



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**

January 28, 2020

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.

As I made clear last year, I am not a utility tax attorney and my comments reflect that professional deficiency. However, I have circulated SB 126 as well as several proposed amendments to Liberty tax and regulatory representatives and the company remains concerned with this legislation.

By and large, the regulatory community – e.g., the State Corporation Commission, CURB and intervenors have historically expressed opposition to the approach of changing utility rates for one item, and as a general matter, courts have not allowed one item in a utility's rates to be adjusted in isolation.

Currently, tax liabilities for a utility are a portion of what is considered by the KCC in setting rates. Any change in federal, state or local tax rates should not be considered in isolation as it is simply not appropriate to view taxes in a snapshot calculation, 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.).

The requirement to file an application within thirty days if federal or state tax assessments reduce a utility's tax liability is totally unworkable and impracticable. Changes in tax laws are complex and often require months to evaluate. In addition, it is worth noting the filing requirement only applies in cases where the amount of taxes assessed are reduced but fails to provide for similar treatment should taxes increase.

Also, the bill repeals its state income tax on utilities but is silent as to what happens with Accumulated Deferred Income Taxes (ADIT) that are on the books of some, if not all utilities.

SB 126 seeks to dramatically oversimplify the process for calculating state and federal income tax liabilities for a public utility and isolate outside the traditional ratemaking process consideration for all factors that appropriately go into the ratemaking process.

This legislation should be rejected for a number of reasons, including unreasonableness of imposition of new rates in an impossible timeframe, the burdensome and costly filings of numerous cases for any law change and the misleading oversimplification of how taxes are assessed on a utility and collected through rates.

In the next few weeks this Committee will hear from London Economics International, the consultants retained by the Kansas Legislature to study electric rates as set forth in SB 69 from the 2019 Legislature. Liberty Utilities would respectfully suggest consideration of any legislation purporting to affect electric rates in Kansas should be deferred until this Committee and the Legislature have an opportunity to consider the findings of the LEI study in its entirety and consideration of legislation such as SB 126 is premature, at best.

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).