additionally, in describing L 3 and ASU’s involvement in this debt, ASU’s documents show that L 3 exists to borrow and provide money to ASU, and ASU is expected to provide the money to pay the debt service. (See Attachments SD-4, p. 14, SD-5, SD-6, and SD-7.)

As Mr. Dellinger noted in his testimony, in accordance with the final order in Cause Nos. 44676/44700, ASU filed its 2017 audited financial statements on November 13, 2018 which shows L 3’s debt as ASU’s debt. “In order for L3 to service its debt, the Company [ASU] pays dividends to Scott Lods, who then makes capital contributions to L3 which are used to pay interest, principal and other expenses on the debt.” (See OUCC Attachment SD-4, page 14.) As of the year ended December 31, 2017, L3 had a total amount of debt outstanding of \$12,300,000 with principal payments commencing November 1, 2020 and ending on November 1, 2034. The interest rates on the debt as of December 31, 2017 ranged from 2.21 % to 2.97%. (Id. See also Dellinger Test. p. 6.) As of the date of the test year, ASU remains responsible for the debts of L 3. ASU’s 2020 Unaudited Statements explains that ASU uses the money borrowed to construct its plant, and L 3 services its debt by the process of ASU issuing dividends to Scott Lods, who then makes “capital contributions to L 3”. (See OUCC Attachment SD-7, page 4 of 19 “Report of 2019 Financial Statements.”)

The Commission sought clarity regarding these “ASU dividends issued to Mr. Lods” in its July 13, 2022 Docket Entry. While ASU claims in its audited financial statements to pay its debt

of L 3's contributions by paying dividends to Mr. Lods, ASU's annual reports to the Commission show no dividends being paid between 2015 and 2020, directly contradicting these audits. ASU however is pulling this money out and paying on the L 3 debt. Even if ASU is not directly paying this debt to the lender, ASU is paying this debt to L 3/Scott Lods. There has not been a sufficient explanation as to whether the money taken out is for "shareholder loans", "dividends", or direct loan repayment. It is the Applicant's burden to show, and it has failed to do so. Again, this is clearly different than other "hypothetical capital structure" cases. ASU's assets are encumbered with the negative pledges in place, ASU is not permitted to borrow more funds without the approval of L 3's lender, the Lender views ASU and L 3 as combined for purposes of financial reporting and loan to value ratios, ASU's stock has been pledged for these loans, and finally ASU is required to submit operating level reporting to L3's Lender for L 3's loans. ASU clearly recognizes this as its debt that must be paid from ASU's funds through rates.

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The facts of this case are so narrowly limited as to make this case unique and fact specific on this issue. Notably, we do not find Mr. Skomp's discussion of whether the OUCC agreed decades ago that it was ok to create a holding company to funnel equity into a highly leveraged utility. Any discussion from decades ago does not reflect what is happening today. This case is uniquely different from other utilities arguing about hypothetical capital structures where the commission or consumer parties imposed a parent corporation's capital structure on a subsidiary, or where a more balanced capital structure was imputed for fairness. This case in no way takes an arbitrary number to place in the capital structure, but instead is using debt recognized by ASU, specifically shown in the Indiana Finance Authority's applications as ASU and assuring that debt is reflected in ASU's capital structure. This is precisely in line with *Indiana-Am. Water Co. v. Indiana Off. of Util. Consumer Couns.*, 844 N.E.2d 106, 122 (Ind. Ct. App. 2006). If the Commission were to allow all utilities to simply form shell companies and borrow money for a utility's capital by pledging the utility's assets as collateral, the effects of such a ruling could be devastating to utility regulation. It could immediately lead to all utilities forming shell companies and lead to unbalanced capital structures with substantial rate increases. For these reasons, the Commission agrees that the \$12.7 million should be included in ASU's debt.

The Commission finds that ASU's capital structure consists of 81% debt, 17% equity and 2% ADIT. Based on this capital structure, the Commission finds that ASU has a WACC of 3.87%. Further, there appears to be a lack of transparency from ASU. The Commission hereby finds that all contracts in which L 3 and ASU are parties need to be provided to the Commission. Any loan

being placed for the improvement of ASU's capital should be first approved by the Commission. ASU must make L 3's cost of debt transparent, and ASU must file a cause seeking permission to encumber its assets with respect to L 3's borrowings.

ii. **Return on Equity.** ASU requested a 12% ROE, but ASU has provided no support for this request. Mr. Dellinger testified that a 12% ROE is inconsistent with other utilities ROEs in Indiana. He looked at other recent cases where the Commission issued an order that involved an ROE, and also considered the ROE the Commission set for ASU previously. Mr. Dellinger also testified that with the capital structure showing more debt than equity, it should affect ROE, notably it signifies more risk, and therefore should result in a slightly higher ROE, and added a 50-basis point increase, resulting in an ROE of 9.75%. Mr. Dellinger also testified that ASU should not receive a higher ROE due to IDEM fines, or because ASU was ordered to issue a refund in a previous subdocket. Nor do we find Mr. Skomp's contention that because of previous and potential disallowances by the Commission, that the ROE should be higher because the utility is more risky.

In looking at the evidence in front of the Commission, including looking at the average return on other similarly situated utilities and taking into account that this utility is now highly leveraged, we believe a slightly higher ROE than the average 9.53% is warranted. Therefore, the Commission approves an ROE of 9.75% based on a capital structure of 17% equity, 81% debt, and 2% ADIT.

b. **Engineering Concerns and Removal**

i. **Kimberly Estates Lift Station Removal.** OUCC Witness Parks recommended removing the Kimberly Estates Lift Station. He noted that ASU actually first requested removal in 2012, and IDEM and the Commission approved removal in 2014. (See Final Order in Cause No. 44272 at 2-8, 10.) The Big 3 approval was predicated on eliminating a sewer and three lift stations, including Kimberly Estates, which ASU testified were too old to fix, with maintenance too costly. (See Final Order in Cause No. 44676 at 15-17.) ASU Witness Mix explained ASU's intention to keep the existing Kimberly Estates Lift Station in operation for emergency situations, claiming that if a critical problem arose at County Home, Kimberly Estates Lift Station would allow a portion of the County Home flow to be diverted to the Carriage Estates wastewater treatment plant. (See Mix at p. 15.) ASU claims that Kimberly Estates is necessary for redundancy, which is a good practice. It is also notable that ASU removed Kimberly Estates from rate base and then placed it back into base rates without Commission approval.

While ASU claimed Kimberly Estates was only used if need, Mr. Parks testified that actual operation shows that ASU operates Kimberly Estates every day and rarely routes flow to the Big 3 Sewer. (Parks at p.17.) Indeed, according to Mr. Parks, the Kimberly Estates pump and power failures caused three sanitary sewer overflows. (Parks at p. 8.) ASU's argument that it should be used for emergencies is not persuasive. Indeed, ASU did not present any evidence on if Kimberly Estates was ever used as a backup or for emergency use, as such the Commission finds that it is

not used and useful, and routes should flow to the Big 3. In *Indiana-Am. Water Co. v. Ind. Off. Of Util. Consumer Couns.*, Indiana American requested rate recovery of five service pumps. The OUCC argued that only four service pumps were necessary to serve customers. 844 N.E.2d 106, 111 (Ind. Ct. App. 2006). The Commission agreed and removed one of the service pumps from rate base as not being necessary and failing the “used and useful” requirement. *Id.* Indiana American appealed that decision. The Court of Appeals, upon review, upheld the Commission’s decision, finding that “[t]he Commission’s ‘used and useful’ standard requires: (1) that the utility plant be actually devoted to providing utility service; and (2) that the plant's utilization be reasonably necessary to the provision of utility service.” *Id.*, citing *City of Evansville v. S. Indiana Gas & Elec. Co.*, 167 Ind. App. 472, 516, 339 N.E.2d 562, 589 (1975). The Court of Appeals noted that “[u]nnecessary plant capacity is not used and useful for rate making purposes and should not be included.” *Id.* at 111, citing *L.S. Ayres & Co. v. Indpls. Power & Light Co.*, 169 Ind. App. 652, 683, 351 N.E.2d 814, 834 (1976), *trans. denied*.

All three lift stations should be retired and physically removed as removals were detailed and included in the Big 3 project plans approved for ratemaking purposes. While the Commission does not have the authority to order removal of the lift station, the Commission recommends, as ASU detailed to IDEM that it would do, to remove Kimberly Estates. While ASU and the OUCC presented conflicting testimony on the cost of Kimberly Estates operation and maintenance, the Commission already authorized the removal costs to remove and retire Kimberly Estates and therefore, this matter need not be relitigated herein. (See Parks at pp. 1, and Attachment JTP-5; See Mix at p.18.) For this reason, all operating and maintenance costs requested by Applicant regarding Kimberly Estates is hereby denied.

ii. **Relocation of the ASU Sewer Assets because of the Big 3 Sewer Project.** OUCC Witness Parks testified the Kimberly Estates lift station, force main and sewers conflict with the 2024-2025 Morehouse Rd. Reconstruction project. Without easements, ASU ratepayers will have to fund force main relocation even though the lift station and force main were to have been retired. (Parks at 19-20.) ASU Witness Mix responded that ASU has no intention to relocate the existing Kimberly Estates Lift Station Force Main, and that it is still in its preliminary project phase with early engineering. (Mix at 21.) This matter is not yet ripe for Commission consideration, but as the Commission has already stated that Kimberly Estates is not used and useful and has already granted retirement and closure cost considerations for moving Kimberly Estates need not be considered, as the Commission already granted removal costs that the utility should use to remove.

iii. **Tree Mitigation for the Big 3 Sewer Project.** Mr. Parks recommended disallowing ASU’s inclusion of the \$9,560 in invoices as a recurring expense because they were not Big 3 project engineering but instead were FTDC contracted obligations included in the \$2,351,074 of rate base allowed by the Commission for the Big 3 Project in Cause No. 44676. (Parks at 28.) ASU claims that the preapproval case does not allow disallowing costs. (Mix at 9.) However, ASU does not address that the OUCC contends that the cost was already

approved and collected in Cause No. 44676. As such, the Commission finds that such costs were included in the \$2,351,074 for the Big 3 Project, and therefore allowing ASU to collect these same costs again would result in an over-collection.

iv. **Preapproved Cumberland Road Project.** The OUCC and reached a Settlement with ASU, which the Commission approved, granting preapproved construction up to \$800,000 to eliminate the Copper Beech lift station and force main. (See Order in Cause No. 44272; Parks at 28-23.) The Commission ordered ASU to notify the OUCC and Commission of project completion and actual costs, however ASU failed to do so. (Id.) Mr. Parks noted in testimony that ASU delayed the project for five years and did not mention it in its Small U filing. Mr. Parks testified that the project should have been considered a main extension. (Parks at 29-31.) The OUCC notes that ASU paid a settlement to West Ridge Apartments of \$100,000 because of soil conditions caused by ASU's excavation, which Parks claims should have been paid by insurance, and not by ratepayers. Mr. Parks recommended the Commission approve \$1,177,356.80 of rate base addition through December 31, 2020, for the Cumberland Road project limited to the \$1,113,965.30 paid to Atlas Excavating plus \$64,241.50 for engineering and easement acquisition supported by invoices minus ASUs' \$850 overpayment correction. (Parks at 36.) Mr. Parks also recommended the Commission order ASU to hire an independent third party at no additional cost to ratepayers to survey locations and elevations of all Cumberland Road assets built and for ASU to complete Record Drawings, and provide all IDEM required testing, and any daily inspection reports.

Mr. Mix claimed that the project was stopped because of COVID-19 shortly after the Governor's March 19, 2020 Order. Mr. Mix claimed that ASU made a judgment that \$100,000 was a good settlement to West Ridge Apartments but did not discuss Mr. Parks concern regarding why insurance did not pay this and why ratepayers should be subject to ASU's decision. (Mix at 27-30.) As for inspection reports or testing, Mr. Mix claimed that the projects are already built and in-service, and the OUCC should not now be requesting compliance filings on the build, and if the OUCC wanted such reporting it should have requested it earlier. Mr. Mix stated that if the Commission requires such testing, ASU will provide, but such mandated costs should be included in rate base. (Mix at 30-33.)

The Commission finds that ASU should have provided notice to the Commission and the OUCC per the Order in 44272. As ASU claims that the OUCC should have requested testing and inspection reports earlier, the OUCC may have had the ability if ASU had kept to the settlement terms and provided the OUCC and Commission proper notice. As such, testing should be completed if required at no cost to ratepayers. Further, as ASU reached a settlement with West Ridge Apartments, without evidence from ASU regarding whether insurance should have been used from the excavation concerns, the Commission finds that ratepayers should not bear such a cost. The Commission approves \$1,177,356.80 of rate base addition through December 31, 2020, for the Cumberland Road project limited to the \$1,113,965.30 paid to Atlas Excavating plus \$64,241.50 for engineering and easement acquisition supported by invoices minus ASUs' \$850

overpayment correction.

v. **Extensions and Sewer Main.** OUCC Witness Parks testified that ASU does not follow the Commission's Main Extension Rule (170 IAC 8.5-4). ASU in a data requested noted that instead of paying three times the annual revenue for extension of service, ASU treats main extensions to serve new developments as special contracts. Mr. Parks recommended the Commission Order ASU to comply with the Main Extension Rule. (Parks at 38-40.) ASU did not address this issue. The Commission hereby orders that ASU must comply with the Main Extension Rule.

c. **Original Cost Rate Base.** ASU proposes a *pro forma* original cost rate base of \$21,322,246, which is a \$3,201,622¹⁵ increase to the rate base authorized by the Commission in Cause No. 44676-S1.

OUCC Witness Margaret Stull began her discussion of rate base by noting that the Commission's final order in Cause No. 44676-S1 authorized an \$18,120,624 original cost rate base as of September 30, 2020 that included all the allowed costs for the pre-approved major projects, including Big 3, Klondike Road, and the CE-III wastewater treatment plant expansion. She noted it did not include any other changes to rate base from March 31, 2015 through September 30, 2020. (See OUCC Attachment MAS-1.) Ms. Stull noted that in its small utility rate application ASU used a historical test year ended December 31, 2020 and explained that when an historical test year is used, the rate base cut-off is the last day of the test year -- in this case, December 31, 2020.

Ms. Stull explained that ASU based its proposed rate base on its historical December 31, 2020 account balances¹⁶ adjusted for (1) a decrease in allowable costs for CE-III phosphorus removal in Cause No. 44676-S1 and (2) a paycheck protection program ("PPP") loan received by ASU in 2020. She explained that the primary driver for the increase to rate base is a \$7,787,164 increase to utility plant in service, of which \$4,258,501 was contributed to ASU, resulting in a \$3,528,663 (\$7,787,164 - \$4,258,501) increase to net utility plant in service primarily due to the (1) Cumberland Road addition (\$1,372,592), (2) the purchase of construction and other equipment (\$1,198,231) and (3) the purchase of vehicles (\$445,206). (See OUCC Attachment MAS-2.) Ms. Stull did not accept ASU's proposed rate base finding and recommended a *pro forma* original cost rate base of \$19,349,046, which was based on test year rate base at December 31, 2020 adjusted to reflect adjustments she proposed.

Ms. Stull clarified that she was not able to review all transactions recorded to rate base from March 30, 2015 through December 31, 2020. Ms. Stull testified ASU did not provide its general ledgers for the years 2015, 2016, and 2017 in response to the OUCC's data request issued

15 \$21,322,246 (ASU proposed rate base) less \$18,120,624 (Cause No. 44676-S1 rate base) = \$3,201,622.

16 Rate base accounts include (1) utility plant in service, (2) accumulated depreciation, (3) contributions in aid of construction, (4) amortization of contributions in aid of construction, and (5) advances for construction.

on February 18, 2022.¹⁷ (OUCC Attachment MAS-4). She explained that while the OUCC requested and received asset ledgers for this period, the asset ledgers provided were not generated by ASU's accounting system and were not complete as they did not initially include asset retirements. She stated the asset registers provided also did not include an asset number or other identifier for each asset added to utility plant in service (See OUCC Attachment MAS-5.). Ms. Stull explained that an asset ledger only provides details for the utility plant in service component of rate base. Without general ledgers, she was unable to review the transactions recorded to construction work in process,¹⁸ accumulated depreciation, contributions in aid of construction, or advances for construction.

Ms. Stull testified ASU did provide a list of all assets currently in service. She noted the OUCC requested ASU "provide a list of all assets, by account number, currently in operation as of December 31, 2020" in OUCC Data Request No. 14-9. ASU's initial response was "This data was provided in Data Request 5-21 to 5-26," which was the request for asset registers for 2015 through 2020. ASU then supplemented its response and provided a listing that included asset numbers (which were not included in the asset registers) but did not provide by account number as requested. Further, the listing provided begins with a "carry forward balance from 2006" of \$10,210,111. No detail was provided for the assets comprising this balance, which represents approximately 25% ($\$10,210,111 / \$39,656,311$) of the total assets ASU asserts are in service. (See OUCC Attachment MAS-6.)

Finally, Ms. Stull noted that the balance of the asset listing provided (\$39,656,311) does not tie to the balance in utility plant in service as of December 31, 2020 as reflected in ASU's general ledger (\$41,863,969). She added that ASU does not properly account for asset disposals. For these reasons, she did not consider this listing to be a reliable list of assets currently in service.

i. **Utility Plant in Service.**

A. **Major Project Costs in Excess of Commission Authorization.** Ms. Stull explained that in Cause No. 44676 and the Cause No. 44676 S1 subdocket, the Commission had limited the costs allowed for the Big 3 project, the Klondike Road Project and the CE-III project. Ms. Stull explained that the engineering, easements, and dewatering costs included in the costs pre-approved in Cause No. 44272 were not part of the preapproved costs. Ms. Stull explained that the three projects had received preapproval in Cause

¹⁷ OUCC DR 5-15, 5-16, and 5-17 asked ASU to list all general ledger transactions, both balance sheet and income statement accounts including key descriptions (i.e., dates, amounts, account numbers). ASU objected noting that the information is archived and that it would be considerable work to pull this information together. On March 31, 2022, the OUCC requested ASU supplement its response with the information requested. ASU provided a supplemental response on April 8, 2022 that included a PDF of the transactions only for 2015.

¹⁸ Costs recorded to construction work in process are generally transferred to utility plant in service with a lump sum entry. The details of the costs included in this lump sum entry are only available in the construction work in process account.

No. 44272, for less than all costs and the Commission found that inclusion in rate base of the additional costs would be “addressed as other rate base additions that have not been approved.” (April 9, 2014 Final Order in Cause No. 44272 at p. 15.) Ms. Stull asserted Cause No. 44676 was that “future rate case.” Ms. Stull asserted the Commission included these costs in its authorization of the Big 3 project but excluded them from the costs authorized for the Klondike Road project and the CE-III project.

Ms. Stull explained that in this case, ASU sought to include in its proposed utility plant in service in this case additional costs for projects already included in rate base. It had included project costs above the amounts that were included in ASU’s rate base for those projects as authorized in Cause No. 44676.

Ms. Stull explained that she did not include additional costs for major projects that had already been included in rate base. She explained that she included the costs incurred for the Big 3 project to the extent those costs were authorized by the Commission for inclusion in rate base in Cause No. 44676. But she did not include the additional costs ASU asserts it incurred for the Klondike Road project or the CE-III project as those costs were not authorized by the Commission in ASU’s last rate case, Cause No. 44676.

Ms. Stull testified that with respect to the Klondike Road project, ASU’s last rate case in Cause No. 44676 was ASU’s opportunity to justify its rate base for those projects to the extent they exceeded the preapproved amounts. And she noted that it took advantage of that opportunity noting that the amount authorized to be included in rates in Cause No. 44676 was substantially more than the amount that had been preapproved. She noted that the Commission found in that later case that “the total \$1.716 million cost shall not be included in Phase II rate base until Petitioner has certified that the Klondike Road Project has been placed in service.”¹⁹ (*Emphasis added.*) (See November 20, 2016 Final Order in Cause No. 44676 at 29.) Ms. Stull asserted that the plain language of the Commission’s order in Cause No. 44676 established that \$1,716,000, less retirement costs, represents the total approved by the Commission for recovery of the Klondike Road project.

For the CE-III project, Ms. Stull testified that in the final order in Cause No. 44676, the Commission found “The total amount to be included in rate base for the CE-III project is \$11.5 million.” (*Emphasis added.*) (See Final Order dated November 30, 2016 in Cause No. 44676 at page 30.) ASU had included \$1,975,200 of CE-III project costs in rate base in Cause No. 44676 Phase II rates implemented in March 2016. In Cause No. 44676-S1, the Commission found what remaining CE-III costs should be included in rate base. The Commission found “ASU is eligible to add \$8,024,800 in rate base for Phase III for the CE-III Plant.” (See Final Order dated September 21, 2021 in Cause No. 44676-S1 at page 37.) Regarding the cost of phosphorus removal, the

¹⁹ In Cause No. 44272, the case that pre-approved the Klondike Road project, \$725,000 of construction costs were pre-approved by the Commission. These costs were exclusive of engineering, easements, and dewatering costs, meaning those costs could be presented for recovery in addition to the pre-approved construction costs. In Cause Nos. 44676, the project’s scope had changed, and construction costs were now \$1,716,000.

Commission further found “the best evidence available of what was actually installed consists of an estimate performed by the OUCC totaling \$263,000, which should be added to rate base.” (*Id.* at page 38.) Adding the \$1,975,200 of CE-III project costs included in Phase II rates results in total authorized CE-III project costs of \$10,263,000 (\$1,975,200 + \$8,024,800 + \$263,000). Ms. Stull testified that through its several orders, the Commission established that \$10,263,000 represents the amount of the CE-III project that should be included in rate base.

Ms. Stull testified that the costs ASU recorded for these major projects, which it seeks to include in its rate base exceed what the Commission’s authorized ASU to include in its rate base. She testified that the asset registers provided in response to OUCC discovery (OUCC Attachment MAS-8), show ASU recorded costs in excess of the amounts authorized by the Commission for each of the above major projects included in rate base in Cause No. 44676. Ms. Stull asserted these excess amounts should not be added to ASU’s rate base. She added that the Commission should order ASU to remove these excess costs from its general ledger to ensure these costs are not included in utility plant in service in any future ASU rate cases.

	Big 3	Klondike Road	CE-III	Total
CN 44272 Pre-Approval	\$ 2,100,000	\$ 725,000	\$ 10,000,000	\$ 12,825,000
Authorized Costs	\$ 2,291,891	\$ 1,691,927	\$ 10,263,000	\$ 14,246,818
UPIS Costs Recorded	2,364,303	1,882,250	10,400,262	14,646,815
Excess Costs	\$ (72,412)	\$ (190,323)	\$ (137,262)	\$ (399,997)

Ms. Shafer asserted the Commission did not limit the costs to be included in rate base for the three major projects authorized in Cause No. 44272 and further addressed by Cause No. 44676 and 44676 S1 as suggested by OUCC witness Ms. Stull at p. 9 of her testimony. Shafer – 4 Ms. Shafer testified that in Cause No. 44272 (IURC April 9, 2014), the Commission approved three major projects and importantly stated: Specifically, Petitioner’s request for approval of expenditures for the CE-III Project is approved up to \$10,000,000, for the Klondike Road Project up to \$725,000, for the Cumberland Road Project up to \$800,000 and for the Big 3 Sewer Project up to \$2,100,000. She testified that once any one of the Proposed Improvements is in service, the associated expenditure as approved may be included in rate base for ratemaking purposes in Petitioner’s subsequent rate proceedings. To the extent the actual expenditures exceed the preapproved amounts, inclusion of such excess expenditures in rate base in future rate cases shall be addressed in the same manner as rate base additions that have not been pre-approved. *Id.* at 15-16. (Emphasis added.) The Commission also stated: “The foregoing amounts do not include reasonable costs for dewatering, easement acquisition (including legal and appraisal, engineering, and phosphorus removal). Inclusion of such costs in rate base in future rate cases will be addressed as other rate base additions that have not been preapproved.”

Ms. Shafer asserted the OUCC throughout many portions of its testimony has attempted to read additional limits into the Commission’s order. Ms. Shafer said Ms. Stull is suggesting the

Commission limited ASU's recovery of these costs to only one subsequent case and asserted that this was not what the language says. Ms. Shafer noted that in every case, the costs that the OUCC seeks to disallow were costs that were paid to unaffiliated third parties; and the OUCC has not challenged the prudence or necessity of any of the services for which these costs were incurred, and therefore, the Commission should authorize recovery of such costs by including them in rate base. Shafer at p. 5.

Commission Discussion and Finding: In Cause No. 44272, the Commission issued an order approving a settlement reached between the OUCC and ASU thereby granting preapproval of three projects. In that agreement and order, the preapproval was for amounts that did not include engineering, easements, and dewatering costs for those projects. The parties agreed and we found that inclusion in rate base of the additional costs would be "addressed as other rate base additions that have not been approved." (April 9, 2014 Final Order in Cause No. 44272 at p. 15.) Ms. Stull asserted Cause No. 44676 was that "future rate case." The OUCC maintained that the Commission included these costs in its authorization of the Big 3 project but excluded them from the costs authorized for the Klondike Road project and the CE-III project. In this case, ASU sought to include in its proposed utility plant in service in this case additional costs for projects that had already been put into rate base pursuant to ASU last rate order in Cause no. 44676.

The OUCC included the costs incurred for the Big 3 project to the extent those costs were authorized by the Commission for inclusion in rate base through our order in Cause No. 44676, but did not include the additional costs ASU asserts it incurred for the Klondike Road project or the CE-III project as those costs were not authorized by our order in ASU's last rate case, Cause No. 44676. With respect to the Klondike Road project, we agree ASU's last rate case in Cause No. 44676 was ASU's opportunity to justify its rate base for those projects to the extent they exceeded the preapproved amounts. ASU took advantage of that opportunity noting that the amount authorized to be included in rates in Cause No. 44676 was substantially more than the amount that had been preapproved. Where we had pre-approved expenditures of \$725,000 of construction costs, in Cause Nos. 44676, the project's scope had changed, and construction costs were now \$1,716,000. Moreover, we found in Cause No. 44676 "the total \$1.716 million cost shall not be included in Phase II rate base until Petitioner has certified that the Klondike Road Project has been placed in service."²⁰ (*Emphasis added.*) (November 20, 2016 Final Order in Cause No. 44676 at 29.) The OUCC maintained that that the plain language of the Commission's order in Cause No. 44676 established that \$1,716,000, less retirement costs, represents the full and complete cost for the Klondike Road Project. We reject ASU's request for recovery of additional costs. We note that Mr. Mix testified that \$40,945 of Klondike Road costs excluded by the OUCC were actually related to the Klondike Road roundabout project and not the Klondike Road project addressed in

²⁰ In Cause No. 44272, the case that pre-approved the Klondike Road project, \$725,000 of construction costs were pre-approved by the Commission. These costs were exclusive of engineering, easements, and dewatering costs, meaning those costs could be presented for recovery in addition to the pre-approved construction costs. In Cause Nos. 44676, the project's scope had changed, and construction costs were now \$1,716,000.

Cause No 44676. As such, we find that ASU's utility plant in service should include this \$40,945 of Klondike Road roundabout project costs.

For the CE-III project, the OUCC likewise maintained that in the final order in Cause No. 44676, the Commission found "The total amount to be included in rate base for the CE-III project is \$11.5 million." (*Emphasis added.*) (See Final Order dated November 30, 2016 in Cause No. 44676 at page 30.) ASU had included \$1,975,200 of CE-III project costs in rate base in Cause No. 44676 Phase II rates implemented in March 2016. In Cause No. 44676-S1, we found what remaining CE-III costs should be included in rate base. We found "ASU is eligible to add \$8,024,800 in rate base for Phase III for the CE-III Plant." (See Final Order dated September 21, 2021 in Cause No. 44676-S1 at page 37.) Regarding the cost of phosphorus removal, the Commission further found "the best evidence available of what was actually installed consists of an estimate performed by the OUCC totaling \$263,000, which should be added to rate base." (*Id.* at page 38.) Adding the \$1,975,200 of CE-III project costs included in Phase II rates results in total authorized CE-III project costs of \$10,263,000 (\$1,975,200 + \$8,024,800 + \$263,000). Through its several orders, the Commission has established that \$10,263,000 represents the amount of the CE-III project and the limit of costs that should be included in ASU's rate base for this project.

Finally, we would note that in our final order in Cause No. 44676, our authorization to phase in these projects did not suggest the opportunity to increase rate base beyond our authorizations. We also indicated that phase-ins were to be limited and were not to be made until the project costs were incurred:

Prior to implementing the authorized rates for each Phase, we find that Petitioner shall provide certification that the new plant is in service and verification that the construction costs have been incurred and paid. Petitioner shall also file a report with the actual and approved amount of plant for the major projects by plant account. Any proposed adjustments to the costs associated with Petitioner's major projects will be limited to the project costs approved in this Cause.

Cause No. 44676, Final Order, pp. 39-40. (*emphasis added.*)

We find ASU's additional requested project costs should be removed from ASU's rate base and direct ASU to remove these excess costs from its general ledger to ensure these costs are not included in utility plant in service in any future ASU rate cases.

B. Cumberland Road Project Costs Ms. Stull noted that according to the asset registers and general ledgers provided in response to OUCC discovery, as of December 31, 2020 ASU incurred \$1,372,592 of costs for its Cumberland Road project, which is \$572,592 more than the \$800,000 pre-approved in Cause No. 44272. (Final Order dated April 9, 2014 in Cause No. 44272 at p. 12.) Ms. Stull noted that ASU incurred an additional \$186,918 in 2021 on this project, primarily through its contract with contractor, Atlas Excavating. She explained that such costs were incurred after the rate base cut-off and will presumably be included by ASU in rate base in ASU's next rate case. Of the \$1,372,592, Ms. Stull explained the OUCC

recommends recommended exclusion of the \$70,000 change order added to the contract with Atlas Engineering.

OUCG witness Mr. Parks testified ASU did not support Cumberland Road project costs in its Small U filing including the excess above the \$800,000 preapproved amount. Id. at 33. He testified the sewer route and tie in points appeared to be the same, but Atlas installed less sewer (4,051 LF instead of 5,027 LF) and 12 of 14 manholes preapproved in Cause No. 44272. Id. at 33-34. Mr. Parks testified ASU selected Atlas in November 2019. He noted Atlas included dewatering at \$374,000 but ASU negotiated a lower \$1,300,000 contract with no dewatering. Id. at 34. He testified ASU provided no information but approved a \$70,000 change order in Pay Application No. 5 as Item 12 – Additional Mobilization/Demobilization. The OUCG maintained that ASU did not support the change order, instead referring the OUCG back to Pay Application No. 5. Id. at 35. In Pay Application Nos. 6 through 10, Atlas revised Item 12’s description to “Dewatering” even though Dewatering line item 8 was already listed at zero cost. He noted that in Cause No. 44676, ASU failed to support its Big 3 dewatering claim, and similarly ASU provided no support in this case for the \$70,000 dewatering change order for the Cumberland Road project. Due to this lack of support, he recommended disallowing ASU’s dewatering claim and including \$70,000 in rate base. Mr. Parks recommended the Commission approve \$1,177,356.80 of rate base addition through December 31, 2020, for the Cumberland Road project limited to the \$1,113,965.30 paid to Atlas Excavating plus \$64,241.50 for engineering and easement acquisition supported by invoices minus ASUs’ \$850 overpayment correction. Id. at 36.

Mr. Mix explained on his rebuttal testimony why ASU paid Atlas Excavating \$70,000 for “dewatering.” He testified the \$70,000 charge was for demobilization and mobilization of the project. Mr. Mix testified ASU felt it was prudent to “shut down” the project until more was known after the Governor’s March 19, 2020 “Stay at Home” order was issued. ASU believes that in subsequent Atlas invoices, “demobilization” was changed to “dewatering” due to a typographical or auto-correct error that was not caught. Mix at p. 28 – 30.

We said in our final order in Cause No. 44676 that “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.” Final Order, Cause No. 44676, p. 41. ASU’s decision to file a small utility case leaves this requirement unfulfilled as did ASU’s choice not to submit a narrative case-in-chief when we found a hearing should be held in this Cause. Contrary to ASU’s witnesses’ suggestions, a small utility case does not simplify matters or eliminate issues, it merely requires matters to be explored by the OUCG and this Commission. ASU is a utility with unusual issues and requests. ASU indicated it believes “demobilization” was changed to “dewatering” due to a “typographical or auto-correct error that was not caught.” There is a lack of certainty with respect to that explanation that prevents our finding that belief as a fact. Further, ASU’s not noticing the error is troubling. Moreover, if the costs are higher due to ASU’s unilateral decision to instruct its contractor to demobilize as Mr.

Mix suggested, we do not agree that ASU's ratepayers should pay higher rates for a project cost incurred without any clear or explained justification.

We find that the \$70,000 change order added to the contract with Atlas Engineering should be excluded and so order.

Ms. Stull also identified a \$100,000 payment ASU made to settle a dispute with West Ridge Apartments due to (OUCC Attachment MAS-10) actions taken by its contractor, Atlas Excavating, that caused damages to West Ridge Apartments. Mr. Parks testified it appeared work stopped when West Ridge Apartments, LLC ("West Ridge") claimed excavation in the temporary easement affected soil conditions under its planned apartments. *Id.* at 32. To resolve the claim ASU made a \$100,000 Mutual Release and Settlement Agreement payment to West Ridge. Mr. Parks asserted ratepayers should not fund the payment which should have instead been paid by Atlas' or ASU's insurance. He noted ratepayers already pay through rates for ASU insurance and Atlas' insurance imbedded in project costs. He recommended disallowing the \$100,000 payment in the Cumberland Road project because it is not prudent or reasonable to add it to rate base. *Id.* at 32.

Mr. Mix explained ASU's \$100,000 payment to West Ridge Apartments the payment was made to settle a case alleging Atlas excavated beyond the permanent easement, into the temporary easement. A dispute related to whether the excavation within the temporary easement area occurred, whether excavation within the temporary easement area was permitted by the terms of the easement, and whether such excavation, if it occurred, caused West Ridge to incur additional costs of construction would have otherwise been required. Mr. Mix said the issue was a risk of higher costs associated with delay that ASU was unwilling to take. Atlas reimbursed ASU for its share by removing the Copper Beech lift station, which was not in the Cumberland Sewer contract, at no charge as part of the settlement, an estimated benefit of \$53,675. Whether Atlas was responsible or ASU for the problems rectified by a payment of \$100,000, we agree that ASU should not be permitted to pass on to its customers the payment it made to resolve this matter. We make no adjustment for the removal of the Copper Beech Lift Station, that matter not having been presented as a part of this Cause.

Finally, we address Ms. Stull's exclusion of \$20,385 related to the purchase of 0.23-acres of land located at 3350 West 250 North (OUCC Attachment MAS-11). Ms. Stull explained land is not located near the Cumberland Road main extension route or necessary to install a main extension. She also pointed to a lack of evidence that ASU owns this parcel of land as the parcel is not included in the list of real estate owned by ASU provided in response to OUCC discovery (OUCC Attachment MAS-12). Mr. Parks testified the 0.23-acres purchase appears to be unrelated and the \$20,797.78 should not be included in rate base for the Cumberland Road project.

Mr. Mix testified the parcel was originally owned by Indiana-American Water Co. ("IAWC") and purchased for a possible future water storage facility. He noted the Casons owned a large tract of land around this 0.23-acre parcel and understood that this 0.23-acre parcel was key

to their development plans for the larger parcel. Despite great effort over a prolonged period, the Casons could not negotiate a purchase with Indiana-American. ASU worked out an agreement that if ASU could purchase the land, ASU would then transfer it to the Casons in exchange for the Casons granting easements across the parcel for the construction of the Cumberland sewer. ASU was able to negotiate a deal with IAWC, and then proceeded to procure the necessary easements. An additional benefit is that this deal shortened the length of the Cumberland Sewer by approximately 160 L.F. and eliminated the need for two manholes, a cost savings of approximately \$61,440. Mix at p. 30.

Mr. Mix has described an unusual transaction. We have no basis to determine whether the costs ASU says it incurred to acquire an easement on property in such an unusual way made economic sense. Nor is there reliable evidence or explanation how two manholes were avoided or what they or 160 linear feet of sewer line would have cost. We therefore find the costs associated with the acquisition of the parcel should be excluded.

C. **Construction and Other Equipment.** Ms. Stull recommended a \$1,369,414 decrease to utility plant in service to eliminate construction and other equipment the OUCC asserted was either not used or necessary to provide safe, reliable sewer utility service to ASU customers. More particularly, Ms. Stull recommended the removal of \$1,121,424 of various construction equipment, including excavators, a Mack semi, a 66' straight boom, and a telehandler. She also recommended removal of two (2) camera trucks purchased from an affiliate, First Time Development Corporation ("FTDC"), at a cost of \$170,000. Finally, she recommended the removal of \$77,990 of miscellaneous equipment including trenchers, landscape rakes, and a drum roller. (See OUCC Attachment MAS-14.)

Ms. Stull explained that asked ASU to explain how each item covered under its insurance policy as "contractor's equipment" was used to provide sewer utility service, what circumstances required the use of the equipment, and the amount of time each piece of equipment was used from 2018 through 2021. But ASU provided generic responses, which did not explain why ASU needed so much specialized equipment. More importantly, ASU could not provide any information regarding how often this equipment was used as it "does not keep track of this." (See OUCC Attachment MAS-13.) Stull at p. 14.

Ms. Stull explained that most of the equipment the OUCC recommends removing is either heavy equipment typically used in construction projects or specialized equipment that would not be used on a regular basis. She noted ASU just completed several major capital projects, including main extensions and treatment plant expansions and that despite owning this equipment, ASU used various construction contractors, including its own affiliate, to perform this work, as has been its practice in prior years. Ms. Stull added that in making an emergency sewer repair in the test year, rather than relying on its own equipment and personnel, ASU hired a contractor. Ms. Stull ASU has not demonstrated it uses the specialized equipment it has purchased to perform sewer utility related work on any consistent or regular basis that would justify the purchase of this equipment. She asserted that if a piece of specialized equipment is needed, it would be more cost effective for ASU to rent the equipment rather than purchase it. For these reasons, the OUCC does not consider it reasonable to include this equipment in rate base.

Ms. Stull explained that in total, ASU acquired \$1,591,231 of construction and other equipment from March 31, 2015 through December 31, 2020. The OUCC accepts the inclusion of \$171,182 in utility plant in service for a Case tractor, a scissor lift, and an extended hoist, among other things. She explained that the OUCC also accepted a “jet vac” truck acquired from FTDC at a cost of \$50,000. Finally, the OUCC did not recommend the removal of construction and other equipment purchased before March 31, 2015. (See OUCC Attachment MAS-14.) Ms. Stull also recommended the removal of all depreciation expense recorded to accumulated depreciation for the recommended asset removals from March 31, 2020 through December 31, 2020. (See OUCC Attachment MAS-20.)

Mr. Mix acknowledged that ASU had informed the OUCC that ASU did not keep records of the equipment’s use (Attachment AAM-R29). However, Mr. Mix stated that ASU performed an analysis in response to Ms. Stull’s testimony that discusses the use of this equipment and time usage estimates, the number of days it is used, and provides a brief discussion on how ASU receives and distributes equipment and supplies to its treatment plants in addition to normal operation and maintenance of its plants and collection systems. Mr. Mix said ASU asked its employees to calculate each item of equipment with its engineers, Mr. Serowka and himself to arrive at a reasonable estimate of days that the equipment is used.

Mr. Mix indicated he assumed any item of equipment was used partially in any given day. For example, he said the forks for the 544k loader would be used for a delivery that might only take an hour to unload. The 72” bucket could be used for one load of stone on a project and then several days or weeks later used daily for a larger project. It also must be noted that the above forks and 72” bucket must be attached to one of the John Deere tractor/loaders. He asserted that if rented, ASU would have to rent both the tractor/loader and the attachments. Mix - Page 43. Mr. Mix said he strongly felt that the estimates for usage of the equipment was conservative and that having this equipment readily available significantly improves the efficiency of ASU’s field staff. Mr. Mix asserted owning instead of renting would mean ASU was ready to receive large/heavy equipment deliveries, which he suggested usually happens without warning. Mr. Mix suggested that if the fork accessory and loader were not immediately available, then the freight company would simply return the equipment to its nearest center requiring ASU to reschedule the shipment, rent the necessary unloading equipment, pick it up, unload the truck and return the unloading equipment which results in a waste of manhours for both the office and field staff. Mr. Mix also asserted that rented equipment must be extended if there are weather conditions increasing the cost. Mr. Mix testified the most serious issue is if there is an emergency, especially if it occurs during the night, on weekends, or holidays. Mix - Page 44. Mr. Mix asserted ASU had emergencies at these times and fortunately had the necessary equipment available to deal with them. He asserted ASU had the equipment needed to stabilize the emergency situation on US 52 until it could obtain additional help from a company that had the larger equipment and additional manpower to assist ASU.

Commission discussion: We are mindful that according to Ms. Stull, at least some of the equipment was purchased by ASU from its affiliate First Time Development Corporation (“FTDC”). Ms. Stull noted that ASU purchased two camera trucks for \$170,000 from FTDC. The

record does not disclose whether this transaction was made pursuant to an affiliate agreement that was filed with the Commission. As it was not an arm's length transaction between strangers, it is particularly important that the terms of that transaction be transparent so that the public may be assured the purchase price was reasonable.

ASU's analysis attempting to justify the infusion of equipment it seeks to add to its rate base was done *after* it purchased the equipment and after the OUCC filed its case. Moreover, it was done without any actual documentation establishing how often any equipment was used. Mr. Mix explained that he, Mr. Serowka and ASU's engineer were tasked with speaking to ASU's other employees to determine how frequently equipment was used, which is the very information ASU said it could not provide to the OUCC in response to its data request. We note the information provided in ASU's rebuttal was based on undocumented hearsay conversations leading to singular statements about the frequency construction equipment is used.

Ms. Stull asked ASU to explain how each item covered under its insurance policy as "contractor's equipment" was used to provide sewer utility service, what circumstances required the use of the equipment, and the amount of time each piece of equipment was used from 2018 through 2021. But ASU provided generic responses, which did not explain why ASU needed so much specialized equipment. ASU could not provide *any* information regarding how often this equipment was used as it stated it "does not keep track of this." (See OUCC Attachment MAS-13.) As Ms. Stull noted, most of the equipment the OUCC recommends removing is either heavy equipment typically used in construction projects or specialized equipment that would not be used on a regular basis. She noted ASU just completed several major capital projects, including main extensions and treatment plant expansions and that despite owning this equipment, ASU used various construction contractors, including its own affiliate, to perform this work, as has been its practice in prior years.

Mr. Mix's testimony and analysis largely focuses on comparing renting as opposed to owning that makes several assumptions. Other than asserting through his table what ASU estimates the number of days the equipment is used. Mr. Mix does not adequately explain why ASU needs such large construction equipment now, after its capital improvements have been completed by its affiliate and not sooner. As OUCC Attachment MAS-14 shows, most of this equipment was added after 2017. We agree that ASU has not established that it needs to own the equipment Ms. Stull has identified. We find that such equipment shall be excluded from ASU's rate base.

D. Asset Disposals. OUCC witness Ms. Stull testified that ASU does not properly record the sale or disposal of its assets. She explained that when ASU does record an asset disposal, whether ASU correctly removes the original cost of the asset from utility plant in service, as it should, is not indicated. Ms. Stull testified that she identified several assets that ASU failed to remove from its utility plant in service. She explained the US 231 Bypass gravity sewer main and the Copper Beech lift station were no longer in service after completion of the Cumberland Road project approved in Cause No. 44272 and placed in service on November 19, 2020. Ms. Stull recommended the removal of \$910,409 of costs to reflect this retirement. Stull Direct at 16. Ms. Stull also testified that she identified several vehicles reflected in prior year asset registers that were never removed from utility plant in service. She explained these vehicles were

not included in the list of vehicles covered by ASU's vehicle insurance policy and she concluded these vehicles were either sold or otherwise disposed of. She recommended \$24,378 of vehicles be removed from utility plant in service. *Id.* and OUCC Attachment MAS-16. Ms. Stull testified that ASU purchased computers on a regular basis but no transactions reflecting the retirement or disposal of computers since ASU's last rate case were found in the asset registers provided. Ms. Stull recommended removing \$5,080 of computers from utility plant in service to reflect the retirement of computer purchases prior to 2015. *Id.* at 17 and OUCC Attachment MAS-17. Ms. Stull testified that additional office equipment, as well as miscellaneous tools and equipment, should be retired, including machines to fold and insert customer billings into envelopes, paper shredders, and welders. She explained that ASU purchased multiple versions of this equipment over the past 10 years but the assets being replaced were not removed from utility plant in service. Ms. Stull concluded \$34,977 of other equipment should be removed from utility plant in service. *Id.* and OUCC Attachment MAS-18.

On rebuttal, ASU witness Ms. Shafer agreed \$692,994 should be retired and eliminated from the rate base calculation. She explained the remaining \$581,851 should remain in rate base, as explained by Mr. Mix and/or reflected in Attachment KS-R2. Shafer Rebuttal at 14. ASU witness Mr. Mix testified to the removal of the US 231 force main from rate base as a result of the Cumberland Sewer project and explained that a significant portion of this 10-inch diameter force main remains in service after the completion of the Cumberland Sewer project. Mr. Mix explained that he completed an analysis of the lengths of force main still in service versus abandoned in place and calculated that \$354,165 was the value of the abandoned force main based on the schedule of values for the project. Mr. Mix proposed that \$546,722 (\$900,887 - \$354,165) of the cost of the US 231 force main remains in service and should be included in rate base. Mix Rebuttal at 46-47. Mr. Mix acknowledged that the Copper Beech lift station, which served the US 231 bypass, was physically removed and was no longer in service. *Id.* at 29.

While ASU accepted the removal of \$692,994 of utility assets from utility plant in service, it did not provide any details regarding how that amount was determined. Other than Mr. Mix's testimony regarding the US 231 bypass force main retirement recommended by the OUCC, ASU provided no evidence regarding the additional asset retirements proposed by the OUCC. Mr. Mix's testimony that a significant portion of the US 231 force main remains in service lacks any supporting documentation or explanation as to what areas continue to be served by this force main and what lift station is serving this force main now that the Copper Beech lift station has been physically removed and retired. The evidence of record indicates that the US 231 bypass force main and the Copper Beech lift station were no longer used and useful once the Cumberland Road project was completed and in service. Without further evidence as to how portions of this force main continue to be used and useful, we find that \$910,409 should be removed from ASU's utility plant in service to reflect the retirement of these assets. As to the retirement of vehicles, computers, and other equipment, ASU provided no evidence regarding whether it disagreed with any of the asset retirements recommended by the OUCC, we find the evidence of record supports the removal of \$364,436 from ASU's utility plant in service to reflect the retirement or disposal of vehicles (\$324,378), computers (\$5,080), and other equipment (\$34,978).

E. Non-Allowed Utility Plant in Service. OUCC witness Ms. Stull recommended excluding four assets added to ASU's utility plant in service since its last rate case. She explained two of these assets were not necessary to the provision of safe, reliable sewer utility service, including a fishing boat (\$801) and a stationary bike (\$854). She stated the remaining two assets do not meet the \$750 threshold established by ASU for capitalizing assets as stated in its capitalization policy, including Pendaflex file rails (\$38/box) and a printer (\$300). Stull Direct at 19. In total, Ms. Stull recommended excluding \$4,395 from ASU's utility plant in service.

In rebuttal, ASU witness Ms. Shafer made a \$3,593 reduction to ASU's proposed UPIS to reflect "accepted non-allowed UPIS," a difference of \$802, which appears to correspond to the value of the fishing boat. Neither Ms. Shafer nor any other ASU witness provided an explanation regarding ASU's inclusion of the fishing boat in utility plant in service.

The parties agree that \$3,593 of non-allowed assets should be excluded from ASU's utility plant in service. The remaining disputed item is a fishing boat valued at \$801. Given that ASU provided no support regarding why a fishing boat should be considered a used and useful asset in the provision of safe, reliable utility service, we agree with the OUCC and find that the fishing boat should also be excluded from utility plant in service. In total, \$4,395 of non-allowed assets should be removed from ASU's utility plant in service.

ii. Misclassified Capital Costs. The OUCC identified test year operating expenses related to capital projects. OUCC witness Ms. Stull asserted \$58,738 should be removed from operating expenses because they were capital costs related to the CE-III project, the Klondike Road project, the Belle Terra main extension, the Big 3 project, and two projects that are not yet in service. Stull Direct at 17 and Table MAS-6. Ms. Stull explained that, with the exception of \$5,200 related to the Belle Terra main extension project, which she included in the OUCC's recommended UPIS, the remaining costs were incurred on projects that are either not complete (construction work in process) or that have already exceeded the authorized amount in the Commission's rate base finding in Cause Nos. 44676 and 44676-S1.

In response to the OUCC's testimony regarding capitalization of operating expenses, ASU witness Ms. Shafer reclassified \$43,136 of operating expenses in her proposed utility plant in service compared to the OUCC's \$5,200. Shafer Rebuttal at 14. Ms. Shafer disagreed that the Commission placed limits on the amount of costs to be included in rate base for the projects preapproved in Cause No. 44272. Ms. Shafer asserted that, in suggesting that the Commission limited ASU's recovery of these costs to only one subsequent case, the OUCC has attempted to read additional limits into the Commission's order in Cause No. 44272. Ms. Shafer asserted the costs the OUCC seeks to disallow as rate base additions were costs that were paid to unaffiliated third parties and that the OUCC has not challenged the prudence or necessity of any of the services for which these costs were incurred. *Id.* at 4.

The parties agree in concept that some costs expensed during the test year are related to capital projects and should be excluded from operating expense. The issue in dispute is whether costs in excess of the project costs authorized in Cause Nos. 44676 and 44676-S1 should be

authorized for inclusion in rate base in this case. We dealt with this issue in the “Major Project Costs in Excess of Commission Authorization” section of this proposed order. We agree with the OUCC that ASU’s last rate case (Cause No. 44676), as well as the subdocket (Cause No. 44676-S1), was ASU’s opportunity to justify and establish its rate base for the preapproved projects to the extent they exceeded the preapproved amounts. In Cause No. 44676, ASU chose to file a hybrid/forward-looking test year that required its rate base findings to be based on projected data, scrutinized by other parties with any disputes resolved by the Commission with its findings. ASU made its compliance filings indicating its projects were in service. In Cause No. 44676-S1, we made an after the fact determination as to ASU’s authorized rate base for the CEII project. We have already established ASU’s rate base for the projects included in rates in Cause No. 44676. Our authorization to phase in these projects did not afford ASU with a second or third bite of the apple. To the extent the project related costs expensed during the test year cause total project costs to exceed the amounts established in Cause No. 44676, they are disallowed for inclusion in rate base. Based on the evidence of record, we find that \$5,200 for the Belle Terra main extension should be reclassified from operating expenses to utility plant in service. Similarly, \$25,655 (\$14,701 + \$10,954) should be reclassified from operating expenses to construction work in process for inclusion in rate base in a future rate case. The remaining \$27,883 (\$58,738 – \$25,655 - \$5,200) of test year project related engineering operating expenses do not qualify as recurring operating expenses and should be excluded from ASU’s *pro forma* revenue requirement.

iii. Accumulated Depreciation. Accumulated depreciation at December 31, 2020 was \$9,100,609. ASU proposed accumulated depreciation of \$9,069,684 in its small utility application. According to this application, ASU adjusted test year accumulated depreciation to remove \$30,925 of 2020 depreciation expense related to the reduced phosphorus removal costs.

OUCC witness Ms. Stull testified that accumulated depreciation at December 31, 2020 should be \$7,691,303. Ms. Stull explained her recommendation was based on the test year accumulated depreciation at December 31, 2020 adjusted to reflect the impact of her proposed UPIS adjustments. Stull Direct at 21 and OUCC Schedule 7. Ms. Stull also had accepted ASU’s adjustment for phosphorus removal costs.

In rebuttal, ASU witness Ms. Shafer proposed \$8,377,437 based on ASU’s rate base adjustments. Ms. Shafer adjusted the accumulated depreciation from ASU’s initial small utility application to reflect additional accumulated depreciation on reclassifications and reductions for non-allowed UPIS and asset disposals.

Based on the evidence of record and our findings above regarding various rate base adjustments proposed by the parties, we find ASU’s accumulated depreciation at December 31, 2020 is \$7,675,759 as follows:

Accumulated Depreciation as of December 31, 2020	\$ 9,100,609
Add: Approved phosphorus per Final Order CN 44676-S1	6,575
Capitalized Test Year Operating Expenses	130
Less: Phosphorus prior to Final Order 44676-S1	(37,500)
Excess Project costs	(32,962)
Cumberland Road Disallowed Costs	(4,760)
Construction and Other Equipment Disallowed	(58,209)
Asset Disposals	(1,274,789)
Kimberly Estates Lift Station	(22,960)
Non-Allowed UPIS	(375)
Total Accumulated Depreciation	<u><u>\$ 7,675,759</u></u>

iv. **Net Contributions in aid of Construction.** There is no dispute as all parties agree that rate base should be offset by net contributions in aid of construction of \$10,350,028. We agree and find that rate base should be offset by \$10,350,028 of net contributions in aid of construction.

v. **Advances for Construction.** There is no dispute as all parties agree that rate base should be offset by advances for construction of \$25,138. We agree and find that rate base should be offset by \$25,138 of advances for construction.

vi. **Working Capital.** A for-profit utility is allowed the opportunity to earn a return on its investment in working capital – that is the capital it devotes to the running of its operations. ASU calculated its proposed \$309,007 working capital investment using the FERC 45-day methodology as reflected in its small utility application (Schedule 7 – Rate Base). OUCC witness Ms. Stull accepted ASU’s use of the FERC 45-day method, but she recommended a working capital investment of \$214,166 based on the OUCC’s recommended level of operating expenses. Ms. Stull also disagreed with ASU’s exclusion of payroll tax expense from the calculation. Ms. Stull explained that while taxes are generally paid in arrears and excluded from the working capital calculation, payroll taxes are an exception. She noted that payroll taxes are remitted to the government on a weekly or bi-weekly basis and, therefore, should be included in the determination of working capital. Stull Direct at 22-23. In rebuttal, ASU witness Ms. Shafer stated she did not accept Ms. Stull’s recommended working capital investment as ASU disagreed with many of the changes in operating expenses proposed the OUCC. Ms. Shafer proposed a working capital investment of \$302,967 after incorporating ASU’s proposed operating expenses on rebuttal and including payroll tax expense. Shafer Rebuttal at 17 and Attachment KS-R1 (Schedule 7 – Rate Base).

Commission Discussion. We agree with the inclusion of payroll tax expense in the calculation of ASU’s working capital investment. Based on our findings below regarding operating

expenses, we find ASU’s working capital investment for purposes of establishing rate base, is as follows:

Operation & Maintenance Expense	\$ 1,994,887
Plus: Payroll Taxes	70,193
Less: Purchased Power	<u>(258,431)</u>
Adjusted Operation & Maintenance Expense	1,806,649
Times: 45 Day Factor	<u>12.50%</u>
Working Capital Requirement	<u>\$ 225,831</u>

vii. **Depreciation and Amortization Expense** Test year depreciation expense was \$1,048,779 and CIAC amortization expense was \$-265,385, a net expense of \$783,394²¹. In its small utility application form, ASU proposed depreciation expense of \$1,006,071.

OUCC witness Ms. Stull stated she agreed with the composite depreciation rate used by ASU but her recommended depreciation expense differs from ASU’s due to various utility plant in service adjustments recommended by the OUCC. Ms. Stull also explained that ASU proposed no adjustment to reflect annual CIAC amortization thereby effectively eliminating the amortization of CIAC. Stull Direct at 23-24. Ms. Stull recommended depreciation expense of \$924,653 and CIAC amortization expense of \$-289,832 for a net depreciation expense of \$634,821. *Id.* at 24-25.

In rebuttal, ASU witness Ms. Shafer proposed net depreciation expense of \$699,903 after subtracting CIAC amortization. Shafer Rebuttal at 17. Ms. Shafer acknowledged the error discovered by Ms. Stull and stated she had corrected the error in her application workbook (Attachment KS-R1.) Shafer Rebuttal at 19.

Commission Discussion. While there are differences in the parties’ calculations of depreciation expense and CIAC amortization expense, those differences stem from differences in rate base, rather than differences in methodology. Based on our findings above regarding depreciable utility plant in service and using the Commission’s composite depreciation rate, the Commission finds the following depreciation expense and CIAC Amortization expense to be reasonable.

²¹ ASU’s small utility application reflects net depreciation expense of \$783,643, a difference of \$249 from the amounts reflected in its general ledger.

Depreciation Expense:

Utility Plant in Service at December 31, 2020	\$ 37,242,293
Less: Land	<u>(215,245)</u>
Depreciable UPIS	37,027,048
Times: Composite Depreciation Rate	<u>2.50%</u>
<i>Pro Forma</i> Depreciation Expense	<u><u>\$ 925,676</u></u>

CIAC Amortization Expense:

CIAC at 12/31/2020	\$ (11,593,275)
Times: Depreciation Rate	<u>0.025</u>
<i>Pro Forma</i> CIAC Amortization Expense	<u><u>\$ (289,832)</u></u>

Original Cost of ASU's Rate Base.

Based on the evidence presented in this case, and the findings discussed above, we find that the net original cost of ASU's rate base used and useful for the benefit of the public is \$19,417,409 at December 31, 2020, as detailed below.

Utility Plant in Service at 12/31/2020		\$ 41,863,969
Add:	Approved Phosphorus per Final Order in CN 44676-SI	263,000
	Capitalized Test Year Operating Expenses	<u>5,200</u>
		268,200
Less:	Phosphorus Prior to Final Order in CN 44676-SI	(1,500,000)
	COVID Forgivable Loan	(168,880)
	Excess Project Costs	(359,053)
	Cumberland Road Disallowed Costs	(190,385)
	Construction and Other Equipment Disallowed	(1,369,414)
	Asset Disposals	(1,274,789)
	Kimberly Estates Lift Station	(22,960)
	Non-Allowed UPIS	(4,395)
		<u>(4,889,876)</u>
Gross Utility Plant in Service		<u>37,242,293</u>
Accumulated Depreciation at 12/31/2020		(9,100,609)
Add:	Approved Phosphorus per Final Order in CN 44676-SI	(6,575)
	Capitalized Test Year Operating Expenses	<u>(130)</u>
		(6,705)
Less:	Phosphorus prior to Final Order 44676-SI	37,500
	Excess Project costs	32,962
	Cumberland Road Disallowed Costs	4,760
	Construction and Other Equipment Disallowed	58,209
	Asset Disposals	1,274,789
	Kimberly Estates Lift Station	22,960
	Non-Allowed UPIS	<u>375</u>
		<u>1,431,555</u>
Total Accumulated Depreciation		<u>(7,675,759)</u>
Net Contributions in Aid of Construction at 12/31/2020		(10,350,028)
Advances for Construction		(25,138)
Working Capital		<u>226,041</u>
Total Original Cost Rate Base at 12/31/2020		<u><u>\$ 19,417,409</u></u>

d. Operating Results Under Present Rates.

i. Revenues. Test year operating revenues were \$4,417,618. Both ASU and the OUCC proposed various *pro forma* adjustments to revenues associated with test year normalization, post-test year customer growth, and a Phase III rate reduction approved in Cause No. 44676-S1. In addition, the OUCC proposed that other income be included in operating revenues for ratemaking purposes. In rebuttal, ASU accepted the OUCC's calculation of the Phase III rate reduction approved in Cause No. 44676-S1 (\$-266,591). We find this adjustment agreed to by the parties to be reasonable. The remaining disagreements, which are associated with customer growth and other income, are discussed below.

A. Test Year Growth Normalization. ASU proposed an \$18,201 increase to reflect the normalization of test year operating revenues but only for the months of September through December 2020.

OUCC witness Margaret Stull agreed that test year normalization adjustments were necessary but disagreed with ASU's assumptions and recommended a total test year normalization adjustment of \$73,175.²² Ms. Stull explained her test year normalization adjustments calculated the increase (or decrease) in test year customer billings that would result if the customers at December 31, 2020 had been ASU customers for the entire year. The increase (or decrease) in customer billings was then multiplied by the current rate for that customer class. Stull Direct at 31, 33, 35, and 36.

In rebuttal, ASU witness Katlyn Shafer continued to propose an \$18,201 increase to reflect test year normalization. Ms. Shafer asserted "the final order in Cause No. 44676 and 44676-S1 already incorporates the units billed through September 2020, therefore, operating revenues should not be adjusted further than the original application submission. That would result in double counting for January – September 2020 growth normalization." Shafer Rebuttal at 18.

Commission Discussion. A test year normalization adjustment annualizes test year revenues to reflect a full year of revenues from customers as of the end of the test year. The parties essentially used the same methodology to calculate their proposed test year normalization adjustments. However, the time period each party used to make this calculation differs - the OUCC normalized the entire test year (calendar year 2020) while ASU only normalized September through December 2020²³. Ms. Shafer explained that she didn't include January through

²² The OUCC's test year normalization adjustment consists of the following: (1) unmetered residential increase of \$50,218, (2) unmetered multi-family increase of \$19,766, (3) Unmetered Mobile home decrease of \$3,141, and metered increase of \$6,332.

²³ Note: While Ms. Shafer stated that the growth for the first 9 months of the test year (January through September) was already included in the final order in Cause Nos. 44676 and 44676-S1, she included four months of growth

September because the final order in Cause Nos. 44676 and 44676-S1 already included the units billed through September 2020. The starting point for the determination of rates in this case is the test year adjusted for items that are fixed, known and measurable, not the Phase III *pro forma* net income as determined in Cause no. 44676-S1. While the authorized rates in Cause Nos. 44676 and 44676-S1 may have included customer growth adjustments through September 2020, those growth adjustments are not included in this Cause. Excluding the growth from January through September 2020 understates ASU’s present rate operating revenues. We agree with the OUCC that the test year revenue normalization adjustment should include the entire test year. Accordingly, we find that the test year revenue normalization adjustment is an increase of \$73,175 as follows:

Residential	\$	50,218
Multi-Family		19,766
Mobile Home		(3,141)
Metered		6,332
	\$	<u>73,175</u>

B. Post-test Year Customer Growth. ASU included no post-test year customer growth adjustment in its small utility application.

OUCC witness Stull recommended a total post-test year customer growth adjustment of \$146,679.²⁴ Ms. Stull explained her adjustment calculated the increase in customer count for each customer class from December 31, 2020 through December 31, 2021 and multiplied this increase by 12 to determine the increase in annual customer billings resulting from this growth. She then multiplied the increase in annual billings by the current rate for that customer class to calculate the post-test year customer growth adjustment. Ms. Stull made a post-test year customer growth adjustment for the flat rate residential and multi-family customer classes. Stull Direct at 32 and 34.

ASU witness Shafer disagreed with Ms. Stull’s calculation of post-test year adjustments. Ms. Shafer stated Ms. Stull calculated her adjustment “by simply taking the year end customer count, less the year beginning customer count and multiplying by 12. That is not how the customer growth adjustment is addressed in the Small-U application, which accounts for customer growth month-to-month.” Shafer Rebuttal at 18. Ms. Shafer opined that ASU’s customer base fluctuates widely, since much of its customer base is around the City of West Lafayette. The Small-U methodology is the appropriate method.” *Id.* Ms. Shafer proposed a post-test year customer growth

adjustments rather than three. Since we do not accept her adjustment, this error has no effect on the rates being authorized in this order.

²⁴ The OUCC’s post-test year customer growth adjustment consists of the following: (1) unmetered residential increase of \$61,680 and (2) unmetered multi-family increase of \$84,999.

adjustment of \$28,890 for the residential customer class and \$51,593 for the multi-family customer class.

Commission Discussion. A post-test year customer growth adjustment calculates the customer growth since the end of the test year and calculates the *annual* revenues that will result from that growth. Ms. Shafer incorrectly assumes that test year customer growth normalization and post-test year customer growth are calculated in the same manner. They are not. The test year growth normalization adjustment simply annualizes the revenues from the growth (or reduction) that occurred during the test year. The post-test year customer growth adjustment calculates the additional *annual* revenues that will result from the addition (or reduction) of customers since the end of the test year. While an applicant can propose a post-test year customer growth adjustment in its small utility application form, currently no standard adjustment is included in the application form. Ms. Shafer also stated that her methodology is more appropriate because ASU’s customer counts “fluctuate widely.” Ms. Shafer provided no analysis to support her assertion and this Commission is hard pressed to see any “wide” fluctuations in the customer counts included in her or Ms. Stull’s customer growth adjustments. While there are occasional reductions in customer counts, on the whole we note a continuous upward trajectory in the monthly customer counts as reflected in both parties’ schedules and workpapers. We agree with the OUCC’s calculation of post-test year customer growth. Accordingly, we find that the post-test year customer growth adjustment is an increase of \$146,679 as follows:

Residential	\$	61,680
Multi-Family		84,999
	\$	<u>146,679</u>

C. Other Income. The OUCC reclassified \$156,551 of below-the-line income as operating revenues. These revenues included inspection fees (\$39,737), connection fees (\$113,064) and other income (\$3,750). In response to our July 1, 2022 Docket Entry, the OUCC explained why these revenues were reclassified above-the-line and included in the determination of its recommended rate increase in this case. The OUCC explained that inspection fees are supposed to be cost based and are designed to recover the costs the utility incurs to inspect the construction of the contributed assets, ensuring compliance with the utility’s standards. Connection fees are collected from customers or developers to recover the utility’s costs to connect the customer to the utility’s system. These fees should also be cost-based. The OUCC also explained that the proper accounting for these activities is to capitalize the actual costs of the inspection or the connection (debit to utility plant in service) and to record the fees collected as contributions in aid of construction.

Based on ASU’s responses to discovery, the OUCC determined that the costs of performing inspections were not capitalized and, therefore, were included in *pro forma* operating expenses and, therefore, would be recovered through ASU’s proposed rates in this case. Because ASU’s

responses indicated the cost of performing the inspections was embedded in rates, the OUCC reclassified the revenues associated with these inspections above the line, as an additional component of operating revenues, to effectively offset the costs included in *pro forma* operating expenses.

Further, ASU's discovery responses also indicated to the OUCC that any costs incurred to connect customers to its system were not capitalized and, therefore, would have been included in *pro forma* operating expenses and recovered through ASU's proposed rates in this case. Because ASU's responses indicated the cost of connecting customers to its system were embedded in rates, the OUCC reclassified the revenues associated with these connections above the line, as an additional component of operating revenues, to effectively offset the costs included in *pro forma* operating expenses.

Regarding other income, the OUCC explained the OUCC reclassifies any revenues or expenses that are recorded "below the line" to the extent that these revenues and expenses are related to utility operations. Revenues, after being offset by any expenses, should be considered in the determination of a utility's rate increase. In this instance, on May 31, 2020, ASU posted a \$3,750 journal voucher (JE 010127) to "Void Winding Creek." The journal voucher was posted as a debit to Cash, account 1017 (NARUC Account 131) and a credit to Other Income, account 9035 (NARUC Account 421). It is unclear what transaction is being voided or why this transaction is recorded to other income. As such, the OUCC reclassified this income to offset any test year transactions recorded above the line.

Commission Discussion. Generally, the costs associated with inspecting contributed utility plant and connecting new customers is tracked and included in utility plant in service, not recorded as an operating expense. Inspection fees and connection fees are recorded as contributions-in-aid of construction and included as an offset to utility plant in service. In this instance, ASU has repeatedly stated in response to discovery that it does not track these costs and does not know what these costs are, or even if it has incurred any costs for these activities. As these fees are supposed to be costs based, the only conclusion that can be made is that the costs incurred equal the fees collected. Therefore, we agree with the OUCC that the inspection fee and connection fee revenues should be included in operating revenues as an offset to the corresponding costs included in operating expenses.

We further find that ASU shall henceforth track the costs incurred for inspecting contributed utility plant and record this to utility plant in service. ASU shall also henceforth track the costs incurred to connect new customers to its system and record these costs to utility plant in service. Correspondingly, ASU shall record inspection fees and connection fees as contributions in aid of construction.

ASU shall also submit to this Commission and to the OUCC a detailed accounting of the average costs it incurs to inspect contributed utility plant. ASU shall also submit to this Commission and the OUCC a detailed accounting of the average costs it incurs to connect new customers to its system. Finally, to the extent these average costs are less than the current rates reflected in ASU's tariff, ASU shall submit a 30-Day Filing to reduce the tariff rate for these activities.

D. Pro Forma Present Rate Operating Revenues. Based on the above, the Commission finds ASU's *pro forma* operating revenues at present rates for the 12 months ended December 31, 2020 are \$4,527,433.

	CN 44676-S1				Present Rate Revenues
	Test Year	Phase III Adjustment	Test Year Normalization	Post-Test Year Growth	
Sewer Revenues					
Residential	\$ 2,143,338	\$ (129,322)	\$ 50,218	\$ 61,680	\$ 2,125,914
Mobile Home	0	-	(3,141)	-	(3,141)
Multi-Family	2,006,596	(121,086)	19,766	84,999	1,990,275
Commercial	106,311	(6,425)	-	-	99,886
Hotels	3,863	(240)	-	-	3,623
Metered	155,724	(9,411)	6,332	-	152,645
Forfeited Discounts	1,787	(107)	-	-	1,680
Inspection Fees	39,737	-	-	-	39,737
Connection Fees	113,064	-	-	-	113,064
Other Income	3,750	-	-	-	3,750
	<u>\$ 4,574,170</u>	<u>\$ (266,591)</u>	<u>\$ 73,175</u>	<u>\$ 146,679</u>	<u>\$ 4,527,433</u>

ii. **Operating Expenses.**

A. **Salaries and Wages Expense.** ASU's small utility application proposed a \$239,424 increase to test year salaries and wages expense of \$823,727, resulting in *pro forma* salaries and wages expense of \$1,063,151. During the test year, ASU expensed \$627,930 for employee wages, \$194,000 for Scott Lods' salary, and \$1,797 for directors' fees. Ms. Sullivan explained ASU's *pro forma* salaries and wages expense is based on twelve (12) full-time employees and four (4) part-time employees. Table CFS-3 shows the number of *pro forma* labor hours ASU proposes.

Table CFS-3: Proposed Pro forma Labor Hours

	<u>Regular Hours</u>	<u>Overtime Hours</u>
Full-time Employee Hours	24,960	338
Part-time Employee Hours	5,148	
	<u>30,108</u>	<u>338</u>

OUCC witness Carla Sullivan made no adjustment to test year recommending ASU's *pro forma* salaries and wages expense be based on its test year expense of \$823,727. Ms. Sullivan explained that during the test year, ASU employed 22 people, who worked a total of 22,847 regular hours and 910 overtime hours or equivalent to 11.5 full time employees. Based on her review of

payroll records provided, all but two of these positions were filled by persons working less than 2,080 hours per year. ASU's test year staff included one engineer, one field lab technician, ten (10) field maintenance staff, three (3) accountants, two (2) accounts receivables specialists, and six (6) general office employees.²⁵

Ms. Sullivan noted that ASU's projected number of labor hours of 30,108 hours is nearly twice what ASU used in 2017 (15,813 hours), which is the lowest level of labor hours since rates were set in Cause No. 44676. Ms. Sullivan also compared ASU's recommended number of wage hours to the test year, noting that ASU's request for employee hours depends on a 26% increase of employee hours over the test year number $((30,1304 - 23,969)/23,969 = 25.6\%)$. Ms. Sullivan noted that ASU's proposed 30,108 hours exceeds the number of hours it claims to have incurred in the 12-month adjustment period, which ended on December 31, 2021.

Ms. Sullivan testified that ASU did not adequately explain in response to discovery why its operations require such a significant increase in the number of labor hours since its test year ended. Moreover, ASU's wastewater treatment plants are primarily new infrastructure, which should simplify ASU's operations noting for instance that ASU has fewer lift stations to be maintain.

Ms. Sullivan noted that ASU's labor hours had not consistently increased since its rates were set in Cause No. 44676. Ms. Sullivan explained ASU's employee hour levels were significantly lower in 2016, 2017, and 2018 than they were in 2015, which was used in part to establish ASU's pro forma revenue requirements in that rate case.²⁶ M. Sullivan provided Table CFS-4, which relies on information provided through discovery responses,²⁷ to shows ASU employee hours worked and the number of full-time equivalent ("FTE") employees since 2015 through 2021.

25 OUCC Attachment CFS-2: 2020 and 2021 Payroll

26 ASU's hybrid test year relied in part on data from the first quarter of 2015.

27 OUCC Attachment CFS-3: OUCC Date Request No. 7-7 – Employees and Hours

Table CFS-4: Number of Employees and Hours Worked

	2015	2016	2017	2018	2019	2020	2021
Engineering	250	2,068	1,964	939	741	481	1,365
Field Lab		333	32	35		178	1,795
Field Maintenance	12,688	11,330	8,394	8,828	11,781	12,397	13,826
Office Accounting	2,220	1,634	3,018	3,365	3,717	3,794	3,843
Office Billing	2,080	1,017	1,555	1,971	1,907	1,380	3,438
Office General	2,808	2,140	851	2,915	4,604	5,739	3,931
Total hours	20,046	18,521	15,813	18,053	22,750	23,969	28,198
Full-time Equivalent Employees	9.64	8.90	7.60	8.68	10.94	11.52	13.56
Employee Count	14	20	17	15	18	22	23

Ms. Sullivan compared the average number of hours worked during the years 2015 through 2021 with the number of hours ASU used to propose its revenue requirement for Salaries and Wages in this case.

Table CFS-5: Comparison of Employee Hours and Full-time Equivalents

	Historical Seven Year Average		ASU Proposed	
	Hours	Full-time Equivalent	Hours	Full-time Equivalent
Engineering	1,115.43	0.54	2,360	1.13
Field Lab	474.60	0.23	2,080	1.00
Field Maintenance	11,320.50	5.44	13,728	6.60
Office Accounting	3,084.32	1.48	3,952	1.90
Office Billing	1,906.66	0.92	3,900	1.88
Office General	3,284.04	1.58	4,160	2.00
	21,185.55	10.19	30,180	14.51

Ms. Sullivan noted that the OUCC made several inquiries to determine what tasks ASU’s field and office personnel perform including the amount of time spent on each task. Ms. Sullivan testified that ASU’s responses to that discovery showed ASU’s management does not have job descriptions for its employees, does not track what tasks are being performed by its employees, and does not know how much time is needed to accomplish the tasks performed by its employees. In addition to not having written job descriptions,²⁸ ASU could not differentiate between duties

28 OUCC Attachment CFS-5: OUCC Date Request No. 3-10 – Job Descriptions

and tasks of consultants and employees,²⁹ or identify any projects that ASU staff worked on during the test year.³⁰

Ms. Sullivan recommended ASU's rates be based on its test year labor expense of \$823,727. She explained that a revenue requirement based on the 7-year average would result in *pro forma* salaries and wages expense of \$814,485, which assumes a 5% increase over 2020 rates of pay for five (5) FTE field staff working 10,400 hours; four (4) FTE office staff working 8,320 hours; a part-time field lab person working 1,040 hours; and a part-time engineer working 1,040 hours. Nonetheless, she recommended ASU's rates be based on its slightly higher test year labor expense of \$823,727.

Mr. Mix disagreed with the OUCC's recommendation to set salaries and wages based on the number of hours expensed in the test year as proposed by OUCC accounting witness Carl Sullivan. He asserted Ms. Sullivan's position is flawed in two respects. First, Mr. Mix asserted Ms. Sullivan incorrectly assumed the hours that ASU paid its employees were hours worked. Mr. Mix said any employee who is employed "full time" is paid for 2,080 hours/year. (52 weeks/yr. @ 40.0 hrs./week = 2080 hours/year) but they do not "work" 2080 hours/year. In other words, productivity hours are not the same as wage hours because employees receive time off for paid holidays, paid vacation time, and paid sick days. Mr. Mix added that while paid time off may be considered "labor hours" the hours are not actually spent performing work on behalf of the utility. Second, Mr. Mix asserted Ms. Sullivan expected *pro forma* salaries and wages to equal the amount spent in 2020 – the height of the pandemic and Governor's emergency orders (including his Work From Home Order). Mr. Mix testified that for part of 2020, ASU temporarily laid off a substantial number of its staff out of concerns, early in the pandemic, over where the pandemic would lead. The test year is not representative of normal payroll levels. Mix - Page 4 Mr. Mix asserted that based on his experience, the OUCC's recommended 10,400 hours for five field staff, 8,320 hours for four office staff, 1,040 for a part-time field staff person, and 1,040 hours for a part-time engineer would not allow ASU to maintain appropriate operations.

Mr. Mix asserted ASU's system and customers have changed since 2015 stating that the system is significantly larger than in 2015. You cannot properly determine the number of employees needed in 2022 by analyzing the past seven (7) years of equivalent employees' hours (2015 thru 2021), especially when the equivalent employee hours were calculated on wages (2080 hrs./year) instead of productivity. Mr. Mix disagreed with Mr. Sullivan's observation that ASU's wastewater treatment plants are "primarily new infrastructure" and that ASU's operations have been simplified. He testified the plant consists of the new 3.0 MGD continuous sequencing batch reactor system, as well as the older four (4) tank continuous sequencing batch reactor system, which IDEM required to be maintained for standby use. He added the plant constructed four (4) large aerobic digester tanks while maintaining the two (2) older digester tanks for sludge storage

29 OUCC Attachment CFS-6: OUCC Date Request No. 7-9 and 7-27 – Coleman, Crandell, and S&D Testing

30 OUCC Attachment CFS-7: OUCC Date Request No. 9-3 – Identify Projects

and it has a new ultraviolet disinfectant (UV) system and chemical phosphorus removal. Mix - Page 5. He asserted the plant is approximately half-new infrastructure (2019) and half old infrastructure (2000). He noted the County Home IV Wastewater Treatment Plant has a sequencing batch reactor (SBR) and has an average design flow of 1.0 MGD. He added this plant is an older plant (2005), and construction has just started on a new chemical phosphorus removal system. He noted the ASU collection system consists of one (1) submersible lift station (Willowbrook) and one (1) emergency lift station (Kimberly Estates) and has approximately 64.2 miles of gravity sewers with 5.6 miles of clay pipe. Mr. Mix asserted that in 2022 ASU began to implement its infiltration and inflow (I&I) program, which he asserted will result in a significant increase in manhours to inspect and maintain the collection system.

Mr. Mix said all wastewater utilities are unique, will not all need the same amount of staffing, and are not all operated in the same manner, but there are resources available to assist in determining the approximate hours and staff for the utility including the Northeast Guide for Estimating Staffing at Publicly and Privately Owned Wastewater Treatment Plants (the "Guide") which was prepared by the New England Control Commission, November 2008. Mix - Page 6 He said the guide describes a four-step method that state regulatory agencies and plant managers successfully used for many years to determine the staffing needs associated with specific treatment plant processes and activities.

Mr. Mix testified the Guide sets forth the manhours needed to operate, maintain and repair specific treatment plant equipment along with the manhours required to conduct laboratory tests, as well as for general plant and building maintenance tasks. He testified the recommended manhours will be similar for the similar task no matter if the plant is in New York or Indiana. He said the Guide can be used to determine field treatment/laboratory operating staff and utility clerical staff, but it does not provide any recommendations for staffing to operate the Utility's collection system. Therefore, Mr. Mix asserted that in order to calculate collection system staffing, ASU used EPA 305-B-05-002, Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems which states: "The system's personnel requirements vary in relation to the overall size and complexity of the collection system. In very small systems, these responsibilities may include operation of the treatment plant as well as the stormwater as well as wastewater collection system" (p. 2-6). References providing staff guidelines or recommendations are available to help the reviewer determine if staffing is adequate for the collection system being reviewed. Mix - Page 7 Mr. Mix testified his testimony included tables have been taken from EPA documents he listed to provide the reviewer with guidance. These documents were published in 1974, 1973 and 1993. Mr. Mix added that the document may not take into account technological advances that have occurred since their publication date that might reduce staffing requirements. He noted, for instance, advances in remote data acquisition and telemetry have likely reduced the number of field inspection staff needed for systems with several pump stations. Other system-specific characteristics should also be accounted for when using these tables. An example of this might be collection systems that are not primarily constructed of brick will not require the masons the tables specify.

Mr. Mix explained that ASU estimated the population size as 40,000 P.E. based on the size of the two (2) treatment plants (4,000,000 GPD/100.0 GPD/P.E.). Thus, the required staff was obtained from the 50,000 population columns on pp. 2-8 (Attachment AAM-R6). Based on this table, ASU said it will require four (4) full time employees as shown in the table in Attachment AAM-R6 for field work, with many of the other duties such as maintenance, typist, dispatcher, etc. being performed by the existing office staff. Mr. Mix testified that based on the Guide's Chapter 6 Charts and EPA manual, ASU's requested staffing will be short 2.81 "paid" employees, and 8.49 "working" employees. Mix - Page 7

Mr. Mix added that Ms. Sullivan used a historical seven-year average to compare it to the 2022 ASU labor request, which, he asserted, violates one of the major rules for staffing studies which is to "ensure the study takes place during a representative time period." Mr. Mix asserted the representative time frame for this study is 2022, because ASU must have the staff to properly operate and maintain its collection and treatment systems as they exist today and must meet their current NPDES discharge permits as well as design and start an I&I maintenance program. Therefore, he asserted, it is incorrect to use past staffing or even an average past staffing amount over several years to determine what is required today. Mr. Mix testified that ASU divides its workforce into three groups: field staff, office staff, and engineering staff. Mr. Mix provided a table comparing the number of working hours for each group for 2020 and 2022 with proposed hours for 2022. Table 2 asserts Engineering Staff worked 481 hours in 2020, 1,365 hours in 2021 and a proposed 2,360 hours in 2022. Table 2 asserts Field Staff including Laboratory worked 12,575 hours in 2020, 15,621 in 2021 and a proposed 21,646 hours in 2022. Table 2 asserts Office Staff worked 10,913 hours in 2020, 11,212 hours in 2021 and a proposed 12,012 hours in 2022 for a "TOTAL Man Hours" of 23,969 hours in 2020, 28,198 hours in 2021 and a proposed 36,018 hours in 2022. Mix - Page 9.

Without identifying the number of hours incurred or suggested by the guidelines, Mr. Mix asserted that Laboratory staffing was well below EPA guidelines in 2020 and 2021. Mr. Mix testified that ASU deals with low laboratory staffing issues by cross training existing staff to handle some of the tasks. ASU deals with the low field staffing by using the office staff to fill in the holes, such as having them assist in preparing field reports, researching equipment replacements and repair parts, ordering gravel, sand, and similar items. Mr. Mix added that ASU has also used contract labor like Mr. Serowka and Mr. Crandall to supplement its field staff. Mr. Mix stated that even with its requested raise in salaries and wage expense, ASU will still be operating with lower than that determined to be needed under the U.S. EPA standards. Mr. Mix said the salaries and wage expense should be set at the amount calculated by ASU witness Ms. Shafer.

ASU witness Ms. Shafer testified that ASU's salaries and wages remain unchanged from what was included in the Application. She asserted ASU's requested \$239,424 increase to test year's salaries and wage expense of \$823,727 resulting in pro forma salaries and wage expense of \$1,063,151 is reasonable and should be accepted.

Commission Discussion and Finding: ASU has asked to include in its pro forma annual revenue requirement an adjustment increasing its pro forma revenue requirement by \$239,424, resulting in *pro forma* salaries and wages pro forma annual revenue requirement for Salaries and

Wages expense of \$1,063,151, which also exceeds the expense incurred by ASU for labor and wages in the adjustment period. The OUCC maintained that ASU should be permitted to include in its rates as a pro forma revenue requirement its test year expense for Salaries and Wages of \$823,727.

We now decide whether ASU's pro forma revenue requirement should be based on its test year or some other basis. ASU's proposed pro forma revenue requirement for Salaries and Wages exceeds both the amount expended by ASU in the test year, which ended December 31, 2020, and the amount ASU said it expended in the 12 months following the test year, which ended on December 31, 2021. Nothing in the duly enacted small utility rules, the Indiana Code or our prehearing conference order authorizes ASU to base its rates on an adjustment period following the test year. But we note the OUCC applied this adjustment period to some of its revenue requirement recommendations in this case. To the extent an adjustment period applies to this proceeding, that adjustment period ended on December 31, 2022, and any opposed consideration of expenses that may have occurred beyond that adjustment period should not be considered. We hereby reject the level of *pro forma* revenue requirement ASU requested because the expenses do not fall within 12 months of the end of ASU's declared and accepted test year.

The OUCC's positions in this proceeding is not based on the premise that there is no adjustment period the Commission may consider. The OUCC acknowledges that ASU's test year expenses may be adjusted based on fixed, known, and measurable changes that occur within 12-months of the end of the test year provided the increased expenses are reasonable and are representative of ASU's prospective operations. The OUCC noted that maintains that ASU has not adequately justified a Salary and Wages revenue requirement that relies on a number of hours that is 26% more than the number of hours used in the test year. ASU's test year is more representative of ASU's expected reasonable Salaries and Wages Expense than any other basis that ASU has attempted to use to support its proposed revenue requirement.

In selecting the small utility process, ASU necessarily selected the use of an historical test year. The use of a historical test period is the generally accepted method for setting rates for the future by taking the actual results for the particular test year and adjusting for any extraordinary and nonrecurring items and for all known and measurable changes. Cap. Improvement Bd. of Managers of Marion Cnty. (Convention Ctr.) v. Pub. Serv. Comm'n, 176 Ind. App. 240, 257–58, 375 N.E.2d 616, 630 (1978) citing In re Vermont Gas Systems, Inc. (1973), 100 P.U.R.3d 202. In re Vermont Gas Systems, Inc. (1973), 100 P.U.R.3d 202. The test year sets the limits by which the factors of ratemaking can be known and used for the rate-making process. Id. As a general rule, the test year does not take into consideration future expenses or future revenues except known changes in both expenses and revenues occurring within a reasonable proximity of the test year. Id. citing In re Southern Connecticut Gas Co. (1974), 7 P.U.R.4th 364. The object of the test year is merely to reflect typical operating conditions of a utility and provide a reliable guide in fixing rates *for the future* by monitoring actual operating results over a representative period of time. Id. (emphasis added.)

As the Court of Appeals said in Cap. Improvement Bd. of Managers of Marion Cnty. (Convention Ctr.) v. Pub. Serv. Comm'n, 176 Ind. App. 240, 272, 375 N.E.2d 616, 638 (1978) in

using a test year, it is the duty of the Commission to compute rates that are fair and just both to the utility and to its customers, not only at the time the order is made but also for a reasonable period of time thereafter. *Id.* citing *New England Telephone and Telegraph Company v. State* (1973), 113 N.H. 92, 302 A.2d 814.

In determining ASU's pro forma Salaries and Wages revenue requirement, we should evaluate whether the higher expenses in the adjustment period are both reasonable and, if so, whether ASU may be expected to incur that level of expense of forward going basis.

Mr. Mix asserted Ms. Sullivan's reliance on the test year expense is flawed - first, because Ms. Sullivan incorrectly assumed the hours that ASU paid its employees were hours actually worked, excluding the cost of vacations and holidays; and second, because 2020 included a period during the height of the Covid pandemic when ASU temporarily laid off a substantial number of its staff out of concerns, early in the pandemic, over where the pandemic would lead.

As to the first assertion (i.e., that Ms. Sullivan's comparison did not include vacation and holiday hours) the evidence establishes that is not the case. The hours Ms. Sullivan considered all hours paid notwithstanding her descriptor "hours worked." Ms. Sullivan relied on information provided by ASU, and ASU's own responses to discovery, show that Ms. Sullivan analysis compared all hours paid in each year and simply "productive hours" as Mr. Mix asserted in his rebuttal testimony. During cross-examination by the OUCC, Mr. Mix acknowledged that Ms. Sullivan was proposing that ASU be permitted to include the entire \$823,727 that ASU's employees were actually paid in the test year. Hr. Tr. P. 54, lines 9 – 25. Mr. Mix acknowledged during cross-examination that the 23,829 hours Ms. Sullivan indicated for the test year included overtime, vacation hours and holiday hours. Hr. Tr. A-54-line 9 – A-58, line 17. OUCC Attachment CSF-2 made this clear. Importantly, OUCC Attachment CFS-3 on which Ms. Sullivan relied for her comparison of hours worked in each year 2016 through 2021 provides on six separate pages the same payroll information for each year. The total hours for 2021 on OUCC Attachment CSF-3, page 5 of 6 also shows 23,829 hours. Just as the 23,829 hours listed in OUCC Attachment CFS page 5 of 6 included vacation and holiday hours in the test year, so too did each of the totals for the years 2016, 2017, 2018, 2019, and 2021. Notwithstanding her term "hours worked," Ms. Sullivan looked at test year salary and wage expense that included all categories of pay as did the other years in her comparison. There is no such flaw in Ms. Sullivan's analysis.

We next reject the suggestion that Ms. Sullivan should not have considered the test year in her analysis because of ASU's management decision to lay off a number of its employees. First of all, Mr. Mix, who was not an employee of ASU until mid-2021, could not say for how long ASU had laid off its employees in 2020, whether it was more or less than month or whether any of those employees sent home were permitted to use their accrued vacation time. Hr. Tr. A-59. If those employees had been permitted to use vacation time, certainly to that extent the time those employees spent at home and not on the job would still have showed up as a Salary and Wage Expense in the test year. ASU provided no evidence in this case quantifying the effect on Salary and Wages expense of its decision to send part of its work force home. It may be that there was none. From 2015, which preceded ASU's last rate order, through 2020, ASU exhibited first a marked decline in personnel going from neatly 10 full time equivalent employees in 2015 declining

steadily through 2017 with roughly 7.5 full time equivalent and then building back to the level in 2020.

Importantly, the number of personnel hours expensed in the test year is not fewer than any of the five years preceding it. While the 2020 test year relied on 23,829 labor hours, 2016 relied on 18,381 labor hours, 2017 relied on 15,673 hours, 2018 relied on 17,913 and 2019 relied on 22,609. Test year salary and wages hours is higher than average. If Ms. Sullivan had chosen to disregard the test year in her analysis, it would only have reduced the average she calculated. We disagree that ASU's test year should be considered not representative of its ongoing pro forma salary and wage requirements.

Mr. Mix asserted that based on his experience, the OUCC's recommended 10,400 hours for five field staff, 8,320 hours for four office staff, 1,040 for a part-time field staff person, and 1,040 hours for a part-time engineer would not allow ASU to maintain appropriate operations. Importantly, any revenue requirement we set would not prevent ASU from allocating its revenue requirement as circumstances dictate. Also important, starting in the middle of the test year, Mr. Mix's experience at ASU does not include any of the five years previous where ASU made do with fewer employees. Indeed, there were fewer employees than 2015 a year preceding the rate order in Cause No. 44676. Table CFS-4, Public's Exhibit No. 2, p. 9. For instance, ASU's total employee equivalency in 2017 was 78% of what it had been in 2015. *Id.* And it did not meet or exceed that level until 2019. *Id.* ASU has shown that it does not steadily grow its workforce and has either decided to serve its customers with fewer employees or been unable to retain its workforce numbers. Workforce challenges today are no less than they were in 2016, 2017, and 2018. We agree with the OUCC that ASU's history of workforce numbers, which may be described as fluid, should inform our evaluation of ASU's Salaries and Wages pro forma revenue requirement.

After averaging the number of employment hours from 2015 through 2021, the OUCC noted how similar that value was to the test year and recommended the lightly higher test year be used to set the revenue requirement. The question is whether the Salary and Wages revenue requirement we set would afford ASU with the funds reasonably necessary for it to operate its utility and further whether it will be representative of its ongoing operations. After noting The OUCC's recommendation that ASU's Salary and Wages revenue requirement be equal to the 2020 Test Year ASU chose for its small utility application would afford ASU with the equivalent of more than 11 full-time positions. As shown in the OUCC's Table CFS-4, that is a level of personnel ASU had not previously reached. In light of ASU's tendency to have workforce numbers that fluctuate, we agree with the OUCC that the 2020 test year is representative of ASU's ongoing operations.

Mr. Mix disagreed with Mr. Sullivan's observation that ASU's wastewater treatment plants are "primarily new infrastructure" and that ASU's operations have been simplified. He testified the plant consists of the new 3.0 MGD continuous sequencing batch reactor system, as well as the older four (4) tank continuous sequencing batch reactor system, which IDEM required to be maintained for standby use. He added the plant constructed four (4) large aerobic digester tanks while maintaining the two (2) older digester tanks for sludge storage and it has a new ultraviolet

disinfectant (UV) system and chemical phosphorus removal. Mix - Page 5. Mr. Mix cataloguing of the new and old parts of ASU's system, does not explain the wide variation over the years of ASU's personnel expenses. For instance, it does not explain combined Office Accounting, Office Billing and Office General expense of 11,212 hours in 2021, where the combined number of hours in 2016, 2017, and 2018 was 4,791 hours, 5,424 hours and 8,251 hours respectively. See Table CFS-4, p. 9 Public's Exhibit No. 2. In 2021, ASU employed the equivalent of nearly two full-time Office Accountants (3,843 hours), nearly two full-time billing staff (3,438 hours) and nearly two full-time general office employees- (3,931). None of the plant added or retained explains this difference or establishes why a small utility that charges most of its customers a flat monthly rate suddenly requires more than one less than full-time assigned to billing.

Mr. Mix asserts the OUCC's recommendation to establish Wage and Salary revenue requirement based on the test year would implicate its operations. Importantly, with respect to field maintenance staff, the difference between test year (2020) and the adjustment period (2021) is less than the equivalent of one full-time Field Maintenance staff person. Hours attributed to Field Maintenance was 12,397 hours in 2020 and 13,826 in the adjustment period. Previously, ASU had not exceeded its 2020 test year level of Field Maintenance hours since 2015 before its last rate order. The OUCC's Table CFS-4 reminds us that ASU's Salary and Wage commitment has tended to decline after its rates have been established. ASU's lowest commitment to all its wages and Field Maintenance, in particular, was in 2017, when staff worked a total of only 15,813 hours. Total hours in 2017 were roughly 76% of what ASU paid in 2015 and roughly 52% of the wage hours ASU has asserted to justify its requested Wage and Salary revenue requirement in this case.

In its rebuttal case, Mr. Mix engaged in an after the fact justification of its proposed Salary and Wage revenue requirement relying on the Northeast Guide for Estimating Staffing at Publicly and Privately Owned Wastewater Treatment Plants (the "Guide") which was prepared by the New England Control Commission, November 2008. Mix - Page 6 He said the guide describes a four-step method that state regulatory agencies and plant managers successfully used for many years to determine the staffing needs associated with specific treatment plant processes and activities.

Mr. Mix testified the Guide sets forth the manhours needed to operate, maintain, and repair specific treatment plant equipment along with the manhours required to conduct laboratory tests, as well as for general plant and building maintenance tasks. He testified the recommended manhours will be similar for the similar task no matter if the plant is in New York or Indiana. He said the Guide can be used to determine field treatment/laboratory operating staff and utility clerical staff, but it does not provide any recommendations for staffing to operate the Utility's collection system. Therefore, in order to calculate collection system staffing, ASU used EPA 305-B-05-002, Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems which states: "The system's personnel requirements vary in relation to the overall size and complexity of the collection system. In very small systems, these responsibilities may include operation of the treatment plant as well as the stormwater as well as wastewater collection system" (p. 2-6).

Mr. Mix analysis misapplied this guide. To use the guide, ASU established a population served not by determining the number of members of the households served but simply by basing

it on the capacity of ASU's two (2) treatment plants (4,000,000 GPD/100.0 GPD/P.E.). Based on that assumption he considered the 50,000 population columns on pp. 2-8 (Attachment AAM-R6). Based on this table, ASU said it will require four (4) full time employees as shown in the table in Attachment AAM-R6 for field work, with many of the other duties such as maintenance, typist, dispatcher, etc. being performed by the existing office staff. Mr. Mix testified that based on the Guide's Chapter 6 Charts and EPA manual, ASU's requested staffing will be short 2.81 "paid" employees, and 8.49 "working" employees. Mix - Page 7. In addition to evaluating the population actually served, Mr. Mix made several missteps that make his analysis fatally flawed. Mr. Mix overestimated the population served by ASU. Under his own methodology Mr. Mix used the design capacity to estimate the population capacity. Mr. Mix attributed to 75 metered sewer customers roughly one-third of the total 38,523 population he indicated ASU was serving. Hr. Tr. p. B-11. However, Mr. Mix acknowledged also that those 75 metered sewer customers were producing less than 1/15th of ASU's revenues in rates. Hr. Tr. p. B-12. Yet, Mr. Mix assumes that, so far as the population served, the 75 metered customers provide a population equivalency of 12,566 people. Id. The math simply does not work. Mr. Mix's determination that ASU serves a population of 40,000 is not supported. However, even if it was supported, it would not establish ASU's prospective salary and wage expense.

The evidence suggests ASU did not and does not rely on such guidance to actually establish its workforce. It only uses such guidance after the fact to justify how much its customers are to be charged for rates. Just as ASU's workforce hours ebbed after it had received its rate order in Cause No. 44676, there is nothing in ASU's proposal that would prevent it from reducing its workforce as it had between these last two rate cases.

For the foregoing reasons, we find that ASU's test year is reasonable and most representative of ASU's ongoing operations. The OUCC recommended ASU's Salary and Wages expense because it was slightly higher than her calculation of ASU's seven-year average of equivalent full-time employees multiplied by ASU's rate of pay in the adjustment period, which was 5% higher than ASU's test year wages, which would have resulted in a *pro forma* salaries and wages expense of \$814,485. As we have found ASU's test year equivalent employment hours is representative of its ongoing operations, it is appropriate to incorporate ASU's more recent 5% increase into its Salary and Wages revenue requirement. We find that ASU's Salary and Wages revenue requirement shall be \$864,913 (\$823,727 + \$41,186.35).

B. Employee Benefits Expense. ASU proposed a \$16,161 increase to test year employee benefits expense of \$156,139, resulting in *pro forma* employee benefits expense of \$172,300. ASU's test year employee benefit expense included \$120,881 for pension expense, \$20,580 for health reimbursement expenses, and \$14,678 for employee relations.

I. Pension Expense Ms. Sullivan explained that ASU offers employees a 401(k)-profit sharing plan (a defined contribution pension plan). The plan matches 100% of employee's contributions, up to 6%. The employee must be 19 years old with one year of service. The plan has been in effect since January 1, 2018. (OUCC Attachment CFS-

8: OUCC Date Request No. 1-7 – 401(k)) ASU proposed a \$16,161 increase to \$120,881 of test year pension expense, resulting in *pro forma* expense of \$137,042. Ms. Sullivan recommended a \$71,457 decrease to test year pension expense of \$120,881 resulting in *pro forma* pension expense of \$49,424. (See OUCC Schedule 6, Adjustment No. 2.) ASU’s pension plan matches up to 6% of an employee’s salary. Because we have found salary and wages expense should be \$864,913, this expense should be 6% of \$77,453.

II. Employee Relations Expense. Ms. Sullivan noted that during the test year, ASU paid \$14,678 of employee relations expenses, including (1) \$4,500 for a wellness program, (2) \$3,000 for team building activities (\$200 x 15 employees), (3) \$6,700 for Christmas bonuses (\$300 x 22 employees plus \$100 for postman)³¹, and \$478 for other miscellaneous expenses. Ms. Sullivan disagreed that ratepayers should pay as a pro forma revenue requirement the \$3,000 for team building activities and the \$6,700 of Christmas bonuses. In total, she recommended removing \$9,700 from test year operating expenses. (See OUCC Schedule 6, Adjustment No. 3.) Sullivan explained that compensation for participating in team building activities and Christmas bonuses are not necessary for the provision of safe, reliable sewer service, are not a reasonable expense to recover from ratepayers, and should therefore be disallowed. Ms. Stull recommended ASU’s employee relations expense be set at \$4,978 allowing the \$4,500 for the wellness program and \$478 for miscellaneous expenses.

Mr. Mix rebutted that Employee benefits come in many forms and said it is extremely beneficial for a team to work well together. Mr. Mix stated that even the State of Indiana offers employee benefit packages, some of which are agency specific. Mix - Page 11 Mr. Mix testified employers are having an extremely hard time maintaining employees and noted that a March 9, 2022, Pew Research Center, publication states, “Majority of workers who quit a job in 2021 cite low pay, no opportunities for advancement, feeling disrespected.” Mr. Mix testified that all three of these reasons exist in small utilities. Mr. Mix added that employees are giving up a lot when they are called out on Christmas morning to clear a sewer backup or cannot celebrate New Year’s Eve since they are fixing a water main break in below zero winter conditions. Even the Government Accountability (GAO) in their January 2018 report on water and wastewater work force “Recruiting Approaches Helped Industry Hire Operations, but Additional EPA Guidance Could Help Identify Future Needs” discussed various ideas from large and small utilities to attract and keep employees. Mr. Mix testified this is especially important for ASU since it has to hire and retain employees in one of the fastest-growing areas in Indiana where there are many job opportunities for employees that provide greater pay and benefits. Mix - Page 12.

We will first address the \$6,700 for Christmas bonuses. There is no evidence ASU had an obligation to issue Christmas bonuses to its 22 employees. Consequently, the bonuses are in

31 OUCC Attachment CFS-9: OUCC Date Request No. 7-4 – Employee Relations

essence gifts from ASU's owner/shareholder. While this act of generosity may be laudable, and especially welcome in a year ASU had made the decision to lay off its workforce, it is an act of generosity that should be counted below the line. In other words, it is appropriate for for-profit utilities to reward their employees for a profitable year by giving bonus from earnings, but it is not appropriate for ASU to charge its customers for that act of generosity. Accordingly, we agree that the \$6,700 that ASU paid for Christmas bonuses should not be included in the calculation of ASU's pro forma annual revenue requirement.

As to the \$3,000 for team building activities (\$200 x 15 employees), neither Mr. Mix nor Ms. Shafer who argue that the expense should be allowed described the particular team building activity or explained how that particular activity should be considered necessary for the provision of safe, reliable sewer service or otherwise explained how the \$3,000 it cost is a reasonable expense to recover from ratepayers. In the absence of such evidence, we agree with the OUCC that the \$3,000 for unspecified team build activities should not be included in ASU's pro form revenue requirement. Allowing the \$4,500 for the wellness program and \$478 for miscellaneous expenses, which the OUCC did not oppose, we find ASU's pro forma employee relations expense shall be \$4,978.

C. **Sludge Removal Expense.** ASU proposed as its *pro forma* revenue requirement for Sludge removal its test year expense of \$68,564. The OUCC proposed a *pro forma* revenue requirement of \$43,910, an adjustment from test year of \$24,654. OUCC witness Carla Sullivan explained that, unlike 2018 and 2019 when ASU land applied all of its sludge, in the test year ASU hauled sludge to Merrell Bros.' regional biosolids center, at significantly greater cost. Ms. Sullivan explained that Land applied sludge is \$0.051 per gallon and sludge hauled to Merrell Bros. regional biosolids center is \$0.1245 per gallon, which is well more than twice the cost as land applying sludge. $((\$0.1245 - \$0.051) / \$0.051 = 144\%)$. Ms. Stull determined Sludge Removal costs by averaging the quantity of sludge removal costs from the last four years and multiplying that amount by the current rate for land applying sludge resulting in sludge expense of \$43,330. She then added \$95 for Biosolid pre-testing and \$485 for Nutrient testing to determine total sludge removal expense of \$43,910.

The OUCC did not incorporate into its proposed revenue requirement, the cost of having the sludge hauled to a treatment center asserting that the higher cost of doing so was avoidable. Ms. Sullivan explained that in response to questions asking why it was necessary for ASU to have some of its sludge hauled to the Merrell Bros. regional biosolids center, ASU merely stated "Solids hauled from the County Home plant to Center because of the weather, it could not be land applied."³² She noted ASU did not explain what weather condition existed that required it to have the sludge hauled to the biosolids center instead of land applying the sludge. She added there was

32 OUCC Attachment CFS-11: OUCC Date Request No. 9-36 – Sludge removal

no indication whether that weather condition that occurred in 2020 may be expected to reoccur on an annual basis during the life of ASU's rates. Ms. Sullivan explained that invoices from 2018 and 2019 did not include the higher expense of transporting to the Biosolids Center, suggesting this cost can be avoided by not removing sludge while the weather condition exists.

In his rebuttal testimony, Mr. Mix testified that price should not be a deciding factor with respect to sludge removal and it should not be the controlling factor. Mix - Page 12 He testified that sludge handling is an extremely complicated and regulated process which starts at the wastewater treatment plant. A wastewater treatment plant must maintain a cell residence time (CRT), which optimizes the process, thus allowing proper nitrification. He explained that if the sludge CRT is too long, then the plant's nitrification efficiency will decrease, and it may violate the plant's NH₃N discharge limits. Therefore, the operator must make a decision as to when and how much to waste. However, every plant has a limited sludge storage capacity and if it is full, then the operator cannot wait to waste sludge, or the plant would violate its NPDES Permit.

Mr. Mix explained that ASU has two (2) land application permits, one for the Carriage Estates III Plant and one for the County Home IV Plant. He testified Sludge can be only applied on farmland for a short period of time - before the crops are planted in the spring and after the crops are harvested in the fall. He said another factor that has to be considered is the size of the aerobic digester tanks. The aerobic digester tanks at the Carriage Estates III Plant have sufficient capacity to hold sludge until weather permits it to be directly land applied by Merrell Bros. However, he asserted the digesters at County Home have experienced difficulties holding until the sludge can be land applied due to their smaller size.

Mr. Mix testified Merrell Bros. invoices indicate the sludge was removed in September 2020, March 2021, and August 2021 when farmland was unavailable for applying sludge because of weather. Mr. Mix said that if farmland is available, but there is a wet spring or early winter storms, it makes it impossible to get heavy equipment needed to apply the sludge. He asserted that is why IDEM requires aerobic digesters capacity to be designed for a storage time of 90 days for treatment, and if the sludge is land applied an additional 30-day storage because of weather preventing land application. In added that if chemical phosphorus removal is used by the plant, additional digester capacity is required for the chemical sludge.

In response to Ms. Sullivan's statement that there is no "indication whether that weather condition that occurred in 2020 may be expected to reoccur on an annual basis during the life of ASU's rates." Mr. Mix testified that weather varies from year to year; in fact, sometimes from hour to hour. Mix - Page 14 As he explained, the weather season (i.e., fall, winter, and spring) matters but it also depends on when sludge needs to be removed, which varies with accumulation from wastewater processing because it is based not only on the weather but on the treatment process and the size of the aerobic digesters.

Mr. Mix recommended that the sludge expense of \$68,564 be recovered because it is a reasonable and prudent expense to keep the plants' treatment process operating at its optimum to

assume quality effluent which meets the plants' NPDES Permit. Plant operation, digester capacity and weather all play a part in sludge management. Mr. Mix testified he hoped the Commission will agree that complying with the plants' NPDES Permit is important.

Commission Discussion: As the OUCC's Table CSF-7 shows, the quantity of sludge ASU removes from its plant varies greatly from year to year, making the quantity removed in a single test year not representative or predictive of ASU's ongoing operations. For instance, in 2019 ASU removed less than 25% of the sludge ASU removed in its 2020 test year. Based on ASU's practices, sludge removal is in the nature of a periodic expense. We agree that basing expenses on a four-year average of quantities of sludge removed is reasonable and we find that ASU's sludge removal expense should be so based.

We next address whether the calculation of sludge removal costs should include as a factor the higher cost of hauling sludge to Merrell Bros.'s regional biosolids center. ASU has not hauled sludge to Merrell Bros.'s regional biosolids center in each year. In fact, ASU acknowledged that, in addition to not hauling sludge to the center in 2018 or 2019, it did not have invoices for hauling sludge to the center in 2015 or 2017. (OUCC's Cross Examination Exhibit No. 9, Response DR 19-5.) (According to ASU, ASU had 12,426 gallons of sludge hauled to the regional biosolids center in 2016 but was charged the land application rate.) Presumably, the cost of hauling sludge to the regional biosolids center is a cost ASU has largely avoided.

The OUCC suggested that ASU may be expected to avoid this cost. Ms. Sullivan noted in her testimony that the only reason ASU gave for not land applying the sludge was a vague reference to the weather without further explanation. Ms. Sullivan noted ASU did not explain why such a condition would be likely to recur or why the sludge could not be removed after that weather condition was no longer existing. Public's Exhibit No. 2, p.15.

In response, Mr. Mix spoke generally about the need for wastewater treatment plants to remove sludge to maintain a cell residence time (CRT) to allow allowing proper nitrification. Mr. Mix spoke about the need of plant operators decide when and how much to waste. He noted every plant has a limited sludge storage capacity and if it is full, then the operator cannot wait to waste sludge or the plant would violate its NPDES Permit. The only assertion Mr. Mix made about ASU's system is that while the aerobic digester tanks at the Carriage Estates III Plant have sufficient capacity to hold sludge until weather permits it to be directly land applied by Merrell Bros, "the digesters at County Home have experienced difficulties holding until the sludge can be land applied due to their smaller size."

This would seem to suggest that ASU had no choice but to send its sludge to the biosolids center. But Mr. Mix never actually made such an assertion. But in response to the OUCC's discovery asking ASU to state the available capacity of the sludge digesters at County Home on September 9, 2020 when ASU had its sludge hauled to the biosolids center, ASU did not assert it had no available capacity, rather it said simply that "ASU does not track the day-to-day digester capacity availability." (OUCC's Cross Examination Exhibit No. 9, Response DR 19-8.) Despite the opportunities it had in its rebuttal case and in response to post-rebuttal discovery, ASU did not explain or justify its decision in its test year to send sludge to the biosolids center. ASU claims it

does not know what available capacity it had at County Home. Thus, it had the sludge removed without determining whether it needed to incur the cost to remove the sludge at that time. We are left with the assumption that ASU had the sludge removed to the biosolids because it was necessarily the time for it to do so. Our understanding of ASU's operations does not permit that conclusion.

It is important for ASU to justify its decision to incur higher costs in the test year. And it is reasonable for the OUCC and the IURC to expect such justification. For-profit utilities benefit through higher rates for any unjustified or non-recurring expense the Commission does not identify or exclude. ASU has not presented any facts related to its operations that show it was necessary for it to incur the higher cost of removing sludge to the biosolids center. ASU aerobic digester operating capacity at its County Home Plant is 180,000 gallons, and at its Carriage Estates Treatment Plant ASU has a capacity of 1,950,000 gallons. (OUCC's Cross Examination Exhibit No. 9, Response DR 19-6, DR 19-7.) ASU should track its day-to-day available digester capacity. Through appropriate planning ASU should reasonably be able to avoid the higher cost of having its sludge hauled to the biosolids center.

For the forgoing reasons, we find that ASU's sludge removal revenue requirement shall be based on the four-year average of volume multiplied by the cost of land application resulting in sludge expense of \$43,330 plus \$95 for Biosolid pre-testing and \$485 for Nutrient testing to establish total pro forma annual sludge removal revenue requirement of \$43,910.

D. Cost Caused By Customer Growth. Ms. Sullivan noted ASU proposed two adjustments to account for costs related to its proposed level for ratemaking purposes of residential and commercial customer growth – a \$7,778 increase to purchased power and a \$123 increase to Miscellaneous expense for postage. Ms. Sullivan proposed a larger adjustment based on the OUCC's higher growth projection calculations, which included both the test year and the 12-month adjustment period. Ms. Sullivan recommended an increase of \$9,189 to purchased power, \$1,619 increase to sludge removal costs, \$2,232 increase to chemicals cost, and \$2,223 to miscellaneous expenses for postage. Ms. Shafer agreed sewer processing costs will increase with growth but increased sludge removal expense by \$1,120, purchase power by \$4,091, chemicals by \$989, and postage by \$985. We accept the OUCC's customer growth projections and find those amounts shall be incorporated into ASU's pro form revenue requirement.

E. Purchase Power Expense. ASU incurred a total of \$253,419 in purchased power expense during the test year. To reflect increased power associated with customer growth, ASU proposed a \$4,778 increase to test year purchased power resulting in *pro forma* purchased power expense of \$258,197. Ms. Sullivan disagreed with ASU's proposed growth. She explained that her calculation of the increase to purchased power expense due to growth is discussed later in my testimony under the sewer processing cost caused by customer growth section. Ms. Sullivan recommended an increase of \$9,189 to purchased power, to account for increase cost due to growth. Ms. Sullivan also recommended a \$4,177 *decrease* to test year purchased power to eliminate purchased power expense related to the Kimberly Estates Lift

Station, which was to have been removed as part of the Big 3 project. Ms. Sullivan explained she calculated power costs associated with the Kimberly Estates Lift Station through a response to a data request question in which³³ ASU provided the purchased power costs by location, which indicated the Kimberly Estates Lift Station's test year purchased power expense was \$4,177.

ASU's accounting witness Ms. Shafer disagreed with excluding purchased power costs related to the Kimberly Estates Lift Station, which she said will remain in operation for emergency situations as discussed in Mr. Mix's testimony and therefore, it will require power. However, Ms. Shafer testified ASU has voluntarily reduced the amount of purchased power to be included in rates to be representative of emergency usage. She recommended the Commission approve \$1,200 in purchased power and \$1,700 in annual Parts and Miscellaneous expenses resulting in annual operating expenses of \$2,900 in rate base for the emergency use of the Kimberly Estates Lift Station. Ms. Shafer repeated Mr. Mix's assertion that removing the lift station from service or continuing to operate it as emergency backup will not cause a material difference in employee workloads such that a change in headcount could be accomplished.

Commission Discussion and Findings. As we have noted elsewhere in this order. ASU was authorized preapproval of expenditures that was to make the Kimberly Estates Lift Station unnecessary resulting in savings that would translate into lower rates for ASU's customers. Mr. Parks testified that ASU was authorized rate-based construction costs to demolish and remove the physical facility. Finally, ASU had removed from UPIS put the Kimberly Estates Lift Station only to put it back into service. ASU has not convinced us with competent evidence that it was appropriate to return the Kimberly Estates Lift Station into service even on a part-time basis. We approve the OUCC's recommended \$4,177 decrease to test year purchased power to eliminate purchased power expense related to the Kimberly Estates Lift Station and approve the OUCC's increase of \$9,189 to purchased power, to account for increase cost due to growth in accordance with our other findings herein.

F. Contractual Services Expenses. During its test year, ASU expensed a total of \$533,331 for contractual services, including \$13,257 for accounting, \$109,618 for engineering, \$197,906 for legal services, \$24,594 for testing, and \$187,956 for other contractual services expense. Public's Exhibit No. 2, p. 18.

I. Engineering Expenses. Ms. Sullivan recommended a \$97,456 decrease to test year contractual services - engineering expense of \$109,618 resulting in *pro forma* contractual services - engineering expense of \$12,162. Ms. Sullivan explained that she recommended removing expenses related to eight different providers.

33 OUCC Attachment CFS-12: OUCC Data Request No. 3-7 and 13-28 – Electric Accounts and Invoices

Table CFS-8: Engineering Expense Adjustments

	<u>Amount</u>	
Ed Serwoka		
Contract	\$ 18,000	
Additional Services	<u>1,447</u>	\$ 19,447
Angle Right Solutions	2,250	
Christopher Burke - Expert Witness	3,962	
Cornerstone Design	6,650	
Marjorie Potvin	<u>8,660</u>	21,522
Tbird Design Service Corp.		
Klondike Sanitary Ext.	986	
Carriage Estates Plant	3,360	
Service Area Planning	14,701	
Bella Terra Subdivision	5,200	
Carriage Estates Asbuilts	10,116	
Carriage Estates Plant	1,610	35,973
Vester and Associates, Inc.	10,954	
Williams Creek Management Corp.	<u>9,560</u>	20,514
		<u>\$ 97,456</u>

a. **Contract with Mr. Serowka.** Ms. Sullivan explained the \$19,447 decrease related to payments to Ed Serowka pursuant to a contract, dated February 27, 2020, which she noted simply states ASU will pay Mr. Serowka \$2,000 a month until he is no longer physically or mentally capable of performing the duties assigned by ASU. Ms. Sullivan attached to her testimony a copy of ASU’s response to the discovery, which described some of the duties performed by Mr. Serowka.³⁴ Ms. Sullivan’s Table CFS-9 set forth the 8 duties ASU specified for Mr. Serowka: “(1) Review the plant’s MRO reports; (2) Prepare the DMR report for the plants, (3) Attend Tuesday morning staff meetings to help with any issues, (4) Prepare and/or supervise the plant construction permits, (5) Prepare and obtain NPDES permits, (6) Prepare and supervise any agreed orders, (7) Assist ASU’s staff in dealing with any issues that arise at either plant in regard to process, equipment, or operations, and (8) Assist in any OUCC and IURC requests for data, attend meetings and provide testimony when required.”³⁵

34 OUCC Attachment CFS-13: OUCC Date Request No. 3-15 – Serowka Contract and Duties

35 OUCC Attachment CFS-13: OUCC Date Request No. 3-15 - Serowka Contract and Duties

Ms. Sullivan recommended ASU only be permitted to recover \$6,000 per year as a revenue requirement arguing that only two of the eight tasks listed are reasonable to include in rates as a contractual services expense. Ms. Sullivan asserted that any duty Mr. Serowka has preparing and/or supervising plant construction permits does not justify this 2020 contract as ASU has completed construction of its treatment plant. Further, she asserted that preparing and obtain NPDES permits does not justify the contractual services cost as obtaining an NPDES permit is not a recurring annual expense but must be accomplished every five years. Ms. Sullivan also indicated that Mr. Serowka preparing and supervising any agreed orders is a disallowed expense. Ms. Sullivan noted the duties associated with Mr. Serowka participating in meetings and providing testimony is a non-recurring expense. Finally, Ms. Sullivan further argued that reviewing the plant's MRO reports and preparing the DMR report for the plants could and should be performed by utility employees. In addition to the payments under the Contract, Ms. Sullivan noted Mr. Serowka also received \$1,447 for attending a meeting with Attorney Nick Kile and a hearing with the IURC, which she identified as non-recurring. Therefore, Ms. Sullivan recommend an additional \$1,447 decrease. (See OUCC Schedule 6, Adjustment No. 7(b).)

ASU's witness Ms. Shafer did not agree with Ms. Sullivan with respect to her assertions that duties ASU ascribed to Mr. Serowka were non-recurring. Ms. Shafer said ASU has a yearly contract with Mr. Serowka for \$2,000/month regardless of the number of hours he works on ASU projects. While the activities themselves may not be recurring, Mr. Serowka is on retainer and the retainer expense is recurring. Responding to the suggestion that Mr. Serowka's duties can be performed by ASU personnel, Ms. Shafer asserted Ms. Sullivan has taken a simplistic view of the operations of ASU. She repeated Mr. Mix's assertion that ASU operates at lower staffing levels than would be expected for a wastewater utility of its size. Ms. Shafer argued that just because an employee can perform the duty of another does not mean they have the time to, nor does that mean management has decided that this is the best use of the employee's time.

Commission discussion and finding: We address this issue first by noting that the contract itself lists none of the duties ASU ascribed to Mr. Serowka in its data request response. Besides a date and the signature lines and an indication that both parties will be given a copy. The entirety of the contract is below:

This retainer agreement is made by and between American Suburban Utilities, Inc. (ASU) and Edward J. Serowka, P.E. consulting engineer. As compensation in full for services performed under this agreement, ASU will pay Edward J. Serowka, P.E. a monthly fee of \$2,000.00. This agreement will be automatically renewed annually until either the death of Edward J. Serowka or it is medically proven that he no longer has the mental or physical capacity to perform his duties as determined by ASU.

(OUCC Attachment CFS-13, p. 2 of 2.)

Notably, the agreement does not specify any services for Mr. Serowka to perform. We consider basing rates on an agreement that lacks any specificity as to what is being provided under the agreement is against public policy. That the terms of the agreement are defectively unclear is manifested by the fact that the additional \$1,477 fee Mr. Serowka received for attending a meeting

with ASU's counsel and a hearing with the IURC appears to fall squarely within one of the duties ASU enumerate as falling under the agreement ("Assist in and [sic] OUCC and IURC requests for data, attend meetings and provide testimony when required."³⁶). We cannot assume what either party believes the foregoing retainer agreement establishes for services to be provided by Mr. Serowka to ASU. It may be that one or both parties construe the agreement to provide that Mr. Serowka is to be compensated merely for his knowledge of ASU's system. In that case, Mr. Serowka would charge additionally and separately for any of the tasks ASU enumerated in its data request response. In any event, Ms. Shafer acknowledged in her rebuttal that Mr. Serowka is compensated \$2,000/month regardless of the number of hours he works on ASU projects. Another unusual and troubling aspect of the agreement is ASU's obligation to pay will continue until death of the contractual service provider or there is medical proof the service provider cannot perform services that the contract does not itself define. Yet, there is no obligation by the service provider to submit to any medical exam. As the contract was entered into in the test year, and ASU proposes the expense be included in its rates as a pro forma expense, ASU's customers bear the risk or cost associated with the lack of definition in its contract. Ratepayers should not be required to pay rates for ill-defined or undefined contractual services.

Although the recovery of contractual services should be denied for that reason alone, we will also address the specific duties ascribed to Mr. Serowka in ASU's response to the OUCC's data request. ASU's response to those arguments was limited. Responding to the suggestion that some of the duties ascribed to Mr. Serowka contract can be performed by ASU personnel, Ms. Shafer asserted Ms. Sullivan has taken a simplistic view of the operations of ASU. She then repeated Mr. Mix's assertion that ASU operates at lower staffing levels than would be expected for a wastewater utility of its size. Ms. Shafer argued that just because an employee can perform the duty of another does not mean they have the time to, nor does that mean management has decided that this is the best use of the employee's time. In the same year that ASU entered into its contractual services agreement with Mr. Serowka, ASU increased its own staffing levels in its test year to a level that was unprecedented. Yet there was no evidence ASU was not completing its DMR reports or reviewing its MROs. Moreover, if ASU reasonably intended to use Mr. Serowka's contractual services to supplement ASU's staffing requirements, it would have been reasonable for ASU to spell out those duties in the contract for services and not after the fact in response to a data request.

As to the OUCC's position that some of the duties ASU ascribed to Mr. Serowka in response to the data request were duties that were not expected to recur or are disallowed, Ms. Shafer merely responded by noting that the obligation to pay Mr. Serowka will recur regardless of whether he performs any services. This misses the point. The issue is whether the terms of the services contract are reasonable, and they are not reasonable if the provider does not have sufficient duties to perform or performs duties that should not properly be paid by customers. For instance, it is the utility and not customers that should bear the cost associated with entering into agreed

36 OUCC Attachment CFS-13: OUCC Date Request No. 3-15 - Serowka Contract and Duties

orders for non-compliance. ASU's contract with Mr. Serowka affords no distinction between services that should or should not properly be included in rates as a revenue requirement. While the OUCC attempted to parse and assign a value to a portion of the duties ascribed to Mr. Serowka, upon reflection we disagree that such a parsing can be made.

For the forgoing reasons, we disallow the \$24,000 pro forma annual revenue requirement associated with the agreement with Mr. Serowka. Likewise, we disallow the \$1,477 expense incurred and paid to Mr. Serowka to attend a meeting with ASU's counsel and attend a hearing as that is a non-recurring expense.

b. Decrease related to AngleRight Solutions

LLC. Ms. Sullivan explained her \$2,250 decrease to contractual services expense related to AngleRight Solutions LLC modification and downloading of CAD drawings associated with the Carriage Estates III project.³⁷ Ms. Sullivan explained that the cost of completing CAD drawings are not operating costs but are capital costs. Moreover, she noted the CAD drawings were for the CE-III project and are part of the preapproved capital costs. Therefore, she removed \$2,250 from *pro forma* operating expense. (See OUCC Schedule 6, Adjustment No. 7(c).) Ms. Shafer agreed the costs should not be considering an operating expense but argued that it would be inappropriate to disallow the CAD drawings altogether because the CAD Drawings were Engineering Plans for the Carriage Estates Plant Expansion. We address the latter in the rate base section. We accept the OUCC's \$2,250 decrease to contractual services expense related to AngleRight Solutions LLC.

c. Decrease related to engineering testimony

from Jennifer Leshney, P.E. Ms. Sullivan recommended not including in pro forma operating expense \$3,962 related to engineering testimony from Jennifer Leshney, P.E. of Christopher B. Burke Engineering, LLC, which Jennifer Leshney provided as an expert witness for ASU in Cause No. 44676-S1, which addressed the OUCC's objection to ASU's November 7, 2019, Submission of Compliance Filing and Phase III Rates. Ms. Sullivan explained that Ms. Leshney's testimony in the sub-docket was offered, in part, to support ASU's assertion that the CE-III Project was substantially complete and in service as of the date of the compliance filing. Ultimately, the Commission found "ASU had not completed its CE-III project and was not in service at the time it filed its Compliance Filing on November 7, 2019."³⁸ Ms. Sullivan argued that recovery of this expense from ratepayers is not appropriate and added further that it is a non-recurring expense. Accordingly, Ms. Sullivan removed \$3,962 from *pro forma* operating expenses. (See OUCC Schedule 6, Adjustment No. 9(d).)

Ms. Shafer did not accept that adjustment and testified that ASU could not have forecasted this expense or what the OUCC's opposition would be. Ms. Leshney testified on two issues: (1) that the plant was in service as of the date that it was certified to be in service; and (2) that the plant that was built was properly designed and was indeed a better design than the "options" that

37 OUCC Attachment CFS -14: OUCC Data Request No. 1-12 – AngleRight Solutions LLC

38 Commission Order, Cause No. 44676 S1, dated September 22, 2021, p 40.

had been presented in the preapproval case. Ms. Shafer asserted ASU lost on the first issue but prevailed on the second. She said the case was litigated by ASU in good faith, and the amount should be recoverable. Ms. Shafer said ASU would amortize this test year expense over five years.

ASU seemingly acknowledges the expense is non-recurring and should not be a *pro forma* operating expense. However, for the first time in its rebuttal case, ASU asks to recover a *past* non-recurring operating expense over five years. ASU had the opportunity to file case-in-chief testimony after the Commission scheduled a hearing in this case but declined to do so. In that case, the OUCC would have had an opportunity to file testimony responsive to such a request. Were we inclined to authorize the creation of a mechanism to allow recovery of a past operating expense in this unilateral matter, which we are not, ASU has provided inadequate evidence to support such relief. Accordingly, we decline to authorize the requested recovery mechanism and find that the cost of Ms. Leshney's expert testimony should be excluded as a *pro forma* revenue requirement in this Cause.

We also address Ms. Shafer's assertion that because ASU prevailed on one of the two issues she identified; it should be permitted to recover the expense. Ms. Shafer's assertion is a gross oversimplification of our findings in Cause No. 44676-S1. Among our findings we found the rate base value ASU had proposed in its compliance filing was overstated. In particular, we found ASU had overstated the value of its plant associated with phosphorous removal. Order Cause No. 44676 S1, pp 37-38. The findings we made in that order addressed several operational deficiencies and issues. Ultimately, we need not parse the degree or percentage one party prevailed. ASU's need to participate in the sub-docket began with decisions made by ASU. ASU will have no compliance filing, and an expense such as this should not be expected to recur during the life of these rates. We find that this expense should not be included in ASU's *pro forma* revenue requirement.

d. Cornerstone Design and Marjorie Potvin.

Ms. Sullivan removed from her *pro forma* operating expenses \$6,650 paid to Cornerstone Design and \$8,660 paid to Marjorie Potvin. She explained that ASU contracted Cornerstone Design to create plans for a new office complex and explained that the expenditure should not be included in the revenue requirement because it does not represent a recurring annual operating expense. Ms. Sullivan explained that Marjorie Potvin created plans and drawing for ASU's facilities, which is also a non-recurring expense.³⁹ Ms. Sullivan likewise removed the \$8,660 as a non-recurring expense. (See OUCC Schedule 6, Adjustment No. 7(f).)

Ms. Shafer said ASU agreed to the removal of \$6,650 for Cornerstone Design. As to contractual services performed by Ms. Potvin, Ms. Shafer testified that performed all of her work on the Carriage Estates projects. She noted ASU is willing to agree this expense should not be ongoing, but as it was a legitimately incurred cost that ASU will capitalize this cost as reflected.

39 OUCC Attachment CFS -17: OUCC Data Request No. 1-12 – Marjorie Potvin

We find both amounts should be excluded from pro forma operating expenses. As to the whether the cost of the contractual services performed by Ms. Potvin should be included in rate base, that has been addressed in our rate base section above.

e. **TBird Design and Vester and Associates, Inc. and Williams Creek Management Corp.** Ms. Sullivan removed from pro forma operating expenses the \$35,974 decrease related to TBird Design. Ms. Sullivan testified that all but one of the various projects for which TBird Design received \$35,974 related to Klondike Rd. or Carriage Estates. She noted that Engineering costs for Klondike Rd. and Carriage Estate were included in ASU's preapproval.⁴⁰ Ms. Sullivan noted that these were capital costs, which OUCC witness Margaret Stull addressed in her testimony. Therefore, I removed \$35,974. (See OUCC Schedule 6, Adjustment No. 7(g-l).)

Ms. Sullivan removed from pro forma operating expenses \$10,954 related to Vester and Associates, Inc. Ms. Sullivan noted that Vester and Associates, Inc. received \$10,954 for design and staking associated with the Morehouse Rd. sewer relocation.⁴¹ Ms. Sullivan testified those are capital costs not operating expenses. Ms. Sullivan noted that whether the costs should be included in rate base is discussed by OUCC witness Margaret Stull in her testimony. Ms. Sullivan removed \$10,954 from *pro forma* operating expense. (See OUCC Schedule 6, Adjustment No. 7(m).)

Ms. Sullivan removed from pro forma operating expenses \$9,560 decrease related to Williams Creek Management Corp, noting that Williams Creek Management Corp. received \$9,560 for maintenance and preservation of Big 3 Sewer land.⁴² Ms. Sullivan testified that the cost is a capital cost not an operating expense, and further that it was included in Big 3 Sewer's preapproval case. Ms. Sullivan noted that whether the costs should be included in rate base is discussed by OUCC witness Margaret Stull in her testimony. Ms. Sullivan removed \$9,560 from *pro forma* operating expense. (See OUCC Schedule 6, Adjustment No. 7(n).)

Ms. Shafer responded to the OUCC's reductions to pro forma operating expenses with respect to contractual expenses for TBird Design and Vester and Associates, Inc. and Williams Creek Management Corp. (p. 22-23) She argued that the expenses incurred for these contractual services were reasonably incurred, and ASU is not prohibited under the preapproval case from seeking recovery of these costs. She noted however that ASU moved the Vester and Associates, Inc.'s \$10,954 to construction work in progress (CWIP) and that move has been reflected in her attached schedules. Through Ms. Shafer's testimony, ASU acknowledges the expenses are capital in nature should not be included in ASU's pro forma operating expense. To what extent such expenses should be included in ASU's rate base we have addressed above.

40 OUCC Attachment CFS -18: OUCC Data Request No. 1-12 – TBird Design

41 OUCC Attachment CFS -19: OUCC Data Request No. 1-12 – Vester and Associates

42 OUCC Attachment CFS -20: OUCC Data Request No. 1-12 – Williams Creek Management Corp.

We find ASU’s pro forma revenue requirement for Engineering Contractual services should be set at \$6,162.

G. Legal Expenses. Ms. Sullivan recommended a \$160,423 decrease to test year contractual services – legal expenses of \$197,906 resulting in a *pro forma* expense of \$37,483. Ms. Sullivan testified these expenses are capital in nature or otherwise nonrecoverable.

Table CFS-10: Legal Expense Adjustment

	<u>Amount</u>	
Barnes & Thornburg		
000019206-000009 General Environmental	\$ 14,126	
00019206-000027 2016 Rate Case Compliance		
Filing Subdocket	<u>101,896</u>	
		\$ 116,022
Gutwein LLP Attorneys		
Case No. 2019-26314-W	15,411	
Withered Burns & Persin, LLP	<u>28,990</u>	
		<u>44,401</u>
		<u>\$ 160,423</u>

Ms. Sullivan explained her \$116,022 adjustment related to two matters in which Barnes & Thornburg provided legal counsel. She noted that the invoices provided were thoroughly redacted, however, it appeared that one case related to environmental penalties imposed by Indiana Department of Environmental Management (“IDEM”) (\$14,126) and the other case (\$101,896) related to compliance issues.⁴³ Ms. Sullivan argued that expenses related to IDEM violations should not be recovered through rates. With respect to the compliance issue, she noted this is presumably related to rate case expense in Cause No. 44676 and the amount of rate case expense ASU could recover was established in that order. She added, moreover, the revenue requirement for rate case expense in Cause No. 44676 was set to terminate unless ASU filed this rate case. Despite full recovery through amortization, she explained that ASU will still be collecting the related revenue requirement in rates until an order has been issued in this Cause. Most importantly, she noted the compliance issue arose because ASU tried to implement its phased rate increase before it had completed its project. Ms. Sullivan asserted it is inappropriate for ASU to recover its related legal expense from its ratepayers, and she removed \$116,022 from *pro forma* operating expense. (See OUCC Schedule 6, Adjustment No. 8(a-b).)

With regard to the \$14,126 in expenses from B&T, Ms. Shafer asserted B&T does not represent ASU in any such cases. She believed Ms. Sullivan had incorrectly inferred the

43 OUCC Attachment CFS -21: OUCC Data Request No. 1-13 – Barnes & Thornburg LLP

relationship from ASU data request responses to the OUCC (OUCC attachment 3 CFS-21). She testified that the file name of “GENERAL ENVIRONMENTAL” does not mean that B&T represents ASU in IDEM violation proceedings. A variety of regularly expected general legal work is included in this file. She testified that none of that work is related to IDEM violations but are legitimate expenses to be included in rates. Through its proposed order, the OUCC accepted ASU’s explanation, and we find the \$14,126 should be included in ASU’s pro forma revenue requirement.

Ms. Shafer acknowledged the remaining balance of the expenses from B&T were incurred for the subdocket – Cause No. 44676 S1. She said Ms. Sullivan claims ASU should not recover its rate case expense from Cause No. 44676 because ASU lost on the issue related to its phased rate increase occurring before it has completed its projects (Sullivan at 24, line 13-17). Ms. Shafer asserted that is an inaccurate representation of the issues in the subdocket and stated that the largest dollar value issue in the subdocket was the amount that was to be allowed for the cost of the upgrade for the CE-3, and on that issue, ASU prevailed. ASU sought approval of the phased rate increase in good faith and had no way of knowing what the OUCC would oppose, requiring further litigation efforts. Ms. Shafer said that anticipating costs of a subdocket in the expense for rate case expense in the last rate case could not have been anticipated.

We need not delve into the factual quagmire of resolving who may be considered to have prevailed in the sub-docket or whether ASU’s legal expenses are reasonable and to what issues the expenses related. We also need not delve into the legal and administrative law issues as to whether ASU should be permitted to recover expenses for a matter that began over a dispute as to whether ASU had completed the project it said it was entitled to earn a return and include in rates. The fact is that ASU seeks to recover the \$101,896 expense each year as a recurring *pro forma* operating expense. ASU will not be making any subsequent Phase rate base compliance filings during the life of these rates, and even if it that were not the case, objections to such filings are rare indeed. We find that this expense not a recurring expense and it would be inappropriate for ASU to secure such funds every year throughout the life of these rates. We find the \$101,896 should not be included in ASU’s pro forma revenue requirement.

Mr. Sullivan noted that Gutwein LLP Attorneys provided legal services related to IDEM violations and stated they are therefore not recoverable.⁴⁴ She removed the \$15,411 from ASU’s *pro forma* operating expense. (See OUCC Schedule 6, Adjustment No. 8(c).) Ms. Shafer acknowledged that \$5,131 related to the agreed order case, which ASU agrees to not seek recovery for, Gutwein LLP Attorneys were retained to assist with ASU’s NPDES permit. Through its proposed order, the OUCC accepted ASU’s explanation, and we find the \$10,280 of the amount should be included in ASU’s pro forma revenue requirement.

Ms. Sullivan removed \$28,990 from *pro forma* operating expense, as the basis of this expense was not provided.⁴⁵ She asserted the invoices provided in response to discovery do not

44 OUCC Attachment CFS -22: OUCC Data Request No. 1-13 – Gutwein LLP Attorneys

45 OUCC Attachment CFS -23: OUCC Data Request No. 1-13 – Withered Burns, LLP

lead to any conclusion as to whether the expense is recoverable, recurring, and not capital in nature. (See OUCC Schedule 6, Adjustment No. 8(d).) Ms. Shafer Withered Burns & Persin, LLP, who assists ASU in easement and acquisition matters. Through its proposed order, the OUCC accepted ASU's explanation, and we find the \$28,990 should be included *pro forma* operating expense revenue requirement.

H. Testing Expenses. Ms. Sullivan recommended a \$12,550 decrease to test year Contractual Service - Testing expense of \$24,594, yielding *pro forma* operating expense of \$12,044. (See OUCC Schedule 6, Adjustment 9.) She explained that this service is now provided by ASU staff as of 2020. She explained that Sherri Crandell, president of S&D Testing, was added to ASU's payroll during the test year and is included in *pro forma* salaries and wages. She asserted Ms. Crandell will perform the tasks and duties previously performed by S&D Testing.

Mr. Mix responded in rebuttal that Mr. Mix testified that Ms. Crandall is not performing the same tasks as S&D Testing. He explained that Ms. Crandall, who is the president of S & D Testing is also an hourly ASU employee. Mr. Mix explained that Ms. Crandall's duties as an hourly paid employee are for lab work. He noted ASU has contracted with S & D Testing for the service of a certified operator, as IDEM requires that the treatment system operate under the supervision of an Indiana Certified Plant Operator. Mr. Mix explained Ms. Crandall is not a licensed certified operator, but her company, S & D Testing, provides Mr. Crandall, who has a Class IV Indiana Operator License No. WW015007.

Based on Mr. Mix's explanation that Ms. Crandall is not performing the same tasks as S&D Testing, we find that ASU may continue to include the contractual services amount of \$12,550 in its *pro forma* revenue requirement.

I. Other Contractual Services Expenses. Ms. Sullivan recommended removing expenses related to two (2) providers -- First Time Development Corp. in the amount of \$29,390 and Kokopelli in the amount of \$82,672 for a combined decrease of \$112,062 decrease to test year "contractual services – other" expenses of \$187,956 resulting in a *pro forma* expense of \$75,894.

Ms. Sullivan recommended removing expenses related to two (2) providers -- First Time Development Corp. in the amount of \$29,390 and Kokopelli in the amount of \$82,672 for a combined decrease of \$112,062 to test year "contractual services – other" expenses of \$187,956 resulting in a *pro forma* expense of \$75,894.

First Time Development Jet Vac costs. Ms. Sullivan explained that ASU purchased from First Time Development Corp. (“FTDC”) the jet vac truck it used to provide this service to ASU.⁴⁶ As such, tasks previously performed by FTDC will fall to ASU staff. Accordingly, she removed \$29,390 as ASU will not be expected to incur this expense. (See OUCC Schedule 6, Adjustment No. 10(a).)

ASU’s witness, Ms. Shafer did not agree with Ms. Sullivan’s proposed removal of ongoing JET Vac expenses stating that JET Vac was not and is not a one-time expense. She asserted ASU previously paid its affiliate for this service, which under the affiliate agreement at the time was costs plus 10%. She stated that now that ASU owns the JET Vac, the services it provides will still occur and the costs associated with operating are still incurred. She explained that in the application ASU had adjusted out the plus 10% that had been paid to the affiliate.

First, we have no basis to determine whether ASU’s affiliate First-Time Development’s actual costs to Jet vac’s ASU’s lines was truly \$29,390. No evidence support’s ASU having such knowledge or transparency with respect to its affiliate’s costs. Moreover, for an asserted savings of only roughly \$3,000 it hardly made sense for ASU to incur the cost of buying a Jet Vac truck from its affiliate. Certainly, ASU’s staff will operate the Jet Vac truck, and that cost will be met by our findings with respect to Salaries and Wages and attendant employee benefits expense. Authorizing First-time’s charges even at a ten percent discount would result in double recovery. Accordingly, we find the OUCC’s \$29,390 reduction is both appropriate and reasonable.

2020 Kokopelli Asphalt Maintenance Invoice No. 402 Ms. Sullivan explained that the other decrease to Other Contractual Services expense related to Kokopelli LLC, noting that ASU submitted a one-page invoice for work done by Kokopelli LLC (“Kokopelli”) in the amount of \$82,672.⁴⁷ Ms. Sullivan testified that ASU was unable to provide support for the charges and noted that Mr. Parks explained why the OUCC recommended a \$82,672 decrease to expenses associated with Kokopelli from *pro forma* operating expense. (See OUCC Schedule 6, Adjustment No. 10(b).)

Mr. Parks testified that 44% of ASU test year consulting expense “Other” was for an emergency sewer repair performed at 3725 US 52 by Kokopelli Asphalt Maintenance, who billed ASU \$82,672.11 in a one-page invoice that lacked any basic information that would permit a person reviewing the invoice to determine what had been done and whether the prices were reasonable. *Id.* at 40-41. Mr. Parks testified the invoice listed costs for twelve-line items totaling \$82,672.11 but provided no breakdown, no basis for each charge, and no invoices supporting the line item charges. *Id.* at 44. Mr. Parks testified Kokopelli did not provide any repair information such as pipe type, length or whether it repaired or replaced the pipe. He testified ASU indicated it was a 14-inch clay pipe installed in the 1960s but also did not indicate length repaired or replaced.

46 OUCC Attachment CFS-24: First Time Development Corp. sale of equipment.

47 OUCC Attachment CFS-25: Kokopelli invoice.

Id. at 43. Mr. Parks explained that responses to discovery were unavailing noting that ASU failed to support *any* of the labor, equipment, materials, and subcontractor costs. Id. at 41. He noted Kokopelli later stated “Further documentation is not available at this time due to a building flood in 2021 causing a complete loss of records and receipts. Id. at 44. Mr. Parks noted that ASU’s response to one question was “To be provided; Kokopelli staff is currently on spring break.” Mr. Parks considered ASU needing to defer the response to a contractor strongly suggested ASU does not require, obtain, or maintain adequate records to support its claimed costs and that ASU accepted Kokopelli’s one-page \$82,672.11 invoice without internal procedures to review, verify, and document the charges. Id.

Mr. Parks testified that ASU’s inaccurate continuing property records, poor recordkeeping practices, and lack of records have been an issue in past cases with the Commission in Cause No. 44676 agreeing and concluding its own review of invoices brought into question the adequacy of ASU’s records. Id. Mr. Parks testified ASU has a particular obligation to show its sewer repair expense is reasonable due to these past recordkeeping problems. Parks at 47. Mr. Parks noted that in the final order in Cause No. 44676 the Commission said it expects ASU to comply with NARUC’s Accounting Instruction 2 and stated the following:

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.” (Emphasis added by the OUCC) Final Order, Cause No. 44676, pp. 40-41.

Parks at 45.

Mr. Parks testified that despite being given the opportunity to do so, ASU had not supported the Kokopelli invoice charges. He testified the \$82,762.11 charge is not reasonable based on his knowledge of sewer repair work, typical costs for sewer repairs and ASU’s recent costs per LF for deep sewer installation. Id. at 51. Mr. Parks also concluded Kokopelli’s charges are not reasonable and appear excessive to repair an existing 14-inch sewer that is only 13 feet deep within the right-of-way with good access from US 52. Id. at 45. He disputed ASU’s claim in discovery that the toe of the embankment is ten feet below US 52. Mr. Parks provided point elevations from a Department of Natural Resources website he used to determine the ditch line elevation at approximately 650 feet is less than four feet lower than the US 52 shoulder elevation of approximately 653.65 feet next to the sewer break area, not the ten feet claimed by ASU. Id. at 46. He criticized both ASU and Kokopelli for not knowing the length replaced, a basic project parameter, and stated Kokopelli’s and ASU’s failure to list the length and lack of support for the invoiced charges should result in disallowance of this expense. He testified it is not administratively efficient to have to go through repeated discovery and still not know this basic information. Id. at 48.

Mr. Parks also discussed the lack of clear information as to the timing of the repair. He noted that Kokopelli's Invoice No. 402, dated February 20, 2020, predated the work by a month. Id. at 41. He reported that in a letter provided in discovery, Kokopelli stated ASU called them on March 20, 2020, and that "By March 25, 2020, we were able to contain the inflow of water and sediment to make necessary repairs." He testified it appears it took five days to control the groundwater, but Kokopelli's letter does not state the duration of sewer repairs once groundwater was controlled nor how long it took for site restoration. Id. at 42.

Mr. Parks testified that in follow-up discovery about work duration ASU reported nothing beyond it took "Approximately 2 weeks starting 20-Mar-20." He testified ASU provided no other detail that an auditor could use to understand the work and to determine whether charges were reasonable and prudent. Mr. Parks testified ASU did not report how it learned of the sewer problem and further that ASU was unsure if it had televised the sewer but stated it "believes that the line may have been televised at some time prior to the collapse, however no record can be located." Id. Mr. Parks testified that upon his closer review of other invoices, he found a FTDC invoice indicating televising took place on January 16, 2020 at the same address listed on Kokopelli's invoice with the notation that it was "due to complaint sink hole." He added that on January 17, 2020, FTDC again televised "to inspect lines at US 52" but listed no specific address. Id. at 43.

To assess the reasonableness of Kokopelli's sewer repair invoice, Mr. Parks calculated overall cost per LF metrics by, bracketing the range of replacement costs for two assumed pipe lengths: 1) short length of 20 feet and 2) longer length of 80 feet. Under the short length scenario, he calculated the cost at over \$4,100 per LF which he characterized as excessive at 13 to 16 times higher than the typical \$200 to \$300 per LF costs ASU has paid to install sewers twice as deep including \$284 per LF for 15-inch PVC sewer installed twice as deep (30 feet) for the Cumberland Road Sewer in 2020. Id. at 48. For the longer length metric, he calculated the cost per LF at \$1,033 per LF which he testified also appears excessive at 3 to 4 times ASU's average cost. Id. Mr. Parks testified he also reviewed the line-items, many of which were not reasonable, including a \$11,877 charge for a trench box which Kokopelli stated it abandoned in place, a \$16,838 charge listed as Vac Truck camera even though ASU's Affiliate FTDC had local camera trucks previously used to televise this line, that were sold to ASU in 2020, and \$26,974 for unspecified Kokopelli labor charges equivalent to a six-man crew working 450 hours at \$60 per hour. Id. at 49-50. Mr. Parks testified that to excavate a 10- to 14-foot-deep utility trench, the RS Means manual indicates a two-man crew of one laborer and one excavator operator would be required, and that excavation should have taken half a day. Id. at 50-51. Mr. Parks also questioned what Kokopelli's workers were doing while the groundwater issue was being resolved which Kokopelli indicated took five days. Id. at 51.

Mr. Parks recommended the Commission disallow the Kokopelli invoice as an operating expense as it was neither supported nor shown to be recurring. However, he noted that if the Commission believed this expense should be included in rates as a pro forma operating expense, it should be limited to a pro forma operating expense of \$25,000. Id

ASU's witness Mr. Mix discussed the sewer collapse at 3725 US 52 and the emergency repairs by Kokopelli in his rebuttal testimony. Responding to Mr. Parks' testimony that

Kokopelli's invoice predated the work by a month, Mr. Mix acknowledged the work was actually completed in late January 2020 and that Kokopelli's March 29, 2022 letter stating that "By March 25, 2020, we were able to contain the inflow of water and sediment to make necessary repairs" was in error. ASU Ex. No. 2-R, p. 22. Mr. Mix provided an additional letter from Jeff Bush, Kokopelli's President, dated May 6, 2022 stating the error. (Attachment AAM-R-14) Id.

Mr. Mix asserted Kokopelli's invoice No. 402 dated February 20, 2020, documents the costs for the emergency repair of the sewer line. (Attachment AAM-R15). Id. at 23. Mr. Mix opined the invoice for this emergency work is in standard format for emergency work and argued that Mr. Parks is attempting to hold ASU's vendor to a standard that is not typical business practice. Mr. Mix testified that in an emergency situation that focus is rightfully on the emergency. Id. Mr. Mix opined the U.S. 52 Sewer repair involved extenuating circumstances and provided pictures he claimed showed the severity of the situation. (Attachment AAM-R16) He testified that installation of deep sewers in a design and construct scenario varies considerably from those encountered in an emergency situation. He said months of planning and investigation go into a planned project, and this was not the case in this situation. Mr. Mix testified that in an emergency sewer collapse, normal careful, logical, and sequential engineering processes are abandoned in exchange for expediency. He said there is no time to prepare plans, specifications, work plans, site inspections, utility locates, obtain competitive bids, etc., and the only thing that can be done is marshal all available assets to attack the problem and fix it. In some cases, like the U.S. 52 sewer collapse, it requires calling in reinforcements to assist ASU. He testified time was not on ASU's side in this emergency situation. Mr. Mix testified he understood the Commission's long-standing policy is to not engage in hindsight review of decisions but to base prudence reviews on "the facts and circumstances as they existed at the time" a decision was made. Id. at 23-24.

Mr. Mix responded to Mr. Parks' disagreement with ASU's claim that the toe of the embankment is ten feet below U.S. 52. Mr. Mix defended ASU's discovery saying the ten feet difference stated in response to DR No. 13-20 (Attachment AAM-R17) was estimated visually by ASU staff. Id. at 24. Mr. Mix provided a topographic map from the Tippecanoe County GIS system (Attachment AAM-R18) absent any elevation data that he claimed indicates the actual elevation difference between the road centerline and ditch line is on the order of 6- 7 feet. This map is publicly available online. He said the level of vertical accuracy of these maps is on the order of plus or minus 0.5 to 1 foot, not to the hundredths of a foot as Mr. Parks would seem to indicate. Id. at 24. Mr. Mix opined, nevertheless, whether it was 4-foot or 7-foot is immaterial to the fact that this was an emergency repair on a vital portion of one of ASU's major interceptors directly adjacent to, and potentially endangering U.S. 52, a major thoroughfare designated as a Primary Arterial Highway in the Tippecanoe County Thoroughfare Plan. Id. at 24-25. He testified that during an emergency situation, decisions were made quickly and decisively in an attempt to save the sewer, the road, and the nearby gas main and fiber optic cables. By necessity, communication was often verbal between workers on-site or via telephone. Id. at 25.

Mr. Mix testified that while ASU has equipment, personnel, and expertise to complete many sewer repairs in house, ASU required outside assistance with the emergency repair of the U.S. 52 sewer because of the location, the slope complication, the excavator reach required, and

ASU's lack of equipment capable of digging deep enough. He testified ASU employees were on site with outside contractors working around the clock to complete the repair. He testified ASU management decided to employ an outside underground contractor to complete the actual repair, while ASU staff would install, maintain, and monitor a system of sanitary bypass pumps and lines around the excavation. He asserted the bypass system was maintained 24-7 for approximately 6-7 days. Id. at 25.

Mr. Mix also explained how a Trench box was used in the U.S. 52 Sewer Repair. He said that Trench boxes are primarily used to safeguard utility personnel while completing excavation chores within an excavation region and they also provide support for equipment used in the excavation process and help to protect existing infrastructure from damage during excavation and potentially limiting the extents of the excavation. In this particular case, a trench box was utilized for the safety of the workers inside a potentially unstable excavation, which is common practice. He testified the box was originally supposed to be rented. However, he noted that upon completion of the sewer repair, the contractor was having difficulties removing the trench box, which he thought was due to the settlement/deposition of soil during the previous work. Rather than risking further damage to the road, erosion of the slope, and exposing workers to greater risk, a decision was made by ASU to leave the trench box in place and backfill around it. Mr. Mix asserted this was reasonable. He said this also meant that the road restriction on U.S. 52 would be lifted sooner. For comparison, Mr. Mix said ASU reached out to suppliers to get a quote for a similar trench box, and located one, brand new at a price of \$14,850 in 2022 dollars. (Attachment 18 AAM-R19). Given all the known facts regarding this emergency situation, Mr. Mix said Kokopelli's invoice of \$11,877 for the trench box is reasonable. –Id. at 26.

Mr. Mix explained it is good policy for the Commission to support prudent emergency repairs and opined that the Commission must send a strong message that responding to and repairing equipment under emergency conditions is one of the most important functions that a utility can do to protect the public safety and public health. Mr. Mix disagreed with Mr. Parks' cost estimating method asserting Mr. Parks made no allowance for the complexity of the excavation, safety apparatus, infiltration of the trench, overtime work, risk nor the conditions under which the repair took place. Mr. Mix acknowledged this was not a well-planned and designed sewer installation, but rather a dangerous and tense emergency repair under less-than-ideal conditions. Mr. Mix opined that while the RS Means manual can be a relatively good tool for estimating costs, its use must be tempered with sound engineering judgement and proper situational adjustments. Given all these considerations Mr. Mix said ASU believes the \$82,672.11 is recoverable. Id. at 27.

Commission Finding: We begin by noting the disparity between the level of information ASU provided about this project before the OUCC filed its case and what Mr. Mix, who was not employed by ASU at the time of the repair, seems to recall. Mr. Mix discusses an event to which he was not present and for which there is no meaningful documentation. The source of Mr. Mix's facts is not stated. Particularly troubling is that both Kokopelli and ASU fail to provide the basic sewer replacement parameters of pipe type and length. On its invoice, Kokopelli listed a \$365 purchase from pipe supplier, EJP. Since the OUCC faulted ASU for not knowing the length and

Kokopelli claimed flooding destroyed its records, ASU should have obtained and provided a copy of the pipe invoice from EJP to settle the issue. ASU should also know sewer depth from inverts and rim elevations at manholes or from elevations taken during repairs. We note that Mr. Mix did not dispute Mr. Parks' statements that the sewer was 13 feet deep, 20 to 80 feet long, at a site with good access via US 52. From the evidence of record, the sewer replacement should have had routine elements of excavation safety, traffic control, bypass pumping, protection of other utilities in the right of way, and groundwater control.

Mr. Mix also did not provide a replacement cost per foot or dispute Mr. Parks calculated \$4,100 per LF cost, if a standard 20 feet pipe section was replaced, which cost Mr. Parks deemed excessive at over 13 to 16 times higher than costs per LF he documented for ASU projects with sewers twice as deep. Also troubling is ASU's failure to discuss what caused the sewer collapse, why ASU's sewer televising did not detect the problem, why ASU could not locate its sewer televising records, and what ASU is doing to find and repair sewers before collapse.

However, we will also note that Mr. Mix largely addresses issues not raised by Mr. Parks. Mr. Parks never testified that ASU should have put the emergency repair out to bid. Mr. Mix testified "the Commission must send a strong message that responding to and repairing equipment under emergency conditions is one of the most important functions that a utility can do to protect the public safety and public health." This is a strawman. Mr. Parks never testified ASU should have engaged in a lengthy planning process in response to an emergent condition. Mr. Parks' points are two. First, the costs incurred are not transparent or supported, and ASU in particular has an obligation to support its costs. Second, the costs incurred appear to be both unusual and unusually high.

Mr. Parks' testimony proposed another strong message – a message we inserted into ASU's last rate order – that it needs to document its project costs so the reasonableness of those costs may be determined. While Mr. Mix appears to have a good deal of knowledge about an event that occurred before he was an employee of ASU, his testimony sheds little light on what Kokopelli provided in terms of labor, equipment, and materials in exchange for \$82,672 and eleven cents.

Mr. Mix claims ASU was present and onsite for the emergency repair and that several days were involved. He speaks of the extreme challenges presented. However, those challenges and the exigent circumstances do not prevent Kokopelli or ASU from documenting what steps it took, what labor hours were expended by the contractor and subcontractors, the hourly rates, what materials were purchased and supplied, what quantities, and at what unit costs.

ASU asks that as a result of the \$82,672.11 invoice it paid, that its ratepayers be required to duplicate that amount every year through higher rates. Regardless of our statement in our final order in Cause No. 44676, requiring ASU to provide detail of its project costs, ASU had an obligation to support the reasonableness of this unusual emergency repair, which it did not do. For the foregoing reasons, we find that ASU has not supported the reasonableness of the costs incurred for the amount of the repair invoiced by Kokopelli.

J. Rental Expense. Ms. Sullivan explained that ASU proposed \$60,083 of test year rental expense. During the test year ASU expensed a total of \$60,083

in rental of building/real property expense, \$2,105 paid to Omega Rail Management and \$57,978 paid to Mr. Lods for the ASU office space, storage area, and shop space. She added that ASU and Mr. Lods entered into a new lease agreement on November 1, 2020, that increased ASU's rent from \$54,000 to \$77,869 per year.⁴⁸

Ms. Sullivan asserted that ASU's *pro forma* lease expense is overstated because it includes square footage not reasonably needed to operate the utility. She recommended a \$39,089 decrease to test year's \$60,083 rental of building/real property expense yielding *pro forma* rental of building/real property expense of \$20,994. She explained the \$20,994 consists of \$2,105 paid to Omega Rail Management and \$18,889 paid to Mr. Lods. (See OUCC Schedule 6, Adjustment No.11.)

Ms. Sullivan noted that in its November 30, 2016 order establishing ASU's rates, the Commission disallowed rent expense in that case and stated ASU did not support the additional space and limited the utility's authorized expense for ratemaking purposes to 2,664 square feet at the rate of \$4.50 per square foot per year, yielding an annual lease rate of \$11,988.⁴⁹ (ASU had made a \$52,100 adjustment in Cause No. 44767 to compensate Mr. Lods for more rental space.)

She noted that in 2016, the Commission allowed ASU a revenue requirement sufficient for it to lease 2,664 square feet, which consisted of the main floor and garage space. Since that time, the main floor has increased from 864 square feet to 1,407 square feet. Ms. Sullivan recommended ASU be authorized a revenue requirement to permit it to rent 3,207 square feet, which consist of the expanded main floor (1,407 square feet) and the garage space (1,800 square feet). Ms. Sullivan recommended *pro forma* annual rental expense of \$18,889 (3,207 square feet x \$5.89 per square foot / per year = \$18,889).⁵⁰

In ASU's rebuttal case, Ms. Shafer responded that ASU further analyzed the rent and did a more thorough appraisal (see Attachment KS-R6) for Mr. Matt Washburn's appraisal information. Ms. Shafer asserted that the amount ASU initially included is understated and it should have included a total of \$77,869 for building rental fees and related property taxes.

Commission discussion and finding: ASU has had two opportunities to ask for the rental expense it asks for the first time in its rebuttal case – first, when it submitted its small utility application and second, when it had an opportunity to submit a case-in-chief after we granted the OUCC's motion for an evidentiary hearing. The revised amount is not based on any external causes but on ASU's decision to "further analyze the rent" and do a new appraisal. Revising its

48 OUCC Attachment CFS-26: 2020 Lease Agreement and Realty Advisors' Estimate

49 OUCC Attachment CFS-27: Commission Order Cause No. 44767

50 OUCC Attachment CFS-26: OUCC Data Request No. 3-3 - 2020 Lease and Realty Advisors' Estimate

request at this juncture is inconsistent with the regulatory process and deprives any other party to the proceeding of the opportunity to respond with their own evidence. Ms. Shafer asserted that the increased amount to be included in rates as a result of the higher rent and property tax expense will be offset by the adjustments ASU has made in other areas. This is not a remedy as those other downward adjustments and concessions are independently justified. While we are not striking Ms. Shafer's assertion that the value of the building and related property taxes should be higher according to "a more thorough appraisal," we shall consider it in the weight we give the evidence in this issue. We find *pro forma* annual rental expense shall be \$18,889 (3,207 square feet x \$5.89 per square feet / per year = \$18,889).⁵¹

K. Miscellaneous Expenses. The OUCC recommended a decrease of \$27,713 to Miscellaneous expenses for disallowed travel and meeting expenses, Christmas party expenses, and IDEM violation fees. Ms. Sullivan recommended a \$10,204 decrease to test year Miscellaneous expense associated with Scott Lods' travel and meeting expense. Ms. Sullivan testified she removed expenses either because they did not sufficiently relate to the provision of sewer service or because they were otherwise unsupported. Ms. Sullivan noted that the expenses include the cost of ASU's owner, Scott Lods attending a concrete expo during the test year. (The 2020 CONEXPO-CON/AGG and IFPE expo, held in Las Vegas, matches the date on his plane ticket.) Ms. Sullivan testified that event literature she reviewed online states the expo is "North American's premiere events for the construction industries and the fluid power, power transmission and motion control industries."⁵² Ms. Sullivan removed all expenses that appeared to be associated with the expo, \$2,572.⁵³ (See OUCC Schedule 6, Adjustment No. 12(a).) She noted further that Mr. Lods also attended the 2020 National Association of Home Builders - International Builders Show, also held in Las Vegas. She noted that popular education sessions included Building Homes Faster and The New Rules for New Home Sales.⁵⁴ I removed all expenses I could associate with the show, \$4,071.⁵⁵ (See OUCC Schedule 6, Adjustment No. 12(b)). In addition to expenses related to those events, she removed an additional \$3,561 of travel and meeting expenses, which were not identified and for which no support was provided.⁵⁶ (See OUCC Schedule 6, Adjustment No. 12(c).) Ms. Sullivan also noted that ASU spent \$3,709 during

51 OUCC Attachment CFS-26: OUCC Data Request No. 3-3 - 2020 Lease and Realty Advisors' Estimate

52 OUCC Attachment CFS-28: CONEXPO-CON/AGG and IFPE

53 OUCC Attachment CFS-29: Concrete Expo Invoices

54 OUCC Attachment CFS-30: National Association of Home Builders - International Builders Show

55 OUCC Attachment CFS-31: Home Builders Invoices

56 OUCC Attachment CFS-32: Unsupported Transactions

the test year for a Christmas party.⁵⁷ Ms. Sullivan removed this expense from *pro forma* operating expenses as inappropriate expenses for ratepayers to fund through higher rates. (See OUCC Schedule 6, Adjustment No. 13.) Finally, Ms. Sullivan noted that ASU paid IDEM \$20,900 during the test year. Among the expenses is a \$10,800⁵⁸ payment towards a \$63,800 civil penalty assessed in an IDEM Agreed Order.⁵⁹ Ms. Stull removed the \$10,800 expense because ratepayers should not be responsible to pay ASU's civil penalties associated with violations of its IDEM NPDES Permit. (See OUCC Schedule 6, Adjustment No. 14.)

ASU's witness Ms. Shafer responded by asserting that ASU reasonably incurred Mr. Lods' travel expenses and the cost of a Christmas party and claimed they are related to ASU's provision of utility service. She stated that Mr. Lods is a "hands on" owner who works daily with his consulting engineers and field staff to assist in the design of new structures and equipment as well as in the repair and maintenance of existing structures and equipment. Shafer - 13 Therefore, she asserted it is important to be knowledgeable of new products and techniques, and one of the best ways is to attend conventions such as the CONEXPO-CON-A66, which featured "10 tracks covering a variety of equipment application, site development, fleet management, learning best practice, technology, safety, and attracting and retaining talent." She noted that utilities are amongst the businesses displayed as attendees on the about the show page.

Ms. Shafer acknowledged that IDEM violations in the amount of \$10,800 should not be included for rate recovery and represented that she had made this adjustment in her attached schedules.

Commission Discussion and Findings: As ASU has acknowledged that it should not have asked for its penalties for IDEM violations to be included and has effectively withdrawn that request, we need not elaborate other than to find that such expense shall be excluded from Petitioner's revenue requirement.

As to \$3,709 expended during the test year for a Christmas party, we begin by noting that the question is not whether shareholders, management or owners of a public utility should hold Christmas parties or other similar events for their employees. The question is whether ratepayers should be expected to pay for such events. We find that they should not. The Commission and the Indiana General Assembly regulates utility monopolies as a proxy for competition. We believe that in a competitive marketplace in the absence of regulation and without the need for a proxy for competition that such events are paid for through profits and are not explicitly counted as a cost of

57 OUCC Attachment CFS-33: OUCC Data Request No. 3-9 – Christmas Party

58 OUCC Attachment CFS-34: OUCC Data Request 8-20 - Civil Penalties

59 Commissioner of the Department of Environmental Management (Complainant) vs. American Suburban Utilities, Inc. (Respondent), Agreed Order in Case No. 2019-26314-W, approved and adopted on December 1, 2020.

the service or product. We believe in this case such costs of such events should remain below the line. A party for 20 or more full and parttime employees at a cost of roughly \$175 per attendee is an appropriate for the generous owners of a utility to give to its employees. It is not appropriate to expect customers to pay higher rates to accommodate such events.

As to the \$10,204 decrease to test year Miscellaneous expense associated with Scott Lods' travel and meeting expense, we first address the \$3,561 of travel and meeting expenses, which were not identified and for which no support was provided. ASU provided no rebuttal testimony describing that expense and explaining why it should be considered necessary for the provision of utility service. We find that amount of travel and meeting expenses (\$3,561) should be excluded.

As to the cost of Lods attending a concrete expo in Las Vegas (\$2,572) and the 2020 National Association of Home Builders - International Builders Show, also held in Las Vegas (\$4,071) in 2020, Mr. Lods did not testify in this Cause, but Ms. Shafer asserted Mr. Lods is a "hands on" owner who works daily with his consulting engineers and field staff to assist in the design of new structures and equipment as well as in the repair and maintenance of existing structures and equipment. Therefore, she asserted it is important to be knowledgeable of new products and techniques, and one of the best ways is to attend conventions such as the CONEXPO-CON-A66. She noted that utilities are amongst the businesses displayed as attendees on the about the show page. Ms. Shafer noted some of the courses offered but did not describe the particular lectures Mr. Lods attended. We are not unmindful that it is useful for utilities to have some knowledge of challenges faced by homebuilders. But as our previous orders have established, Mr. Lods is also the owner of First Time Development whom ASU engaged to build its system as it stands today. In light of Mr. Lods ownership of ASU's affiliated construction company, we find it is more appropriate for the expense of enhancing his knowledge of concrete and the construction industry to be borne by First Time Development. Consequently, we agree with the OUCC that the \$6,643 expended for the concrete expo and Home Builders International Builders show not be included in ASU's pro forma revenue requirement.

L. **Property Tax Expense.** ASU proposed a \$51,446 increase to test year property tax expense of \$195,479 yielding *pro forma* property tax expense of \$246,925. Based on ASU's asserted rate base additions, Ms. Sullivan recommend a \$42,274 increase to test year property tax expense of \$195,479 yielding *pro forma* operating expense of \$237,753. (OUCC Schedule 6, Adjustment No. 15.) She explained the increase she recommended is \$9,172 less than ASU's proposed increase because she removed the property tax liability associated with the 17.486 acres owned by Scott Lods. She further explained that according to the affiliated, triple net lease, executed between Scott Lods and ASU, ASU is required to pay property taxes on the land it occupies. Property taxes on parcel No. 79-06-10-251-004.000-022 covers

17.486 acres.⁶⁰ Ms. Sullivan argued that because ASU occupies a very small percentage of the 17.486 acres, ratepayers should not be responsible to pay property taxes on acreage that is neither owned by ASU nor used for the provision of utility service.

In its rebuttal case, ASU did not respond to Ms. Sullivan's statement that ASU occupies a very small percentage of the 17.486 acres, and her assertion that ratepayers should not be responsible to pay property taxes on acreage that is neither owned by ASU nor used for the provision of utility service.

We agree the entire property tax liability associated with a parcel owned by ASU's owner and of which ASU occupies a very small portion, should not be included in ASU's property tax expense pro forma revenue requirement. As such, the assessed value of that property shall be excluded from the calculation of ASU's total property tax liability to be included in rates.

M. Utility Receipts Tax. ASU proposed a \$16,957 decrease to test year utility receipts tax expense of \$77,259 resulting in \$60,302 *pro forma* utility receipts tax expense. The OUCC did not agree with ASU's proposed adjustment noting that as of July 1, 2022, the utility receipts tax has been repealed and will no longer be an operating expense. Therefore, the OUCC recommended a \$77,259 decrease to test year utility receipts taxes to remove the expense from ASU's *pro forma* operating expenses. (See OUCC Schedule 6, Adjustment 15.) Also, she noted ASU complied with the Indiana House Bill 1002's requirement and had filed a 30-day filing showing the removal of the URT on n April 29, 2022. The parties seem to agree that no utility receipts tax expense should be included in ASU's pro forma revenue requirement, and we so find.

N. Income Tax. Test year federal income tax expense was \$315,045 and state income tax expense was \$95,647. In its application, ASU proposed *pro forma* present rate federal income tax expense of \$-41,761, a \$356,806 reduction from test year. ASU proposed *pro forma* present rate state income tax expense of \$-7,121, a \$102,768 reduction from test year.

OUCC witness Ms. Stull stated that, other than the differences in various proposed revenue and expense items, there is no difference between her calculation of federal and state income tax expense and ASU's calculations. Ms. Stull recommended *pro forma* present rate federal income tax expense of \$227,530 and *pro forma* present rate state income tax expense of \$55,826.

In rebuttal, ASU witness Ms. Shafer proposed *pro forma* present rate federal income tax expense of \$79,912 and pro forma present rate state income tax expense of \$19,607.

60 OUCC Attachment CFS-35: Property Taxes

O. Amortization of ADIT. Test year reflected no amortization of excess ADIT. ASU did not include any amortization of excess ADIT in its case-in-chief. OUCW Witness Ms. Stull recommended \$-7,094 of excess ADIT amortization, explaining that in Cause No. 44032-S15 the Commission found ASU's excess ADIT as of December 31, 2017 was \$212,828. The Commission also found that the appropriate amortization period for excess ADIT was 30 years based on the remaining life of its utility assets. The Commission ordered ASU to reduce its rates to reflect \$7,094 ($\$212,828 / 30$ years) of excess ADIT amortization. In rebuttal, ASU witness Ms. Shafer agreed with Ms. Stull's inclusion of excess ADIT amortization and stated that amortization of ADIT will be corrected going forward.

P. Accumulated Deferred Income Taxes. OUCW witness Ms. Stull noted that ASU did not reflect any accumulated deferred income taxes in its balance sheet and asserted that ASU does not record or keep track of its deferred income tax liabilities. She disclosed that a review of ASU's IURC annual reports show no accumulated deferred income taxes for the years 2018, 2019, or 2020. While ASU's test year general ledger reflects \$351,981 of accrued deferred income taxes, this amount was included in the \$762,673 of current accrued taxes reflected in its 2020 IURC annual report and in its small utility application form in this case. She noted that ASU stated it does not separately record deferred and current income tax expenses even though this is required by both the NARUC Uniform System of Accounts as well as US GAAP. Stull Direct at 36-37.

Ms. Stull explained that accumulated deferred income taxes represent a source of zero cost capital that should be included in ASU's capital structure for ratemaking purposes. Stull Direct at 36. Therefore, for purposes of this rate case, it was necessary to estimate the December 31, 2020 balance for accumulated deferred income taxes to be included in the capital structure. In response to discovery, ASU stated that "since the Commission investigation following the adoption of the Tax Cuts and Jobs Act...Petitioner has endeavored to assure that there are no timing differences such that there should [be] no source (including depreciation) of deferred income taxes." Stull Direct at 38. Based on this response, Ms. Stull determined that ASU's accumulated deferred income tax balance could be determined by taking the balance at December 31, 2017 less the amortization of excess ADIT through December 31, 2020. Ms. Stull recommended an accumulated deferred income tax balance at December 31, 2020 of \$511,744.

There was no discussion of this issue in ASU's rebuttal testimony, but Ms. Shafer did include accumulated deferred income taxes of \$514,744 in her proposed capital structure.

Commission Discussion. We note that the parties are in agreement regarding the treatment of excess ADIT amortization and have included in the determination of their *pro forma* operating expenses. We are concerned about ASU's failure to adhere to basic accounting principles promulgated by both NARUC and US GAAP. We find that ASU should properly record its income tax expense, including the appropriate identification of current and deferred taxes. While there are differences in the parties' calculations of income taxes, those differences stem from differences in

rate base and overall expense levels, rather than differences in methodology or tax rates. Accordingly, we find that ASU's present rate income tax expense is as follows:

	Federal	State
Operating Revenue	\$ 4,527,433	\$ 4,527,433
O&M Expenses	2,022,069	2,022,069
Depreciation Expense	925,676	925,676
Amortization of CIAC	(289,832)	(289,832)
Payroll Taxes	70,193	70,193
Property Tax	237,753	237,753
State Income Tax	55,300	-
Subtotal	<u>1,506,274</u>	<u>1,561,574</u>
Less: Synchronized interest	<u>433,004</u>	<u>433,004</u>
Taxable Income	1,073,270	1,128,570
Taxes Rate	<u>21.0%</u>	<u>4.9%</u>
Tax at present Rate	<u>\$ 225,387</u>	<u>\$ 55,300</u>

2. Net Operating Income at Present Rate. Based on the evidence and the determinations made above, we find Petitioner's adjusted operating results under its present rates are as follows:

Operating Revenues	\$ 4,527,433
Operating Expenses:	
Salaries and Wages	864,913
Employee Benefits	77,453
Sludge Removal	47,207
Purchased Power	258,431
Chemicals	62,777
Materials and Supplies	155,305
Contractual Services	
Accounting	13,257
Engineering	6,162
Legal	80,599
Testing	24,594
Other	75,894
Rental of Building	20,994
Rental of Equipment	2,107
Transportation	43,288
Insurance	65,690
IURC Fee	5,809
Miscellaneous Expense	219,267
Total	<u>2,023,747</u>
Depreciation Expense	925,676
Amortization Expense	(289,832)
Taxes Other than Income	
Property Tax	237,753
Payroll Tax	70,193
Income Taxes	
Federal	225,051
State	55,217
Amortization of EDIT	(7,094)
Total Operating Expenses	<u>3,240,711</u>
Net Operating Income at Present Rates	<u><u>\$ 1,286,722</u></u>

3. **Authorized Rates.** On the basis of the evidence presented in these proceedings, we find that ASU shall decrease its rates and charges for sewer service across the board by 15.76% to decrease annual operating revenues by \$713,374, resulting in total annual operating revenue of \$3,814,060. This revenue is reasonably estimated to afford ASU the opportunity to earn a net operating income of \$751,454, as follows:

Original Cost rate Base	\$ 19,417,409
Times: Weighted Cost of Capital	<u>3.87%</u>
Net Operating Income Required for Return on Rate base	751,454
Less: Adjusted Net Operating income	<u>1,286,722</u>
Net Revenue Requirement	(535,268)
Gross Revenue Conversion Factor	<u>133.2743%</u>
Recommended Revenue Increase	<u>\$ (713,374)</u>
Recommended Percentage Decrease	<u><u>-15.76%</u></u>

4. **Confidentiality.** On April 14, 2022, Applicant filed its Motion for a Protective Order and Finding of Confidential Information. In its Motion, Applicant, via an Affidavit by Scott Lods, claimed that financial statements provided to ASU’s lender Horizon Bank as part of ASU’s borrowing should be confidential. However, such information provided in JRS-R9, included information relating to the financial borrowings of ASU and L3. As the Commission has determined that ASU and L3 operate as one in the same company, as indicated numerous times in testimony, the Public has an interest in L3 finances as it is directly ties to ASU. Further, Applicant has previously disclosed such financial information in ASU’s updated JRS-R9, and that information is no longer subject to confidential treatment due to its prior public disclosure. Therefore, the Commission finds that such information is not exempt from public access and disclosure by the Commission.

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

1. The Commission finds that ASU’s capital structure consists of 81% debt, 17% equity and 2% ADIT. Based on this capital structure, the Commission finds that ASU has a WACC of 3.87%.

2. The Commission approves an ROE of 9.75% based on a capital structure of 17% equity, 81% debt, and 2% ADIT.

3. ASU shall decrease its rates and charges for sewer service across the board by 15.76% to decrease annual operating revenues by \$713,374. Said rates will produce total annual operating revenues of \$3,814,060 and, on the basis of annual operating expenses of \$3,062,606, will result in annual utility operating income \$751,454.

4. ASU shall file its schedule of rates and charges within ten days of this order.

5. Applicant shall file new schedules of rates and charges with the Commission's Water and Wastewater Division on the basis set forth in the above Findings. Such new schedules of rates and charges shall be effective upon filing and approval by the Water and Wastewater Division and shall apply to sewer usage from and after the date of approval.

6. The information filed by Applicant in this Cause pursuant to its Motion for Protection and Nondisclosure of Confidential and Proprietary Information is hereby denied pursuant to Ind. Code § 5-14-3-4.

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