UTILITY REPLACEMENT TAX TASK FORCE MEETING
MINUTES
November 12, 2014

The Utility Replacement Tax Task Force met at 1:00 p.m. on November 12, 2014 in Room 7 on the A Level of the Hoover state office building, Des Moines, Iowa. The meeting concluded at 2:40 p.m. A quorum was present.

COURTNEY KAY-DECKER (CKD): We will take the Executive Authority to proceed without my co-chair here. Thank you all for coming to today's meeting. There should be a sign-up sheet that's going around, if you haven't signed it yet. Make sure you sign that so we can have an inventory of name spellings, so on and so forth for the record. I have Christina Downing here again who will be recording our proceedings today and what I will ask you to do when if you are up speaking, to come up here and sit in this chair right next to her. So it's easier for her to hear for the transcription purposes. And with that I think we will officially go ahead and get on the record and get under way with the Agenda. Alright very good, so first thing we have on the agenda is roll call and introductions. I think everybody pretty much knows each other, but why don't we go ahead and go around the room.

Present:

Courtney Kay-Decker, Director of the Iowa Department of Revenue and Task Force Co-Chair
Victoria Daniels, Department of Revenue
Mike Rubino, State Tax Director for John Deere
JJ Severson, Department of Revenue
Roland Simmons, Department of Revenue
Julie Roisen, Department of Revenue
Carrie Johnson, Department of Management
John Ward, Rural Electric Cooperatives
Tim Coonan, Iowa Association of Electric Cooperatives
Julie Smith, Municipal Utilities
Steve Evans, Investor Owned Utilities
Christina Downing, Department of Revenue
Jim Miller, Iowa Attorney General's Office
Donn Stanley, Iowa Attorney General's Office
Lori Marchese, Department of Revenue
Grant Meinke, Iowa Renewal Fuels Association
Jace Mikels, Senate Democrat Staff
Erin Mullenix, Iowa League of Cities
Robert Palmer, Iowa League of Cities
Monte Shaw, Iowa Renewable Fuels Association
Terry Harmann, Alliant Energy

Mark Douglas, Iowa Utilities Association
Tom Stanberry, Davis Brown Law Firm
Kate Carlucci, Davis Brown Law Firm
Dick Stradley, The Stradley Group
Alan Harding, The Stradley Group

Absent:
Bill Peterson, Iowa State Association of Counties
Alan Kemp, Iowa League of Cities

CKD: All right we have been around and Dave will be here shortly. So the next item that we have on the agenda is approval of the minutes from our August 21st meeting. We basically just took the transcription and made that the minutes. Does anyone have any corrections or comments on the minutes? And if there are none I'll entertain a motion to approve them.

Julie Smith (JS): I move approval.

CKD: Thank you Julie, do I have a second.

Tim Coonan (TC): I'll second.

CKD: Thanks Tim. Any further discussion? All of those in favor in approving the minutes. Everyone said "Aye". Opposed? None. All right we are done with two items already. That's exciting. So the next step in the process is we are going to ask those who have submitted written comments, if they would like to provide an additional oral presentation. I know that we heard from Mr. Stanberry that you'd like to give a presentation. Are there others who will also want to give presentations, so that we make sure that we allot enough time and divide up the time we have available? Other non-Task Force members? So just Mr. Stanberry?

Tom Stanberry (TS): We are happy to…

CKD: You are happy to present?

TS: We are happy to answer questions and (inaudible)

CKD: Okay; very good, and Mr. Stanley. So we have two presenters then I'll expect that we will have questions from the Task Force for those presenting and also for anyone who has submitted written comments to get clarification in that regard. Does anybody have any questions or suggestions on that procedure before we get started? All right then, Mr. Stanberry. Okay; go ahead and come up.

TS: My name is Tom Stanberry, I am an attorney with the Davis Brown Law Firm and we represent a group of the Natural Gas Replacement Tax Bypass Customers who are currently paying the tax. We have submitted a written submission. I am not going to go over the written submission in detail. I

want to just highlight a couple of items that are in the submission and then certainly answer questions. We have outside consultants as well as two of my partners are here to answer additional questions. I am going to be brief. I didn't realize I was the only one that said that I was going to speak. I still intend to be brief.
I wanted to clear up a couple of misperceptions about the goal of the bypass customers that we represent. Misperceptions come to me from comments that'd we have heard from various people some on the task force or some legislators and others that have been involved in this discussion. First, from our clients' standpoint we are not asking for an exemption. We don't see this as an exemption. We are not suggesting that anyone that does not pay the tax today be subject to the tax. We know that there are grandfathered bypass customers. We are not suggesting that they be subject to the tax. We know that there are municipal utilities that have a zero rate and we are not suggesting that change. What we are really asking for is that the non-grandfathered bypass customers pay a tax based on the value of their assets as opposed to the value of some assets that were in existence in 1998 and that if this tax is to be a true excise replacement tax for property taxes, that the property that these bypass customers that are non-grandfathered are or have be used as a basis for the tax.

We went through our submission and reviewed all the other submissions and we tried to break down some of the comments into the key principles the Task Force uses. And I know that you talk about them in terms of 3 principles when you look at the statute. One of them kind of gets interwoven with each other so I am going to break them down for purposes for today in kind of four basic categories. The first principle that we always hear about from the Task Force is that any change in the replacement taxes needs to preserve revenue neutrality and debt capacity for local governments and taxpayers. We agree. We think that any change that you make to the natural gas replacement tax or any other replacement taxes really needs to maintain the local governments and the same revenue position that they are into today. Taking into account what would be the normal changes in business cycles and knock on wood or knock on Formica everybody who is in business today paying the replacement tax maybe not be in business at some point in the future. Businesses may shrink, businesses may grow. As a result of that, the amount of tax that's going to be collected and the amount of revenue to local governments may change; may go up, may go down, but we don't think that anything that we are suggesting should change that. Chapter 437A has a mechanism in place to change the rate as volumes are adjusted. And if there is a volume change as a result of what we're discussing, you know, that the rate can be changed by that mechanism. We also think that any consumer of natural gas that does not pay the natural gas replacement tax in the future clearly needs to be subject to local assessment of property taxes. So when you start thinking about the fact that there will be property taxes collected on the value of these assets and there should be an adjustment in the rate of taxes, so that collections will eventually near what they are today. There needs to be a temporary substitute for that revenue, so that all those local tax jurisdictions are maintained in their current revenue position. It could come in…the simplest mechanism to us would be a temporary backfill similar what was used in the 2013 legislation with respect to the property tax rollback. I'm sure there are other alternatives that we can think about. That's what came to mind when we first started talking to our clients and they first started talking to us. And we impressed upon them that we didn't think that there should be an impact….negative impact…on the local tax jurisdictions.

One of the reasons we commissioned the study is a part of our submission that compared the replacement taxes being paid by a number of bypass customers with the theoretical property taxes based on local assessment and local mill levies of various counties in which the bypass customers are located. Was so we could just see the disparity and as you can see from the submission and our expert's analysis, it's a wide range. There are actually cases that we were able to document where the replacement taxes that are being paid, are roughly 45 times what that same bypass customer would pay on the property that would be assessed on a local basis. So when you hear us and when you heard one of our clients speak at the last Task Force talk about the tax inequity, that's what he was talking about. He was not talking about the fact he's taxed and his neighbor down the street is not taxed. He was talking about that the fact that you look at similarly situated people paying property taxes versus what his plants are paying in replacement tax; there is a fairly large disparity.

Second principle just toss out real quickly in the Code says preserve neutrality in the allocation of the cost impact of any replacement tax among and upon consumers of electricity and natural gas in the state. We would argue that the current system is not neutral. There are consumers of gas that under the current statute pay a tax rate of zero. So a zero tax rate, regardless of how much is consumed, is going to be zero taxes. We understand the legal and constitutional principles of why they pay that, but just to point out that there is not total neutrality. The grandfathered bypass customers, so those bypass customers in existence in 1998, pay no tax. We also know, because of the way the tariffs are set up for the investor-owned utilities, that a consumer that is a large consumer of gas can end up in a negotiated rate with a rate that they pay is less than a natural gas replacement tax rate. We have no problem with that, but I think we do need to point out that there is lack of neutrality now and the changes that we are proposing will not change that.

Third item that is in the Code says remove tax cost as a factor in a competitive environment. I think if anything, the system that we have in place now actually promotes competition based on the tax. And I will throw a hypothetical situation. If you locate a facility in a site where the tax rate is zero and the site would be exempt from local property taxes because the consumer is under 437A subject to the natural gas replacement tax, that gives that community that has a municipal utility that is a gas consumer that can site the project within a two mile limit a distinct competitive advantage over any other municipality that can't site a project with the same restrictions or same limitations. So I think when you step back and you look at tax costs as a competitive factor one of the things that has to be considered is whether or not the current system actually accomplishes that. And again, there's nothing that we are proposing and we are not here to talk about proposals at this point…there's nothing in our submission and there's nothing we have discussed so far that would change that. So if the neutrality doesn't exist, we are not suggesting there's a way to change it and we're not suggesting that our alternative would actually eliminate that. So I think the summary of that one, you can take the current system and you can use it actually very competitive advantage for certain municipalities.

Last item that's articulated in 437A says provide a system of taxation which reduces existing administrative burdens on State Government. We spent a lot of time since the 2014 session of the Legislature talking to folks in other states, to people in this state, that are experts in either the administration of the natural gas replacement tax or in many cases, are payers of the tax and talking about alternatives to the current system which would either maintain the status quo or certainly not increase the level of administration that the State has to go through today. And we have multiple attorneys at this point…it'd take a long time to talk about them all, to discuss them all, so I don't think we want to sit here and hash through them. But there are a lot of ways to do that and we understand that is one of the guiding principles and we want to reiterate: we are confident that we can come up with an alternative to the current system that maintains the ease of the administrative burden that this system does from a state government standpoint.

To quickly summarize where I started out, we don't think the right way to solve this problem is a blanket exemption. We think that there are ways to change the system so that the bypass customers are in an equivalent position to what they would be if they were paying locally assessed property taxes. We know that there are consumers that don't pay the tax and we are not suggesting that they do pay the tax. We are not trying to level the volume in the buckets by assessing someone that is not assessed today. We just want to see the non-grandfathered bypass customers taxed on the value of their property as it stands today and that's it. Simple and sweet.

CKD: Thank you Mr. Stanberry.

TS: You are welcome.

CKD: Does anyone from the Task Force have questions. Mr. Stanberry, stay up here if you don't mind.

TS: Oh yeah. I am happy to.

CKD: Task Force -- questions? Questions for....Julie do you have something?

JS: No, not really.

CKD: You look like….

JS: I like the term Muni-halo. I just thought I would throw that out there.

TS: You know I think we would love to take credit for it. I don't think we crafted that one ourselves.

CKD: Is there anyone from the public that has questions? Comments for Mr. Stanberry?

MIKE RUBINO (MR): I might just have a quick question.

CKD: Okay, Mike.

MR: From what I recall there's some language to recalculate the rate when the volume changes in the service area by a certain amount, is that right?

TS: There is. Yes.

MR: Did the rate get recalculated any time during this time period? With…there is so much more usage; did the rate get changed? I just didn't know that…

CHRIS JAMES (CJ): Which CSA?

TS: Yeah, I was going to say it's going to vary from CSA[Competitive Service Area] to CSA, so when you have rates change.

MR: Rates change…

TS: Yes rates have changed.

MR: Dramatically in any of these places to kind of alleviate some of that concern that you had? With the tax being not comparable to the property?

TS: Chris, do you recall the biggest change?

CJ: Yeah, well Roland knows this too, but there has been some significant changes for some aggregations that have occurred earlier on in some CSAs; MidAmerican has been relatively stable, but it does not fluctuate based on the usage of bypass customers; ?They can't use the gas to impact the municipal gas impact the therms any given year, so whether they use a lot or a little does stem from MidAmerican or some other ethanol plants. It probably wouldn't have any impact. They do not use enough gas for the MidAmerican service area. Now in a larger CSA, but a smaller utility base in it maybe a few more could band together and cut the rate, but by in large, (inaudible).

MR: So bypass customers' usage, although it could be substantial, doesn't impact the rate? Is that what you are saying?

CJ: For instance one year...a good example we have is for instance, one year the Little Sioux Corn Processors plant doubled their capacity, doubled their usage in one year, and you would think that if that were to happen the rate would actually go down.

MR: Sure.

CJ: But it didn't; it went up that year. So they don't really have…they just don't use enough therms compared to some energy users. So by and large, they don't really have the ability to affect the rate very much. Collectively, maybe a little bit, but and their therms are factored in, so I wouldn't say it has no impact, but it's very gradual.

TS: It would have to be a small CSA with a lot ethanol plants. There are industrial users that can in fact impact the rate.

CKD: Any other questions for Mr. Stanberry, while he is up here? All right, thank you. Who's next? Is that you Donn? Mr. Stanley?

DS: Good Morning. Afternoon. Again my name is Donn Stanley. Jim Miller and I work for the Attorney General's Office and work with the Replacement Tax Task Force and we are in the Revenue Division, so our main job is litigating cases for the Department of Revenue. So we are working with our old friend and former college Chris James and others in terms of litigating the Little Sioux case that's now before the Supreme Court. I gave a report last time about that; I'm happy to answer any questions you have.

I would like to start by just making clear that that's our role in this…is to try and help with legal issues for the Replacement Tax Task Force and the Department of Revenue. The Attorney General's Office doesn't take a position on this legislation. If that were to happen, it would happen much later and at a much higher level of the Attorney General's Office than you have before you today. General Miller, as most of the people in this room know, has always been a strong supporter of renewable energy, but our job is to defend the statutes as written from this constitutional challenge and if the law changed depending on what the Replacement Tax Task Force recommends, what the legislature does, what the Governor signs; our job would then be to defend whatever statute is in place at that time.

I did just want to comment on some of the issues that were posed by the legislature and some of the comments that had been made in terms of trying to respond to some of that. The first is that the questions that the legislature posed, the numbers and types of taxpayers that currently pay the tax can be provided and the Davis Brown Firm helpfully has provided a list of ethanol users. The question that I think that we would have is are there additional companies that might need to be included in the bypass customer list. We're not aware of that, but those were the ethanol plants that are in that bypass customers. I'll talk a little about the fact that that list might increase over what it is now depending on what kind of legislation would be proposed or enacted.

The amount of tax paid, technically is not confidential just the amount of therms delivered that are disclosed on the return. The problem is that once a tax is revealed for a taxpayer operating in a single service area, the therms delivered can be determined easily by just backing out the number, so that may trigger the confidentiality provisions in terms of that. But the aggregate amount of tax paid by a service area could certainly be provided to the legislature.

CKD: Are you saying that there is a right number of different tax payers…so if they are just paying out of a service area that…

DS: If there is just one service area then you will know how much tax they did, so aggregate. If you have…if the aggregate is more than one, I guess again, which, and the amount of gas, the third question, the amount of gas consumed by the grandfathered companies is not known. There is no requirement that that be reported to anyone. So that amount is not known. The amount of property taxes that would be paid if the transmission property that were subject to local property tax is not known as we did not know the fair market value of the consumer's pipeline facilities. There's a difference between market value and, you know, the cost less depreciation and that may not be the market value and so the tax would be there. Right now the values reported for the statewide property tax is the book value, which is the acquisition cost less depreciation. And as we talked before, that's a very small amount. I think, again, in the Little Sioux example that Chris was talking about earlier, that statewide property tax was what, about six dollars a year, something like that, so I mean that's not a market value approach and that's what's used right now.

The allocation of the revenue to the local governments generated by these consumers again could be aggregated and provided but not the local parts.

Let me address a few of the issues that were mentioned in some of the comments that were submitted and then talk very briefly about some of the things in the oral presentation. First of all, the local distribution companies and the municipal utilities weren't given a replacement tax rate based upon their own taxable assets. And I think this is really important. The service area in which they were the primary provider was given a rate based on the actual tax paid by the provider, not on the value of their assets. And so when you are talking about going back and having the same thing and having it based on the value of the assets, that's not how this is determined in the first place. This was done to ensure revenue neutrality for both the taxpayer and the local government at the time of the conversion to the replacement tax. And again, I think it's important: it was a snapshot for at that time in terms of revenue neutrality. After the replacement tax went into effect the rate was free to fluctuate depending on the number of therms flowing into the service area, subject only to the threshold adjustment and that was talked about, you know at the end of Mr. Stanberry's presentation. There is a mechanism to keep it from too big of fluctuation. This threshold adjustment. But there was never, I think, any thought that it would be the same for all time and that's what this concept of revenue neutrality is about. Otherwise, and we will talk about this maybe in a minute a little bit more, but revenue neutrality only applies to the parties that are involved when this happens in the first place. Otherwise, just by definition if you have a new business and they weren't part of it, their taxes are going to be the same as when they didn't exist. Because when they didn't exist they didn't have any tax and so that's just not how that concept of tax law applies. And I think a lot of the people here are already aware of that.

The second point is the conclusion that 45 more times, 45 times more replacement tax revenue than property tax revenue is really a fallacy, because the replacement tax revenue is dependent solely on the number of therms flowing to the consumer. It's a tax on the therms; it's not the tax on the property. And so comparing the property tax on a pipeline is apples-to-oranges over comparing the therms, because you can have the same length of pipeline that conveys a different amount of therms. And when the tax is on the therms then it's not going to be the same for those areas of pipeline. You could also have the scenario where a plant could shut down for a year because of some sort of mechanical problem or whatever; you have absolutely nothing flowing through or you wouldn't have a tax based on therms during that time, but you would still have the property there. If it was a property tax, that would be paid whether you were actually running therms through there or not. So the 45 times is not really a comparison because it's based on a different tax on a different item.

Also the Legislature was aware of bypass customers which is why the grandfathered companies were treated the way they were in terms of maintaining neutrality for those customers. That again is what the term revenue neutrality and the tax neutrality has to do with it. It has to do with what customers were existing at the time of the law and that's why they had that. I know Mr. Stanberry mentioned that he's not advocating that these grandfathered companies pay the replacement tax, but when we first started to litigate the Little Sioux issue one of the issues that I don't think is before the Supreme Court, but was litigated earlier, was the equal protection argument on these companies. And there was one case that was brought up. Most of the time around the country grandfathered provisions have been upheld; exceptions for grandfather provisions. It's not a novel concept in tax. But there was a California case that was brought up and the remedy that the California court used in that case was to impose the same provisions on the grandfathered companies that the other companies were paying. And so certainly one of the things that the court could do or the Legislature could do is to make the 5 grandfathered companies pay the same amount of money. And I recognize that's not the proposal, but that could be true -- both that the grandfathered companies and the municipal companies where the Legislature and the Governor could decide there's going to be some minimum amount of tax. And again, that is something that the Legislature could do and if they did do that, then our position would be, we would, you know, work our hardest to defend the constitutionality of that.

And another thing that was brought up was about the local distribution companies spreading the tariffs and passing the tax on differently to different customers, which is their right under the law to do. Again, that's not really a Replacement Tax Task Force issue, that's a Utilities Board issue. I don't recall if there's somebody from the Utilities Board here today, but again, that's something that's legal under the law, just as it's legal for the bypass customers to pass on a different portion of the tax that's part of their overhead to different customers. They don't have to pass that on exactly the same to every customer just like the utility companies don't have to pass that on to every customer and that gets to the whole concept of where the incidence of the tax lies. There are taxes where the incidence of the tax falls on the final consumer, but in this case, the incidence of the tax falls on the utility companies or in the case of the bypass customers, they are treated like a utility because the tax hasn't been paid by anybody before. And in all those instances, those can be passed on without any sort of regulation as to how much you pass onto each customer. So if people negotiate rates, that's allowable under the law.

In terms of the "municipal halo," which I really like that, too, Julie; but you know a lot of times as the tax prosecutor you don't get the halo thing very often. But in terms of the municipal halo, the legislature could…you know, they had…one thing that I would encourage everybody to look at and that is that a lot of times when we have to defend statutes we have to come up with what the rational basis for these tax statutes were. In this case of the replacement tax and I give credit to the people that were on this task force long before I was involved, but they actually lay this all out in the preamble and they talk about the rationale for all of this and they talk about the rationale for the different rates. And you know why having one rate would be bad -- because it would reduce the cost for some people and increase the cost for others and all of that. But in terms of this being the, you know, the competitive disadvantage, if that's the case, and I'll give you a little example from a newspaper article of some of the negotiation that takes place, but if there was such a massive advantage in the municipal areas, it would seem like we would have more than one plant that was in a municipal area. We only have one in Emmetsburg and I don't think there is any question that from a replacement tax standpoint, that, you know, that's a better deal for them. But it must not be an overwhelming incentive or we would have all or at least a lot of them. We have dozens of these municipal service areas all over the state and yet there is only one ethanol plant in a municipal service area and just logically, if it was a big advantage, you would have a lot more there.

Again, we talked a little about this: the centrally assessed companies always value far more than just cost-less-depreciation on the pipe. They were assessed under a stock and debt, income, and cost approach as a going concern value based on the value of the entire unit both within and without Iowa. Conducting a similar evaluation methodology on these companies would produce a significantly higher value for the transport and transmission property than the hypothetical used in my good friend Dick's report. Again, we've got the greatest respect for Dick and Al. And I attended a lot of Replacement Tax Task Force Meetings with both of those guys, but that's a different method than what they have in their methodology. Also, if the transport and transmission property is owned by the pipeline up to the bypass customer then the pipeline will be centrally assessed for this property not the bypass customer. And I think that's another important factor is if the pipeline goes almost to the bypass customer's property then the valuation's going to be very small because they just don't have much of the pipeline; the interstate pipeline runs it right to the company. And I think in the grandfathered companies we would need to look at that in terms of making some sort of evaluation.

Let me just tell you…this is from one of our exhibits in the Little Sioux case, but there was an article in the LeMars Daily Centennial when the people from the Little Sioux went to Akron, Iowa to pitch having an ethanol plant there. And we can post this whole thing, but in the article the general manager of Little Sioux who was there with Mr. Grotjohn, who was at our last meeting, says to the Plymouth County Supervisors, "I don't mince words; we're here for some property tax incentives" and then he says later "the plants need zone only line and tax rebates; we need to have paved roads." And asking the local people to pay for the roads…and then this is the interesting part…because that's just what every business is going to try and get the best deal they can to locate somewhere. But then Mr. Roe talked about what benefit this might have for Plymouth County and said, "Iowa does have a pipeline tax that all people that use natural gas have to pay. Adding the taxes and excise tax and says, "As a 55 million gallon plant in Marcus our bill last year was $140,000 that goes direct to the county, that doesn't go through the state," and estimated that Plymouth County could earn in excess of $250,000 annually in pipeline usage tax. And so part of these negotiations, and this might be true in municipal areas and might be true in the other areas, is companies, as they should, and as they have fiduciary duty to do while trying to get the best deal they can, but they also…this gets to the point, and it was really an important point for the court at judicial review…was that unlike the grandfathered customers who were let in on the past ones, those customers made the business decisions they did not knowing about the replacement tax, because that was already…they had already made those decisions before it was in. A point that the District Court Judge made was the difference after the replacement tax for all of the new customers, ethanol or any other new customer, is they already knew the lay of the land. They already knew what the law was and it was clear when they were doing this negotiation, they already knew what the law was in terms of trying to do that.

I think the last thing 'cause I went on longer than I wanted to…is that when you're looking at the impact of the bypass customers leaving the system, I think it's important to look at the fact that if this really is a big incentive, I know we talked about the money being the same, but obviously, if the study is true and the property tax is so low and the replacement tax is higher, the money isn't going to be the same that people would pay. There would be a tremendous incentive for more customers to become bypass customers. If they were saving money…again it's just…they'd almost have a fiduciary responsibility to try and save their business this money, so again our job at the Attorney General's Office is to defend the statute as it's written. We have tried to do that with the statute that we have now. If there's a new statute then we're going to try our hardest to defend that and if people have any questions I would be happy to try and answer them.

MONTE SHAW (MS): You said something…I might have missed part of it. I'm one of the newer people in this room; I have not been attending these meeting for years. You said the tax rate was based on the tax that had been paid in the competitive service area, not on the value of the assets in the service area at that time (unintelligible). While that may be true on one level, the tax that was being paid at that time was through local county assessments, correct? Of the assets?

DS: Yes.

MS: So it actually was valued…it was based on the assets.

DS: No, it wasn't.

MS: If the tax being paid was a reflection of the county assessed tax from assets and then you're just taking the tax paid and saying, "Well, I'll keep it the same," what it actually derives from is the value of the assets times the county tax rate.

DS: No, well….

MS: (Unintelligible) into a service area.

DS: Well in the municipal areas for instance, there wasn't a collection of the tax. They had this in lieu of transfer and so….

MS: With the exception of the munis then.

DS: Well, I mean that's like saying, you know, with the exception of the days that end in "y." That's such a big part of the situation. Most, by far, most of the districts; most of the service areas are municipal districts.

MS: They had a different tax system before the start. I was actually referring…so for people who paid taxes before.

DS: Well and some of those paid a lower rate, but again, it wasn't based on the value of the assets. Not all of the municipal rates are 0. Some of them are small.

MS: So for the non-municipal rate payers who are here in the old system. What they were paying before this law was enacted was a county assessed property tax?

DS: Yes on the operating property that they had at that time.

ROLAND SIMMONS (RS): State assessed.

VICTORIA DANIELS (VLD): Centrally assessed.

RS: Centrally assessed.

DS: Yes, it wasn't local, it was centrally assessed.

MS: Even before this?

RS: Right

MS: Okay, I have always heard you guys say you liked the system because it was one state assessment instead of 99 counties assessment. I wasn't here so….

VLD: The money goes to the locals, but it is centrally assessed at the Department of Revenue.

MS: And you assess what at that time?

RS: We did the stock and debt, income, and cost approach on of a lot of companies. Some of the real small ones, we just did a cost approach.

MS: And then the other question I had was…actually, I had two more things real quick. You mention the 45 times comparison is a fallacy because there's a tax on therms not a tax on assets, but when we are talking about comparing how the bypass customers are taxed vis a vis the investor owned utilities or the grandfathered plants, the grandfathered plants are still…I don't know if it's a central assessment or county assessment, but they're still assessed on the value of their assets?

DS: They're still all assessed just like they were before.

MS: Okay.

DS: But in terms of…like you were talking about investor-owned utilities, I think it would be hard to say they were taxed 45 times as much as they were before.

MS: So I guess what we were comparing was the treatment of the taxpayer to another taxpayer. Say the grandfathered bypass customer to a non-grandfathered bypass customer.

DS: Right.

MS: It wasn't similarly-situated comparisons. I guess it's not a comparison to everybody; obviously there are different players; there's municipal, investor-owned…

DS: Right and like we said, that cost-less-depreciation, which was the methodology, is not a correct methodology; is not equal. And so if a 45 is based on that, which that's the methodology then that just by definition…

MS: Take away the 45 number…

DS: **…**is wrong.

MS: Okay and I'll let you guys who are experts on this argue that. Taking aside the 45, I think the point we were trying to make was an apples to apples comparison with two similarly-situated companies under two different systems. Now it might turn out that that comparison is one to one, it's five to one, it's 45 to one. I won't argue that today (unintelligible).

DS: Sure.

MS: The last question I had was you mentioned that if the Legislature saw fit to change the law and to take all the bypass customers and put them back into the old system, if you will, and some of the grandfathered customers, that that might provide quite an incentive for people to bypass.

DS: If it's true that it's a lot cheaper to do that so…

MS: If it's true that it's a lot cheaper, so under that same theory does the current law not incent companies to not bypass and to go to an investor owned utility for their service?

DS: Well I think it depends on the individual company, just like where you site the company if you bypass or not. Like in Little Sioux, the company that was their advisor advised them to bypass their sister company is the one that did the work. And there, we never got in that one what the real reason for why…they didn't have people still available that could say what the reason why they bypassed or not and then they contrasted that with Valero who got…negotiated a rate, because even the expert witness in that case, Mr. Wehlan, said, you know, one of the things that he tells people is look to see if you can negotiate a rate with the utility company, so it, you know…again there are a lot of factors that might go into that and you know I don't know how big of a role the replacement tax plays in that. Probably would be different for individual companies on why they wanted to bypass and why they wanted to go to the utility. I'm just saying that if it's true that it's so much cheaper then there would be, it seems like, overwhelming reasons to want to bypass.

One of the reasons as I talked about the rationale of the legislation--it's a little like sales and use tax in that if you don't pay; if the sales tax hasn't been paid, then the ultimate consumer is liable for a use tax that equals out the sales tax. There is a subsection one here that imposes this tax on the local distribution companies and then subsection two says if this hasn't been paid before then the consumer is treated like the local distribution company and they pay in the same service area the same rate that the local distribution company paid for it. And if you take that requirement off and it's a better deal, then it seems like a business that's really on top of things would do whatever is the best business deal for them.

MS: With the exception of the bypass customer had to pay to install a pipeline to maintain the pipeline and eventually, when it ends its useful life, replace the pipeline, so they're paying the same rate without benefiting from someone else having provided the pipeline, but if that's….

DS: No, all of those are, you know, I guess I was going to say, I'm not a, I guess I am, but those would all be deductible expenses.

CJ: Is it your position, Donn, then, that these lateral pipelines that were locally assessed may be subject to a unit value approach?

VLD: Locally assessed or centrally assessed?

CJ: A lateral pipeline from an ethanol plant for instance, is it your opinion that a lateral pipeline would be centrally assessed?

DS: I'm not sure I understand what you are saying. Under what law, I mean?

CJ: Under Iowa law, if these pipeline companies, these ethanol plants, run off line in terms of they were…let's say they were exempted from the replacement tax, right?

DS: That's…so under a change in the law?

CJ: Let's say they are exempted. Would that lateral pipeline now be subject to local assessment?

DS: It would depend on what the Legislature provided. If they said we are going to exempt that from replacement tax and make it subject to local assessment then that's the way it would be. But the Legislature would have to do something.

CJ: It doesn't need that. They just said you are not subject to a replacement tax. They'd be subject to local property tax. For instance the grandfathered company at their level…

DS: But, they said how they're treated.

MS: Let's just say…

DS: If they said that's how they're treated then that's what the Legislature would….

MS: So if the Legislature said we're going to treat all bypass customers today like the grandfathered bypass customers and they made that legislative change, is that the right, am I saying that right? How is that a central or county assessment and then what was the other term?

DS: No, if the Legislature provided for that, then that would be what the law is.

CJ: If they were locally assessed, then they wouldn't be subject to a unified approach right?

DS: They would be subject to a market value approach.

CJ: Right, that wouldn't be stock and debt at the local level, right?

DS: Well it would be however they would get to market value and it would be the, you know, it could be income approach, it could be cost approach, it could be whatever, you know, gets to a market value. It would not be the cost less depreciation that the statewide property tax is based on. Wouldn't you agree with that?

CJ: Not necessarily, because that might be the fair market value.

DS: 6 dollars, well it's possible….

CJ: That's the amount of the tax, not the fair market value. The value might be the fair market value.

DS: Right, that's what I'm saying…right…

CJ: The value might be the fair market value.

DS: Yeah,

CJ: No one is going to pay more than it cost to build the plant, so if cost new less depreciation…it's probably a pretty good (unintelligible).

DS: Well, I think the point I was making was that's not how when you are talking about the comparison with how this started, that's not how the utility companies were assessed. They were assessed on stock and debt and income and all of those things. It's not an apples-to-apples, to this how the utilities were done when this was first established.

MS: Is it public information how the bypass customers were evaluated? Not the value or tax paid, the method by which they're valued? Would that be public information?

DS: Well I think the, you know, that's something that the local assessors would know. That's not something that we would get. It's the local assessors.

MS: I didn't know of that.

DS: That would have been…property tax is the most transparent of all the taxes. I mean, they put the value of your house right up on the internet. They don't put your…unless you are like us, state employees, they don't usually put your salary in the Des Moines Register. We get to enjoy that, but most people don't, but your home value is up online.

STEVE EVANS (SE): Could I ask a question that maybe Roland or others would know this. I think it's my understanding from my work here in Iowa and other states that assessors of all kinds are to essentially look to some standards that are out there. Called uniform standards of professional appraisal practices; at least I have and as I read those I see that they are reiterated right in the Iowa Real Property Appraisal Manual, which I think the local folks use and maybe Roland, I mean if you are doing that…

RS: We do.

SE: In Iowa you use that manual and it cites the three methods so who knows what the Local Assessor or the State Assessor might do. They are supposed to consider all three indicators of value and then weigh them as these guys have been doing it a lot longer could tell you. So who knows what they would do, but those are the sorts of things they are supposed to consider all three indicators of value, income, market or stock and debt, then there's cost and then there's various kinds of each one of those three. But those are mapped out at the front end of the Appraisal Manual. I would hope the Local Assessors are using and I think that's what they're supposed to look to; that's its purpose.

CJ: I think the point is that in the report we provided or did provide (unintelligible) basis for a comparison of market value over local value….(unintelligible) so we think the relevant number to look at is what would be assessed at the local level.

SE: Right, and the local and the state are supposed to use the same standards. That's the only point I wanted to make.

CJ: Well it's different than centrally assessed.

SE: They are the same standards.

RS: One of the issues that I think…on the report, and Donn kind of hit on it, was we were talking about the lateral pipeline itself and from what I have determined the lateral pipeline was actually owned by the natural gas company, which then would be centrally assessed by us. So it would have the three approaches to value: income, cost, and stock and debt.

MS: So both of our bypass customers own that; in fact I just had one that made the mistake of buying that from them.

DS: No, he's talking about the grandfathered companies. In Roland's look at that, those pipelines went virtually to the ….

RS: Right up to the point.

DS: Right up to the point of the plant, so there isn't a part that's valued at the local level because the interstate pipeline owned the pipeline up to the plant and that's assessed as a part of a central assessment of interstate pipelines which the…again, is centrally done and then we do that and then there's apportionment among the states and there's a whole formula for how that's done. But again, it's part of the three-pronged approach that Steve was talking about.

MR: I have a quick question here. Are any of these bypass customers, have any of them negotiated lower rates other than the standard rate?

DS: I think by definition it's the ones that are hooked up to the local distribution company that can negotiate a lower rate from that company. The tax…like for instance would fall on MidAmerican, but MidAmerican has the ability to pass that on, not in a one to one basis based on therms. They can negotiate a rate with some customers to get, you know, where a lower part of the taxes is passed on. The bypass customer, they get the rate right onto them, there is…they're the buyer and the seller really, because they are the purchaser and the user. What they can decide is how much of that they're going to pass on to the people who buy their product, you know, they don't have to prorate that out for every bushel of…

MR: Can they negotiate with the recipients of those taxes? The local government to receive some of that as a refund or an abatement or some type of incentive?

DS: There are other incentives like in this Akron example; where they can get some other relief or some services, but the replacement tax just is paid out through a formula that goes through the Department of Management and that's just paid out to the local governments for, you know, where that plant is located.

MR: So do the local governments know how much of the taxes that they are receiving relates to this property tax replacement?

DS: Yes.

MR: So you do know how much that is?

DS: Yes.

MR: You have a separate check?

DS: Yes.

MR: So a person could negotiate with the recipient of that and could ask for some of that back…

DS: Well money is fungible, it's not that you could get a different thing that….

MR: My point is…

DS: …would neutralize it…

MR: **…**the local government is going to be receiving some additional funds that they didn't have before.

DS: Right.

MR: Right? A company could negotiate with that local government and say hey you're going to get $100,000. We would like $75,000 of that if we build our plant near your jurisdiction. They could.

DS: It would be through a different avenue, but it could balance out. But it wouldn't be quite as simple. I know government's unusual that way. It wouldn't be quite as simple as you're saying, but they could get some other incentives.

MR: The government gets--the local government gets a check from the State.

SE: Mike, you said that wouldn't be through the tax laws it's just….

MR: …development incentive…

DS: Right, exactly and that example I read to you, you know, that's part of it. They, you know, they were asking for property tax relief and they were asking for, you know, some services, some construction, and those kinds of things and they were saying, you know, you're going to get this extra money through the replacement tax. So that kind of negotiation, you know, takes place.

MR: So there's agreements in Iowa regarding specifically the replacement taxes coming back to the local jurisdiction.

DS: We're not privy to, you know, this was in the paper. We're not privy to what kind of agreements all the plants had with where they locate. I mean, I think all of those probably would be public…

MR: They would be public information.

DS: They'd be public information, but they're not something that's reported to the State. I mean people could get that information from the counties or cities and those kinds of things. That's not something…that's not the State's business…

MR: …agreements that have been reached with the counties or plants?

MS: To the relief of the utility replacement tax? I'm not aware of that.

CARRIE JOHNSON (CJ): I would definitely claim there's some examples of urban renewal and tax increment financing that gets to the tax relief thing that you are talking about, but I don't think there's a TIF mechanism for utility replacement tax.

SE: But we don't know of anything in Iowa law that would preclude the ethanols from going and getting their savings if they could work it out with local governments outside the tax law. See, you still come out economically better than you are. There is no prohibition; it's the wrong forum because it's not a tax issue, but you guys need some help economically is what I am hearing. Is there a way you could do it outside of the tax laws?

MS: We are asking for fair taxation. Regardless of…

SE: I mean you need….

MS: **…**economic situation.

SE: Under the assumption that perhaps you could benefit from something, it sounds like that might be an avenue you could do outside the tax law.

MS: I got two ethanol plants of the same size paying vastly different tax rates to the State of Iowa. It (unintelligible) locations. And I don't think the solution to that is to ignore the inequities of the Iowa tax law and to ask the disadvantaged client to go to their local government and ask that local government to give them a tax break or tax incentive. But that's my opinion…

MR: Well I think I understand; but you said they were paying it to the State. Are they really paying it to the State?

MS: Paying (inaudible), no.

MR: The tax, the replacement tax, they're not paying it to the State, I get it, but they re-funnel it back to the local government.

DS: It's a pass-through. The local governments, and really in that way it's similar to the fact that you may have a different tax rate in West Des Moines than you do in Lucas county or something like that. It's the same thing: you have a different tax rate, but if you're going to locate, like some of the major plants have, you know, out in Dallas County or Polk County, they negotiate, you know, the best deal they can for those kinds of places. Even though they're actually locating in a higher tax rate place. I mean they could go, you know, from…

MS: I'm not aware, but I'll use a lawyer word. I'll stipulate that there are different local tax rates. I'll stipulate that plants have the ability and any business has the ability to go to a local tax system/tax entity and try and work out a deal within the rules of the State and whatever that tax is in my opinion. But I would also just note that what we're talking about is a tax enforced by the State of Iowa through Iowa Code that treats in our view, and people disagree, in our view, similarly situated taxpayers radically different and that's the inequity that we are talking about. We are not saying that you can't do all these other things. We are saying that it's not good public policy to have the problem in the first place. That's our view.

VLD: Isn't that the issue that's before the Supreme Court?

MS: Actually the issue before the Supreme Court, I can look into this, but it's on refund. But that's on a…does a bad public policy….let me… Can I give a non-lawyer answer because I love it please? The issue before the Supreme Court is actually not that at all. It's does the bad public policy raised to the egregious level of being so bad that it's unconstitutional. It may be ruled ultimately unconstitutional or may be ultimately be ruled constitutional. I mean constitutional does not, I would submit, always indicate good public policy.

CKD: Good lawyering.

MS: Was that pretty good?

DS: I think if you don't mind I will use that as part of my closing statement.

CKD: I think…Mr. Douglas, do you have a comment?

MARK DOUGLAS (MD): Yeah, my comment (unintelligible) but just to clarify since we have the state budget director in the room (unintelligible)…the notion of a similar property taxes, so I guess I'm reading into the assumption that if the bypass customers that are paying the replacement tax moved to some kind of local assessment that they would be paying significantly less taxes; therefore, less revenue to the governments? (unintelligible)

TS: Well I think although Donn disputes the evaluation, I think our report pretty clearly shows that if that lateral pipeline is valued upon a local assessment basis, using the cost approach, you can see the disparity between (unintelligible)…natural gas therms. So there's a gap. The gap is made up over time, but there is certainly a gap and again people don't know the total. (Inaudible) I think that our intent in the beginning is not to (unintelligible), that's not the intent with this. (inaudible) There has to be some mechanism to bridge that gap… (unintelligible)…trying to extrapolate based on the tax rate in the CSAs…(inaudible).

CKD: More questions for Donn while he's here? We can summon Tom back up here too, if you would like?

JS: Can I just have a quick clarification? I just got confused by Monte's non-lawyer/lawyer answer in regard to what actually is the issue before…what are we asking the Supreme Court to decide?

DS: It's whether the replacement tax, especially the bypass provision in the replacement tax, violates the constitution, mostly in terms of equal protection, but also dormant commerce clause, and yeah, I think it's just those two at this point, but…

CJ: There's a statute of limitations issue…

DS: But that is one of the equal protections.

CJ: True.

DS: So we have a number of equal protections and a dormant commerce clause, whether, you know, that the replacement tax is unconstitutional really is the issue.

JS: Because of the fact that similarly situated, which means the pre-replacement tax and post-replacement tax, entities are treated different.

DS: I don't think the grandfathered thing is still in there. It's mainly the difference between the municipal utilities and between the different CSAs. Whether that violates the constitution and I think as Monte said you can have a disagreement as, you know, what's the best public policy without it being a constitutional violation. That's why we feel comfortable that we can argue this and, you know, depending on what the state would do. Believe me if they did something that we didn't think we could defend we would let someone know, but, you know, there's a range of things that you can defend as constitutional because the Legislature and the Governor get to make those type of decisions. The Court really isn't in a position to second guess anything unless it goes so far as to violate the constitution; otherwise, it's a decision for the Legislature and the Governor to make.

CKD: Any other questions and comments for Donn?

JS: Well I have one question, when will we know whether the Supreme Court will decide if they're going to hear this?

DS: Well all the briefing is done and I think both sides…we think the Supreme Court will probably keep it as opposed to give it to the Court of Appeals. Because it's a constitutional issue; an issue of first impression on this thing.

They're in a term. They changed the kind of terms setup, and so if it doesn't get announced soon, then it's going to be heard by April or so; that wouldn't be heard until next fall and then I think after that we're probably looking at six months to a year before we got a decision based on some of our other cases. The criminal cases always have precedence because you know, we're talking, you know, at most about money. Whereas someone's liberty is a little more important than that, so they do those cases and try and get those cases decided first.

DAVID ROEDERER (DR): Monte's making it sound like it's kind of a fine line….

DS: So we're talking it could…I think the soonest it could get argued is late spring. More likely, probably in the fall and then six months to a year after that to get a decision probably. Chris you're on the other side, do you think that's reasonable.

CJ: Two months, would be my answer, but I would say, I think it will get in this year, possibly. The argument.

JS: So for sure either the Appellate Court or the Supreme Court will hear it? Or?

DS: Yes.

JS: Okay.

DS: They'll hear it. Whether they make a decision on is whether is to grant... The Supreme Court decides whether they keep it or give it the Court of Appeals and then whichever Court has it, they decide whether they want to hear oral arguments or just decide it on the papers. But they still set a date where it's submitted.

CJ: The soonest possible date is probably a year from now...is the soonest we could have a decision, possibly. Most likely '16; fall of '16.

JS: I just didn't want it dated if (unintelligible)

DS: I just know whatever way it will be, it will be some time before my rule of 88. It's getting closer.

CKD: All right. Julie, any other questions?

JS: No.

CKD: Anybody else? All right, Donn, thank you.

DS: Thank you.

CKD: Go back to your spot. And so now we are onto item 4, which is Comments from the Task Force. Is there anyone from the Task Force would like to provide any comments? Christina, are they close enough for you or do you need them to move up here?

CHRISTINA DOWNING (CD): That's fine as long as they speak loud.

CKD: So speak loudly, but stay in your seat. Do we just want to go around the table and if you have comments, Steve do you want to go first, you can go last and I'll make Mike go first.

MR: I guess I have a couple comments. First of all, I guess a couple of comments and maybe questions so I can get some clarity for it. When the Replacement Tax was first put into place, it was my understanding that one of the objectives was to create a reliable, fairly consistent, growing revenue and that the prior method with valuation based on the fair market and the cost and the debt and income levels there was changes in it…unpredictable and it was causing concerns about the revenue going up and down. So this new law was to create a more stable, growing type of revenue. Is that a true statement? I recall that from one of the original meetings. Is that one of the intents?

CKD: So…

MR: Okay, was that one of the intents?

DR: Yep.

SE: It was near the top of the talking points when the legislation was being explained.

MR: Okay, and….

SE: …and the department would…cause…we used to watch that roller coaster of value every year…we had differing opinions about what the roller coaster would look like for all that time. So this would lead us to a more predictive, stable, growing tax.

JS: Didn't you have a lot of appeals of the tax? (unintelligible) so local governments were always uncertain…

SE: MidAmerican Energy Company, we protested every year.

MR: Okay.

SE: But we haven't protested since 1998 now, so it's just a matter of filling out a form and validating numbers and we write checks. And our checks are bigger now than--as they should be--than they ever were in those days.

MR: And it has somewhat accomplished that, your comment there. It has created a kind of a steady, consistent growth in the revenue from the tax…

SE: I'll speak again. It's true on MidAmerican side, the investor-owned side. We were paying like $73 million across 80 counties in Iowa in property taxes, now its $96 million. And we certainly invested a lot more in the State of course as well.

MR: Sure.

SE: It was never advertised as a skyrocketing boom for counties and schools and cities, but that it would probably grow in a nice predictable pattern and at least from the MidAmerican side it's probably overachieved that, so…

MR: Okay, and what was the allocation that was first put into place. It was based on the tax that was being remitted based on the property here originally when the tax went into force. From what I recall though it wasn't the intent that the tax would always be based on the value. In fact there were some comments ten years from now you really couldn't even do that anymore, because you didn't know the value of the property. Is that, I mean my point, I don't think the intent was that 20 years after the tax was put in place that necessarily had to be reflective of the of the property. That was just a starting point.

SE: I'll tell you what the property is used for today and you are correct.

MR: That was just a starting point.

SE: What the property is used for today is the Department of Management, the Department of Revenue's system has to have some numbers to allocate this big pile of money to the various taxing districts. So the property information that is submitted is used, you know, there is a baseline and if we have net additions and if there are major additions; they get special treatment by Roland and his crew, but the property story is still there. It is a property tax in that sense, right as Donn explained it. It's an excise tax as far as how much the tax is. Okay that's easy to figure how much the tax is. It takes a system based on property to allocate those tax dollars all over 99 counties.

MR: But the intent was the tax…the property tax would be an allocation tool rather than a dollar generation of tax tool.

SE: Yeah, the tax itself is based, in this case, on the delivery of therms to consumers in the State of Iowa times, you know, whether that competitive service area rate is. That's the big pot. And then the property reporting that we do, which has baseline in '98, but has certainly changed a lot since. It's for Management and Revenue's magic system to figure out where those dollars go. So the property isn't absent. And then just to keep the bond attorneys happy, there is a statewide property tax; a smaller tax that assures that it truly is bondable property so the municipal law people could tell you that story better than I could. Property is a role, but it's based on the throughput of therms. Allocated based on property.

MR: So I guess (unintelligible) Is if I had a local distribution company and a bypass customer in the same customer service area they would pay the exact same tax rate. Is that true?

DR: Yes. That's true.

MR: I just wanted to make sure I understood that.

CKD: Thank you Mike. Julie did you have something that you're….

JS: Well I just was, I guess maybe speaking what our direction is going to be here. Because I didn't think our charge was to, was to talk about potential legislation and what we might all think about that. It was to answer the leadership letter and provide information.

CKD: That's item 5.

JS: Oh am I skipping?

CKD: But we're done with commentary.

JS: You know if you don't want to cut it off, but….

CKD: Nothing wrong with getting done with the meeting early. Nothing wrong with that.

JS: There is a lot of hypothetical of what could possibly be and we are starting a new Legislative session and until we have something in front of us again…

CKD: Well and item 5 is report assignments and next steps and I think Donn so nicely walked through what the letter requests and Donn could you come back up here and maybe you could help us remember all the things that we need to do.

SE: Just as an observation as I look at who is here. We are missing the folks that get all of the money. Yeah we, the cities, counties, and schools are usually at this table, but they are not here today. We do have comments from a couple of cities here, but the counties and schools, that's over half of the tax dollars that we're spending, are not here at the table. I just wanted to note that.

JS: Yeah, for the schools we need to add Shawn Snyder.

CKD: To the school boards?

VLD: I thought he was with the Superintendents, is that the same thing?

DR: No, it'd be different; it'd be the school boards or the administrators.

DS: I think that's….

VLD: I think Shawn is representing the Superintendents, not the boards per se…no?

DR: I don't think so guys.

DS: But I think Steve's point is an important one that I have on my list and I didn't mention this. At some of the comments talked about this being created by the utility stakeholders and you know, the Department of Revenue, Department of Management, but there were the stakeholders of the counties, cities and school levels too and so I think it's good to remember that the original legislation was based on meetings of the group that included both the people who were paying the tax and the people who were receiving the tax.

MS: I know that they didn't include a single non-grandfathered bypass customer.

JS: There weren't any.

DS: I think, in your new legal words we would all stipulate to that.

CKD: All right, so there are some things that are data driven and then other are recommendation driven. So do we want to just walk through what's been requested and kind of assign who's responsible for it? Shall we do it that way?

DS: I have the questions, do you want that?

VLD: Donn has the questions.

CKD: Okay.

DS: Question number 1 was the number and types of taxpayers who currently pay the replacement tax. Oh, you have that now.

CKD: So number of type of taxpayers who pay the tax and Donn said that is something that the Department of Revenue has? If the Task Force would like us to gather that information we are happy to do that.

DR: Yes. Great.

CKD: As well as the amount of tax being paid.

DS: You should ask Roland these questions

CKD: To the extent not confidential.

VLD: Was that number 2?

CKD: And then the natural gas consumed, that's not available, right?

VLD: Unknown.

CKD: So we will have to put unknown and then report the amount of property tax that would be paid by each taxpayer identified in 1 if the taxpayer paid locally assessed property taxes at the current rates in respective counties. I don't think we can answer that one. The number and types of taxpayers who currently pay the tax. I don't think that's information that we have at our fingertips that we could calculate correctly. And then allocation in the amount of revenue generated by tax revenue in the local governments, other taxing districts. Do we have that?

DR: Yeah we have that.

CKD: Okay, so that's the data. And the analysis…I'm going back to the beginning. It says that the Task Force is to analyze the information and submit recommendations to the General Assembly. We can certainly get the data as quickly as we can, but it's going to be such piecemeal data that there's not much more analysis I think that…it's not going to lead you to any more conclusions than the data that's already been presented. We'll certainly do that though, so I guess the next question is, is there analysis or recommendation based on the comments that have been provided today that the Task Force would like us to undertake to start drafting for them. Since we are your staff? Yes Dave, what can I do for you sir?

DR: Well it sounds like, I mean the analysis is probably in the briefs that have been filed. You got different ways of looking at something and you have the Attorney General's office and also have the other folks. I don't know what more analysis…unless I am missing something, but…

CKD: So an approach we could take then is to provide the data and then provide basically the packet of information that we received and then that's the analysis. And then the next question is does the Task Force have a recommendation that it would like to make for the Legislature?

TC: I guess I would say, we wouldn't be here if someone didn't have an issue with the way it's being applied and clearly there's an issue being brought, so I guess I would say we would have to wait for a recommendation for legislation from someone who's got a problem with the way it's administered right now before we can do anything. A few years ago there was a company in an eastern county that had an issue with that and we sat down with a specific legislative proposal and I think spent some time working on that and the ins and outs and it was off to the Legislature. There were a couple of sessions, but I don't know if, since we on the Task Force, at least from what I can tell, we the Task Force folks right now see an issue or at least see a way to solve the issue that has been brought to us. It's hard to have a recommendation. That's where I think where we come from. There was a legislative initiative last year. I would just say that if there is another one coming up this year, that'd I'd ask that it would be detailed and brought to us as soon as possible, so we can get it through our own policy development processing back in our own shops. We would come with the educated discussion about it when the Session starts and that's the…I don't think we generate anything, but I think we are in receipt of information mode and I think we would go forward. That's my opinion on this.

CKD: Julie?

JS: I just think we can't make recommendations based on that. And maybe our recommendation is that it's inconclusive, because we don't have the information. So we haven't really analyzed the information. Our assumption is with the information like it says, so maybe we just say we're not; I don't know just something and then, you know, I wouldn't be opposed to saying, you know, these issues are potentially before the Supreme Court within the next few months and we don't want to make a recommendation about something that's in litigation by official tax lawyers.

CKD: Steve?

SE: Yeah, I've seen this Task Force work over the years and it's usually somebody brings something to us to understand it and then make a recommendation based on when we eventually get some understanding and usually have to have, whether it's Revenue or Management in the earlier years, if its technical, Alan over here would find some odd thing going on and we need to do a little technical fix here, so it would take us a long time to try to understand that. And we would recommend to the Legislature let's try this technical fix that the Department of Revenue or Management recommended. And then every other time anything's come up we've met and try and get educated and just the facts of those proposals against the three principles and see how they go. So it's a long way of saying we would see something before we could recommend anything. I think general comments were already submitted.

CKD: Mike, do you have anything you would like to add?

MR: I think I agree with Steve. We have to see something.

CKD: Anyone else have any comments? Does that give us sufficient marching orders to put together a draft, scrivener? I'm looking at the scrivener. And then we can share that with the Task Force. Share a draft with you. We hopefully (inaudible) to meet the December 5th deadline.

VLD: 15th.

CKD: 15th? Okay, sorry everyone. Any other discussion the good of the cause before we adjourn? Twenty-five minutes….Oh, Monte.

MS: I would like to ask as a favor some of the folks who have been around awhile on this issue and maybe have some of that background. I have a question I would like answered. I would like to sift through the proposal and I'd like to get some thoughts from some of you that have been around. At the time the bill was passed, they would have had some current bypass customers we got now that would have owned their own pipes and that were on loan a couple of miles whatever, not like right up to the door of the thing where the interstate pipeline has it. Would those plants that the current bypass customers have been viewed differently back then than the current grandfathered customers. And if so, how would that differentiation have been made, because if I understand that, I think that goes a long way of helping me maybe try to figure out something to bring to you next.

CKD: Based on what Donn said before I don't think it would. This is like the sales/use tax dilemma, so either you pay the sales tax when you buy it, which is, you know, what you pay to MidAmerican based on whatever you negotiate or if you don't pay the sales tax, you pay the use tax. Now let's not talk to me about use tax enforcement, but they're reciprocal, so you have to have them both.

MS: I am not arguing with you; if you don't pay here, you have to pay there, but in terms of the public policy that we are working against, not working against, but working as it's different background, the current policy/current law we have different categories. We have, you know, the municipalities, we have investor-owned utilities…essentially there little competitive service areas. We have grandfathered bypass plants and we have non-grandfathered bypass plants and I'm just trying to figure out for the bypass plants that exist today, if they had been in operation and existed back when this law was passed, would they have been viewed differently by the people who, and this is an opinion question, it's not necessarily a factual question. But in your opinion, would it have been viewed, would they have been viewed differently than the ones that were grandfathered, and if so, what would have been that dividing line, so that would help me wrap around why there are two different treatments of these facilities.

DS: Monte, I think to try and answer your question, the District Court, and if you...I think that opinion is up online, too, where you can read that. But when you get to the grandfather issue, if the length of the pipe wasn't a factor because neither side even put in the information about these pipes are this long, the other ones are that long…this is information that we have just recently found out. It was primarily based on this reliance interest that the existing taxpayers had a reliance interest on the existing scheme of how they were assessed and that companies who were…went into business after the statute didn't have that reliance interest because the law had already been changed. That was, you know, a primary point of the District Court, so it didn't have anything to do with the length of the pipe.

MS: I am not arguing is it legal to grandfather, so…

DS: No, Yeah…

MS: From a public policy standpoint. Public policy makes a differentiation.

DS: Well in terms of that, you know, the grandfather, all I am saying is that that didn't seem to be a legal issue. I don't know from a policy issue, it wasn't a legal issue.

CKD: Go ahead Dick.

DICK STRADLEY: I will be brief because I no longer believe in free speech now that I am on my own. I did talk to…I was there in the beginning and I did talk to a gentleman by the name of Gene Eich. I think there was only 8 of us in the room. To answer your question, I believe it would be grandfathered because we looked at those and we grandfathered them. But to quote Gene Eich, when I asked him…he somewhat works for me…I don't pay him, okay other than lunches. He said…I asked him what he remembered we did, he said if we didn't do it, we would have blown them out of the water. So that was the reason for grandfathering back when we did that. So I'm done for the day. Thank you.

JIM MILLER: I think it's also kind of difficult to tell, because one of the reasons they allowed grandfathering in, the grandfathered companies in is because there was a relatively small number that wasn't going to affect overall. All of a sudden we have 25 appearing companies that are going to be a factor and I think it's crapshoot at this point. Because we knew there was going to be bypass customers in the State of Iowa.

MS: (unintelligible)…talking about the business case, you could have decided this, you could have done this, I think I would ask the Task Force if they promised something else. Um, put yourself in that time machine and go back to 2001-2005 timeframe when these were being built. They would do this highly risky venture and if they needed a pipeline, multi-million dollar pipeline, built to them there were some companies that not very eager to build those pipelines and I don't regret that…that was their fiduciary responsibility to their company and their shareholders and their owners. Um, and so it wasn't always a choice of, "Gee, we would rather be a bypass customer." It was kind of like here's the right place, because of rail, water, corn…other things. And but the natural gas pipeline's two miles away, ten miles away, twenty miles away, who's going to build that pipe? I suspect that as most of them were trying to raise capital at that time and I helped a lot of them, if someone else would have taken ten million dollars of pipe off their hands, they probably would have been more than happy to do that; in most cases. I remember with the RECs and we talked about this, where you guys have to deliver power to these plants and we had discussions on, "Hey we are going to have to build a substation in this ethanol plant and have (unintelligible) all this money to this REC and if that plant only operates for 6 months and then goes away think of that strained asset that's going to be a real huge problem for the RECs and we really worked through those more or less, one by the fact that the plant didn't go away. But, um…

TC: You just can't fulfill an entire (inaudible), you just have to…

MS: You just stepped up! You guys stepped up! But um, I think it's important to remember, too, that you know, when we hear this thing, "Well they knew the tax was out there;" Um, yeah but sometimes they didn't have a choice and just because someone knows something's out there…we change laws every year, because we currently don't think that the current law is good enough, so…

DR: Monte, going back to your question, I'm trying to…when you are looking at the history of tax law and you use the words "clear and logical path" and "taxation" all in the same sentence, it's not always real clear nor is it always real pretty.

MS: I'm just curious because I know we tried to figure out kind of what some of the goals were and how we could maybe try to operate within those goals.

CKD: All right, anything further for the group? Thank you all for coming. We appreciate it and I would say we are adjourned.

The meeting adjourned at 2:40 p.m.