

ORIGINAL

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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF AMERICAN SUBURBAN UTILITIES, INC., FOR AUTHORITY TO INCREASE RATES AND CHARGES THROUGH THE SMALL UTILITY PROCEDURE PURSUANT TO IND. CODE § 8-1-2-61.5 AND 170 IAC 14-1-1 ET SEQ.) CAUSE NO. 45649 U) APPROVED: JAN 18 2023)

ORDER OF THE COMMISSION

Presiding Officers:
Stefanie N. Krevda, Commissioner
David E. Veleta, Commissioner
Loraine L. Seyfried, Chief Administrative Law Judge

On November 30, 2021, American Suburban Utilities, Inc. (“Applicant” or “ASU”) pursuant to Ind. Code § 8-1-2-61.5 and 170 IAC 14-1, filed an Application with the Indiana Utility Regulatory Commission (“Commission”) requesting authority to increase rates and charges through the small utility procedure.¹ On January 6, 2022, the Commission’s Water and Wastewater Division issued a Memorandum stating that the Application was considered complete.

On December 16, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”), on behalf of ASU’s customers, filed a Notice of Request for Field Hearing.

Under Ind. Code § 8-1-2-61.5, a formal public hearing is not required in rate cases involving small utilities with fewer than 8,000 customers, unless a hearing is requested by at least ten customers, a public or municipal corporation, or by the OUCC.

Based on the Notice of Request for Field Hearing, the Commission held a Public Field Hearing on March 30, 2022, at 6:00 p.m. at the Battle Ground Middle School Gymnasium, 6100 N 50 W, West Lafayette, Indiana. The comments submitted by the customers, both orally and in writing, were presented by the OUCC and are incorporated into the record of this Cause.

On February 14, 2022, the OUCC filed a request for a hearing on ASU’s Application for a rate increase pursuant to 170 IAC 14-1-5. ASU responded on February 24, 2022, that it elected to designate its Application to serve as its case-in-chief. The Presiding Officers granted the OUCC’s request by Docket Entry on March 7, 2022.

On April 11, 2022, the OUCC filed its case-in-chief consisting of the testimony and attachments of Shawn Dellinger, Carla F. Sullivan, James T. Parks, and Margaret A. Stull.

¹ ASU subsequently amended its Application on December 21, 2021, submitted supplemental information on December 22, 2021, and submitted additional information on January 5, 2022.

On May 10, 2022, ASU filed a Motion to Strike OUCC witness Shawn Dellinger's testimony. The OUCC responded on May 20, 2022, and ASU replied on May 27, 2022. The Presiding Officers denied ASU's Motion to Strike by Docket Entry on July 14, 2022.

On May 11, 2022, ASU filed rebuttal consisting of the testimony and attachments of John R. Skomp, Andrew A. Mix, and Katelyn Shafer. Corrections to the rebuttal testimony and attachments of Mr. Mix and Mr. Skomp were filed on July 13, 2022 and July 22, 2022, respectively.

On May 20, 2022, the OUCC filed an Objection and Motion to Strike Portions of ASU's rebuttal testimony. Applicant responded on May 31, 2022, and the OUCC replied on June 7, 2022. The Presiding Officers denied the OUCC's Motion to Strike by Docket Entry on July 14, 2022.

On July 1, 2022, the Commission issued a Docket Entry requesting additional information. ASU and the OUCC filed responses on July 13, 2022.

On July 25, 2022, the OUCC filed an Objection, Motion for Continuance, and Request for Emergency Attorney Conference, moving to strike the inclusion of the changes made to the pre-filed testimony of Mr. Skomp. This motion was denied on the record by the Presiding Officers at the evidentiary hearing.

On July 26, 2022, the Commission issued a Docket Entry wherein the Presiding Officers requested additional information from the parties. ASU and the OUCC filed responses on July 27, 2022.

The Commission held an evidentiary hearing in this Cause on July 28, 2022, at 9:30 a.m. and on August 19, 2022, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Applicant and the OUCC were present and participated through counsel. The testimony and exhibits of Applicant and the OUCC were admitted into the record without objection, except for Public's Exhibit 1, the testimony of Shawn Dellinger, which was admitted over objection.

Based upon the evidence and applicable law, the Commission 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 for approval of wastewater rates and charges. 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 that notice of this Cause was given and published as required by law. Further, the Commission finds that the Application satisfies the requirements of Ind. Code § 8-1-2-61.5 and 170 IAC 14-1. Accordingly, the Commission has jurisdiction over ASU and the subject matter of this proceeding.

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

operated, managed, and controlled by it which are used and useful for the convenience of the public in the provision of wastewater service.

3. Existing Rates and Relief Requested. ASU's existing basic rates and charges for wastewater utility service were established pursuant to the Commission's Order dated November 30, 2016, in Consolidated Cause Nos. 44676 and 44700 ("44676 Order"); the third and final step of the rates authorized therein was placed in effect on September 29, 2021, in accordance with the Commission's Order dated September 22, 2021, in Cause No. 44676 S1 ("44676 S1 Order"). ASU's rates were modified pursuant to the approval of its 30-day filing on June 28, 2022 to decrease rates from implementation of House Enrolled Act 1002 repealing the utility receipts tax. Applicant's current system development charge was established pursuant to the Commission's Order dated July 22, 2015, in Cause No. 44593. In this proceeding, ASU requests that its rates be increased to produce additional revenues of \$2,854,542, or a 68.69% increase.

4. Test Year. ASU proposed an historical test period using historic data for the 12-month period ending December 31, 2020, as authorized by Ind. Code § 8-1-2-42.7(d)(2). With adjustments for changes that are fixed, known, and measurable, the Commission finds this test period is sufficiently representative of ASU's normal operations to provide reliable data for ratemaking purposes.

5. ASU's Case-in-Chief. ASU filed this case pursuant to the Commission's procedure for small utility rate cases. That process includes the submission of an application, which is drawn from the utility's most recent annual report to the Commission. ASU's Application was based upon its 2020 report, which showed net operating income of \$330,394. Based upon ASU's net original cost rate base of \$21,322,246, this resulted in a return of 1.50%. ASU requests an increase of approximately 69%, calculated to produce additional operating revenues of \$2,854,542, total operating revenues of \$7,010,484, and total pro forma net operating income at proposed rates of \$2,188,469. ASU's proposed residential rate would increase to a flat monthly rate of \$99.66.

6. OUCC's Case-in-Chief. The OUCC offered testimony from Shawn Dellinger, Utility Analyst; Carla F. Sullivan, Utility Analyst; Margaret A. Stull, Chief Technical Advisor; and James T. Parks, Senior Utility Analyst.

Mr. Dellinger addressed the financial aspects of ASU and provided a brief overview of ASU, noting Mr. Scott Lods is the President of ASU and the sole shareholder of ASU's stock. He stated Mr. Lods is also the President and sole shareholder of L3 Corp ("L3"), which he described as an affiliate of ASU, but noted that L3 was not listed as an affiliate on ASU's annual reports filed with the Commission since 2015. He explained L3 is engaged in borrowing and providing capital to ASU.

Mr. Dellinger testified that ASU proposes to base rates on a capital structure of 76.30% equity and 23.70% debt, a cost of equity ("COE") of 12%, and a cost of debt of 4.68%, which would result in a weighted average cost of capital of 10.26%. He disagreed with this proposal, stating ASU's capital structure should recognize \$12.70 million of debt incurred by L3 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 through an encumbrance of ASU's utility assets. He further

stated that L3 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 stated the correct capital structure for ratemaking purposes should be 17% equity, 81% debt, and 2% accumulated deferred income tax ("ADIT").

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 weighted average of cost of capital ("WACC") and higher monthly rates for sewer service. He stated Mr. Lods owns both ASU and L3 and 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 9.50%. He stated L3 has total borrowings of \$12,710,000 as of the end of 2020. He stated that in 2013, L3 borrowed \$6,500,000, in 2017 L3 converted this loan and borrowed an additional \$2,820,000. He stated that L3 has an additional \$3,390,000 in debt that is 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.

Mr. Dellinger testified that payments on L3 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 existing debts. He stated these audited financial statements acknowledge L3 debt is functionally ASU's debt. Mr. Dellinger stated that the more recent audited and reviewed financial statements also use similar language. Mr. Dellinger testified that ASU has 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. However, he noted the annual reports submitted to the Commission did not disclose these dividends.

Mr. Dellinger explained the OUCC's efforts to obtain information concerning the breakdown of debt held by L3, but indicated ASU refused to provide any details of L3's debt. He testified the OUCC was able to secure documentation on the L3 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.

Mr. Dellinger testified that L3, in its loan application, described the purpose of the \$6.5 million 2013 loan was to finance "Big 3, Klondike, Cumberland and Phase 1 Carriage Estates." He stated these projects are included in ASU's utility plant in service ("UPIS"). 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." The application also noted that Mr. Lods bought ASU in 1997 and identified ASU's number of customers and sewer mains/lift stations. Mr. Dellinger also noted that the Indiana Finance Authority described L3 or its affiliates (i.e., ASU) as "the Applicant," which would own and operate the project. He stated these examples show that L3 was acting as if ASU and L3 were essentially the same entity.

Mr. Dellinger testified regarding further indications that L3 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 Wastewater Treatment Plant (“CE-III Plant”) was not only ASU’s \$5.1 million tax-exempt financing but also the money L3 had borrowed, specifically \$1,975,200 of the 2013 Bonds and \$2,820,000 of 2018 Bonds. He stated the \$2.82 million is the entirety of the term loan that was issued in 2017 to L3, and that since ASU had no declared debt as of 2013, this funding must refer to the L3 bond offerings.

Mr. Dellinger set forth several excerpts from bond transcripts in which ASU backed the debt through guaranties and other promises. Although ASU claimed in discovery responses that its assets were not encumbered by any other entities’ debt, Mr. Dellinger disagreed based on language from a Continuing Guaranty Agreement and Negative Pledge Agreement signed by ASU. Mr. Dellinger also testified that ASU agreed it cannot incur any additional indebtedness unless the bank agrees in writing.

Mr. Dellinger explained that the 2017 loan to L3 is functionally a loan to ASU, noting the lender required audited financial statements from ASU as well as combined financial statements for ASU and L3. He explained this also occurred on the 2017 loan to ASU. He stated the lender appears to view both entities as the same from a financing standpoint.

Mr. Dellinger testified that the OUCC requested the annual reporting documents required by the lender as provided in the 44676 Order. He stated that in discovery, ASU indicated there are no combined financial statements of L3 and ASU. However, in response to a further data request from the OUCC, Mr. Dellinger said ASU provided financial statements for ASU and L3 that were combined and submitted to the lender.

In addressing ASU’s WACC, Mr. Dellinger testified it was reasonable to conclude that the entire \$12.71 million of L3 loans indicated on the unaudited 2020 ASU financial statements was borrowed for the benefit of ASU’s operations. He testified that this amount should be counted as debt of ASU and therefore replace equity in the capital structure, which would change the capital structure from a proposed 23.72% debt and 76.28% equity to 82.83% debt and 17.17% equity.

Mr. Dellinger also disagreed with the cost of debt proposed by ASU. He stated the L3 loans have adjustable interest rates, but the most recent data shows the rates ranged from 1.28% to 4.25%. He proposed to use the midpoint of those numbers, or 2.77%, as the cost of debt. He stated that combined with the existing \$5.1 million at 4.65%, this results in a weighted interest cost of 3.305%. And, using a capital structure of 82.80% debt and 17.20% equity, a COE of 9.75% and a cost of debt of 3.31%, he said ASU’s WACC considering only debt and equity is 4.41%. Mr. Dellinger then incorporated ADIT of \$511,744 into the capital structure to arrive at a proposed WACC of 4.31%.

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 44676 Order. 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; thus, there were at least \$9.32 million in loans to L3 at that time, but the capital structure in that case only reflected \$5.1 million in long-term debt. He stated that if the \$9.32 million was incorporated into ASU's capital structure in that Cause, it would have been 94.10% debt and 5.90% equity. He estimated the WACC should have been 3.69% instead of the 8.31% ultimately granted. He stated that by treating the \$9.32 million borrowed at a cost of approximately 2.59% as equity costing 9.50%, ratepayers were burdened with an additional \$644,012 annual revenue requirement. He further stated that if the actual debt of L3 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.

Regarding ASU's proposed 12% return on equity ("ROE"), Mr. Dillinger stated ASU's proposal was unsupported and is inconsistent with ROEs for other Indiana utilities. He stated that over the past three years, there have been three orders that included a ROE determination for wastewater or water/wastewater utilities in Indiana. These orders had an average ROE of 9.53% and a range of 9% to 9.80%. ASU's current ROE of 9.50% was approved by the Commission in 2016. He stated that since 2016, ASU's revenues are higher, its asserted capital structure is less leveraged, and the interest rate environment is broadly equivalent. He stated these factors indicate there should be no increase to ASU's ROE, and that the ROE should be slightly lower. Under these circumstances, he stated he would propose a 9.25% ROE.

Mr. Dellinger explained 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, which is more leveraged now than it was in 2016, he would include a 50-basis point increase, resulting in a ROE of 9.75%. He stated ASU should not receive a higher ROE due to Indiana Department of Environmental Management ("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 the ROE based on considerations outlined in Cause No. 43526. Ultimately, Mr. Dellinger 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.

Ms. Sullivan addressed test year operating expense adjustments. She 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. She 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 Kimberley Estates lift station.

Ms. Sullivan explained ASU proposed a \$239,424 increase to test year salaries and wages of \$823,727, resulting in pro forma salaries and wages expense of \$1,063,151. She stated ASU's pro forma salaries and wages expense is based on 30,108 regular and 338 overtime payroll hours. However, ASU payroll hours totaled 23,969 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.

Ms. Sullivan stated ASU did not adequately explain why its operations require such a significant increase in the number of labor hours. She stated, 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.

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 salaries and wages expense resulting in \$814,485 pro forma salaries and wages expense. However, the OUCC recommended accepting ASU's test year salaries and wages expense of \$823,727 as pro forma.

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. Therefore, Ms. Sullivan recommended a \$71,457 decrease to test year pension expense of \$120,881. Because the OUCC recommends salary and wages expense equal to test year, this expense should be 6% of \$823,727, or \$49,424.

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, which includes \$3,000 for team building activities and the \$6,700 of Christmas bonuses, resulting in pro forma employee relations expense of \$4,978.

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 an 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. The pro forma sludge removal expense also includes Merrell Bros. charges for testing and pumping.

Ms. Sullivan recommended a \$4,177 decrease to test year purchased power to eliminate purchased power expense related to the Kimberley Estates lift station, which was to have been

removed as part of the Big 3 project. However, Ms. Sullivan also recommended 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 increased cost due to customer growth.

Next, Ms. Sullivan 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. She recommended removing expenses related to eight different providers as follows:

(1) 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 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.

(2) 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 CE-III Plant and are included in the preapproval.

(3) 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. Because the expense was the direct result of ASU trying to implement its phased rate increase before it had completed its project, recovery of this expense from ratepayers is not appropriate.

(4) 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, who created plans and drawing for ASU's facilities, and is a non-recurring expense.

(5) a \$35,974 decrease related to TBird Design ("TBird"), a \$10,954 decrease related to Vester and Associates, Inc., and a \$9,560 decrease related to Williams Creek Management Corporation ("Williams Creek") as these expenses are capital in nature or nonrecoverable.

(6) a \$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 ("B&T"), Gutwein LLP Attorneys ("Gutwein"), and Withered Burns & Persin, LLP ("WPB"). Regarding B&T, Ms. Sullivan explained the invoices were thoroughly redacted; however, it appears ASU paid \$14,126 for work related to environmental penalties imposed by IDEM. Expenses related to IDEM violations should not be recovered through rates. ASU also paid B&T \$101,896 for work with respect to the compliance issue presumably related to rate case expense in Cause No. 44676, but the revenue requirement for rate case expense was set in that case and has been fully recovered through amortization. She also noted ASU will still be collecting the related revenue requirement in rates until an order is issued in this Cause and that the compliance issue arose because ASU tried to implement its phased rate increase before it had completed its project. Regarding Gutwein,

ASU paid \$15,411 for legal services related to IDEM violations, which are not recoverable. Ms. Sullivan stated an additional \$28,990, paid to WBP, was also removed from test year operating expense, as the basis of this expense was not provided.

(7) a \$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.

(8) a \$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 but was unable to provide support for the charges. Therefore, she removed \$82,672 from test year expenses associated with Kokopelli as non-recurring.

Mr. Sullivan explained her \$39,089 decrease to rental of building/real property test year expense of \$60,083, 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. Ms. Sullivan stated ASU's pro forma lease expense is overstated because it includes square footage not reasonably needed to operate the utility. She explained the Commission disallowed rent expense in the 44676 Order as unsupported 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 consists of the expanded main floor (1,407 square feet) and the garage space (1,800 square feet).

Ms. Sullivan addressed her recommended \$10,204 decrease to test year miscellaneous expense, which is associated with Mr. Lods' travel and meeting expense. She removed expenses related to the 2020 CONEXPO-CON/AGG and IFPE expo (\$2,573) and the 2020 National Association of Home Builders-International Builders Show (\$4,071), which were both held in Las Vegas, because they do not sufficiently relate to the provision of sewer service. Ms. Sullivan stated she removed additional travel and meeting expenses of \$3,561, which were not identified and for which no support was provided.

Ms. Sullivan also removed \$3,709 associated with a Christmas party as inappropriate expenses for ratepayers to fund through higher rates.

Ms. Sullivan addressed the \$20,900 paid to IDEM during the test year, which included a \$10,800 payment towards a \$63,800 civil penalty assessed in an IDEM Agreed Order. She removed the \$10,800 expense because ratepayers should not be responsible to pay ASU's civil

penalties associated with violations of an IDEM permit.

Ms. Sullivan explained her recommended \$42,274 increase, instead of ASU's proposed \$51,446 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 Mr. Lods. According to the affiliated, triple net lease, executed between Mr. 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. Because ASU occupies a very small percentage of the 17.486 acres, ratepayers should not be responsible to pay property taxes on the acreage that is neither owned by ASU nor used for the provision of utility service.

Finally, 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. She also discussed ASU's gross revenue conversion factor, noting 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.

Ms. 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 Plant. She noted it did not include any other changes to rate base from March 31, 2015 through September 30, 2020. Ms. Stull noted that in its Application, ASU used a historical test year ended December 31, 2020 and explained that when a 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 balances adjusted for (1) a decrease in allowable costs for the CE-III Plant phosphorus removal and (2) a paycheck protection program 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 UPIS, of which \$4,258,501 was contributed to ASU, resulting in a \$3,528,663 (\$7,787,164 - \$4,258,501) increase to net UPIS 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). 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 unable to review all transactions recorded to rate base from March 30, 2015 through December 31, 2020 because ASU did not provide its general ledgers for the years 2015, 2016, and 2017. 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 UPIS. Consequently, she was unable to review the transactions recorded to construction work in progress ("CWIP"), accumulated depreciation, contributions in aid of construction ("CIAC"), or advances for construction. Also, Ms. Stull testified that ASU provided a list of all assets currently

in service but explained why she did not consider the listing to be reliable.

Ms. Stull did not accept ASU's proposed UPIS of \$40,458,089 and instead recommended UPIS of \$37,201,349 after making the following adjustments to: (1) exclude major project costs in excess of the Commission's authorization in Cause Nos. 44676 and 44676 S1; (2) exclude certain costs incurred for the Cumberland Road project; (3) exclude equipment unnecessary for the provision of utility service; (4) include asset retirements; (5) include capital costs incorrectly expensed during the test year; (6) exclude the Kimberley Estates lift station; and (7) exclude non-allowed UPIS.

Ms. Stull explained that in the 44676 and 44676 S1 Orders, the Commission limited the costs allowed for the Big 3 project (\$2.1 million), the Klondike Road project (\$725,000), and the CE-III Plant (\$10 million). She explained that the engineering, easements, and dewatering costs were authorized for the Big 3 project but excluded for the Klondike Road project and the CE-III Plant. 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 authorized ASU to include, and they should be removed from ASU's general ledger to ensure these costs are not included in UPIS in any future ASU rate cases.

Regarding the Cumberland Road project, Ms. Stull noted that ASU incurred \$1,372,592 for its Cumberland Road project, which is \$572,592 more than the \$800,000 pre-approved in Cause No. 44272 ("Preapproval Case"). Of the \$1,372,592, Ms. Stull explained the OUCC recommends exclusion of the \$70,000 change order added to the contract with Atlas Engineering, exclusion of the \$100,000 ASU paid to settle a dispute with West Ridge Apartments, LLC ("West Ridge") due to actions taken by its contractor, Atlas Excavating, that caused damages to West Ridge, and exclusion of \$20,385 related to the purchase of .23 acres of land located at 3350 West 250 North, which is not located near the Cumberland Road main extension route or necessary to install the main extension. She also noted this parcel of land is not included in ASU's list of owned real estate.

Ms. Stull recommended a \$1,369,414 decrease to UPIS to eliminate construction and other equipment the OUCC asserted was either not used or necessary to provide safe, reliable utility service to ASU customers. Specifically, 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 camera trucks purchased from an affiliate, 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.

Ms. Stull stated ASU was unable 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. 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 as well a recent emergency sewer repair and that despite owning this equipment, ASU used various construction contractors, including its own affiliate, to perform this work. Because ASU has not demonstrated it uses the specialized equipment to perform sewer utility related work on any

consistent or regular basis, 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.

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 accepted the inclusion of \$171,182 in UPIS for a Case tractor, a scissor lift, and an extended hoist, among other things. The OUCC also accepted a “jet vac” truck acquired from FTDC at a cost of \$50,000. 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, 2020.²

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 UPIS, as it should, is not indicated. Ms. Stull recommended the removal of \$910,409 related to the US 231 Bypass gravity sewer main and the Copper Beech lift station (that were added in 2011 and 2012, respectively), \$324,378 related to vehicles no longer covered by ASU’s auto insurance policy, and \$5,080 related to computers. She also recommended removal of \$34,977 related to other office equipment and miscellaneous tools and equipment.

Next, Ms. Stull noted that OUCC witness Sullivan recommended the exclusion of \$58,738 in UPIS for certain test year operating expenses because the costs are related to capital projects or should otherwise be capitalized. Ms. Stull included \$5,200 of these costs in her recommended UPIS because those costs are related to construction management work performed by TBird on the Belle Terra main extension project but excluded the remaining costs because they were incurred on projects that are either not complete or that have already exceeded the amount approved by the Commission.

Regarding the Kimberley Estates lift station, Ms. Stull explained that the Big 3 project was designed, among other things, to eliminate this lift station along with two others and the attendant operating costs. She noted that OUCC witness Parks discusses why the OUCC disagrees with the continued use of the Kimberley Estates lift station. She also noted that the Big 3 project costs approved by the Commission included the cost to physically remove the Kimberley Estates lift station and, therefore, the removal of this lift station has already been included in rate base.

Finally, Ms. Stull recommended excluding from UPIS four assets ASU recorded to rate base since its last rate case. She explained that a fishing boat (\$801) and stationary bike (\$854) are not necessary to the provision of safe, reliable sewer utility service, and two other assets, a Pendaflex file rails (\$38/box) and printer (\$300), do not meet the threshold established for capitalizing assets (\$750).

Ms. Stull disagreed with ASU’s proposed accumulated depreciation of \$9,069,684, stating she recommended that it be reduced to \$7,691,303 to reflect her proposed UPIS adjustments.

Ms. Stull accepted ASU’s proposed \$10,350,028 of net CIAC based on the December 31, 2020 balances—\$11,593,275 of total contributions offset by \$1,243,247 of accumulated

² We believe Ms. Stull meant to say March 31, 2015 and not March 31, 2020.

amortization.

Ms. Stull stated ASU proposes \$25,138 of advances for construction based on its December 31, 2020 balances, which she accepted. However, she expressed her belief that ASU does not properly follow the Commission's main extension rules or account for advances for construction correctly.

Ms. Stull disagreed with ASU's proposed \$309,007 of working capital based on the 45-day method, which calculates 12.50% (45 days/360 days) of pro forma operating expenses, excluding expenses known to be paid in arrears. Instead, she 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, so she recommended an additional adjustment to pro forma operating expenses to include payroll taxes, which are not paid in arrears and therefore should be included in working capital.

Regarding depreciation expense, Ms. Stull explained ASU's calculation of its proposed \$222,428 increase to test year depreciation expense of \$783,643, resulting in pro forma depreciation expense of \$1,006,071. Ms. Stull explained she agreed with the composite depreciation rate used by ASU, but she recommended a \$124,126 decrease to test year depreciation expense of \$1,048,779, resulting in pro forma depreciation expense of \$924,653, which she based on her recommended gross UPIS of \$37,201,349 and the removal of \$215,245 of land. She then applied the Commission's 2.50% 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.

Ms. Stull also recommended CIAC amortization expense of a \$(289,832), which is a \$24,447 decrease from test year CIAC amortization expense of \$(265,385). She calculated her recommended amortization expense by applying the 2.50% composite depreciation rate to the \$11,593,275 CIAC balance at December 31, 2020, resulting in annual amortization expense of \$289,832. Ms. Stull recommended a net depreciation expense of \$634,821 ($\$924,653 - \$289,832$), compared to test year net depreciation expense of \$783,994 ($\$1,048,779 - \$265,385$).

Regarding operating revenues, Ms. Stull stated ASU proposes present rate pro forma operating revenues of \$4,155,942, which is a decrease of \$261,676 from Applicant's test year revenues of \$4,417,618. ASU proposed two adjustments to increase revenues by \$11,934 to reflect test year customer growth and a third adjustment to decrease revenues by \$279,877 to reflect the 44676 S1 Order, 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 based on 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.

Regarding the 44676 S1 Order Phase III adjustment, Ms. Stull stated 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. While she accepted an adjustment is necessary,

she disagreed with ASU's calculation of the adjustment. First, she noted the amount of final Phase III operating revenues is \$4,436,671, not the \$4,326,808 reflected in ASU's calculation. Second, ASU used a number calculated in its Phase III compliance filing in Cause No. 44676 S1 to represent interim Phase III revenues instead of an amount based on actual revenues recorded during the test year. To capture the reduction in test year rates due to 44676 S1 Order, 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, which results in a decrease of \$266,591.

Ms. Stull proposed six adjustments totaling \$220,346 to reflect both test year and post-test year customer growth. First, she 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. Second, she 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. Third, she recommended a \$19,766 increase to multi-family revenues to reflect customer growth during the test year. Fourth, she recommended a post-test year multi-family growth adjustment of \$84,999 based on the increase in multi-family billing units. Fifth, she recommended a \$3,141 decrease to mobile home customer revenues to reflect customer loss during the test year. And sixth, she recommended a \$6,332 increase to test year metered customer revenues based on the annual number of customer billings that would result if ASU's 70 metered customers at December 31, 2020 had been customers for the entire year.

Regarding ASU's income taxes, Ms. Stull asserted ASU did not properly account for its ADIT because 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. In addition, while ASU's test year general ledger reflects \$351,981 of ADIT, this amount is included in the \$762,673 of current accrued taxes reflected in ASU's 2020 IURC Annual Report and in its filing. Although it is required by both the National Association of Regulatory Utility Commission's ("NARUC") Uniform System of Accounts Accounting ("USoA") as well generally accepted accounting principles ("GAAP"), ASU 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 ADIT was \$533,026 at December 31, 2017. She stated that ASU's books and records do not correctly reflect its ADIT, and based on her review of ASU's general ledgers, it does not appear ASU ever recorded its ADIT as of December 31, 2017. She explained that when asked whether it had any other revenues or expense that generated deferred taxes other than depreciation expense, ASU indicated that it did not believe so. Based on additional information received from ASU, Ms. Stull determined 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, resulting in a December 31, 2020 balance of \$511,744.

Ms. Stull also noted ASU did not include any amortization of excess ADIT in its filing.

She explained that 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 the TCJA. She stated that in Cause No. 45032 S15, the Commission found ASU's excess ADIT at December 31, 2017 to be \$212,828 and determined the appropriate amortization period to be 30 years. She said ASU was ordered to reduce its rates to reflect \$7,094 ($\$212,828/30$ years) of excess ADIT amortization.

Finally, Ms. Stull calculated ASU's pro forma present rate federal and state income taxes. Ms. Stull explained that other than the differences in various proposed revenue and expense items, there is no difference between her calculations 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.

Mr. Parks summarized ASU's requested rate relief and provided a general overview of ASU's wastewater system. Mr. Parks testified the Kimberley Estates lift station should be removed from UPIS. He explained ASU requested preapproval for the Big 3 project to eliminate three lift stations, including Kimberley Estates, that ASU repeatedly testified were too old to fix, had maintenance issues, and were too costly to replace. Mr. Parks noted the Kimberley Estates' pump and power failures caused three sanitary sewer overflows and in 2021, the lift station had periods when only one of two pumps operated, which may be a sign of pump, electrical, or control issues. Mr. Parks testified the Commission preapproved the Big 3 project for \$2,100,000 specifically to eliminate the three lift stations. However, only one of the three lift stations, Hawthorne Ridge, has been physically removed, Big Oaks remains in place (out of service and without pumps), and Kimberley Estates still operates daily in routine service.

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. Mr. Parks testified ASU can meet its policy by just finishing the Big 3 project work for which it has already been compensated. Mr. Parks testified that all three lift stations should be retired and physically removed as detailed on the Big 3 project plans. Mr. Parks noted that specific lift station removal costs were not identified in Cause No. 44272 or 44676 but that HWC Engineering listed such costs as approximately \$30,000. He noted that for the Cumberland Road project, ASU stated the comparable Copper Beech lift station removal cost was \$53,675. Mr. Parks estimated Kimberley Estates 2021 annual operating and maintenance costs at over \$15,500 for labor, power, and routine maintenance.

Mr. Parks noted that in the Preapproval Case, ASU estimated that replacing both Big Oaks and Kimberley Estates would cost \$1,506,250. However, updating the 2013 estimate to 2023 dollars, Mr. Parks calculated Kimberley Estates replacement would be \$800,000. Mr. Parks testified the Commission directed ASU in the 44676 Order to record UPIS retirements of \$59,182 for Big Oaks (\$2,112), Kimberley Estates (\$22,960) and Hawthorne Ridge (\$34,110). He stated these retirements were made but in 2017, ASU reversed the Kimberley Estates retirement by returning \$22,960 to rate base. Mr. Parks testified that in 2015, ASU informed IDEM it removed Kimberley Estates from service. However, in its 2015 IURC Annual Report, ASU noted it had determined that it would be useful to leave the Kimberley Estates lift station in service. 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 Kimberley Estates demolition costs.

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 operation is “unnecessary and wasteful” and recommended the Commission direct ASU to retire Kimberley Estates from service and to physically remove both Big Oaks wet well and Kimberley Estates lift station at no additional cost to ratepayers. Mr. Parks testified removal is needed today to prevent ratepayers from having to pay to replace it in the future.

Mr. Parks testified the Big 3 sewer has low utilization because wastewater is still pumped to Carriage Estates by Kimberley Estates and only one new customer has connected to the Big 3 sewer since 2015. Mr. Parks estimated current flows in the Big 3 sewer are 1% or lower of the carrying capacities calculated by ASU’s engineer in Cause No. 44676, which confirms that the Big 3 could accept all sewage from Hadley Moors and Kimberley Estates.

Further, Mr. Parks testified ASU’s sewers and the Kimberley Estates lift station and force main conflict with the 2024–2025 Morehouse Road 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 that based on his review of construction 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 Kimberley Estates lift station, which confirms ASU intends to keep the Kimberley Estates lift station in service. Mr. Parks testified ASU’s proposed plan contradicts its position in prior cases and does not conform with ASU’s delineated service areas for the County Home and CE-III Plants.

Mr. Parks testified ASU should not continue operating Kimberley Estates because it is neither prudent nor reasonable to incur capital costs beyond those already incurred for the Big 3 sewer or to continue incurring lift station operation and maintenance (“O&M”) costs. Mr. Parks testified there are two options for conveying and treating the flows from the Hadley Moors and Kimberley Estates subdivisions: (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) Kimberley Estates lift station pumping to Carriage Estates. He stated the second option requires annual O&M expenses and future Kimberley Estates replacement and therefore, the lowest cost option is Option 1 since there are no O&M costs and it avoids replacing the Kimberley Estates lift station. For ASU’s Morehouse Road 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 Kimberley Estates subdivision and possibly the Soleado subdivision be routed north to the Big 3 sewer for gravity conveyance to County Home.

Mr. Parks testified ASU has not prepared Big 3 Sewer Record Drawings showing construction changes despite indicating 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 recommended the Commission order ASU to hire an independent third-party engineer/surveyor at no additional cost to ratepayers to produce accurate record drawings. He expressed concern that a 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.

Mr. Parks testified ASU paid two invoices during 2020 for wetland and forested floodway mitigation work for the Big 3 project. Mr. Parks testified ASU did not discuss wetlands in either Cause No. 44272 or Cause No. 44676 but wetland restoration was part of the Big 3 project. 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.

Regarding the Cumberland Road project, Mr. Parks testified ASU cited downstream capacity issues when it sought preapproval of \$1,969,311 for the project in Cause No. 44272 to eliminate the Copper Beech lift station and force main. The OUCC opposed it as unneeded but based upon a settlement agreement between ASU and the OUCC, the Commission preapproved construction up to \$800,000. Mr. Parks testified that although the Commission ordered ASU to provide notice of project completion and actual costs, ASU did not do so. Mr. Parks noted ASU reported Final Completion was November 19, 2020, but there was no discussion of the project or its five-year delay in ASU's Application. Noting 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 the preapproval amount but was the same amount paid to Atlas Excavating ("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.

Mr. Parks testified it appeared work stopped when West Ridge claimed excavation in the temporary easement affected soil conditions under its planned apartments. To resolve the claim ASU made a \$100,000 settlement payment to West Ridge. He testified ratepayers should not fund the payment that 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 as imprudent and unreasonable.

Mr. Parks testified ASU did not support the Cumberland Road project costs in its Application. 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 approved a \$70,000 change order for the project related to Additional Mobilization/Demobilization, which appears to be related to dewatering, but ASU provided no support for the change. Based on the lack of support, he recommended disallowing ASU's dewatering claim and the inclusion of the \$70,000 change order 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. He testified it appeared ASU included two invoices (\$1,627) from Gutwein 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. Mr. Parks testified ASU identified \$186,918.45 in five additional Atlas and TBird charges in 2021 for the Cumberland Road project and indicated no further charges were expected.

Mr. Parks noted three additional concerns with the Cumberland Road project. First, ASU again reported not having Record Drawings. Second, he could not find any record that ASU conducted IDEM required sewer testing including: (1) leakage tests (infiltration/exfiltration), (2) sewer deflection tests, and (3) manhole leakage tests. Third, it appears no inspections occurred after March 20, 2020 when construction stopped. He stated 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 also 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 for the days after project work resumed in August 2020.

Regarding sewer main extensions, Mr. Parks testified that ASU, when asked whether it complies with the Commission's main extension rules, stated that it follows the "spirit" of the rules. When asked to further explain and whether ASU provides a three-year revenue allowance per equivalent dwelling unit to developers/customers who require a main extension before utility service can be provided, ASU responded that it generally did not. ASU indicated it is a small utility and paying three times the annual revenue for each connection would require capital investment that Applicant does not readily have available. ASU stated it would also increase rate base and ultimately customer rates. Accordingly, main extensions to serve new developments are generally regarded by ASU as special contracts. ASU indicated that it also does not gross up for income taxes on contributed plant, which requires a contribution of capital for all main extensions. Based on ASU's lack of responsiveness to other questions concerning ASU's compliance with the Commission's rules for sewer main extensions, Mr. Parks recommended the Commission order ASU to comply with the Commission's main extension rules at 170 IAC 8.5-4.

Mr. Parks testified about a one-page invoice for \$82,672.11 from Kokopelli, which accounted for 44% of consulting expense that was recorded as “Other” during the test year. Mr. Parks stated the invoice was for an emergency sewer repair at 3725 US 52 but because of the lack of information on the invoice, it is not possible for an auditor to determine the nature or extent of actual work completed. 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 explained that ASU provided some information in discovery, but it failed to support any of the labor, equipment, materials, and subcontractor costs. He further stated that the dates the work was performed are still unclear. Accordingly, Mr. Parks 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.

Mr. Parks noted that under an IDEM Agreed Order, ASU was required to prepare a Blower Compliance Plan for the purchase and installation of three blowers at Carriage Estates at no additional ratepayer cost to secure IDEM’s approval to rate the CE-III Plant for 3.0 MGD. Mr. Parks 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. Construction of the estimated \$500,000 blower project was to start on January 17, 2022 and be complete by September 30, 2022. Mr. Parks testified construction had not started and reported ASU had proposed a modification to 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.

Mr. Parks described IDEM’s 2020 enforcement action requiring ASU to develop and implement an I&I program because of 11 sanitary sewer overflows. In its required compliance plan, ASU proposed a two-phase I&I Study to locate and eliminate I&I and prevent sanitary sewer system overflows. 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.

Mr. Parks described the flow data and unauthorized effluent meter reprogramming issues associated with the Carriage Estates flow meter. He summarized the concerns he raised in Cause No. 44676 S1 that ASU does not accurately measure, record, and report effluent flows and discussed ASU’s meter calibrations and incorrect meter reprogramming. Mr. Parks stated ASU’s reported effluent flows from 2020 to 2021 showed a significant 25.60% reduction after meter recalibration by the meter technician, who also password locked the flow meter so it could not be accessed and reprogrammed. He 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 Kimberley Estates and Hadley Moor subdivisions to County Home by retiring and removing the Kimberley 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.

7. **Applicant's Rebuttal.** ASU offered testimony from John R. Skomp, former Partner with Crowe Horwath LLP; Andrew A. Mix, Applicant's staff engineer; and Katelyn Shafer, accountant/financial advisor with Reedy Financial Group, P.C.

Mr. Skomp testified that the capital structure OUCC witness Dellinger used is not the actual capital structure of ASU. He stated Mr. Dellinger used information from various sources to develop a hypothetical capital structure. He explained that hypothetical capital structures have been forbidden at the Commission. Mr. Skomp stated Mr. Dellinger took long term debt that is owed by another entity, claiming that it is "functionally" the debt of ASU, and inserted that debt into a hypothetically derived capital structure, which he then promotes as the capital structure that should be used to calculate ASU's WACC. Mr. Skomp stated that in *Pub. Service Comm'n of Ind. v. Ind. Bell Tel. Co.*, 235 Ind. 1, 130 N.E.2d 467 (Ind. 1955), the public utility affiliate had a capital structure consisting of 100% equity and the Commission set rates based on the parent company's capital structure (which was approximately 50% debt). He said the Indiana Supreme Court disallowed the use of the hypothetical capital structure and, ever since, ratemaking in Indiana has been based on the actual capital structure of the utility.

Mr. Skomp explained ASU's financial statements that were prepared pursuant to GAAP show that L3's debt is not "functionally" the debt of ASU. Mr. Skomp stated the debt is discussed in a footnote disclosure on ASU's financial statements but is not recorded as a liability on ASU's balance sheet. He testified that what this means is that this is not ASU's debt, "functionally" or otherwise. Mr. Skomp also testified that it has long been understood in Indiana utility regulatory, and specifically Commission, practice that guaranties of debt are not considered or treated the same as "functional" or actual debt of a utility. Citing to *Kentucky-Indiana Municipal Power Assoc. v. Public Serv. Comm'n*, 181 Ind. App. 639, 393 N.E.2d 776, 782 (1979), he explained guaranties are contingent liabilities and contingent liabilities do not require Commission approval. He also stated, contrary to Mr. Dellinger's statements and assumptions, ASU dividends have not been the source of the payments of debt service on this debt from 2016 through 2020. He stated, as can be seen in ASU's annual reports to the Commission, Mr. Lods has infused more equity into ASU every one of those years. Mr. Skomp explained Mr. Dellinger's claim that this structure produces a "wealth transfer" from ASU's customer base to Mr. Lods is simply not true—Mr. Lods has been reinvesting earnings into ASU and has also been putting more money into the utility for years.

Mr. Skomp further explained that ASU has pledged not to encumber its assets. He said this is what is referred to as a negative pledge and is called out as such in the heading of the section quoted by Mr. Dellinger. He said Mr. Dellinger claims, again without any citation to authority, that this is an encumbrance. Mr. Skomp explained it is the opposite of an encumbrance; it is a pledge not to encumber.

In response to OUCC witness Dellinger's testimony concerning ASU's relationship to L3 and L3's debt, Mr. Skomp explained the history of this source of funding. He stated it was the result of the OUCC's recommendation in ASU's first rate case following Mr. Lods' ownership. He explained that in Cause No. 41254 (filed in 1998), ASU filed a request for financing and noted

that the capital structure would have been 80% to 90% debt and 10% to 11% equity if it had been approved. He explained that ASU was told by Mr. Edward Kaufman and the OUCC's attorney that the OUCC could not support such a leveraged capital structure, and ASU withdrew its financing request. He explained Mr. Lods created and incorporated new companies that would allow for financing of his investment in ASU and refiled its rate case. He explained the OUCC was fully aware that money would be borrowed and then infused by Mr. Lods to ASU. Mr. Skomp noted that the leveraged capital structure the OUCC initially refused to support is roughly the same capital structure Mr. Dellinger today attempts to force onto ASU.

He explained that when ASU's rate case was filed in Cause No. 44676 (which was later consolidated with Cause No. 44700), with several successful years of operation and after the Preapproval Case, 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. He said ASU was able to file a request for financing as well to achieve a more balanced capital structure at the utility level and take the debt percentage to approximately 30%.

Mr. Skomp disagreed with OUCC witness Dellinger's recommended COE, explaining that two of Mr. Dellinger's three sample companies were authorized a ROE of 9.80% and the third company (the outlier of the group) had a ROE finding from the Commission of 9%. He explained that in the Commission's Order in Cause No. 45307 U approving the 9% ROE, the Commission recognized 9% was an outlier from other similar cases. Mr. Skomp testified that there are additional factors unique to ASU that make it riskier than the utilities used in Mr. Dellinger's average: that Mr. Lods has personally guaranteed ASU's debt (as is evidenced by the transcript from ASU's debt financing that is attached to Mr. Dellinger's testimony), that ASU suffered a write-off of over one million dollars related to the Big 3 sewer in the last rate case, and that the OUCC is recommending another one million dollars plus of disallowances again. He stated ASU is plainly riskier than either of the two utilities represented by that simple average.

Mr. Skomp further stated that, even if debt from other entities were assigned to ASU resulting in a hypothetical capital structure, Mr. Dellinger has not correctly computed the cost of that debt. He explained if Mr. Dellinger wants to assign the debt of one entity to a utility company to achieve a lower WACC, he would need to make sure all the costs of that debt are included in either the utility's operating expenses or in the "cost rate" assigned to that debt. Mr. Skomp testified that the overall cost rate of the debt Mr. Dellinger is "assigning" to ASU cannot be assumed to be the interest rate since the other financing costs are not included in ASU's operating expenses. Mr. Skomp provided an example where he calculated the cost rate of debt to be 7.41% instead of the 2.77% suggested by Mr. Dellinger. Mr. Skomp explained the example was given to provide more insight into why the use of a hypothetical capital structure will not work in calculating allowable net operating income for a regulated utility. He stated there are many other costs that would need to be analyzed and included to try and arrive at a calculation that may or may not be meaningful.

Mr. Mix explained why ASU does not agree with Ms. Sullivan's position to set wages at the test year level. ASU's pro forma salaries and wages are based upon actual employees and wage rates. He explained why Ms. Sullivan's position is flawed including that Ms. Sullivan is expecting pro forma salaries and wages to equal the amount spent in 2020—the height of the pandemic. He

said for part of 2020, ASU temporarily laid off a substantial amount of its staff out of concerns, early in the pandemic, over where the pandemic would lead. Mr. Mix said the test year is not representative of normal payroll levels.

Mr. Mix explained that Ms. Sullivan's statement that ASU's wastewater treatment plants are primarily new infrastructure was incorrect. He stated that ASU operates two plants, with the CE III Plant having a new 3.0 MGD expansion but with its older plant system still in operation. ASU's County Home Plant is an older plant constructed in 2005.

Mr. Mix explained the process ASU used to determine approximate staffing needs and testified to the reasonableness of ASU's request to increase funding for staff. He said that using resources to assist a wastewater utility in determining the necessary level of employees, ASU will still be operating with lower than that needed under the EPA 305-B-05-002, Guide for Evaluating Capacity, Management, Operation, and Maintenance ("CMOM") Programs at Sanitary Sewer Collection Systems standards. Mr. Mix also noted that Ms. Sullivan used a historical seven-year average and compared it to the 2022 ASU labor request, violating one of the major rules for staffing studies, which is to ensure the study takes place during a representative period. He said it is incorrect to use past staffing or even an average of past staffing to determine what is required today.

He discussed sludge removal and its land application and explained why price cannot be the controlling factor. He said price appeared to be Ms. Sullivan's sole focus because sludge handling is an extremely complicated and regulated process which starts at the wastewater treatment plant. He explained why sludge is not always land applied, how weather plays a part in land application, and why weather varies from year to year. He recommended that the test year 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 that meets the plants' National Pollutant Discharge Elimination System ("NPDES") permit.

Mr. Mix explained ASU's intention to keep the existing Kimberley Estates lift station in operation for emergency situations. He stated during the removal planning process, ASU recognized the Kimberley Estates lift station could be useful during an emergency at the County Home Plant. He said if there were some critical problems at County Home, Kimberley Estates would allow a portion of the County Home flow to be diverted to the CE-III Plant. He further explained retaining the Kimberley Estates lift station for emergency situations is good engineering and operational practice to protect the public's health and safety. Citing to the Ten States Recommended Standards for Wastewater Facilities, he said the recommended practice is to have sufficient redundancy for emergency situations. He also testified that ASU has no immediate plans to either remove the existing lift station or replace it with a new lift station, nor have any such costs been included in ASU's rate request in this proceeding. He recommended an annual operating expense of \$2,900, which is a lower operating cost than Mr. Parks' estimate. He explained that Mr. Parks assumed and based his costs on the assumption the lift station is and will be operated daily and not on an emergency basis.

Mr. Mix responded to Mr. Parks' recommendation that the Big Oaks lift station wet well be physically removed. He explained that the Big Oaks lift station has been removed from service

and the lift station's wet well was converted into a manhole with the site restored.

Mr. Mix provided the status of the Big 3 sewer Tree Mitigation Program and stated he disagreed with Mr. Parks that the monitoring and maintenance yearly costs should be considered a capital expense. He explained that the tree mitigation was not done by the underground contractor, and that ASU contracted with Williams Creek for the tree mitigation services. He said the contract was entered into after the underground contractor completed the Big 3 project and left the jobsite. He also explained why he disagreed with Mr. Parks' statement that the tree mitigation and 5-year service agreement were included in rate base because of the Preapproval Case. He explained that ASU did not discuss wetlands in its case-in-chief or rebuttal testimonies, as noted by Mr. Parks, because ASU did not include it in the Big 3 project construction estimate. He explained as discussed by ASU witness Shafer, this is the OUCC's attempt to use the Preapproval Case to disallow costs even though the language of the Order does not support the OUCC's position.

Mr. Mix testified that the Morehouse Sewer Relocation, due to the road reconstruction by the Tippecanoe Co. Highway Department, is still a preliminary project and outside the scope of this filing.

Responding to Mr. Parks' concern with the Kokopelli invoice, Mr. Mix discussed the emergency and the construction costs for the emergency repair of the sewer collapse on U.S. 52. He explained the sewer repair involved extenuating circumstances and required quick decisions and calling in reinforcements to assist ASU. He stated that Mr. Parks attempts to use hindsight analysis in telling ASU what it should have done; however, he testified time was not on ASU's side in this emergency situation. Mr. Mix stated it is his understanding that 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.

Mr. Mix discussed the Cumberland Road project requested by ASU to be placed in rates and explained the work stoppage was a result of the Governor's Orders related to COVID-19, rather than a dispute with the landowner over Atlas excavating outside the sewers' permanent easement into the temporary easement as claimed by Mr. Parks. He also explained that some of Atlas' paperwork indicated dewatering but was instead related to demobilization.

He explained the \$100,000 settlement with West Ridge involved a subcontractor who allegedly excavated beyond the permanent easement, into the temporary easement. He explained the 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 that would not have otherwise been required. He said ASU made a judgment call to settle the case instead of the unknown, but potentially greater costs, for the delay of the project, legal costs, and an unknown but more expensive judgment. He said Atlas also removed 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.

Regarding ASU's purchase of the 0.23 acres located at County Road North 300 West, Mr.

Mix said it was originally owned by Indiana-American Water Co. for a possible water storage facility and Casons owned a larger tract around the 0.23-acre parcel. He said it was ASU's understanding that this 0.23-acre parcel was key to development plans for the larger parcel, and despite great effort over a prolonged period, the Casons could not negotiate a purchase with Indiana-American. He said 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. He explained that 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 at a cost savings of approximately \$61,440 (160 L.F. @ \$234/L.F. + 2 @ \$12,000). Mr. Mix stated that the Gutwein invoice for \$1,627 was for legal service to acquire this land.

Mr. Mix responded to Mr. Parks' recommendation for ASU to provide as built plans for the Big 3 and Cumberland Road projects. He explained first and foremost, all these projects are built and in service. 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 normal procedure to complete the project due to short staffing. Regarding the status of sewer leakage, deflection, and manhole leakage tests for the Big 3, Klondike Road and Cumberland Road projects, he said because these projects have been accepted by ASU and the Commission, the contractor has been paid in full and sewer testing after the fact will not provide any additional benefits to ratepayers.

Mr. Mix discussed the Carriage Estates effluent flow meter. He stated that recalibrating the flow meter every six months or even every day will not solve the problem of incorrect readings. He explained 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% to 30% lower than expected. He stated in ASU's research, ASU discovered that the problem was not with the effluent meter but with the primary measuring flume system. He explained 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. He said taken together, these two facts resulted in an incorrect flow reading. Mr. Mix testified that in his opinion, ASU's approach of testing alternate technologies with the intent of choosing and constructing one that provides better data is the best solution.

Mr. Mix explained why some of the equipment Ms. Stull disallowed from UPIS was necessary. He presented ASU's analysis to show it is more cost effective to own the equipment rather than rent it as suggested by Ms. Stull. He discussed the reasons why owning instead of renting is better. He said the equipment ASU is recommending remaining 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. He recommended the Commission accept the cost for this equipment in the cost of service.

Ms. Shafer explained why certain adjustments recommended by the OUCC witnesses should be rejected, presented the OUCC's adjustments ASU is willing to accept, which are summarized in Applicant's Exhibit 3-R, Attachment KS-R2, and presented an updated Small U application workbook as Attachment KS-R1. She also presented a comparison of net operating

income at present rates among the original Application, the OUCC's case-in-chief, and ASU's rebuttal, as well as a comparison summary of rate base between ASU and the OUCC.

Ms. Shafer explained that the Commission did not limit the costs to be included in rate base for the three major projects authorized in the Preapproval Case and further addressed in Cause Nos. 44676 and 44676 S1 as suggested by OUCC witness Stull. Ms. Shafer explained 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. She explained therefore, the Commission should authorize recovery of such costs by including them in rate base.

Ms. Shafer addressed certain contractual expenses for which the OUCC expressed concern and recommended disallowing. She further explained that when filing its Application in this Cause, ASU did not plan to seek rate case expense as it anticipated minimal costs. She said this has not been the case, as the nature of the proceeding has changed. She explained ASU has incurred considerably more rate case expense than anticipated. Because of the uniqueness of this proceeding and its progression, Ms. Shafer said ASU seeks authority to defer rate case expense to be recovered in a subsequent proceeding.

In response to OUCC witness Sullivan's recommended reduction to building rental fees and property taxes, Ms. Shafer stated ASU further analyzed the rent and did a more thorough appraisal for Mr. Matt Washburn's appraisal information. She explained what ASU initially included is understated and \$77,869 should be included for building rental fees and related property taxes. She stated however, even with the increased amount to be included in rates, it will be offset by the adjustments ASU has made in other areas.

In response to Mr. Parks advocating for ASU to provide an immediate revenue allowance for each connection to a main extension, Ms. Shafer stated the rate increase is already significant; it seems surprising that the OUCC would be advocating for a position that causes customer rates to increase so that real estate developers would receive faster refunds. Given ASU's small size and growth levels, she stated ASU rightfully believes these are abnormal and extraordinary circumstances that warrant a departure from the main extension rules under the "special contract" exception. Notably, ASU has no record of a developer ever complaining about not receiving an immediate revenue allowance. She explained 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." She testified ASU believes there are abnormal and extraordinary circumstances that allow ASU to enter into special contracts with its developers. She explained 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. She stated so even if required, ASU is in compliance with the main extension rules.

Ms. Shafer explained she did not agree with the normalization adjustments to test year or post test-year operating revenues for customer bill counts. She stated 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. She testified that is not how the customer growth adjustment is addressed in the small utility application, which accounts for customer growth

month-to-month. She explained that ASU's customer base fluctuates widely, since much of its customer base is around the City of West Lafayette. She testified the small utility methodology is the appropriate method. She provided the customer growth calculations of \$28,890 for residential and \$51,593 for multi-family. She also explained that since ASU rejects Ms. Stull's growth adjustment and therefore rejects her adjustments to expenses caused by her growth adjustments, ASU calculated its own adjustments to expenses based on the corrected growth calculation. She presented those adjustments as \$1,120 for sludge removal expense, \$4,091 for purchased power, \$989 for chemicals, and \$985 for miscellaneous expense.

8. Commission Discussion and Findings.

A. Rate Base. Ms. Shafer presented all the adjustments made by the OUCC that ASU agreed to in Applicant's Exhibit 4, Attachment KS-R2. The Commission is satisfied with ASU's acceptance of these adjustments as reasonable and discusses below only the adjustments that are still in dispute. What remains in dispute is: (1) the OUCC's proposed removal of certain specialized construction equipment; (2) additional asset retirements and disposals; (3) the OUCC's proposed disallowance for costs that exceeded previously approved amounts; (4) certain costs associated with the Cumberland Road project; (5) certain expenses the OUCC believes are more capital in nature; (6) whether the Kimberley Estates lift station should be retired; and (7) non-allowed UPIS.

1. Construction Equipment. 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 accepted in UPIS a Case tractor, a scissor lift, and an extended hoist, among other things. The OUCC also accepted a "jet vac" truck acquired from FTDC at a cost of \$50,000. Ms. Stull recommended a \$1,369,414 decrease to UPIS 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 camera trucks purchased from an affiliate, FTDC, at a cost of \$170,000. She recommended the removal of \$77,990 of miscellaneous equipment including trenchers, landscape rakes, and a drum roller. Finally, 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.

The OUCC 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. ASU provided only generic responses that 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." 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. Thus, the OUCC concluded that 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.

In rebuttal, Mr. Mix acknowledged that ASU had informed the OUCC that ASU did not keep records of the equipment's use but asserted the OUCC does not claim the equipment was unnecessary. Although the OUCC claims it would be more cost effective for ASU to rent specialized equipment when needed, the OUCC did not complete an analysis that compared renting versus owning the equipment in dispute. Mr. Mix stated that ASU performed an analysis on the cost effectiveness of owning certain equipment versus renting 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 in consultation with its engineers, Mr. Serowka, and him to arrive at a reasonable estimate of days that the equipment is used. He explained that his analysis reflects a breakeven based upon the actual number of days equipment must be used with the cost to own. He explained that when compared with the estimated days used, his analysis clearly shows that it is more cost beneficial to a ratepayer that ASU own the equipment in dispute and not rent them.

As an initial matter, we note that only after informing the OUCC that ASU does not keep track of the amount of time each piece of equipment is used did ASU attempt to provide any data regarding frequency of use. Based on the evidence presented, we find Mr. Mix's analysis largely focuses on comparing renting as opposed to owning that depends on how the equipment could be used, rather than how the equipment is actually used, and several unsupported assumptions. Further, Mr. Mix fails to adequately explain why ASU needs such large and, in some cases, specialized construction equipment for a relatively small utility.

In the 44676 Order, the Commission directed ASU to comply with the NARUC USoA Instruction 2, which requires a utility to keep "records and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account." *Am. Suburban Util., Inc.*, Consolidated Cause Nos. 44676 and 44700, at p. 41 (IURC Nov. 30, 2016). ASU was also directed to "provide records sufficient to support all major plant investments..." *Id.* OUCC Exhibit 3, Attachment MAS-14 shows that most of the equipment in question was added after the 44676 Order was issued. Despite these directives, we continue to find insufficient documentation to support the reasonableness of the equipment purchases in question. Moreover, we are mindful that ASU appears to have a history of allowing its affiliated companies to use its equipment. For example, in Cause No. 44676, ASU could not explain why equipment it bought was being leased back to ASU through an affiliated company. *Id.* We also find in this case that ASU purchased from its affiliate, FTDC, two camera trucks for \$170,000. However, the record does not disclose whether this transaction was made pursuant to an affiliate agreement that was filed with the Commission. Additionally, ASU has not established that it needs

to own the equipment the OUCC identified. We again direct ASU to comply with the NARUC USoA. Furthermore, ASU shall maintain sufficient documentation defining the utilization of equipment purchases.

Accordingly, based on our review of the evidence, we find the construction equipment at issue is indeed specialized, more oriented toward general construction activities, and seldom utilized by a wastewater utility. Thus, we agree with the OUCC and find the \$1,369,414 in specialized construction equipment shall be excluded from ASU’s rate base.

2. Additional Asset Retirements/Disposals. OUCC witness Stull proposes \$1,274,789 in asset retirements including the US 231 Bypass gravity sewer main and the Copper Beech lift station along with certain vehicles, computers, and other equipment. We are comfortable with Mr. Mix’s analysis that a significant portion of the 10-inch diameter force main remains in service after the completion of the Cumberland Road project. Further, Mr. Mix calculated the value of the abandoned portion of the force main as \$354,165. However, no ASU witness discusses the other differences associated with vehicles and office equipment. Therefore, the Commission accepts the OUCC’s proposed adjustment for asset retirements but modified by removing \$546,722 for the US 231 Bypass still in service. As a result, we are approving a rate base adjustment for Asset Retirements of \$728,067 to remove retired assets from UPIS and accumulated depreciation.

3. Major Project Costs in Excess of Commission Authorization. OUCC witness Stull recommends a \$399,997 decrease to rate base. She explains the asset registers provided in response to OUCC discovery show ASU recorded costs in excess of the amounts authorized by the Commission for certain projects included in rate base in Cause Nos. 44676 and 44676 S1. OUCC witness Stull explains the 44676 and 44676 S1 Orders determined the total amount to include in rate base for these three major projects and thus any excess costs should be disallowed.

	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	<u>2,364,303</u>	<u>1,882,250</u>	<u>10,400,262</u>	<u>14,646,815</u>
Excess Costs	<u>(\$ 72,412)</u>	<u>(\$190,323)</u>	<u>(\$ 137,262)</u>	<u>(\$ 399,997)</u>

The OUCC also recommended the Commission order ASU to remove these excess costs from its general ledger to ensure these costs are not included in UPIS in any future ASU rate cases.

In rebuttal, ASU witness Shafer argued the OUCC has attempted to read additional limits into the Commission’s 44272, 44676, and 44676 S1 Orders. She asserted the OUCC has not challenged the prudence or necessity of any of the services for which these costs were incurred. Further, Mr. Mix notes that ASU spent \$40,945 for the Klondike 2020 roundabout project, which is different than the Klondike Road project. The Klondike Road project is a preapproved project relocating sanitary sewers in Klondike Road. The Klondike roundabout project was completed to take advantage of an open field situation prior to the county’s plans to construct a roundabout at

the intersection of Klondike Road and Cumberland Road. ASU recommends the rate base adjustments proposed by OUCC witness Stull be rejected.

We agree with the OUCC that the Commission determined the amount ASU should include in rate base for these three projects, but we disagree with the premise that ASU is limited to the amounts approved. We believe the Settlement language is clear that to the extent additional costs are incurred, ASU can seek to include those additional costs in its rate base. Further, “to the extent actual construction costs are greater than the preapproved amount, it will be Petitioner’s burden to show that the amount charged by its affiliate is fair and reasonable and comparable to what an unaffiliated entity would have charged.” *Am. Suburban Util., Inc.*, Cause No. 44676 S1, at p. 3 (IURC Sept. 22, 2021).

ASU bears the burden of proof to support its incurred excess project costs. However, the only supporting testimony provided by ASU is from Mr. Mix on rebuttal indicating \$40,945 of the OUCC’s \$399,997 was spent on a capital project that involved relocation activities in the Klondike Road infrastructure related to a local roundabout project. Aside from this clarification, ASU has not adequately supported its request to include the full \$399,997 in rate base. Therefore, we find ASU’s rate base should be decreased by \$359,052 because ASU has failed to support its request to recover the additional costs incurred. However, ASU is permitted to request that amount in rate base in their next general rate case to the extent that ASU can document and justify the amount.

4. Cumberland Road Project Costs. OUCC witness Stull noted that in the Preapproval Case, the Commission pre-approved \$800,000 of construction costs for the Cumberland Road project. *Am. Suburban Util., Inc.*, Cause No. 44272, at p. 15 (IURC Apr. 9, 2014). However, Ms. Stull noted that according to the asset registers and general ledgers provided in response to OUCC discovery, as of December 31, 2020, ASU has 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. After its review, the OUCC recommended \$190,385 of the \$572,592 be disallowed or reduced from rate base based on three adjustments: (1) a \$100,000 reduction associated with a dispute with West Ridge; (2) a \$70,000 reduction associated with a change order added to an Atlas contract; and (3) a \$20,385 reduction related to the purchase of 0.23 acres of land located at 3350 West 250 North. OUCC witness Stull also explained that ASU incurred an additional \$186,918 in 2021 associated with this project but such costs were incurred after the rate base cut-off in this case.

i. West Ridge Dispute Settlement. Mr. Parks took issue with the \$100,000 settlement with West Ridge. ASU explained it made a judgment call to settle the case to avoid the unknown but potentially greater costs for the delay of the project and legal costs. As part of the settlement, ASU received the benefit of Atlas removing the Copper Beech lift station, which was not in the Cumberland sewer contract, an estimated benefit of \$53,675. However, as noted by Mr. Parks, ratepayers already pay through rates for ASU to maintain insurance coverage and for Atlas’ insurance coverage as an embedded cost in the construction contract. Thus, ratepayers should not be directly responsible for paying the settlement. Therefore, we will recognize the benefit to ratepayers in the form of the lift station removal but deny inclusion of the remaining \$46,325 in rate base.

ii. **Atlas Change Order.** Mr. Parks identified a \$70,000 change order to Atlas’ Schedule of Values as Item 12 – “Additional Mobilization/Demobilization” in Pay Application No. 5 that was approved by ASU. When in follow-up discovery the OUCC asked for support, no further information about the change order was provided. However, in rebuttal, ASU witness Mix indicated that the work stopped on the project not because of a dispute, but because of the COVID-19 pandemic. ASU felt it was prudent to shut down the project until more information on the pandemic was known. Recognizing that the uncertainties of the COVID-19 pandemic placed ASU in the difficult position of deciding whether to discontinue work, we find the \$70,000 in additional mobilization/demobilization charges should be authorized.

iii. **County Road 300 West Land Purchase.** Mr. Parks challenged the inclusion of ASU’s purchase of land located north of County Road 300 West. In rebuttal, ASU witness Mix explained why ASU became engaged in the deal with Indiana-American to purchase the 0.23 acres. He explained that 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. Mr. Mix explained this deal shortened the length of the Cumberland sewer by approximately 160 L.F. and eliminated the need for two manholes at a cost savings of approximately \$61,440 (160 L.F. @ \$234/L.F. + 2 @ \$12,000). Given the net benefit of the transaction, the Commission approves the inclusion of the land purchase in rate base.

5. **Expensed Capital Costs.** OUCC witness Sullivan identified \$58,738 in reductions to test year operating expenses that should be removed as costs that are more capital in nature. OUCC witness Stull also recommended only \$5,200 of these removed costs should be allowed in rate base. She explained that the removed costs are either costs that exceed project costs already approved by the Commission or are associated with CWIP.

In rebuttal, ASU witness Shafer agreed to move \$10,954 to CWIP and capitalize the \$5,200 associated with TBird. However, Ms. Shafer believed the following costs should also be capitalized:

Angle Right	\$2,250
TBird – Klondike	986
TBird CE-III	3,360
TBird CE-III	1,610
TBird CE-III As-Builts	10,116
Marjorie Potvin CE-III	8,660
Total	<u>\$26,982</u>

Ms. Shafer believes the OUCC has attempted to read additional limits into the Commission’s Order in the Preapproval Case and limit ASU to authorized recovery through one subsequent case. She explains these costs were legitimately incurred and ASU is not prohibited under the Preapproval Case to seek recovery in this case. Therefore, Ms. Shafer recommends these costs be capitalized.

In the Preapproval Case, we found that “[t]o 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.” *Am. Suburban Util., Inc.*, Cause No. 44272, at p. 16. We also explained the preapproved project amounts do not include reasonable costs for dewatering, easement acquisition (e.g., legal and appraisal), engineering, or phosphorus removal and that inclusion of such costs in rate base in future rate cases will be addressed as other rate base additions that have not been preapproved. *Id.* at p. 27.

Based on our review of the remaining \$26,982 in dispute, it appears these costs were incurred after ASU’s base rate case in Cause No. 44676. Based on the invoices provided, we find \$18,322 were associated with either the CE-III or Klondike Road projects and therefore should be capitalized. Regarding the invoices from Marjorie Potvin totaling \$8,660, we were unable to identify the type of work completed or the reasons for the performance of the work to determine the reasonableness of the costs incurred by ASU. Thus, we deny including the \$8,660 in rate base. Further, we believe the \$9,560 from Williams Creek should be removed from test year expense and included in rate base. Even though no party proposed this cost be added to Applicant’s rate base, as explained below, there was no dispute that the tree monitoring program was a specific regulatory requirement for the construction of the Big 3 project. Thus, we concur with the OUCC’s adjustment to remove the \$9,560 associated with Williams Creek’s tree mitigation services from ASU’s operating expenses. However, it would be appropriate to include this cost in rate base as part of the Big 3 project. Therefore, we find that \$33,082 of the capitalized costs removed by the OUCC from test year expense should be included in ASU’s UPIS.

6. Kimberley Estates Lift Station. In the Preapproval Case, the Commission granted preapproval of the Big 3 project, which was to eliminate the need for the Kimberley Estates lift station, and authorized funding for the lift station’s removal. OUCC witness Parks recommended the Kimberley Estates lift station be retired and removed because its continued operation is unnecessary and wasteful. ASU has not removed the lift station, explaining that the Kimberley Estates lift station will remain in operation as a low-cost emergency backup. Mr. Mix stated that during the removal planning process, ASU recognized the Kimberley Estates lift station could be useful during an emergency at the County Home Plant.

Based on the evidence presented, we find Mr. Mix’s assertion that the utility should continue to operate the lift station until failure and then remove it from service because the cost of operating the lift station is minimal, supports the OUCC’s position that the value of the redundancy/operational flexibility provided by the lift station is, at most, minimal. Having redundancy for the sake of redundancy does not equate to an asset being used and useful. The Commission is concerned that, again, ASU has deviated from the representations made seven years ago and has opted not to complete the work for which they have been compensated. The significant value to the utility and its ratepayers in constructing a deep sewer is not only for replacement of aging infrastructure and accommodation of new growth but to reduce O&M expenses. Without quantifying the value of the redundancy/operational flexibility and defining the likelihood of needing to divert flow in an emergency, we find it difficult to conclude that the asset is used and useful. While we cannot require the retirement of an asset, we can determine whether an asset is used and useful and adjust the utility’s expenses to reflect those that are just and reasonable. Therefore, we find that \$22,960 should be deducted from rate base to reflect the evidence of record that the Kimberley Estates lift station is not used and useful.

7. **Non-Allowed UPIS.** OUCC witness Stull recommended excluding four assets ASU recorded to rate base since its last rate case for a total of \$4,395. Two of the assets are not necessary to the provision of safe and reliable sewer utility service, including a fishing boat (\$801) and a stationary bike (\$854). The remaining 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).

In rebuttal, ASU witness Shafer accepted \$3,593, which left a difference of \$802, but did not explain what this difference represents or why she did not agree with the OUCC’s adjustment. Therefore, without an explanation from ASU, we accept the OUCC’s proposed adjustment to remove \$4,395 from UPIS.

8. **Accumulated Depreciation.** Accumulated depreciation at December 31, 2020 was \$9,100,609. ASU proposed accumulated depreciation of \$9,069,684 in its Application. In its Application, ASU adjusted test year accumulated depreciation to remove \$30,925 of 2020 depreciation expense related to the reduced phosphorus removal costs. OUCC witness Stull testified that accumulated depreciation at December 31, 2020 should be \$7,691,303. She 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. Ms. Stull also accepted ASU’s adjustment for phosphorus removal costs. In rebuttal, ASU witness Shafer proposed \$8,377,437 based on ASU’s rate base adjustments. She adjusted the accumulated depreciation from ASU’s initial 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 \$8,226,783 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	(827)
Less:	Phosphorus prior to Final Order 44676-S1	37,500
	Excess Project costs	32,966
	Cumberland Road Disallowed Costs	1,158
	Construction and Other Equipment Disallowed	58,205
	Asset Disposals	728,067
	Kimberley Estates Lift Station	22,960
	Non-Allowed UPIS	372
Total Accumulated Depreciation		\$ (8,226,783)

9. **Working Capital.** A for-profit utility is allowed the opportunity to earn a return on its investment in working capital, which 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 Application. OUCC witness 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 its 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. In rebuttal, ASU witness Shafer disagreed with Ms. Stull’s recommended working capital investment because ASU disputed many of the OUCC’s recommended changes to operating expenses. Ms. Shafer proposed a working capital investment of \$302,967 after incorporating ASU’s proposed operating expenses on rebuttal and including payroll tax expense.

We agree with the OUCC that payroll tax expense is properly included in the calculation of ASU’s working capital investment. Accordingly, based on our findings further below regarding operating expenses, we find ASU’s working capital investment for purposes of establishing rate base, is as follows:

Operation & Maintenance Expense	\$ 2,222,891
Plus: Payroll Taxes	70,193
Less: Purchased Power	(258,431)
Adjusted Operation & Maintenance Expense	2,034,653
Times 45 Day Factor	12.5%
Working Capital Requirement	\$ 254,332

Based on the foregoing, we find ASU’s rate base as follows:

Utility Plant in Service as of December 31, 2020		\$ 41,863,969
Add: Approved phosphorus per Final Order 44676 S1		263,000
Capitalized Test Year Operating Expenses		33,082
Less: Phosphorus prior to Final Order 44676 S1		(1,500,000)
COVID Forgivable Loan		(168,880)
Excess Project costs		(359,052)
Cumberland Road Disallowed Costs		(46,325)
Construction and Other Equipment Disallowed		(1,369,414)
Asset Disposals		(728,067)
Kimberly Estates Lift Station		(22,960)
Non-Allowed UPIS		(4,395)
Gross Utility Plant in Service		37,960,958
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		(827)
Less: Phosphorus prior to Final Order 44676-S1		37,500
Excess Project costs		32,966
Cumberland Road Disallowed Costs		1,158
Construction and Other Equipment Disallowed		58,205
Asset Disposals		728,067
Kimberly Estates Lift Station		22,960
Non-Allowed UPIS		372
Total Accumulated Depreciation		(8,226,783)
Net Utility Plant in Service		29,734,175
Contributions in Aid of Construction at December 31, 2020		(11,593,275)
Add: Accumulated Amortization of CIAC		1,243,247
Net Contributions in Aid of Construction		(10,350,028)
Advances for Construction		(25,138)
Working Capital		254,332
Total Original Cost Rate Base		\$ 19,613,341

B. Cost of Capital. ASU proposed a COE of 12% and a cost of debt of 4.68%, resulting in a proposed WACC of 10.26%. The OUCC proposed a COE of 9.75%, a cost of debt of 3.31%, adjusted for a portion of assets that are zero cost accumulated deferred incomes taxes, and proposed a final WACC of 4.31%. In rebuttal, ASU, after adjusting for deferred income taxes,

proposed a WACC of 10.03%.

1. ASU's Capital Structure. ASU's Application included \$16,401,918 in common equity and \$5,100,000 in long-term debt. This long-term debt was authorized in Consolidated Cause Nos. 44676 and 44700. The OUCG included \$3,691,918 in common equity, \$17,810,000 in long-term debt (which includes the \$5,100,000 in long-term debt in ASU's capital structure), and \$511,744 in ADIT. While noting that ASU did not reflect any ADIT in its Application balance sheet, OUCG witness Stull explained it is necessary to determine the amount of ADIT because it is a source of zero cost capital that should be included in ASU's capital structure. Ms. Stull testified that ASU does not properly account for or keep track of its deferred tax liabilities based on her review of ASU's annual reports filed with the Commission for the years 2018, 2019, or 2020, which show no ADIT. She also noted that while ASU's test year general ledger reflects \$351,981 of ADIT and this amount is included in the \$762,673 of current accrued taxes reflected in ASU's 2020 IURC Annual Report and in its Application.

In response to discovery, ASU stated it does not separately record deferred and current income tax expense, even though this is required by the NARUC USoA as well as GAAP. In Cause No. 45032 S15, the Commission determined that ASU's ADIT was \$533,026 as of December 31, 2017. However, based on Ms. Stull's review of ASU's general ledgers, ASU had not recorded this amount in its books and records. Ms. Stull stated it was unclear what ASU's ADIT balance should be as of December 31, 2020. Additionally, based on ASU's response to further inquiry as to whether ASU had any other revenues or expenses that generated deferred taxes, other than depreciation expense, she found 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. Using this calculation, the ADIT balance at December 31, 2020 would be \$511,744, which is the amount included in the capital structure recommended by OUCG witness Dellinger.

Ms. Stull explained that while ASU stated it endeavored to eliminate any timing differences between book income and taxable income, there may still be permanent differences, rather than timing differences. She surmised one reason for the differences between the net income reported for book purposes and that reported for tax purposes could be the \$2.5 million of CIAC that ASU has received since the TCJA. If the taxation of CIAC is considered a permanent difference, and there are no other differences between book income and tax income, then this methodology is reasonable because permanent differences do not generate ADIT.

OUCG witness Dellinger testified the \$12,710,000 of debt incurred by ASU's affiliate, L3, should be reflected in ASU's capital structure as debt since it was guaranteed by ASU and resulted in the encumbrance of ASU's utility assets. He noted that L3's bond transcripts include an Indiana Finance Authority loan application wherein L3 explained that a significant portion of the borrowings was to fund capital projects for ASU, specifically, the CE-III Plant, Cumberland Road, Klondike Road, and Big 3 projects.³

³ We share the OUCG's concern with several of the statements contained in the unsigned Indiana Finance Authority loan application that give the appearance L3 and ASU are the same entity. For example, the description of the Applicant provides that "L3 is a privately owned public waste water treatment utility. It has been in business since 1963 and currently has 2,779 customers in West Lafayette, Indiana." OUCG Exhibit CX 33.

In rebuttal, ASU witness Skomp argued that Mr. Dellinger used information from various sources to develop a hypothetical capital structure, which is inappropriate. He stated Mr. Dellinger took long-term debt owed by another entity, claiming that it is “functionally” the debt of ASU, and inserted that debt into a hypothetically derived capital structure which he then promotes as the capital structure that should be used to calculate ASU’s WACC. He argued none of the financial statements Mr. Dellinger produced show the L3 debt as a liability of ASU and, per GAAP, L3 debt is not ASU’s debt.

Mr. Skomp also took issue with Mr. Dellinger’s implication that the OUCC did not know of L3’s debt and the conversion to common equity. He explained that in ASU’s first case, Cause No. 41254, the OUCC would not support a capital structure of 80% to 90% debt and 10% to 11% equity if ASU issued the debt. Thus, Mr. Lods created and incorporated new companies that would allow for the financing of his investment in ASU and ASU refiled its case, which resulted in a settlement. The Commission approved the settlement, which included the following:

For so long as a personal loan(s) to ASU’s shareholder [added “Scott Lods” in writing] remains outstanding, ASU and the OUCC stipulate that ASU’s cost of common equity for ratemaking purposes in any rate case to be filed by ASU will be computed in two classes consisting of fifty percent (50%) each. For the first half of ASU’s common equity the Commission will find the cost of common equity based upon the evidentiary submissions of the parties. For the second half of ASU’s common equity, the cost of common equity will be equal to the interest rate on the loan issued to ASU’s shareholder. This stipulation is entered so that, without the use of a hypothetical capital structure, ASU’s customers will be provided the benefit of a one-to-one (1:1) debt to equity ratio, using as the debt portion the personal loan issued to ASU’s shareholder. When ASU is in a position to obtain borrowed capital on its own collateral, it shall strive to maintain a capital structure of at least 40% debt but in no event to exceed 60% debt.

Mr. Skomp stated that because ASU’s capital structure was no longer 100% equity in Consolidated Cause Nos. 44676 and 44700, the two-class equity calculation no longer applied.

We agree with the amount of ADIT identified by the OUCC, which was not challenged by ASU on rebuttal, and the \$5,100,000 debt that was issued pursuant to the Commission’s 44676 Order. Therefore, the only remaining disputed issue is how to classify the \$12,710,000 in long-term debt acquired by ASU’s affiliate, L3, for use by ASU to complete certain capital improvements.

As Mr. Skomp pointed out, Mr. Dellinger’s proposed capital structure is a hypothetical capital structure, which is generally prohibited. *See, Pub. Service Comm’n of Ind. v. Ind. Bell Tel. Co.*, 235 Ind. 1, 130 N.E. 2d 467 (Ind. 1995). Thus, in the absence of a settlement agreement or stipulation between the parties, the capital structure used to set rates must be based on ASU’s actual capital structure. We also note that the OUCC had the opportunity to raise the issue of L3’s

debt being converted into ASU's common equity in Consolidated Cause Nos. 44676 and 44700 but chose not to do so. Accordingly, we find L3's \$12,710,000 in long-term debt is appropriately considered ASU's equity and, thus, ASU's capital structure consists of: \$16,401,918 in common equity, \$5,100,000 in long-term debt, and \$511,744 in deferred income taxes.

2. ASU's Cost of Long-Term Debt. In its Application, ASU determined the cost of debt to be 4.68%, which is the total annual cost, \$238,680, divided by the total loan, \$5,100,000. OUCC witness Dellinger determined the cost of debt to be 4.65% based on the submission of ASU's financing report in Consolidated Cause Nos. 44676 and 44700 dated December 28, 2017. ASU did not dispute the OUCC's recommended cost of debt or provide any verification for the \$238,680 annual cost. Therefore, we find ASU's cost of the \$5,100,000 long-term debt to be 4.65%.

3. ASU's Cost of Equity. As noted above, ASU proposed a COE of 12%, whereas the OUCC proposed a COE of 9.75%. OUCC witness Dellinger did not perform a full COE study, but indicated he examined the COEs that were determined in recent Commission Orders (*Indiana American Water Co.*, Cause No. 45142 (IURC Jun 26, 2019) (9.80%), *Aqua Indiana, Inc.*, Cause No. 45314 U (IURC May 27, 2020) (9.80%), and *LMH Util., Corp.*, Cause No. 45307 U (IURC July 29, 2020) (9%)) and ASU's COE in Consolidated Cause Nos. 446776 and 44700 of 9.50%. He then adjusted ASU's current COE downward to 9.25% based on three factors since ASU's last rate case: (1) the doubling of ASU's revenues, (2) little change in interest rates, based on the 10-Year Treasury Rates, and (3) a less leveraged capital structure. However, because Mr. Dellinger's proposed capital structure for ASU is highly leveraged, with about 81% debt, he added 0.50% to arrive at 9.75%.

In rebuttal, ASU witness Skomp took issue with Mr. Dellinger's consideration of the 9% COE approved in Cause No. 45307 U, which he considered to be an outlier. He noted that the average of the other two utilities would be 9.80% and argued ASU is riskier than either of those utilities because: (1) Mr. Lods has personally guaranteed ASU's debt, (2) ASU suffered a write-off of over \$1 million related to the Big 3 project, and (3) the OUCC is recommending another \$1 million plus of disallowances in this Cause.

Neither ASU nor the OUCC did a complete COE analysis. In totality, little has changed with ASU as a utility since the 44676 Order, but interest rates have increased. Traditional models to determine the COE, such as the Capital Asset Pricing Model and the Risk Premium model, are driven, in part, by interest rates. Therefore, based on the evidence presented and these factors, we find a 0.25% adder to the 9.50% from the COE approved in the 44676 Order to be reasonable and approve a COE of 9.75%.

4. ASU's WACC. Based on the capital structure, cost of debt, and COE, the unadjusted WACC approved in this Order is 8.34%. However, as we observed in our 44676 Order (at p. 35), "achievement of a 40% debt level cannot happen immediately, and Applicant is progressing in the proper direction. We expect the Applicant to continue to do so and achieve a 40% debt level."

In Consolidated Cause Nos. 44676 and 44700, ASU's capital structure was the following:

Class of Capital	Pro Forma Amount	% of Total
Long-Term Debt (as authorized herein)	\$ 5,100,000	33.27%
Common Equity (as of March 31, 2015)	10,230,394	66.73%
Total	\$ 15,330,394	100.00%

Instead of moving toward the 40% debt level, ASU moved from 33.27% debt in Consolidated Cause Nos. 44676 and 44700 to 23.72% debt as reflected in its Application, which is the opposite direction. In its Amended Application, ASU indicates that based on the rate of return history over the past few years from its IURC annual reports, securing additional debt financing is not feasible because ASU must first be earning a fair return on its rate base to attract additional debt capital. However, we disagree. While ASU claims it is unable to attract debt capital, it provided no rejection letters from lending institutions or other documentation to support its claim. Given the explicit language in our 44676 Order, we find that ASU should have provided clear evidence that it cannot attract capital. The overall purpose of moving toward the 40% debt level was to lower the overall WACC, which in turn will lower customer rates.

Given the Commission's directives in the 44676 Order for ASU to achieve a 40% debt level, we find ASU's WACC should be based on 40% debt. With this WACC, we have adjusted the COE, such that the new WACC equals the WACC with 40% debt. The WACC based on 40% debt is 7.48% as shown below:

Components	Amount	% of Capital	Cost Rate	Weighted Cost
Common Equity	\$ 16,401,918	57.68%	9.75%	5.62%
Long-Term Debt	5,100,000	40.00%	4.65%	1.86%
Deferred Income Taxes	511,744	2.32%	0.00%	0.00%
Total	\$ 22,013,662	100.00%		7.48%

We previously determined the unadjusted COE to be 9.75%, but we are reducing the COE to 8.60% because ASU did not follow the Commission's directive in the 44676 Order to increase the debt component of its capital structure to 40%. ASU's failure to comply with this directive harms ratepayers because debt capital has a lower cost than equity capital. With the COE of 8.60%, cost of debt of 4.65%, and components of the capital structure determined above, the WACC is 7.49%⁴ as shown below.

Components	Amount	% of Capital	Cost Rate	Weighted Cost
Common Equity	\$ 16,401,918	74.51%	8.60%	6.41%
Long-Term Debt	5,100,000	23.17%	4.65%	1.08%
Deferred Income Taxes	511,744	2.32%	0.00%	0.00%
Total	\$ 22,013,662	100.00%		7.49%

⁴ The difference between 7.48% and 7.49% is due to rounding.

C. Net Operating Income.

1. 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 agreed-upon adjustment to be reasonable. The remaining disagreements, which are associated with customer growth and other income, are discussed below.

i. 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 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. 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.

In rebuttal, ASU witness Shafer continued to propose an \$18,201 increase to reflect test year normalization. Ms. Shafer asserted the 44676 Order already incorporates the units billed through September 2020, and therefore, operating revenues should not be adjusted further because it would result in double counting for January – September 2020 growth normalization.

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 2020. Ms. Shafer explained that she did not include January through September because the final order in Cause Nos. 44676 and 44676 S1 already included the units billed through September 2020. While we agree with ASU that the number of customers through September 30, 2020 was considered in ASU's previous cases, the normalization of the customer growth that occurred during the first nine months of 2020 was not computed. Instead, the number of customers was used to determine the amount of rate increase needed to generate the revenue requirement authorized in Cause No. 44676 S1. The normalization of the change in the number of customers did not occur. Thus, we disagree with Ms. Shafer that the OUCC's adjustment double counts customer growth that occurred during January through September 2020 and find that the OUCC's test year revenue normalization adjustments resulting in an overall \$73,175 increase should be accepted:

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

ii. **Post-test Year Customer Growth.** ASU included no post-test year customer growth adjustment in its Application.

OUCC witness Stull recommended a total post-test year customer growth adjustment of \$146,679. 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 of \$61,680 and \$84,999, respectively.

ASU witness Shafer disagreed with Ms. Stull’s calculation of post-test year adjustments, asserting that in the small utility rate application, customer growth is accounted for month-to-month. Ms. Shafer stated that ASU’s customer base fluctuates widely, since much of its customer base is around the City of West Lafayette. Therefore, she proposed a post-test year customer growth adjustment of \$28,890 for the residential customer class and \$51,593 for the multi-family customer class.

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. 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 a utility can propose a post-test year customer growth adjustment in its small utility application form, there is no standard adjustment included in the application form. Because we agree with the OUCC’s calculation of post-test year customer growth, we find the post-test year customer growth adjustment results in an increase of \$146,679.

iii. **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 the Commission’s July 1, 2022 Docket Entry, the OUCC explained that through several discovery responses, the OUCC determined the costs associated with this income was not capitalized and therefore would have been included in pro forma operating expenses and recovered through ASU’s proposed rates in this case. When asked why ASU excluded these amounts from its pro forma present rate net operating calculation, ASU explained that the inspection fees were a one-time revenue and are not expected to be received in the future and the other income is unreliable and an immaterial amount.

As for connection charges, ASU indicated that if they diminish drastically or entirely, operating expenses will continue unchanged. In addition, ASU does not track expenses directly associated with connection charges and the employee that handles connection charges would be employed regardless of connection charges.

Generally, the costs associated with inspecting contributed utility plant and connecting new customers is tracked as a capitalized cost, not recorded as an operating expense. Inspection fees and connection fees are recorded as CIAC and included as an offset to UPIS. However, in this instance, it appears ASU has again failed to properly account for capitalized costs. Moreover, stating that certain income is unreliable or immaterial does not negate the fact that the cost incurred to generate that income could be embedded in ASU's test year expense. Therefore, we agree with the OUCC that \$156,551 should be reflected above-the-line to offset costs included in test year operating expense.

Moreover, we find ASU's accounting violates 170 IAC 8, which states that private rural sewage utilities are to follow the NARUC USoA. The Commission directed ASU in the 44676 Order to comply with the NARUC USoA's accounting instruction regarding records. However, in this case, ASU explains that it does not track costs associated with inspections and does not capitalize costs associated with customer connections. If ASU had followed the NARUC USoA and the Commission's directives provided in the 44676 Order, there would have been no question whether the costs associated with inspections of main extensions or connections were included in expense. Thus, we again direct ASU to comply with Accounting Instruction No. 2, which would include tracking the costs incurred for inspecting contributed utility plant and recording this to UPIS. ASU shall also track the costs incurred to connect new customers to its system and record these costs to UPIS. Correspondingly, ASU shall record inspection fees and connection fees as CIAC. ASU is further advised that failure to comply with these directives is a violation of Ind. Code §§ 8-1-2-10 and -17 and may lead to separate violations and penalties as authorized in Ind. Code §§ 8-1-2-108 and -112.

iv. 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.

2. Expenses. ASU originally proposed pro forma operating expense of \$4,076,356, which is a decrease of \$10,868 to its test year operating expense of \$4,087,224. The OUCC recommended a pro forma present rate operating expense of \$3,147,775 based on various adjustments to ASU's operating expenses. On rebuttal, Applicant accepted some of the proposed adjustments, proposing pro forma expense of \$3,717,522. The parties agreed with an \$86,004 reduction to amortization of rate case expense, a \$10,800 reduction to test year expense for the removal of an IDEM penalty, the addition of \$5,809 for test year IURC fee, the removal of \$77,259 in utility receipts tax, and a decrease to expense of \$7,094 associated with the amortization of excess deferred income taxes. We find the parties' agreed adjustments to be reasonable and discuss each disputed adjustment below.

i. Salaries, Wages, and Employee Benefits. ASU's \$239,424 increase to test year salaries and wage expense of \$823,727, which resulted in pro forma salaries

and wage expense of \$1,063,151, was challenged by the OUCC, which recommended wages and salaries be set at test year expense. The OUCC based its adjustments on the number of hours ASU employees worked during the test year. In rebuttal, ASU witness Mix explained that the test year is not representative of normal payroll levels due to the COVID-19 pandemic. For part of 2020, ASU temporarily laid off a substantial amount of its staff out of concerns with the pandemic. Thus, ASU based the salaries and wages expense on actual headcount and salary/wage levels. Mr. Mix explained ASU will still be operating with fewer employees than determined necessary under the EPA 305-B-05-002, Guide for Evaluating CMOM Programs at Sanitary Sewer Collection Systems standards.

We agree with ASU that test year payroll levels are not representative of ASU's normal ongoing needs. Therefore, we accept ASU's requested \$239,424 increase to test year salaries.

ASU proposed a \$16,161 increase to test year pension expense of \$35,881, which when added to \$85,000 for 401K expense, \$20,580 for health reimbursement expenses, and \$14,678 for employee relations, results in pro forma employee benefits expense of \$172,300. OUCC witness Sullivan explained that ASU offers employees a 401K profit sharing plan (a defined contribution pension plan), which matches 100% of employee's contributions up to 6%. Ms. Sullivan recommended a \$71,457 decrease to test year pension/401K expense of \$120,881 resulting in pro forma pension expense of \$49,424. She explained that because the OUCC recommended salary and wage expense equal to test year expense, the pension/401K expense should be 6% of \$823,727, or \$49,424. Based on our determination that pro-forma salaries and wage expense is \$823,727, we find ASU's pro-forma pension/401K to be \$49,424.

Ms. Sullivan also 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), and (4) \$478 for other miscellaneous expenses. Ms. Sullivan recommended removing the \$3,000 for team building activities and the \$6,700 of Christmas bonuses. She explained that compensation for participating in team building activities and Christmas bonuses are not necessary for the provision of safe, reliable sewer service, and are not a reasonable expense to recover from ratepayers. Ms. Sullivan recommended ASU's employee relations expense be set at \$4,978, which includes \$4,500 for the wellness program and \$478 for miscellaneous expenses. On rebuttal, Mr. Mix argued that employee benefits come in many forms and said it is beneficial for a team to work well together. He testified employers are having an extremely hard time maintaining employees, noting that low pay, no opportunities for advancement, and feeling disrespected are reasons employees leave small utilities.

While we are sympathetic to the need to attract and retain employees, ASU provided no analysis to support that Christmas bonuses were expected by the employees or tied to a reasonable level of compensation or some element of a performance matrix. Moreover, ASU provided no evidence demonstrating that ASU has an obligation to issue Christmas bonuses to its 22 employees. Consequently, the bonuses are gifts from ASU's owner/shareholder and thus should not be an expense that ratepayers should be expected to cover in rates. 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 identified a particular team building activity, explained how that activity should be considered necessary for the provision of safe, reliable sewer service, or otherwise explained why the 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 building activities should not be included in ASU's pro form revenue requirement.

Therefore, 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.

ii. **Sludge Removal.** The OUCC recommended reducing operating expenses by \$24,654 for sludge removal expense, resulting in pro forma expense of \$43,910. The OUCC claimed the costs for sludge removal during the test year was significant when compared to the average cost. OUCC witness Sullivan explained there is a significant difference in costs to land apply sludge verses hauling the sludge to a regional biosolid center. In rebuttal, ASU witness Mix explained sludge handling is a complicated and regulated process, and price is not the deciding factor in sludge management. He noted every plant has limited sludge capacity and when it is full, the operator must remove it to avoid violating the utility's NPDES permit. Moreover, sludge can be only applied on farmland for a short period of time and depends on the weather.

Based on the evidence presented, we find an ongoing level of sludge removal expense in rates is reasonable and in customers' interests. While we reject Mr. Mix's assertion that price cannot be a controlling factor for sludge removal expense, we understand that sludge may need to be hauled when less than opportune conditions exist. In determining the appropriate amount, we agree with the OUCC that it is reasonable to look at the average amount of sludge removal year after year to recognize increased costs of hauling and to determine the reasonableness of test year expense. Based on the record, the sludge removal was significantly higher in 2020 and 2021. Therefore, we find that using a four-year average for both hauled sludge and land applied sludge to yield a pro forma expense of \$49,883 is reasonable and appropriate.

iii. **Expenses Associated with Kimberley Estates Lift Station.** OUCC witness Parks recommended the retirement and removal of the Kimberley Estates lift station as well as any ongoing expenses associated with the lift station. Mr. Parks estimated annual operating costs for 2021 of over \$15,500, which included \$9,500 in annual labor for daily lift station checks and routine maintenance and \$4,300 in purchased power costs. However, Mr. Parks noted that test year purchased power expense associated with the Kimberley lift station was \$4,177.

Consistent with our discussion and finding in Section 8.A.6. above that the Kimberley Estates lift station is not used and useful, the Commission accepts the OUCC's recommendation and finds \$4,177 in purchased power expense incurred during the test year for the Kimberley Estates lift station should be removed from operating expenses.

iv. **Contractual Expenses.** OUCC witness Sullivan proposed several adjustments to four sub-categories under contractual expenses: (1) Engineering (\$97,456); (2) Legal (\$160,423); (3) Testing (\$12,550); and (4) Other (\$112,062). In rebuttal, ASU accepted various adjustments to those proposed by the OUCC, which we find to be reasonable:

Engineering ⁵		(\$49,786)
Legal		(\$107,027)
Testing		\$0
Other		\$0

We discuss the remaining disputed expenses below.

a. **Engineering.** Regarding consulting engineer Mr. Edward J. Serowka’s contract, OUCC witness Sullivan claimed the expenses were non-recurring and could be performed by other ASU employees. Based on ASU witness Mix’s testimony and the OUCC’s workpapers for salaries and wages, Mr. Mix works for ASU as a full-time staff engineer. Because ASU has an engineer on staff, we find it is unreasonable to have an additional engineer, Mr. Serowka, on retainer for a utility the size of ASU. We agree with the OUCC and find the \$19,447 associated with Mr. Serowka should be removed from test year expense.

Ms. Sullivan also 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, in Cause No. 44676 S1. Ms. Sullivan explained that Ms. Leshney’s testimony was offered, in part, to support ASU’s assertion that the CE-III Plant was substantially complete and in service as of the date of the compliance filing. She argued that because the Commission ultimately determined ASU had not completed its CE-III Plant and that it was not in service at the time of ASU’s compliance filing, recovery of this expense from ratepayers is not appropriate as well as a non-recurring expense.

ASU witness Shafer disagreed, asserting ASU could not have forecasted this expense or known what would be the OUCC’s opposition. Ms. Shafer stated that Ms. Leshney testified on two issues in Cause No. 44676 S1: (1) that the plant was in service as of the date that it was certified to be in service; and (2) that the plant as built was properly designed. 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, the amount should be recoverable, and ASU would amortize this test year expense over five years.

Cause No. 44676 S1 was initiated due to a dispute over the in-service date of the CE-III Plant. On that issue, the Commission determined that ASU had not completed its CE-III Plant as ASU had indicated in its November 7, 2019 compliance filing requesting implementation of Phase III rates. Had ASU waited until its CE-III Plant was completed before filing its compliance filing, Ms. Leshney’s services would not have been necessary. Therefore, we decline to authorize the requested expense and find that \$3,962 should be excluded from the pro forma revenue requirement in this Cause.

⁵ \$43,136 engineering to be capitalized + \$6,650 engineering to be removed.

The next disputed issue relates to several invoices from TBird. Ms. Sullivan proposed several adjustments totaling \$35,974 for various projects. OUCC witness Stull explained the costs associated with the Klondike Road and Carriage Estates projects were costs that have already exceeded the amount the Commission found should be allowed in rate base and the remaining \$14,701 of service area planning costs should be included in CWIP until such time as the related assets are placed in service. In rebuttal, ASU witness Shafer argued that the OUCC was reading additional limits into the Preapproval Case. She asserted the expenses were reasonably incurred, and ASU is not prohibited under the Preapproval Case from seeking recovery of those costs.

Applicant's Exhibit 3-R, Attachment KS-R2 reflects all the TBird invoices that the OUCC removed from expense are to be capitalized except for \$14,701 in invoices associated with Project #18017 CTA Update. Although Attachment KS-R2 does not include the invoices associated with Project #18017, ASU offered no other support for its position concerning this project. Therefore, we find the OUCC's proposed adjustment to remove \$35,974 from test year expense for contractual engineering services should be approved.

The final disputed issue related to engineering contractual expense relates to two invoices ASU paid during the test year to Williams Creek. The OUCC recommended removal of the Tree Mitigation Program costs related to the Big 3 project, arguing that these costs were capital in nature and included in the Preapproval Case. Mr. Parks explained that the \$9,560 from Williams Creek are not charges for engineering of the Big 3 project but rather for construction that falls under the Big 3 contractor, ASU's affiliate, FTDC. ASU witness Mix explained the Tree Mitigation Program started with the tree and vegetation plantings in the spring of 2018. The mitigation permit expired at the end of 2021, subject to ASU meeting the permit's success criteria. He stated the tree mitigation was not done by the underground contractor and ASU contracted with Williams Creek for the tree mitigation services after the underground contractor completed the Big 3 project. He asserted ASU did not include these costs in the Big 3 project construction estimate.

We agree with the OUCC that the tree monitoring program is capital in nature because it is a specific regulatory requirement of the construction of the Big 3 project. However, there was no cross by the OUCC that challenged Mr. Mix's testimony that the tree mitigation costs were not part of the Big 3 project construction estimate and therefore were not included in rate base. Thus, we concur with the OUCC's adjustment to remove the \$9,560 associated with Williams Creek's tree mitigation services from ASU's operating expenses. However, as previously determined in our discussion on rate base, it would be appropriate to include this cost in rate base as part of the Big 3 project.

b. Legal. OUCC witness Sullivan recommended reductions to Barnes and Thornburg, LLP ("B&T") of \$14,126 related to general environmental issues and \$101,896 related to Cause No. 44676 S1. ASU agreed with the OUCC's adjustment related to Cause No. 44676 S1. However, ASU witness Shafer explained that the general environmental work performed by B&T relates to a variety of regularly expected general legal work. Regularly expected legal work should be included in annual legal expense and therefore, we reject the OUCC's proposal to remove \$14,126 from test year legal contractual expense.

The OUCC also proposed a test year reduction of \$15,411 from Gutwein and a \$28,990 test year reduction from WBP, claiming the costs are either not recoverable or were not supported. In rebuttal, ASU accepted the OUCC's adjustment to remove \$5,131 from Gutwein related to its Agreed Order case with IDEM but explained Gutwein was retained to assist with ASU's NPDES permit. Because ASU must hold the permit to operate the WWTPs, Ms. Shafer said it is not unreasonable to expect ongoing costs. Regarding WBP, Ms. Shafer explained these expenses were related to easement and acquisition matters, which are legitimate costs, but are typically costs associated with projects and therefore should be capitalized.

We agree that inclusion of costs associated with ASU's NPDES permit may be appropriate. However, the Gutwein invoices in OUCC Exhibit 2, Attachment CFS-22 related to Case No. 2019-26314-W totaled \$15,411 and ASU agreed to not seek recovery for costs associated with this case. The remaining Gutwein invoices that indicated CE III NPDES permit work totaled \$10,280, which were not removed by the OUCC. Therefore, we find the \$15,411 for Gutwein should be removed from test year operating expense.

Regarding the WBP invoices, we agree with ASU that if the costs are associated with easements and acquisitions, those costs are typically associated with projects and therefore should be capitalized. However, a review of the invoices fails to provide any information indicating the nature of the legal expense and ASU did not offer any evidence concerning the project(s) associated with these costs. Thus, we lack sufficient information to determine if the WBP invoices are associated with CWIP or a completed project. Therefore, we accept the OUCC's adjustment to remove \$28,990 from test year legal expense and direct ASU to provide, in the future, sufficient information to support the reasonableness of its proposed capital project costs.

c. Testing. Regarding testing expenses, OUCC witness Sullivan testified that as of 2020, this service is provided by ASU staff. She stated Sherri Crandall, President of S & D Testing, was added to ASU's payroll during the test year and is included in pro forma salaries and wages. In rebuttal, ASU witness Mix explained Ms. Crandall's duties as an ASU employee are for lab work. ASU's contract with S & D Testing, however, is for certified operator services and Ms. Crandall is not a licensed certified operator. Thus, Ms. Crandall is not performing the same tasks as S & D Testing.

Based on Mr. Mix's explanation, the S & D Testing costs are incurred to satisfy IDEM rules and regulations for wastewater treatment plants and that Ms. Crandall performs services for ASU as an employee that are distinct from those provided by S & D Testing. The OUCC does not dispute that the treatment plants need to be operated by a licensed operator. Therefore, we find the costs associated with the contract between ASU and S & D Testing for a licensed certified operator are properly included by ASU and are approved.

d. Other. OUCC witness Sullivan proposes two adjustments to reduce test year other contractual services by \$112,062. The first adjustment is a reduction of \$82,672 associated with services received from Kokopelli for emergency repairs to US 52, which OUCC witness Parks asserted was unsupported and inflated. In rebuttal, Mr. Mix explained the extenuating circumstances surrounding the emergency repair and the differences between an emergency and a planned construction project. He explained that prudence reviews

should be made on the facts and circumstances as they existed at the time the decision was made. Based on the evidence presented by Mr. Mix in rebuttal, we find ASU's decision to retain Kokopelli to be reasonable under the circumstances and the costs normalized to allow for recovery. Therefore, we approve the creation of a regulatory asset for this expense to be recovered over a five-year period.

The second adjustment proposed by the OUCC is a reduction to test year other contractual expense of \$29,390. ASU purchased from its affiliate, FTDC, the JetVac truck it used to provide services to ASU. OUCC witness Parks explains that ASU also purchased from FTDC a camera truck. As such, tasks previously performed by FTDC will fall to ASU staff. In rebuttal, ASU argued the expense is ongoing because ASU, rather than FTDC, will be responsible for operations. ASU witness Shafer explained that JetVac expenses are ongoing and previously paid to its affiliate at cost plus 10%. Now that ASU owns the JetVac, the services it provides will still occur and the costs associated with operating are still incurred. Ms. Shafer claims that ASU adjusted out the plus 10% paid to its affiliate in its Application. The Commission reviewed the invoices the OUCC relied on for its adjustment and provided to the Commission in response to its July 1, 2022 Docket Entry. Some invoices included services for other pieces of equipment. We also note that we removed the camera trucks purchased from FTDC from rate base. Thus, we find the costs associated with the use of a camera truck and the other equipment should remain in contractual service expense. We also find that gas for the JetVac truck should also remain in test year expense. Therefore, we find only \$7,318 of the OUCC's proposed adjustment, which is associated with the JetVac truck and associated overhead and profit, should be removed from test year other contractual service.

v. **Rental Expense.** OUCC witness Sullivan explained 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 for approximately 13,212 square feet of space located at 3350 W 250 N, West Lafayette, Indiana. Ms. Sullivan recommended a \$39,089 decrease to the test year expense of \$60,083 for rental of building/real property, 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. Ms. Sullivan stated ASU's pro forma lease expense is overstated because it includes square footage not reasonably needed to operate the utility. She noted the 44676 Order disallowed rent expense because 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 a revenue requirement that permits it to rent 3,207 square feet, which consists of the expanded main floor (1,407 square feet) and the garage space (1,800 square feet). In rebuttal, ASU witness Shafer responded that ASU further analyzed the rent and did a more thorough appraisal asserting that the amount ASU initially included for rent expense is understated. ASU should have included a total of \$77,869 for building rental fees and related property taxes.

We addressed the issue of ASU's affiliated contract with Mr. Lods regarding its building lease in the 44676 Order, limiting rental expense based upon 2,664 total square footage. In that case, we also explained that Ind. Code § 8-1-2-49(2) requires an affiliated contract to be filed with the Commission before being placed in effect. On November 1, 2020, ASU executed a new

affiliated contract and failed to file it with the Commission. Instead, we received the contract as an attachment to the OUCC's testimony. Based on our review of this new affiliated contract, we find it is unreasonable and not in the public interest. Section 8 of the contract reflects ASU is renting more than 13,000 square feet of space and Section 16 of the contract states the contract "shall be considered a triple net lease," meaning ASU is responsible for all operating costs associated with the building, including property taxes and insurance. ASU offered no support for the increased need in square footage. Moreover, the contract does not adhere to the standards outlined in the Commission's General Administrative Order 2016-5, specifically section IV. Therefore, the affiliated contract is not approved and the OUCC's position on this issue is accepted.

vi. **Miscellaneous Expense.** OUCC witness Sullivan addressed her recommended \$24,713 decrease to test year miscellaneous expense for disallowance of \$10,204 related to travel and meeting expense, \$3,709 for a Christmas party, and \$10,800 for IDEM violation fees. ASU accepted Ms. Sullivan's adjustment to remove a \$10,800 payment towards a \$63,800 civil penalty associated with IDEM violations, which we find to be reasonable. The remaining two adjustments are discussed below.

a. **Travel and meeting expenses.** OUCC witness Sullivan recommended removing \$10,204 associated with Mr. Lods' travel and meeting expense. She removed \$2,572 related to the 2020 CONEXPO-CON/AGG and IFPE expo and \$4,071 related to the 2020 National Association of Home Builders-International Builders Show, both of which were held in Las Vegas, because they do not sufficiently relate to the provision of sewer service. She also removed \$3,561 of travel and meeting expenses, which lacked detail or support. In rebuttal, Ms. Shafer explained why she believes these expenses are related to ASU's provision of utility service, stating Mr. Lods assists in the design of new structures and equipment as well as in the repair and maintenance of existing structures and equipment and it is important to be knowledgeable of new products and techniques.

After reviewing the documentation supporting OUCC witness Sullivan's proposed adjustments, we agree that the expenses she recommends removing from test year expense provide no material benefit to ASU's ratepayers. The two conferences selected by Mr. Lods appear to be marketed to general building and construction industries. The programming provided by the conferences was much broader than an owner of a small wastewater utility would need. We also agree that there is insufficient support to determine the reasonableness of the additional \$3,561 in travel and meeting expenses. Therefore, we accept the OUCC's recommended removal of \$10,204 in travel and meeting expenses.

b. **Christmas party.** Ms. Sullivan also recommended removal of Christmas party costs. She stated she removed this expense from pro forma operating expenses as inappropriate expenses for ratepayers to fund through higher rates. While ASU witness Mix explained the importance of retaining employees, he failed to provide any support for the notion that a Christmas party helps to retain employees. Given the lack of evidence demonstrating the reasonableness of requiring ratepayers to fund ASU's Christmas party, we agree with the OUCC that such costs are unnecessary for the provision of utility service and accept the OUCC's adjustment to reduce \$3,709 associated with ASU's Christmas party.

vii. Annualized Expenses. The OUCC increased purchased power by \$9,189, sludge removal expense by \$1,619, chemical expense by \$2,232, and miscellaneous postage expense by \$2,223 related to its test year revenue normalization and post-test year customer growth adjustments. Given we have accepted the OUCC's test year revenue normalization and post-test year customer growth adjustments, we find these associated expense adjustments properly calculated and reasonable, except for sludge removal expense. We found above that ASU's pro forma expense for sludge removal should be \$49,833. Using the same methodology used by the parties, we find an increase of \$1,839 for sludge removal expense shall be approved.

viii. Amortization of Regulatory Assets. Having found the \$82,672 ASU incurred for the sewer collapse along US 52 to be reasonable, and the approval for the creation of a regulatory asset to recover this expense over a five-year period, we included \$16,534 in amortization expense in ASU's revenue requirement.

ix. Depreciation and Amortization of CIAC. 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 UPIS 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. Ms. Stull also recommended CIAC amortization expense of (\$289,832) for a net depreciation expense of \$634,821. In rebuttal, ASU witness Shafer proposed net depreciation expense of \$699,903 after subtracting the CIAC amortization expense proposed by the OUCC. Ms. Shafer also acknowledged the error discovered by Ms. Stull and corrected the error in her Application.

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 UPIS and using the Commission's composite depreciation rate, the Commission finds the depreciation expense of \$943,643 and CIAC amortization expense of (\$289,832) to be reasonable.

x. Taxes Other Than Income. The parties agreed that utility receipts tax should be removed from test year expense. Having found that test year salaries and wages should be approved in this case, we approved test year payroll taxes. The remaining dispute relates to 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. OUCC witness Sullivan explained her recommended \$42,274 increase to test year property tax expense is \$9,172 less than ASU because she removed the tax liability associated with 17.486 acres owned by Mr. Lods. According to the affiliated, triple net lease, executed between Mr. 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, of which ASU occupies a very small percentage. 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 addition, as discussed previously, the affiliated rental contract is not

reasonable or in the public interest. Therefore, we accept the OUCC’s proposed property tax expense adjustment.

xi. Income Taxes. We find that other than the differences in various proposed revenue and expense items, there is no difference between the parties’ state and federal tax expense calculations. Using the same methodology, we find ASU’s pro forma present rate state income tax to be \$54,747,797 and federal income tax to be \$223,132.

3. Authorized Rate Increase. The Table below summarizes the rate increase approved by the Commission:

Revenue Requirements	
Original Cost Rate Base	\$ 19,613,341
Times: WACC	7.49%
Net Operating Income Required for Return on Rate Base	<u>1,469,039</u>
Less: Adjusted Net Operating Income	<u>1,055,466</u>
Net Revenue Requirement	413,573
Times: Gross Revenue Conversion Factor	<u>133.2743%</u>
Required Revenue Increase	<u>\$ 551,187</u>
Required Percentage Increase	<u><u>12.61%</u></u>

Pro forma Net Operating Income	
Operating Revenues	\$ 5,078,620
Less: Operation & Maintenance Expense	2,223,594
Depreciation Expense	960,177
Amortization of CIAC	(289,832)
Taxes Other Than Income	307,946
State Income Taxes	81,720
Federal Income Taxes	333,069
Amortization of EDIT	<u>(7,094)</u>
Net Operating Income	<u><u>\$ 1,469,039</u></u>

The Commission finds that the revenue requirements and pro forma net operating income shown in the tables above are reasonable and should be approved. The Commission finds that ASU’s rates should be increased by 12.61% across-the-board. The residential wastewater flat monthly rate will increase from \$59.08 to \$66.53.

4. Other Issues.

i. As-Builts. Mr. Parks recommends ASU provide as built plans for the Big 3 and Cumberland Road projects. Mr. Mix explained that the COVID-19 pandemic affected how certain aspects of the work were completed and the as-built drawings were unable to be completed. The Commission is not persuaded that the COVID-19 pandemic is a reasonable excuse for not completing as-built drawings because if construction crews were able to

complete their work in a safe manner, then those recording the field conditions as construction progresses should also have safely been able to do the same. Therefore, ASU is instructed to hire an independent, third-party, surveyor at no additional cost to ratepayers to produce accurate record drawings. Applicant shall submit a certification under this Cause that the as-built drawings have been completed for the Big 3 and Cumberland Road projects within six months of the date of this Order.

ii. **Effluent Flow Meter.** In response to Mr. Parks' criticisms of ASU's efforts to recalibrate the CE-III Plant effluent flow meter as ordered by the Commission in Cause No. 44676 S1, ASU has requested the Commission revisit the frequency with which ASU must recalibrate the effluent flow meter. ASU is instructed to resolve the effluent flow meter issue promptly and permanently at no cost to ratepayers. As ASU continues to develop and implement that resolution, ASU shall submit a compliance filing under this Cause every six months, providing an update on the status of testing of alternative metering technologies or other possible solutions and, when appropriate, notifying the Commission that a final metering solution has been implemented. In addition, ASU's reporting of the bi-monthly flow data reports as required by the 44676 S1 Order is terminated.

iii. **Compliance with the main extension rules.** OUCC witness Parks testified that ASU does not follow the Commission's main extension rules at 170 IAC 8.5-4. Instead of paying three times the annual revenue for extensions of service, he said ASU treats main extensions to serve new developments as special contracts. Mr. Parks recommended the Commission order ASU to comply with the main extension rules.

ASU witness Shafer argued that 170 IAC 8.5-4-39(a)(4) provides a "Special contract" exception that allows the utility to enter into a special contract when "there are abnormal or extraordinary circumstances." Given ASU's small size and growth levels, ASU believes these are abnormal and extraordinary circumstances that warrant a departure from the main extension rules under the "Special contract" exception.

The Commission did not create the special contract exception to the main extension rule as a way for utilities to avoid applying the main extension rule. Nonetheless, based on the evidence presented in this Cause, ASU appears to be complying with the exception. Therefore, we decline to declare what terms ASU must offer to developers in special contracts.

iv. **Compliance with 44676 Order regarding Invoice Detail.** OUCC witness Parks testified that ASU has failed to comply with the Commission's directive in the 44676 Order to provide 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. The Commission stated that 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." *Am. Suburban Util., Inc.*, Consolidated Cause Nos. 44676 and 44700, at p. 41.

ASU's lack of adequate records has been an issue in Cause Nos. 44272, 44676/44700, 44676 S1 and this proceeding. We once again order ASU to keep records of all costs incurred during construction of all capital projects for materials, labor, equipment, engineering, construction inspection, and project management. Further, ASU shall develop formal agreements between itself and its contractors, comply with Indiana statutes regarding affiliated contracts, and follow the Commission's rules regarding the creation and maintenance of utility records. Failure to do so may result in the disallowance of associated costs or an enforcement action in accordance with Ind. Code § 8-1-2-115.

v. **Deferral of Rate Case Expense.** ASU requested deferral authority for rate case expense. ASU noted that it had anticipated minimal expense based on the nature of a small utility filing. However, this proceeding included an evidentiary hearing and multiple pre-hearing motions, something that does not typically occur with a small utility filing. In this instance, the Commission finds it is reasonable and appropriate to grant ASU deferral authority for rate case expense incurred in this proceeding. However, approval of ASU's deferral request is not an assurance of cost recovery.

9. **Confidential Information.** On April 14, 2022, ASU filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information ("Motion") in this Cause, which was supported by the Affidavit of Mr. Lods showing that certain information to be submitted to the Commission contained confidential financial information and should be treated as confidential in accordance with Ind. Code §§ 5-14-3-4 and 8-1-2-29. The Presiding Officers issued a Docket Entry on April 25, 2022, finding this information should be held confidential on a preliminary basis, after which the information was submitted under seal. After reviewing the information, we find this information qualifies as confidential financial information pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29. This information shall be held as confidential and protected from public access and disclosure by the Commission and is exempted from the public access requirements contained in Ind. Code Ch. 5-14-3 and Ind. Code § 8-1-2-29.

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

1. Applicant is authorized to increase its rates and charges for sewer service by 12.61% across-the-board in order to increase annual operating revenues by \$551,187.
2. Applicant shall comply with the accounting and recordkeeping requirements of the NARUC USoA.
3. Applicant shall file semi-annual compliance filings under this Cause providing an update on the status of implementing a solution to the effluent flow meter issue.
4. Applicant shall submit a certification under this Cause that the as-built drawings have been completed for the Big 3 and Cumberland Road projects within six months of the date of this Order.

5. Applicant shall comply with Ind. Code § 8-1-2-49 and the Commission's General Administrative Order 2016-5 concerning affiliate agreements.

6. Prior to implementing the rates authorized in this Order, Applicant shall file new rate schedules under this Cause for approval by the Commission's Water and Wastewater Division. Such rates shall be effective on or after the Order date subject to Division review and agreement with the amounts reflected.

7. The information submitted under seal in this Cause pursuant to ASU's Motion is determined to be confidential financial information and shall continue to be held as confidential and exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29.

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

HUSTON, FREEMAN, KREVDA, VELETA, AND ZIEGNER CONCUR:

APPROVED: JAN 18 2023

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

Dana Kosco
Secretary of the Commission