



Liberty Utilities[®]
EMPIRE DISTRICT

OPPOSITION TESTIMONY

Senate Committee on Utilities

SB 126

**An Act concerning income taxation; relating to certain public utilities;
exemption from income tax; income tax expenses; exclusion from retail rates.**

**Whitney Damron
On behalf of Liberty Utilities – Empire District**

March 20, 2019

Good afternoon Chairman Masterson and Members of the Committee:

I am Whitney Damron and I appear before you today in opposition to SB 126 on behalf of Liberty Utilities – Empire District.

At the outset of my comments, I readily admit I am not a utility tax attorney and my comments reflect that lack of knowledge. I am aware of testimony scheduled today from conferees who have much more experience in this area than I. However, Liberty Utilities does have concerns with SB 126, and we would like to be on the record as such.

SB 126 suggests the Kansas Corporation Commission (“KCC”) and public utilities regulated under K.S.A. 66-104 should be subject to single-issue ratemaking when it comes to the assessment, collection and treatment of taxes in a utility’s rate base.

Currently, corporate tax expenses represent only one of the many components which are considered by the KCC in setting rates. Other components such as additional capital investments, changes in operating expenses, and a utility’s authorized rate of return also impact retail utility rates. Changes in federal, state or local tax rates should not be considered in isolation because taxes are calculated and result from the amount of income and expense incurred by a Company, given all of the factors that are involved with the assessment of a tax liability for a utility (e.g., deferred income taxes, depreciation, net operating loss carryforward, normalization, etc.) isolating tax changes at the exclusion of other rate components is not reasonable

SB 126 has a requirement which stipulates that a utility must credit to customer's bill within thirty days any federal or state tax assessments which reduce a utility's tax liability. This requirement would pose an unrealistic deadline for both the utility and the KCC as it would not allow the appropriate time needed to properly ensure the accuracy of any applicable credit calculations. In addition, many times the IRS or other regulatory bodies must provide further clarity such as Private Letter Rulings when tax laws change which may take several months to issue. Furthermore, it is important to note the 30-day requirement found in New Section 1 (b) only applies where the amount of taxes assessed are reduced, but fails to provide for similar treatment should taxes increase.

Utility rates are set by the KCC after thorough review of all filings, testimony, rate cases and related review by KCC Staff, CURB, and other intervenors. Through this process, the KCC determines an allowed rate of return for a utility – not a guaranteed rate of return. Most, if not all utilities who have their rates set by the KCC cannot meet their allowed rate of return for a variety of reasons, including regulatory lag.

The proponents of this legislation know the regulatory process and how rates are set. SB 126 seeks to dramatically oversimplify the process for calculating state and federal income tax liabilities for a public utility and seeks to isolate changes in corporate tax expenses in a vacuum and not follow the traditional ratemaking process which takes into consideration all factors that should appropriately go into the ratemaking process.

This legislation should be rejected for any number of reasons but primarily for the misleading oversimplification of the impact of how taxes are considered in utility rate making, plus the unreasonable requirement of implementing new rates in an unreasonable timeframe.

SB 69 passed in the Senate on March 14. Tax impact on rates are a part of that study and any consideration of legislation such as this should be deferred until the findings of that study are made available for consideration by the Kansas Legislature.

On behalf of Liberty Utilities, I thank you for your consideration of our concerns with SB 126.

Whitney Damron

About Liberty Utilities:

<https://libertyutilities.com/>

<https://empiredistrict.com/>

Liberty Utilities' Central Region is headquartered in Joplin, Missouri and provides electric, natural gas, water and wastewater service to nearly 320,000 customers across six states, including Missouri, Kansas, Oklahoma, Arkansas, Iowa and Illinois. The company has approximately electric 10,000 customers in Kansas in the southeast corner of the state.

In Kansas, Liberty Utilities – Empire District owns and operates a 286-megawatt natural gas power plant in Riverton, Kansas and has purchase power agreements with two Kansas windfarms: Elk River Wind Farm in Butler County and Meridian Way Wind Farm in Cloud County. In addition, the company has contracted with Apex Clean Energy to purchase an approximately 300-megawatt renewable wind energy project in Neosho County, Kansas, once the project is operational (scheduled for late 2020).