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Before the House Energy, Utilities, and Telecommunications Committee
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Supportive Testimony on Substitute for Senate Bill 126

Submitted by Justin Grady, Chief of Accounting and Financial Analysis, Utilities Division
On Behalf of The Staff of the Kansas Corporation Commission

Chair Seiwert, Vice Chair Schreiber, Ranking Minority Member Kuether, and members of the committee, thank you for the opportunity to provide testimony to your committee today on behalf of the Staff of the Kansas Corporation Commission (KCC or Commission).

To a great extent, the Commission Staff (Staff) is supportive of SB 126. I will use this opportunity to discuss the reasons for our support for the bill, as well as offer a minor amendment which I believe will correct an unintentional clerical error made when SB 126 was amended on the floor of the Kansas Senate. Staff is not taking a position on the provisions of SB 126 that pertain to exempting utilities from paying State income taxes as that is a public policy decision that is properly evaluated by the Legislature and Governor. However, the other elements of the bill we support.

During the Senate Utilities hearing for SB 126, Staff offered neutral testimony and expressed some concerns with the bill as written. Those concerns surrounded the administrative timelines by which utilities and the Commission were required to act, the asymmetric nature of the tracking and refund requirements, the lack of Commission flexibility to rule on the single-issue rate filings that would be required by the bill, and the lack of a materiality threshold for tracking and refunding changes in income tax rates.

Subsequent to the hearing, a stakeholder group was convened to work through the issues that were expressed during the hearing. This group included all of the major investor-owned taxable public utilities, as well as consumer advocates for several rate classes. Staff participated in this process and the changes that resulted have resolved Staff's original concerns with the bill, with one minor exception as noted below.

As amended, SB 126 will accomplish the following:

- Permanently exempt public utilities from state income tax beginning with any fiscal year ending on or after December 31, 2001;
- Require public utilities in the state to track any under/over collection of income taxes in their rates that equals or exceeds 0.25% of the utility's base revenue level as approved by the Commission;
- For income tax changes exceeding that threshold, utilities will be required to file a single-

issue rate filing to change rates and refund or collect the tax savings/deficiency from customers over a time period determined by the Commission;

- Requires that the Commission phase-in tax refunds to customers over two years, if requested by the utility. The balance of tax savings that does not go back to customers in the first year accumulates interest at the utility's weighted average cost of capital. The interest on this tax savings accumulates interest until the utility's next general rate proceeding;
- Requires the Commission to issue an Order ruling on the utility's single-issue rate filing within 120 days;
- Allows the Commission to delay the implementation of new utility rates (that reflect the change in income tax rates) until the utility's next general rate case, as long as the utility has a pending general rate case or has given notice of a general rate case and the Commission finds that the public interest would be promoted by such an Order;
- Requires that Commission amortize into rates the excess Accumulated Deferred Income Taxes (ADIT) created when this law takes effect, over a period of not less than 30-years, if requested by the utility. Future excess ADIT created with future changes in tax law may be amortized into rates as the Commission determines is appropriate, as long as the amortization period is in accordance with state and federal tax law and will not impair the utility's credit rating.

There is one minor amendment to SB 126 that the committee may want to consider if this bill is to move forward. As currently written, tax exemption for Kansas public utilities would not begin until the first tax year that ends on or after December 31, 2021. For most public utilities, this would mean that tax exemption would begin with the tax year beginning January 1, 2021. However, Atmos Energy Corp, one of the state's large investor-owned natural gas distribution utilities, has a fiscal year ending September 30, 2021. This means that Atmos' first year of tax exemption would begin October 1, 2021, or nine months after most other public utilities in the state. This could be corrected by amending the language in Section 2(d) to strike the phrase "ending on or after December 31, 2021," and replace it with the phrase "**beginning on or after January 1, 2021,"** This would be consistent with the language suggested by the stakeholders after the Senate Utilities hearing.

Staff has estimated the impact on utility rates of exempting Kansas public utilities in the state from income taxes. The information found in the table below estimates the approximate annual impacts on each utility's revenue requirement based on the most recent rate proceedings of each utility.

Utility	**Annual Impact to Revenue**
Westar Energy	$19,996,465
Kansas City Power and Light Company	$8,580,710
Empire District Electric Company	$223,943
Kansas Gas Service	$5,326,461
Black Hills Kansas Gas Utility Company	$699,780
Atmos Energy Corp	$1,117,029
Total	**$35,944,388**

Note that these approximate annual impacts do not include the effect of amortizing (refunding) state Excess Deferred Income Taxes (EDIT) into rates. Refunding these state EDIT balances will further reduce utility rates in the State beyond the estimates in the table over some period (likely 30-years). However, once these state EDIT balances are all refunded, they will no longer be an offset to a utility's rate base (to reflect their nature as cost-free capital) as is currently the case. This will mean a corresponding increase in the rate base upon which utilities have an opportunity to earn a return in the ratemaking process. While the net result will likely be a rate reduction overall, this impact cannot be overlooked.

The degree to which these rate reductions would affect the State Treasury would differ by utility and would be impacted by items such as:

1. Temporary timing differences between the actual tax deductions available to the utility and the normalized or ratemaking tax deductions used to set rates; and

2. Any reductions in Kansas income tax payments that the utility realizes because of using consolidated tax losses from other business to offset its regulated tax liabilities in the State.

Thank you again for the opportunity to present Staff's views and suggest minor revisions to SB 126.