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Senate Utilities Committee
SB 126 - Opposed
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Thank you Chairman Masterson and members of the committee for the opportunity to provide comments today on SB 126 which concerns the exemption of certain utilities from Kansas state income taxes for a period of time and the implementation of reductions to corporate income tax rates within the retail rates of regulated utilities. Black Hills Energy is a natural gas utility proudly serving approximately 113,000 customers in 65 Kansas communities. All together the Black Hills Energy family serves 1.2 million natural gas and electric customers in eight states.

Let me start by saying that Black Hills Energy is not opposed to the exemption of certain utilities from the Kansas state income tax within Section 2(d) of the bill as such tax exemption helps to reduce bills for our customers. We do have some questions though regarding the implementation of a four-year state income tax exemption given that certain items are not explicitly spelled out in the legislation. For example, how would accumulated deferred income taxes created or scheduled to reverse during the four-year exemption be treated? Also, would the carryforward periods on state net operating losses and tax credits increase in accordance with the exemption period? These, and various other questions, will need to be sorted through if the Legislature desires to consider a four-year state income tax exemption for certain public utilities.

It should also be pointed out that just because no “cash” or “current” taxes have been paid in recent years by Black Hills Energy and other utilities, the liability has not been extinguished. Rather, the tax obligation is merely being deferred for future payment. The four-year state income tax exemption within Section 2(d) would delay the year when many utilities would begin paying cash taxes to the state.

Regarding Section 1 of SB 126, Black Hills Energy believes this Section is unnecessary because the Kansas Corporation Commission (KCC) currently has the authority and jurisdiction to address the impact on utility rates resulting from changes in federal or state income tax rates. A recent example of this is the Tax Cuts and Jobs Act of 2017 (“TCJA”), in which one of the main components of the law was the reduction of the corporate federal income tax rate from 35% to 21%.

Anticipating the change to the federal income tax rate, the KCC opened a docket providing for the general investigation regarding the impact on rates and how to best determine a fair and consistent path forward. Black Hills Energy was a committed participant in this docket, along with the Citizens’ Utility Ratepayer Board (CURB) and the KCC Staff.

In March 2018, Black Hills Energy was one of the first investor owned utilities in Kansas to gain approval of the KCC to pass the benefits of federal tax reform to our customers. The average residential customer we serve is currently experiencing a total annual benefit of approximately \$11 on their energy bills. The tax savings are calculated based on customer type and usage so the actual benefits received varies by customer and will continue each year until rates are adjusted in our next general rate case.

Additionally, when tax rates change and a utility is in the midst of a rate case or a rate case is imminent, the opportunity to address the change exists in that process also, similar to how changes in any other utility cost are addressed.

Further, based on our recent experience with the TCJA, Black Hills Energy does not believe the proposal within SB 126 for an automatic refund within 30 days of the change is feasible given the complexities involved and time necessary to sort through the details. Further, the approach in SB 126 does not provide flexibility to address the particular circumstances of each utility.

Finally, while Section 1 requires an automatic refund when there is a reduction in income taxes, the bill lacks a certain symmetry if the tax rates were to increase. Regulatory lag remains for the utility in recovering those increased costs. While Black Hills Energy believes the KCC currently has the authority and jurisdiction necessary to address decreases or increases in income taxes, if the Legislature desires to establish a process for implementing such changes then it should apply to both tax reductions and tax increases.

Thank you for the opportunity to address the committee today. I will stand for questions at the appropriate time.