

UTILITY REPLACEMENT TAX TASK FORCE MEETING

MINUTES March 12, 2014

The Utility Replacement Tax Task Force met at 11:30 a.m. on March 12, 2014 in Room 7 on the A Level of the Hoover state office building, Des Moines, Iowa. The meeting concluded at 1:00 p.m. A quorum was present.

Members Present

Courtney Kay-Decker, Co-chair, Director of the Iowa Department of Revenue

David Roederer, Co-Chair, Director of the Department of Management

Tim Coonan, Iowa Association of Electric Cooperatives

Steve Evans, Vice President Taxation, MidAmerican Energy Company

Jim Henter, President, Iowa Retail Federation

Alan Kemp, Executive Director, Iowa League of Cities

Bill Peterson, Executive Director, Iowa State Association of Counties

Julie Smith, General Counsel, Iowa Association of Municipal Utilities

Members Absent

Michael Rubino, Manager of State and Local Taxes, Deere & Company

Other Attendees

Jim Miller and **Donn Stanley**, Iowa Attorney General's Office

Julie Roisen, **Lori Marchese**, **Roland Simmons** and **Mark Berkenpas**, Iowa Department of Revenue Property Tax Division

Victoria Daniels and **JJ Severson**, Iowa Department of Revenue Policy Section

Carrie Johnson, Department of Management

John Davis, MidAmerican Energy

Mark Douglas, Iowa Utility Association

Terry Harmon, Alliant Energy

Bob Bartlett, Alliant Energy

Mark Landa, Sullivan & Ward

Susan Walter, Black Hills Energy

Opening Remarks

Co-chair Director Kay-Decker opened the meeting by welcoming the membership and those in attendance. Introductions were then made.

Prior Meeting Minutes

It was moved by Tim Coonan and seconded by Bill Peterson to approve the January 23, 2012 meeting minutes. The motion carried unanimously.

Discussion on 2014 Iowa Acts SF 2329

Bill Petersen began the discussion by asking about the implications of the bill sponsored by Senator Amanda Ragan, SF 2329. It was pointed out that the bill would phase in an exemption for companies delivering 60 million therms or less of natural gas from payment the Replacement

Tax. The loss in local property tax revenue would be backfilled by appropriations from the State's General Fund. There was speculation that the bill may have stemmed from the District Court decision in the Little Sioux Corn Processors (LCSP) case.

Bill Petersen pointed out that the conventional wisdom of the Legislature is not to interfere with issues that are in litigation. There was a question as to whether or not the Task Force should take the position that the litigation should be resolved prior to the Legislature taking action on a bill of this type.

Steve Evans said that the constitutional issues in the LCSP case are not part of SF 2329 and while the bill is not exactly on point with the LCSP case, they are somewhat related.

The discussion then turned to the bill's therm threshold, 60 million. Steve Evans explained that MidAmerican's Pleasant Hill plant (Greater Des Moines Energy Center) consumes about 45 million therms, which is not an insubstantial amount. The implication of this is that a lot of companies would fall under the 60 million therm threshold and therefore would no longer be subject to the Replacement Tax.

At this point, Donn Stanley spent some time discussing the LCSP case, in which he represented the State. Donn explained that the District Court decision was dated February 28, 2014 and LCSP has 30 days to appeal. He indicated that LCSP's attorney had not yet provided official notice that they would appeal. Donn said he believes the Iowa Supreme Court, as opposed to the Court of Appeals, would likely retain jurisdiction of the case because of the constitutional issues and because it is a case of first impression.

Steve Evans reminded everyone that the Task Force operates under three basic principles:

- Revenue neutrality to local governments and tax neutrality among consumers;
- Competitive tax equity; and
- Ease of administration.

He suggested viewing the bill in terms of these three principles and also against the question "Is this fixing a problem." The Task Force discussed and reached the following conclusions:

In relation to the concepts of revenue and tax neutrality, the bill appears not to be revenue neutral in the manner contemplated in the Replacement Tax system, which was to try to ensure that local governments would not receive less than they would under the general property tax system. The bill does not ensure that all those subject to the Replacement Tax equitably participate in paying the tax. Rather, it addresses the loss of revenue with a General Fund "backfill" that future legislatures may or may not agree with.

The bill does not foster competitive tax equity because it creates an exemption for some, but not all, Replacement Tax taxpayers. It also creates a huge incentive to bypass a service area's local distribution carrier.

The bill would add complexity to existing administration by creating an additional level of reporting and tracking. It also creates a system where companies could fluctuate in and out of being subject to the Replacement Tax.

The Task Force did not believe the bill was solving a problem. Rather, it simply creates a tax exemption.

The Department of Management pointed out that the backfill contemplated in the bill is not currently in anyone's budget targets.

The Task Force determined it would submit a letter to Senator Ragan and the three Senators assigned to the bill's Ways and Means subcommittee meeting, which will be held March 20, 2014 at 8:00 a.m. The Department of Revenue agreed to draft a letter to be circulated to all Task Force members for approval.

The Task Force adjourned without scheduling a future meeting.