March 18, 2019

The Honorable Ty Masterson
Kansas State Senate
224-E Capitol Building
Topeka, Kansas 66612

Dear Chairman Masterson:

Atmos Energy Corporation appreciates this opportunity to express its opposition to Senate Bill 126. The stated intent of Senate Bill 126 ("the Bill") is to promptly reflect income tax decreases in utility rates and to temporarily exempt certain utilities from state income taxes. However, as written, the Bill would violate the regulatory compact with utilities and have other negative impacts on consumers and state and local revenues. In addition, the Bill could force Kansas utilities to violate the normalization provisions of the Internal Revenue Code. The penalty for such a violation is the loss of accelerated tax depreciation which would increase customer bills and harm utilities.

**Tax Changes Should Neither Benefit nor Harm Utilities**

Proposed Section 1(b) states that when there is a change in the law that reduces the amount of income tax assessed on a utility, that utility must file new retail rates reflecting that lower income tax rate within 30 days of such change. However, there is no corresponding mechanism to allow utilities to promptly reflect income tax increases. Ratemaking in Kansas is done on a historic basis with a prohibition on retroactive ratemaking, meaning that absent allowing comparable treatment for income tax rate increases, there would be no ability for a utility to file a prompt rate change and recover tracked under-collected amounts.

The utilities would be put in a no-win scenario with regards to income tax changes. Increases would result in under recovery for the utility while decreases would be fully reflected to consumers. The regulatory compact holds that in exchange for accepting an obligation to provide service, a regulated utility is to be given a reasonable opportunity to achieve its authorized rate of return. The bill would deprive utilities of that opportunity by creating a one-sided system to reflect future income tax changes. Income taxes are a pass-through item and thus should not result in a "win" or a "loss" for utilities. They should be promptly reflected in bills, regardless of the change.

Proposed Section 2(b) would further violate the regulatory compact by effectively penalizing many utilities that have generated Kansas net operating loss carryforwards. If unused, these carryforwards expire ten years after the loss was generated. If this carryforward period were not extended, utilities would lose the ability to utilize these losses as a result of the four year exemption from Kansas income tax.

**Tax Changes Cannot Be Accounted For Within 30 Days**

Proposed Section 1(b) further requires the tracking and prompt refund of over-collected taxes. As recently demonstrated by the implementation of the Tax Cut and Jobs Act ("TCJA"), accurate accounting for income tax changes and reflection in a utilities rates takes time. Our recent experience shows that utilities can track over-collected amounts and return them to consumers, but not within 30 days. After an income tax change, accounting guidance is needed and continues to be issued for many months. The provisions of this Bill would not enable utilities to

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adjust rates after clarification and guidance was issued in the months subsequent to an income tax law change.

**SB 126 Would Reduce Tax Receipts for State and Local Government**

Proposed Section 2(d) is problematic for other reasons. SB 126 proposes to exempt utilities from state income taxes for tax years 2019 through 2022. While the state may certainly choose to exempt utilities from state income taxes doing so on a temporary basis will have the impact of a rate increase in the 2023 tax year. It is likely that customers would disproportionately notice the rate increase in 2023 as opposed to the lower rates over the preceding four years. If SB 126 is good public policy on a temporary basis then it stands to reason that it would be good public policy on a permanent basis.

As proposed Section 2(d) would negatively impact overall Kansas tax revenues. Since utilities would not incur tax liabilities in 2019 through 2022, accumulated deferred income tax balances would be lower and be extinguished sooner. Lastly, this part of the Bill would reduce franchise fee payments to municipalities throughout Kansas, as franchise fees are calculated as a percentage of gross revenues. Any overall reduction in utilities' bills will have the same percentage reduction on franchise fees, which are often an important component of municipal budgets.

Thank you for your service to our state, and for considering our viewpoint on this important issue.

Sincerely,

Aaron Bishop
Manager of Public Affairs
Atmos Energy Corporation