

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

RESPONDENT'S PROPOSED ORDER

Comes now Fountaintown Gas Company, Inc. (Respondent), by counsel, and submits its Proposed Order in this Cause.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by electronic delivery the 2nd day of November, 2018:

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L. Parvin Price

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, INC.)

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Chairman

Lorraine L. Seyfried, Chief Administrative Law Judge

On January 3, 2018, this Commission initiated this Cause naming all rate regulated investor owned utilities as Respondents. The purpose of this Cause was to begin an investigation into 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 under this Phase 1, its Revised Tariff. 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 sub dockets 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 sub docket (S8) and a procedural schedule for this sub docket 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 1:30 P.M. in Room 222 of the

PNC Center, 101 West Washington Street, Indianapolis, Indiana, Respondent Fountaintown and the OUCC 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 sub docket 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 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 indicates 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 sub docket 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 Community 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. OUC's Case-in-Chief. The OUC's case-in-chief consists of the Testimony and Exhibits of Mark H. Grosskopf. Mr. Grosskopf is a senior utility analyst with the OUC. Mr. Grosskopf offered his opinion on the various adjustments to Respondents' rates and charges that would be required by the Act. He indicates that the reduction in the federal income tax rate to 21% as the corporate tax rate was required in Phase 1. The remaining adjustments that Mr. Grosskopf identifies requires a refund of 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. He also points out that an adjustment to Respondent's rates would be required in order to return the excess accumulated deferred income tax created when accumulated deferred income tax was revalued to 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, he acknowledges 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 reflect the new 21% tax rate. Turning to deferred taxes, Mr.

Grosskopf notes that deferred income taxes are primarily created by accelerated tax depreciation. But he acknowledges that 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 agrees with Fountaintown's proposed amortization period of 16.51 years. He notes that he also agrees that amortizing both the protected and unprotected EDIT dollars over the same amortization period is reasonable. He concludes that Fountaintown should refund on an annual basis \$28,510 as its refund of EDIT. He suggests that this will require 198 months for such amortization. He recommends that Fountaintown allocate the amortization in the same manner used in its last base rate case. Finally, he suggests that Fountaintown accomplish this EDIT refund by using a new 30-day filing process which will permit time for review by the OUCC.

Turning to the refund of the over collected tax dollars from January 1, 2018, Mr. Grosskopf agrees with Fountaintown's proposal to refund \$81,923 using a tracker mechanism that would begin in January of 2019 and continue through April of 2019. However, he disagrees that Fountaintown should be permitted to wind up such refund by way of the GCA that follows April 2019. He indicates that Fountaintown should continue to use the tracker mechanism for purposes of reconciling all variances in the refund because he believes the GCA process may allocate costs differently than the allocation process used in the last base rate case and not all customer classes receiving the refund of the over collection participate in the GCA.

Next, Mr. Grosskopf discusses other concerns raised by the Respondent acknowledging the relevance of those concerns to this Cause. However, he also notes his disagreement with Respondent's request to defer as a regulatory asset the costs of Fountaintown's participation in this Cause. He suggests that legal and accounting fees are embedded in Fountaintown's current base rates. Further, he believes that the Testimony filed on behalf of Fountaintown is similar to the Testimony filed on behalf of other small gas utilities in this Cause. While Mr. Grosskopf acknowledges that the cost of capital would increase for Fountaintown due to the changes in the amount of accumulating deferred income tax, he suggests that this is an issue outside of the scope of this particular proceeding. Finally, Mr. Grosskopf addresses Fountaintown's concern that this tax investigation has created uncertainty for the utility and thus, increases the risk for its shareholders. Mr. Grosskopf opines that regulatory action is inherent to the business model of a regulated utility.

C. Respondent's Rebuttal. Ms. Mann explains that she disagrees with some of Mr. Grosskopf's recommendations, but recognizes that his proposal on the EDIT dollars to be refunded has an immaterial impact on the Respondent. Therefore, Fountaintown's management agrees to refund the proposed EDIT dollars, over the time period proposed by Mr. Grosskopf. However, Fountaintown does not agree with Mr. Grosskopf's objection to Respondent's request to defer the costs of its participation in this cause. Ms. Mann points out that the costs for Fountaintown's participation in 45032 and this sub docket 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 sub docket. Fountaintown and

the OUCG agree that the EDIT dollars to be refunded is \$470,706. Fountaintown and the OUCG agree that the time period such EDIT dollars should be amortized is 16.51 years. Based on the evidence of the OUCG, 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 OUCG Witness Grosskopf agrees that both the protected and unprotected excess deferred taxes should be included in this 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 \$81,293. Fountaintown has proposed that 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 OUCG agrees to both the amount and the proposed tracker mechanism. Based on the evidence of record, we find that the over collection between January 1, 2018 and April 30, 2018 in the amount of \$81,293 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 appear to 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. The OUCG opposes the use of the GCA as a method of winding up this refund tracker, but offers no alternatives. We believe some method of winding up this tracker mechanism is required. We also recognize that the vast majority of Fountaintown customers are directly impacted by the GCA. Thus, we find that in the next available GCA following April 2019, Fountaintown shall include in its Schedule 12 of the GCA the dollars representing the amount of refund that has not yet been refunded, or the amount that has been over refunded. Such variance shall thereafter be allowed to flow through the GCA to those GCA customers. For those dollars to be refunded to non GCA customers served by Fountaintown between January 1, 2018 and April 30, 2018, such as transportation customers, Fountaintown shall identify those dollars, those customers, and initiate a bill credit or charge to the extent that the tracker mechanism described above has not completely and accurately refunded the over collection from non GCA customers. Fountaintown shall also provide testimony in the GCA following April 2019 explaining the amounts that are to be flowed through the GCA mechanism, and the amounts for which a bill credit has been provided to non GCA customers. This will permit Fountaintown to completely refund, but not over refund the over collection of tax dollars from the period of January 1, 2018 through April 30, 2018 by the end of 2019. This will also provide a reasonable method to winding up the proposed tracker mechanism.

The OUCG has recommended that Fountaintown file a new 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 will order Fountaintown to initiate such a 30-day filing. Fountaintown shall also reflect in such 30-

day filing its bill credit to non GCA customers. As noted by the OUCC witness, this will permit the OUCC additional time to review the proposed tariff before it actually goes into effect.

With respect to other issues, we agree with Fountaintown that our Order of January 3, 2018 specifically ordered Fountaintown to set up regulatory accounting including using regulatory assets and regulatory liabilities in order to deal with the impact of the Act. We also agree with Fountaintown that they were named a Respondent, required to appear, and have now complied with our requirements under Phase 1 and Phase 2. Denying Fountaintown the authority to continue to defer their costs as a regulatory asset would be inappropriately denying Fountaintown the opportunity to recover the actual costs associated with providing service to their natural gas customers. The Commission has long adhered to the guidance offered by our Indiana Appellate Courts on basic rate making methodology and the requirement to have substantial evidence to support our decisions. We believe the issue of recovery of the costs of this proceeding is essentially dictated by the Indiana Court of Appeals decision in L.S. Ayres & Co. v. Indianapolis Power & Light Co., 351 N.E. 2d. 814. The Court began its review of various complex issues by describing the required rate method as follows:

“The Commission’s primary objective in every rate proceeding is to establish a level of rates and charges sufficient to permit the utility to meet its operating expenses, plus a return on investment which will compensate its investors.” Id. at 819.

If we were to follow the OUCC’s suggestion, we would violate this basic responsibility to ensure that a regulated utility has the opportunity to recover in rates its operating expenses and earn a return on its investment. Further, we would be subject to criticism under that same appellate case for the lack of substantial evidence if we were to agree with the OUCC. While we recognize that the amount of costs is unknown at this time, we also recognize that there have been and will be additional costs incurred. Some of those costs will be incurred because of the OUCC’s proposal that Fountaintown file a new 30-day filing. We also recognize that Fountaintown will be responsible for filing information with this Commission to wind up and reconcile the refund of over collected tax dollars from the period of January 1, 2018 through April 30, 2018. That information will not be provided to us until after April of 2019. Therefore, we reject the OUCC’s proposal that Fountaintown not be authorized to defer as a regulatory asset the cost of these proceedings. In Fountaintown’s next base rate case, we will take up the issue of this regulatory asset and its recovery, the risks associated with these regulatory proceedings under 45032, and the impact of changes in deferred taxes on Fountaintown capital structure.

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 \$81,293 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 in the next available GCA reflect the amount of dollars still to be refunded or the amount of dollars which have been over refunded and should be collected. Such reconciled variance shall flow through to customer classes whose rates are affected by the GCA mechanism. To the extent that a customer class is not affected by the GCA mechanism, Fountaintown shall in its Testimony in such GCA explain the dollar amount that requires reconciliation and the credit or charge which will be applied to such non GCA customer class.

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**