

**Testimony of Jim Zakoura
On Behalf of Kansas Industrial Consumers Group and
Kansans for Lower Electric Rates
In Support of SB 126
Before the Senate Utilities Committee
January 28, 2020**

I appreciate the opportunity to update our testimony from last year on a simple issue that can start the process of reducing Evergy's high electric rates, and the rates of other investor-owned utilities. SB 126 would end the Kansas corporate income tax for investor-owned utilities – without negative impacts to the state budget – and benefit customers by reducing rates.

The simple reason is that, for perfectly legal and reasonable accounting treatments, the utilities are collecting payments from customers for income tax expenses, but not remitting those collections to the state treasury.

Between 2014-2019, Evergy (KCP&L and Westar), Liberty Utilities (Empire), Kansas Gas Service, Atmos Energy and Black Hills Energy **collected about \$250 million** from customers to pay for Kansas income taxes. But **ZERO** ended up going to the State. Evergy has communicated to Wall Street it will not pay taxes for at least the next several years.

The solution is to simply end the state income tax for gas and electric utilities. If the income tax is eliminated, utilities can't collect income taxes from customers, causing rates to decrease.

We know a reduction in income taxes **will directly reduce utility rates** because it happened in 2018 and 2019 after passage of the federal Tax Cuts and Jobs Act, which reduced the federal corporate income tax rate from 35% to 21%. Because federal income taxes are a component of utility rates (just like state income taxes) a large reduction in this expense caused utility rates to decrease. The exact same thing would happen with SB 126, although on a smaller scale (14% Federal reduction versus 7% state reduction.)

Last year, the Kansas Corporation Commission (KCC) estimated eliminating the Kansas income tax expense **will save Westar and KCP&L customers \$22.8 million and \$8.6 million each year**, respectively. When all other Kansas investor-owned utilities are

included, the customer savings estimated by the KCC are about \$40 million per year.

SB 126 should also benefit the customers of electric cooperatives and municipal utilities by reducing rates for wholesale energy and transmission services. This means **all Kansans would be positively impacted by SB 126.**

As we seek to make Kansas electric rates regionally competitive, it should be noted, effective January 1, 2020, Missouri reduced its corporate income tax rate from 6.25% to 4%. This will eventually cause Missouri utility rates to decrease, dropping Kansas further behind.

To advance this issue, we have several proposed amendments for SB 126 that seek to address various stakeholder concerns. The amendments, reflected in the attached redline, are as follows:

- Create symmetry so that tax increases could also be expedited along with decreases
- Provide additional time for the KCC to implement changes
- Make the tax elimination permanent to avoid future rate shocks
- Clarify new rate changes for income taxes do not require a traditional rate case, nor would they violate Evergy's rate moratorium

KIC and KLER want to be good partners at the Legislature and will always listen to concerns and attempt to address them.

In summary, Senate Bill 126 is a great option for the State to begin reducing utility rates. And it will do so in a fashion that does not appear to negatively impact any stakeholder – the utilities, customers, or the State. Thank you, and I urge passage of SB 126.

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SENATE BILL No. 126

AN ACT concerning income taxation; relating to certain public utilities; exemption from income tax; income tax expenses, exclusion from retail rates; amending K.S.A. 79-32,113 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) If a public utility as defined in K.S.A. 66-104, and amendments thereto, includes expenses related to income taxes as a component of its retail rates, the utility shall track any overcollection or undercollection of such income tax expense if the income taxes assessed on such utility are either reduced or increased as a result of any changes in state or federal law.

(b) When any change in state or federal law that reduces the amount of incomes taxes assessed on a utility results in an overcollection of such utility's income tax expenses, of an amount equal to or exceeding .25% of such utility's base revenue level approved by the Commission in the utility's most recent general rate proceeding, such utility shall file an application with the state corporation commission proposing new retail rates reflecting the lower income tax rates within 30 days of such change in state or federal law and shall promptly refund ~~the~~ any tracked overcollected amounts to retail customers in a manner approved by the state corporation commission ~~within 30 days of such change in state or federal law~~. For any application filed pursuant to this subsection (b), a utility shall only be required to update the income tax expense component of its retail rates and shall not be required to file a full general rate case updating every component of its retail rates. No application filed pursuant to this subsection (b) that updates only the income tax expense component of a utility's retail rates shall constitute a violation of any existing rate moratorium agreement.

(c) When any change in state or federal law that increases the amount of income taxes assessed on a utility results in an undercollection of such utility's income tax expenses, of an amount equal

to or exceeding .25% of such utility's base revenue level approved by the Commission in the utility's most recent general rate proceeding, such utility shall file an application with the state corporation commission proposing new retail rates reflecting the higher income tax rates within 30 days of such change in state or federal law and shall be allowed to recover any tracked undercollected amounts from retail customers in any manner approved by the state corporation commission. For any application filed pursuant to this subsection (c), a utility shall only be required to update the income tax expense component of its retail rates and shall not be required to file a full general rate case updating every component of its retail rates. No application filed pursuant to this subsection (c) that updates only the income tax expense component of a utility's retail rates shall constitute a violation of any existing rate moratorium agreement.

(d) The state corporation commission shall issue an order addressing applications filed under subsections (b) and (c) no more than 120 days following the date of filing.

~~(e)~~(e) For the purposes of this section, "overcollection or undercollection of income tax expense" means the portion of utility revenue representing the difference between the cost of service as approved by the state corporation commission in the utility's most recent base rate proceeding and the cost of service that would have resulted had the provision for state or federal income taxes been based upon the reduced or increased corporate income tax rate.

(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.

Sec. 2. K.S.A. 79-32,113 is hereby amended to read as follows: 79- 32,113. (a) A person or organization exempt from federal income taxation under the provisions of the federal internal revenue code shall also be exempt from the tax imposed by this act in each year in which such

person or organization satisfies the requirements of the federal internal revenue code for exemption from federal income taxation. If the exemption applicable to any person or organization under the provisions of the federal internal revenue code is limited or qualified in any manner, the exemption from taxes imposed by this article shall be limited or qualified in a similar manner.

(b) Notwithstanding the provisions of subsection (a) ~~of this section~~, the unrelated business taxable income, as computed under the provisions of the federal internal revenue code, of any person or organization otherwise exempt from the tax imposed by this act and subject to the tax imposed on unrelated business income by the federal internal revenue code shall be subject to the tax which would have been imposed by this act but for the provisions of subsection (a) ~~of this section~~.

(c) In addition to the persons or organizations exempt from federal income taxation under the provision of the federal internal revenue code, there shall also be exempt from the tax imposed by this act, insurance companies, banks, trust companies, savings and loan associations, credit unions and any other organizations, entities or persons specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(d) *Notwithstanding the provisions of K.S.A. 79-32,110, and amendments thereto, ~~for tax years 2019, 2020, 2021, and 2022~~, every electric and natural gas public utility as defined in K.S.A. ~~66-10466-101a~~ 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 that is investor owned and subject to the jurisdiction of the state corporation commission shall: (1) Be exempt from the tax imposed by the Kansas income*

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tax act; and (2) not collect, as a component of such utility's retail rates, Kansas income tax expenses.

Sec. 3. K.S.A. 79-32,113 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.