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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 115,000 customers in 65 Kansas communities. All together the Black Hills Energy family serves 1.2 million natural gas and electric customers in eight states.

Accompanying our testimony for today's hearing is a copy of our testimony from last year's hearing on SB 126. For this hearing I would like to take the time to reiterate our perspectives regarding the policy decisions in this legislation. We appreciate the proponents of the legislation recently sharing suggested changes to the bill and we have informally provided them our feedback.

Income Tax Exemption (Section 2d)

As we stated last year, 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.

As would be expected with any change in tax policy, there are some technical questions that will need to be considered. We shared some of these questions specific to the four-year exemption in our testimony at last year's hearing on this bill. Additionally, as we also consider a permanent exemption, as has been recently suggested by the proponents of the bill, we have additional questions that will need to be addressed through this process. Specifically, how would the exemption be applied in conjunction with the requirement in Kansas that a "unitary group" file a consolidated tax return? Further, how would historic tax attributes such as Net Operating Loss Carryforwards and Tax Credit Carryforwards be treated? If a utility has Net Operating Loss Carryforwards would there be a mechanism to monetize or offset other tax liabilities? How would this exemption apply to any non-regulated services provided by a public utility in Kansas? These and potentially other technical topics need to be considered if this measure moves forward.

Process to Change Retail Rates to Reflect Changes in Income Taxes (Section 1)

We continue to believe Section 1 of the legislation is unnecessary because the Kansas Corporation Commission (Commission) already possesses and has recently acted within its authority and jurisdiction to address changes in federal or state corporate income tax rates and the impact on utility rates. In fact, within only a few months of the passage of the federal Tax Cuts and Jobs Act of 2017 (TCJA), which among other items lowered the federal corporate income tax rate from 35% to 21%, Black Hills Energy gained approval of the Commission to pass the benefits of the lower tax rate to our customers. This

was the result of a timely general investigation initiated by the Commission and a collaborative effort with the KCC Staff and the Citizens Utility Ratepayer Board (CURB). However, if the Legislature determines a process should be laid out in statute to address such changes to income tax rates, we would recommend certain changes to Section 1 to address the unreasonable timeframe for implementing changes, the asymmetrical treatment of income tax changes, and the overly broad category of potential law changes that could trigger a regulatory filing.

Unreasonable Timeframe for Implementing Changes to Retail Rates

First, the 30-day timeframe in the legislation is too short and should be extended to a more practical timeframe. A 90-day timeframe to understand the implications of a tax change and prepare a filing is more reasonable, and in line with our experience following the passage of the TCJA.

Asymmetrical Treatment of Tax Reductions and Tax Increases

Second, to the extent the bill provides a process for decreasing a utility's rates upon a reduction in the federal or state income tax rate, the bill should likewise include a similar process for addressing increases in the federal or state income tax rate. Such symmetry is appropriate and we appreciate the proponents' consideration of this symmetry in the suggested changes they've recently shared with us.

Overly Broad Category of Potential Law Changes

Third, the scope of the legislation in Section 1(a) should be limited to changes in federal or state corporate income tax rates, instead of broadly covering any change in state or federal law impacting income tax. This will help to avoid forcing a regulatory process to deal with a myriad of other possible items which may have immaterial impacts on a utility's income tax expense, but would nevertheless trigger the requirement for a filing in Section 1. Clarifying in Section 1(a) that only changes in federal or state corporate income tax rates would require a filing with the Commission would still achieve the desired intent of the bill.

We are committed to being engaged participants in any further discussion about this legislation and its impact on our customers and our utility. Thank you for the opportunity to address the committee today. I will stand for questions at the appropriate time.