




# SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy® Cooperative 

Senate Utilities Committee  
Opponent Testimony for SB 126  
On behalf of Sunflower Electric Power Corporation  
and Southern Pioneer Electric Company  
Provided by Davis Rooney, Chief Financial Officer  
January 28, 2020

Thank you for the opportunity to provide testimony regarding SB 126. Sunflower and Southern Pioneer oppose this bill as introduced. We have been working with the bill sponsor to add language that removes our concerns. If the amendment proposed by Kansas Industrial Consumers is adopted, our opposition would be removed.

If the intention of this legislation is to exempt electric utilities who are eligible to pay Kansas income tax from paying such tax, the current language does not accomplish this intent. Most Kansas electric cooperatives are income tax exempt under Internal Revenue Code section 501(c)12. For unique reasons, Sunflower and Southern Pioneer are not tax exempt.

Sunflower is a not-for-profit taxable corporation owned by six electric cooperatives and Southern Pioneer and operates as a cooperative. There have been rare times in our history when we had state and federal income tax liabilities. Under KSA 66-104d Sunflower is self-regulated for the rates we charge our Members, those utilities that own Sunflower.

Southern Pioneer is a wholly owned subsidiary of Pioneer Electric Cooperative. Southern Pioneer's retail rates are regulated by the Kansas Corporation Commission.

SB 126 as introduced is unclear as to how it applies to these two utilities. It is unclear whether it continues to impose Kansas income tax on certain electric public utility cooperatives and cooperative-owned electric public utilities, while exempting investor owned electric public utilities from Kansas income tax. We are aware of potential amendments that would protect Sunflower and Southern Pioneer from the proposed taxation changes. We believe it would be unfair to exempt investor owned taxable electric public utilities from state income taxation and leave two not-for-profit taxable electric public utilities subject to income tax.

Neither Sunflower nor Southern Pioneer have paid Kansas income tax for at least the past five years due to loss carry forwards, which is expected to continue for the next several years. However, when these losses run out or should state or federal tax laws change to cause income taxes to be paid, Sunflower and Southern Pioneer would be the only electric public utilities in Kansas to be subject to Kansas income taxation should SB 126 pass in the original form.

We have discussed our proposed amendment with KIC and appreciate their willingness to accommodate our concerns.

We propose two changes. First, that new section 1 (f) be added to ensure that income tax rate adjustment provisions of section one do not apply to municipal, cooperative, or cooperatively-owned electric or natural gas utilities.

We propose:

*(f) the provisions of this section shall not apply to any municipal public electric or natural gas utility or cooperative public utility supplying electricity or natural gas and organized under K.S.A. 17-4601 or any electric or natural gas public utility that is owned by one or more cooperatives.*

Second, that Sec 2. (d) SB 126, as introduced, be amended to ensure that Southern Pioneer and Sunflower receive the same tax treatment of other electric and natural gas public utilities.

We propose:

*(d) Notwithstanding the provisions of K.S.A. 79-32,110, and amendments thereto, every electric and natural gas public utility as defined in K.S.A. 66-101a and K.S.A. 66-1,200 respectively, and amendments thereto, and subject to rate regulation by the state corporation commission or a cooperative public utility supplying electricity or natural gas and organized under K.S.A. 17-4601 or any electric or natural gas public utility that is owned by one or more cooperatives shall: (1) Be exempt from the tax imposed by the Kansas income tax act; and (2) not collect, as a component of such utility's retail rates, Kansas income tax expenses.*

Please consider the amendments proposed to SB 126 by KIC which will alleviate the concerns listed here and would remove our opposition to this legislation. Thank you.

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#### About Sunflower Electric Power Corporation

Sunflower is a Kansas taxable, not-for-profit, membership corporation organized and existing under K.S.A. 17-6001 et seq., operating as a cooperative, to generate, furnish, transmit, and sell electric power and energy at wholesale, Sunflower is owned by Lane Scott Electric Cooperative, Inc., Pioneer Electric Cooperative, Inc., Southern Pioneer Electric Company, Prairie Land Electric Cooperative, Inc., The Victory Electric Cooperative Association, Inc., Western Cooperative Electric Association, Inc., and Wheatland Electric Cooperative, Inc.

#### About Southern Pioneer Electric Company

Southern Pioneer is a not-for-profit, taxable Kansas corporation with its principal place of business located in Ulysses, Kansas, with distribution and customer service offices in Liberal and Medicine Lodge, Kansas. Southern Pioneer serves approximately 16,820 total retail customers in 34-communities located over ten southcentral and southwest Kansas counties. Southern Pioneer owns and operates approximately 1,120 miles of distribution and sub-transmission line and substation facilities. Southern Pioneer is a Member-Owner of Sunflower and takes wholesale generation and transmission services from Sunflower pursuant to an all-requirements contractual arrangement. Southern Pioneer is a certificated electric public utility and is a wholly-owned subsidiary of Pioneer Electric Cooperative, Inc. (Pioneer). Southern Pioneer was granted public utility status on November 21, 2013, when the Commission approved the transfer of the retail certificated territory, customers, Rules and Regulations, and tariffs from Mid-Kansas Electric Company to Southern Pioneer in Docket No. 13-MKEE-447-MIS.

#### About Pioneer Electric Cooperative

Pioneer is a non-taxable 501(c)12 not-for-profit member-owned Kansas electric cooperative with its principal place of business located in Ulysses, Kansas. Pioneer serves approximately 4,955 members and 16,669 meters in ten southwest Kansas counties. Pioneer owns approximately 4,102 miles of distribution and transmission line and substation facilities. Pioneer is a Member-Owner of Sunflower and takes wholesale generation and transmission services from Sunflower pursuant to an all-requirements contractual arrangement. Pioneer is a certificated electric public utility.