

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

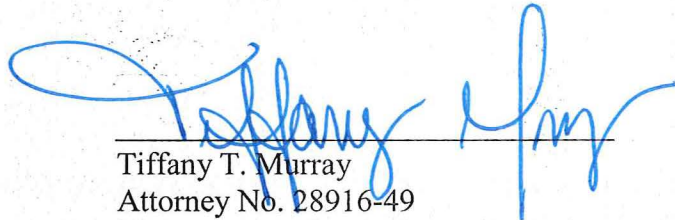
**IN THE MATTER OF THE INDIANA UTILITY)
REGULATORY COMMISSION'S INVESTIGATION)
INTO THE IMPACTS OF THE TAX CUTS AND JOBS)
ACT OF 2017 AND POSSIBLE RATE IMPLICATIONS)
UNDER PHASE 2 FOR FOUNTAINTOWN GAS)
COMPANY)**

CAUSE NO. 45032 S8

**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S
PROPOSED ORDER**

Comes now, the Indiana Office of Consumer Counselor, by counsel, hereby submits its
Proposed Order to the Commission for its approval.

Respectfully submitted,



Tiffany T. Murray
Attorney No. 28916-49
Deputy Consumer Counselor

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Attorney No. 27839-49
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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY)
REGULATORY COMMISSION'S INVESTIGATION)
INTO THE IMPACTS OF THE TAX CUTS AND) **CAUSE NO. 45032 S8**
JOBS ACT OF 2017 AND POSSIBLE RATE)
IMPLICATIONS UNDER PHASE 2 FOR)
FOUNTAIN TOWN GAS COMPANY)

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Chairman

Lorraine L. Seyfried, Chief Administrative Law Judge

This Cause was initiated by the Commission on January 3, 2018, naming all rate regulated investor owned utilities as Respondents. The purpose of this Cause is to investigate and consider the impacts on all Respondents' current base rates due to changes created by the Tax Cuts and Jobs Act of 2017 (the Act). All Respondents were to initiate regulatory accounting treatment for all impacts of the Act. A Pre-Hearing Conference was established for February 6, 2018. Respondent Fountaintown Gas Company, Inc. (Fountaintown) appeared at such Pre-Hearing Conference and participated. Also participating were the Office of Utility Consumer Counselor (OUCC), various other Respondents, and various Intervenors.

On February 16, 2018, the Commission entered an Order in this Cause dividing the proceedings into Phase 1 and Phase 2. Phase 1 was designed to change current base rates for purposes of quickly implementing the new federal income tax rates established by the Act going forward. All Respondents, including Fountaintown, were ordered to file Revised Tariffs with the Commission reflecting the new federal income tax rates. The Commission ordered all Respondents to use the 30-day filing procedures outlined in 170 IAC 1-6 et seq. On March 26, 2018, Fountaintown filed its Revised Tariff under Phase 1. Such tariff filing was processed under filing # 50155. In support of such Phase 1 filing, Fountaintown presented the Testimony and Exhibits of its witnesses, Bonnie J. Mann and Kerry A. Heid. On April 19, 2018, the OUCC filed an objection to the Fountaintown Phase 1 filing. On April 24, 2018 Fountaintown filed an Amended Revised tariff in response to the OUCC's objections. On April 30, 2018 the Commission approved Fountaintown's Amended Revised Tariff for Phase 1.

On May 14, 2018, the Commission entered its Order establishing Phase 2 subdockets for all Respondents except those who had been dismissed, or for whom further filings had been stayed, or those for whom the impact of the Act was not a reduction in the federal income tax rate. Respondent, Fountaintown was assigned this subdocket (S8) and a procedural schedule for this subdocket was established. Fountaintown filed its case-in-chief on May 2, 2018. The OUCC filed its case-in-chief on August 21, 2018. Fountaintown filed its rebuttal on September 21, 2018. At an evidentiary hearing in this Cause on November 1, 2018 at 9:30 A.M. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana, Respondent Fountaintown and the

OUCG appeared and offered their respective evidence into the record without objection. No members of the general public appeared or sought to participate. No Intervenor appeared or sought to participate.

Based on the applicable law and the evidence of record, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal, and timely notice was given and published as required by law. Respondent is a public utility as defined in Indiana Code § 8-1-2-1. This Commission established this Cause and this subdocket pursuant to its authority under Indiana Code § 8-1-2-42; § 8-1-2-58; and § 8-1-2-72. Therefore, the Commission has jurisdiction over this Respondent and the subject matter of this Cause.

2. **Respondents Characteristics.** Respondent is a public utility currently providing natural gas service to its customers in Decatur, Hancock, Henry, Rush, and Shelby Counties, Indiana pursuant to prior Orders of this Commission. Respondent's current base rates are those established by this Commission under Cause No. 44292, as changed by this Commission in the approval of Fountaintown's Phase 1 tariff.

3. **Evidence of the Parties.**

A. **Respondent's Case-in-Chief.** Respondent's case-in-chief consisted of the Testimony and Exhibits of Bonnie J. Mann. Ms. Mann is a Certified Public Accountant and has offered Testimony in various cases before the Commission, including Fountaintown's last base rate case. Ms. Mann explained that she attended the Commission's various conferences and had reviewed the Commission's Orders of January 3, 2018 and February 16, 2018, prior to filing Testimony in this Phase 2. Based on the Commission's prior Orders, Ms. Mann explained that Fountaintown had established regulatory accounting for purposes of dealing with the impacts of the Act. She explained that Fountaintown had filed information under Phase 1, including a revised tariff reducing the federal income tax beginning with the May 2018 billings to customers. She explained her understanding that this Phase 2 was designed to address all remaining issues flowing from the Act, specifically including returning any over collection of federal income tax collected between January 1, 2018 and April 30, 2018. She indicated that this would require calculating the appropriate excess accumulated deferred federal income tax.

Ms. Mann explained that in her opinion, Fountaintown had complied with all Commission Orders in this Cause. She explained the methodology that she had used to calculate the amount of dollars to be refunded for the over collection between January and April of 2018. She described a tracker mechanism that she proposed to be used for the refund of such over collected tax dollars. She opined that such tracker should begin in January 2019 in order to more closely match the usage of Fountaintown customers that had occurred from January to April 2018. Based on her calculations, Ms. Mann proposed that Fountaintown would refund to its customers \$81,923 by way of a negative tracker multiplied by meter consumption beginning in January 2019. At the conclusion of the tracker mechanism, Ms. Mann proposed to reconcile any variances between the amount required to be refunded and the amount actually refunded through the GCA variances in a GCA filed after April of 2019.

With respect to the estimate of excess accumulated deferred federal income tax (hereafter described as EDIT); Ms. Mann explained that deferred taxes for Fountaintown and other small natural gas utilities, which she and her colleagues at LWG CPAs & Advisors are representing in Cause No. 45032, will vary as to the components of such deferred taxes by utility. She notes that all of the small gas utilities have in common the deferred tax elements representing the difference between book and tax depreciation. However, other components of deferred taxes include: comprehensive income components for retirement benefits; unrealized gains and losses on investments; tax carryforwards, including capital loss carryforwards; charitable contribution carryforwards; rate case cost deducted for federal income tax purposes; unbilled revenue; and other miscellaneous differences all of which may vary by utility. She also notes that there are differences among the utilities depending on whether the utility is a calendar year-end federal income tax filer or a fiscal year-end tax filer. With respect to fiscal year-end tax filers, she notes that the federal income tax calculation will be a blended tax rate not the new tax rate of 21%. She also points out that deferred tax calculations in this subdocket must recognize that the calculation is based on the embedded amount of deferred taxes included in current base rates.

Witness Mann also provided in Exhibit 3 and in Exhibit 2 the amount that should be returned and the amortization period that should be used related to the return of EDIT dollars. She indicated that this amortization period should be the same for both protected deferred taxes and unprotected deferred taxes. For purposes of returning the over collection of taxes from January 2018 to April 2018; Ms. Mann proposed a tracker mechanism to be applied in the first 4 months of 2019 followed by a reconciliation of such 4 month period through the Schedule 12 variances in the GCA. Finally, Ms. Mann pointed out issues caused by the change in federal income taxes including the impact of deferred taxes on the capital structure, the risk associated with the regulatory process, and the recovery of the costs associated with Respondent's participation in Phase 1 and Phase 2 of this Cause. She suggests all of these issues could be dealt with in Petitioner's next base rate case; but specifically asked that Fountaintown be authorized to defer the cost of this proceeding as a regulatory asset for further review and recovery in the next base rate case.

B. OUCC's Case-in-Chief. The OUCC's case-in-chief consists of the Testimony and Exhibits of Mark H. Grosskopf. Mr. Grosskopf is a senior utility analyst with the OUCC. Mr. Grosskopf offered his opinion on the various adjustments to Respondents' rates and charges that would be required by the Act. He testified the Tax Cuts and Jobs Act reduced the federal corporate income tax rate to 21% and an adjustment to Respondent's income tax expense revenue requirement for the new tax rate was required in Phase 1. The two remaining adjustments Mr. Grosskopf identified were to (1) refund the federal income tax expense over collected by the utility from January 1, 2018 until the federal income tax rate embedded in Respondent's rates and charges was reduced and (2) to adjust Respondent's rates in order to return excess accumulated deferred income tax created when accumulated deferred income tax was revalued at the 21% rate.

For purposes of the Phase 1 issue and the reduction of the federal income tax rate embedded in Fountaintown's base rates, Mr. Grosskopf acknowledged that Fountaintown, through a 30-day filing, has completed this process, and as of May 1, 2018, the federal income tax rates embedded in Fountaintown's base rates reflected the new 21% tax rate. Turning to deferred taxes, Mr. Grosskopf noted that deferred income taxes are primarily created by accelerated tax depreciation.

But he acknowledged deferred taxes can also be generated by other items such as unbilled revenue and accrued wages. For Respondent Fountaintown, Mr. Grosskopf calculated EDIT dollars that require a refund in the amount of \$470,706. He agreed with Fountaintown's proposed amortization period of 16.51 years and that amortizing both the protected and unprotected EDIT dollars over the same amortization period is reasonable. He concluded Fountaintown should refund \$28,510 on an annual basis as its refund of EDIT over 16.51 years. He recommended Fountaintown allocate the amortization in the same manner approved in its last base rate case. Finally, to allow sufficient time for review by the OUCC and IURC, he suggested Fountaintown use a 30-day filing mechanism to reduce its rates for the EDIT refund.

Turning to the refund of excess income tax expense over-collected by Fountaintown from January 1, 2018 to April 30, 2018, Mr. Grosskopf agreed with Fountaintown's proposal to refund \$81,923 using a temporary tracking mechanism that would begin in January of 2019 and continue through April of 2019. However, he disagreed with Fountaintown's proposal to refund any remaining variance through Fountaintown's GCA beginning April 2019. Mr. Grosskopf testified all seven small utilities described in Ms. Mann's testimony use one GCA rate for all customer classes, and transportation customers are not included in the GCA. Therefore, the allocation of variances would deviate from the customer class allocation approved in the last rate case. As such, he recommended Fountaintown use the same temporary tracker mechanism for purposes of reconciling all variances in the refund of over-collected income tax expense.

Next, Mr. Grosskopf responded to other concerns raised by the Respondent. He testified Respondent seeks approval to defer the cost of its participation in this proceeding as a regulatory asset that can be reviewed and eventually recovered in its next full base rate case. Mr. Grosskopf did not recommend approval of this unknown amount. He explained that because Respondent's tax rate has changed, Respondent would have had to calculate its EDIT in order to adhere to the IRS' normalization requirements; therefore, Mr. Grosskopf stated it is not entirely accurate to suggest Respondent's costs to participate in this investigation would not have been required anyway. Mr. Grosskopf explained that in a regulatory environment, unexpected, one-time legal and accounting bills occur occasionally. He testified Respondent has legal and accounting fees embedded into its current rates and no additional compensation should be necessary. Since this is a single issue case and Respondent's testimony is considerably similar for each of the seven utilities, Mr. Grosskopf explained litigation should be minimal, and he expected the costs for each utility to be a reasonable amount as the actual costs incurred have not been presented in this subdocket. He stated Respondent has an interest in arguing for an outcome in this case that minimizes any refunds it owes to its customers, explaining those same customers should not be required to pay for the regulatory expense Respondent incurs in making such arguments. Mr. Grosskopf also responded to Respondent's argument that its authorized earnings must increase because a lower deferred tax balance with a 0% cost of capital could have the effect of increasing the overall cost of capital. Mr. Grosskopf did not disagree the overall cost of capital could increase, but he testified this issue is outside the scope of this proceeding. Finally, Mr. Grosskopf responded to Respondent's belief the Commission has created uncertainty for the utility by initiating this investigation, increasing the utility's risk. Mr. Grosskopf explained a regulated utility facing regulatory action is inherent to its business model.

C. Respondent's Rebuttal. Ms. Mann explained that she disagreed with some of Mr. Grosskopf's recommendations, but recognized that his proposal on the EDIT dollars to be refunded has an immaterial impact on the Respondent. Therefore, Fountaintown's management agreed to refund the proposed EDIT dollars, over the time period proposed by Mr. Grosskopf. However, Fountaintown did not agree with Mr. Grosskopf's objection to Respondent's request to defer the costs of its participation in this cause. Ms. Mann pointed out that the costs for Fountaintown's participation in 45032 and this subdocket are regulatory costs typically permitted to be recovered. Further, Fountaintown's base rates were last established in 2013 and therefore, the cost of 45032 could not have been included.

D. Discussion and Findings. Based on the evidence of record, Fountaintown and the OUCC agree on most issues that have arisen in this Phase 2 subdocket. Fountaintown and the OUCC agree the EDIT dollars to be refunded is \$470,706. Fountaintown and the OUCC agree the time period such EDIT dollars should be amortized is 16.51 years. Based on the evidence, this amortization will require an annual amortization of \$28,510. Fountaintown has proposed to allocate this refund through changes to its volumetric rates by class based on the original allocation of revenue to volumetric rates in Fountaintown's last base rate case Cause No. 44292. The OUCC does not oppose including both the protected and unprotected excess deferred taxes in the refunded amount and allocated over the same time period. We find that substantial evidence exists to support both the amount and the amortization period proposed by the Parties to refund EDIT dollars.

Fountaintown has proposed to refund the over collection of tax funds from January 1, 2018 through April 30, 2018 by refunding \$81,923. Fountaintown has proposed such refund occur through a tracking mechanism that will begin in January 2019 and run through April 30, 2019 in order to refund the over collection as closely as possible to the customers by class who paid such over collection. The OUCC agrees to both the amount and the proposed tracker mechanism. Based on the evidence of record, we find the over collection between January 1, 2018 and April 30, 2018 in the amount of \$81,923 should be refunded to the customer classes as proposed by Fountaintown. This refund of over collected tax dollars will begin in January 2019 and run through April 30, 2019 in order to more closely match the refund to the customer who provided such funds.

The Parties disagree on the approach that should be used to wind up the refund of the over collection of tax dollars. Fountaintown proposes to reflect the variances through the GCA process. However, Fountaintown's GCA uses only one rate for each customer class, and does not include transportation customers. Fountaintown's base rates are designed using customer class specific rates, and it is through those specific rates that the regulatory liability generated by excess income tax expense was created. In our February 16, 2018 order in this Cause establishing how the Phase 1 income tax revenue requirement reduction would be conducted, we ordered that utilities' revisions to rates and charges for reduced taxes "shall be allocated among customer classes in accordance with the allocation methodology used at the time that the current Rate or Charge was approved or, if applicable, consistent with subsequent Commission approvals in tracker proceedings." Using Fountaintown's single GCA rate for any income tax refund would be inconsistent with this directive. As such, we order Fountaintown to use the same temporary tracker for both the refund of excess income tax expense and any related variance. Fountaintown is to include the design of this tracking mechanism with its compliance filing following a final order in

this subdocket, and is directed to work with the OUCC to resolve any variances such that the temporary tracking mechanism can conclude before the end of 2019.

As a means to allow for adequate review of Respondent's calculations, the OUCC recommended Fountaintown make a 30-day filing in order to establish new tariffs for purposes of amortizing EDIT dollars and establishing the tracker for refunding over collected tax dollars. We believe such recommendation is reasonable and order Fountaintown to initiate such a 30-day filing following the issuance of this order.

Fountaintown seeks deferral of costs incurred by the utility to participate in this investigation. Ms. Mann testified regulatory proceedings like this investigation come at a cost to the utility, and that the small natural gas utilities represented by Ms. Mann are requesting the Commission allow them to defer the cost of this proceeding as a regulatory asset for review and recovery in their next full base rate case. Mr. Grosskopf disagreed with Ms. Mann's recommendation because Fountaintown did not support its request. He stated Respondent has an interest in arguing for an outcome in this case that minimizes any refunds it owes to its customers, explaining that those same customers should not be required to pay for the regulatory expense Respondent incurs in making such arguments.

As a creature of statute, the Commission's authority is circumscribed by the terms of its enabling legislation. *Northern Indiana Public Service Co. v. United States Steel Corp.*, 907 N.E.2d 1012, 1015 (Ind. 2009). Ind. Code § 8-1-2-58 authorizes the Commission to initiate an investigation into all matters relating to any public utility. The only statute which makes reference to costs related to Commission investigations is Ind. Code § 8-1-2-70, which authorizes the Commission only to "ascertain and declare the expenses incurred by it upon such investigation, and the municipal utility affected thereby shall pay into the commission public utility fund account described in IC 8-1-6-2 the amount of the expenses, so ascertained and declared" (Emphasis added.) Indiana law does not provide the Commission with specific authority to approve utility costs associated with a Commission investigation.

In our January 3, 2018 order initiating this Cause, we stated:

The Commission recognizes that the approved tax reform will create benefits for utility customers because of the reduced federal tax burden on Respondents. The determination and customer realization of these benefits that flow from the Act warrant deliberative consideration. Accordingly, the purpose of this investigation is to review and consider the impacts from the Act and how any resulting benefits should be realized by customers.

Under the Act, the tax rate reduction is effective January 1, 2018. Because customer utility service rates today reflect a now materially altered tax structure, the reform-driven benefits are accruing today and going forward. Accordingly, the Commission finds it is appropriate and in the public interest for Respondents to immediately begin using regulatory accounting, such as the use of regulatory assets and liabilities, for all calculated differences resulting from the Act and what would have been recorded if

the Act did not go into effect. While the exact amount of the tax benefits and resulting rate impacts cannot be determined at this time, each of the Respondents should use its best estimates to determine the amount to be recorded as a deferred liability, subject to review and adjustment as part of this proceeding.

This Cause is not the first Commission-initiated investigation into the effects of federal tax rate changes on utility rates. We have previously considered such effects in Cause No. 38194 as a result of the Tax Reform Act of 1986. We note that no provision was made in that Cause for deferral of any utility's costs to participate in that investigation despite the "great deal of time and considerable effort in accomplishing this task" of presenting an unanimous recommendation from representatives of the utility industry and the public to the 1986 Commission of how to reflect the effect of the relevant tax changes in utility rates. (Cause No. 38194, Report of the Executive Committee, April 15, 1987 at 4.)

Nor is this subdocket the first time we have been asked to consider whether expenses as a result of a Commission-initiated investigation should be recovered from the utility's customers in rates. Our June 5, 2002 Final Order in *South Haven Sewer Works, Inc.* (Cause No. 41903) declined to permit such recovery. South Haven argued utility costs as a result of a Commission investigation should be considered like any other utility expense, suggesting the only question is whether the expense was incurred and whether the expense provided a utility service. However, we examined the nature of the expense, and noted that rather than implementing remedies at issue in the investigation, the utility engaged counsel to assist in responding to the Commission investigation, which increased South Haven's cost to participate. We also highlighted South Haven's failure to provide information breaking down the costs of investigation in its case-in-chief. We ultimately concluded a utility should not be permitted to recover costs for an investigation that was begun in response to deficiencies in the management and operation of the utility because "ratepayers should not be penalized for the mistakes of the utility's management." (South Haven Sewer Works, Inc., Cause No. 41903, Final Order at 20.) We further concluded if these costs were recovered, "management would have less incentive to operate its utility in a responsible manner." (*Id.*)

While Fountaintown requests authority to defer its legal and consultant fees as a result of this investigation, it has provided no estimate of its total costs to participate, let alone a breakdown of each component. The record is further bereft of any of Fountaintown's actual costs incurred to date, or any support for those costs. Our orders must contain specific findings of fact and conclusions of law on all material issues. *L.S. Ayres & Co. v. Indianapolis Power & Light Co.*, 169 Ind. App. 652, 662, 351 N.E.2d 814, 822 (1976). The absence of evidence to support Fountaintown's request is adequate reason, on its own, to reject deferral of any costs to participate in this investigation.

Further, as highlighted in our January 3 order, this investigation was initiated with the purpose to evaluate whether, given the immediate reduction to corporate income tax liability to 21%, Indiana utility rates continue to be reasonable and what benefits should be realized by customers. Taxes are a pass-through expense, the calculation of which is typically non-controversial. However, in this subdocket, Respondent introduced several controversial proposals, which would have reduced the tax benefit to its customers. Due to what it characterized as

“immateriality,” Respondent decided not to oppose the OUCC’s calculations, and filed rebuttal testimony indicating its acquiescence. However, in addition to its insistence that undefined costs to participate should be deferred for future recovery, Fountaintown continues to dispute how the over-collected income tax expense refund should be completed. Fountaintown seeks to encumber this subdocket with controversial matters while seeking, at the same time, to burden ratepayers with its legal and consultant fees to make such arguments. Authorizing recovery of these expenses would create a perverse incentive we wish to avoid. Accordingly, we reject Fountaintown’s request for deferral of costs as a result of this investigation.

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

1. Respondent shall refund \$470,706 as the amount of excess accumulated deferred income tax that was embedded in its base rates in its last base rate case, which has now been changed by the Act and our decision in this Cause.

2. Such amortization of EDIT dollars shall occur over 16.51 years and shall be allocated to the customer classes in the same manner in which Respondent’s revenue requirements were allocated to volumetric rates in its last base rate case.

3. Petitioner shall refund \$81,923 in the over collection of taxes from January 1, 2018 through April 30, 2018 by way of a tracker mechanism which shall begin in January 2019 and continue through April of 2019. Thereafter, Petitioner shall provide the OUCC with calculations showing the amount of dollars still to be refunded or the amount of dollars which have been over refunded and should be collected. With confirmation from the OUCC as to the accuracy of those calculations, such reconciled variance shall flow through to all customer classes in the same temporary tracking mechanism.

4. Respondent shall propose a new tariff through the Commission’s 30-day filing process to change its existing tariff in keeping with our findings above.

5. This order shall be effective on and after the date of its approval.

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

APPROVED:

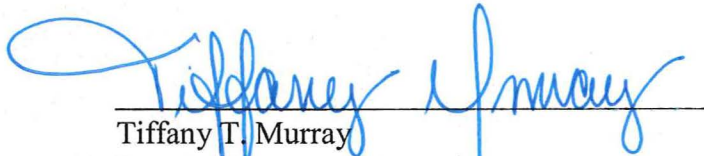
**I hereby certify that the above is a true
and correct copy of the Order as approved**

Mary M. Becerra
Secretary of the Commission

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Indiana Office of Utility Consumer Counselor's Proposed Order* has been served upon the following counsel of record in the captioned proceeding by electronic service on November 16, 2018.

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