

UTILITY REPLACEMENT TAX TASK FORCE MEETING

MINUTES March 30, 2009

The Utility Replacement Tax Task Force met at 2:02 p.m. on March 30, 2009 in the fourth floor conference room of the Hoover state office building, Des Moines, Iowa. The meeting concluded at 4:02 p.m. A quorum was present.

Participants

Task Force members attending the meeting included **Mark Schuling**, Co-chairperson, Director of the Iowa Department of Revenue; **Charles Krogmeier**, Co-chairperson, Director of the Iowa Department of Management; **Tim Coonan**, Iowa Association of Electric Cooperatives; **Steve Evans**, Vice President Taxation, MidAmerican Energy Company, investor owned utilities; **Jim Henter**, President, Iowa Retail Federation; **Alan Kemp**, Executive Director, Iowa League of Cities; **Bill Peterson**, Executive Director, Iowa State Association of Counties; **Michael Rubino via telephone**, Manager of State and Local Taxes, Deere & Company; **Larry Sigel present until 3:25 p.m.**, Director of School Finance, Iowa Association of School Boards; and **Julie Smith**, General Council, Iowa Association of Municipal Utilities.

Member absent was **Deborah Krauth**, Nyemaster Law Firm, public member.

Others attending were Jim Miller, Assistant Attorney General; Dale Hyman, Alan Harding, Lori Marchese, Roland Simmons and Mark Berkenpas of the Department of Revenue; John Donnelly, attorney for Iowa Association of Electric Cooperatives; Mark Douglas, Iowa Utility Association; David Lynch, Iowa Utilities Board; Terry Harmann, Alliant Energy; J.D. Davis, MidAmerican Energy; Tom Determann, Clinton Regional Development Corp.; Roger Holm, Mayor of Clinton; John Moreland, Clinton City Assessor; Gary Boden, Clinton City Administrator; Paul Walter, Clinton City Attorney; Tim Krumm and Bill Sueppel of Meardon, Sueppel & Downer representing the City of Clinton; Donald Frey, Rich Dye and Joe Robertson of Archer Daniels Midland Company; Andrew Anderson of Faegre & Benson representing Archer Daniels Midland Company; and Michael Albers, recording secretary.

Opening Remarks

Co-chair Schuling opened the meeting by welcoming the membership and those in attendance. He then asked for introductions and outlined the meeting flow.

Prior Meeting Minutes

It was moved by Sigel, seconded by Henter, to approve the November 06, 2006 meeting minutes. The motion carried unanimously.

City of Clinton request for statutory changes enabling a co-generation utility plant owned by the Archer Daniels Midland Company, which is generating electricity not wholly consumed, to remain locally assessed, as opposed to being subject to the replacement tax statutes.

Co-Chair Schuling stated that the purpose of the meeting was to address proposed legislation currently known as SSB 1312. The bill changes the definition of self-generator in Iowa Code Chapter 437A. Schuling said Archer Daniels Midland (ADM) is building a generating facility in Clinton, Iowa for both internal use, and for use by a related corporation, which prevents the facility from being classified as a self-generator under Iowa Code Chapter 437A. He explained that self-generators are locally assessed, and if a facility is not a self-generator, then it is centrally assessed by the Department of Revenue and subject to the replacement tax laws.

Co-Chair Schuling said the Task Force is created in Iowa Code Chapter 437A specifically to study the effects of the replacement tax on local taxing authorities, local taxing districts, consumers, and taxpayers and makes recommendations for modifications to the law for consideration by the general assembly.

Co-Chair Schuling said the City of Clinton requested a meeting of the Task Force to review the proposed legislation and then asked to hear from the City of Clinton.

Tim Krumm, representing the City of Clinton, thanked the Task Force for meeting. He said he wanted to make sure the Task Force understood the impact of passing or not passing the proposed legislation. Krumm said the City representatives were here to answer questions to convey to the current position of the City.

Clinton Mayor Roger Holm said that in 2005 the urban revitalization area where the ADM facilities are located was formed specifically at the request of, and for the benefit of, ADM. He said this is a 10-year revitalization plan noting this year will be the first year funds will be received. Holm said the plan starts out with a 20% contribution not to exceed \$500,000 and next year it will be about \$1,000,000.

Mayor Holm said on November 5, 2008, the Department of Revenue received notice that ADM was considering backing out of the agreement. He said on December 3 the City Assessor was informed by Dale Hyman of the Department of Revenue, that ADM wanted to withdraw from the urban revitalization plan. He said the City Council in good faith, and in granting many concessions, entered into this agreement with ADM. Holm said ADM's withdrawal, at the end of the 10th year, will mean approximately 4.4 million dollars to the City of Clinton. He said this will have a significant impact upon the City of Clinton, especially with the future of their capital improvement projects, and will affect many of the City's services including their central services.

John Moreland Clinton City Assessor said that on December 3 he received a letter from Dale Hyman advising him that Joe Robertson of ADM requested that the co-generation facility become centrally assessed. He said additional correspondence from Hyman

showed that 2008 values would be locally assessed and 2009 values would be centrally assessed.

Moreland said he met with ADM officials in 2005 to discuss the assessment of the co-generation plant and was told the cost to build the plant would be about \$350,000,000. He said the officials in attendance included the plant manager, Joe Robertson and Rich Dye from ADM corporate headquarters, and Kevin Duffy. He wasn't sure if Don Frey was there. He said since the plant was going to be built over a period of time ADM officials wanted to know how Moreland would assess the plant. Moreland said he told Robertson to provide the cost each year for each building and he would use those costs and percentages of completion to determine the assessed valuation. He said once the plant was completed it would be appraised according to the Iowa Manual Cost Code. Moreland said they also discussed the equipment that would be locally assessed. He said pollution control was discussed and he informed ADM to file with the DNR for any type of exemption for the bag house or the cooling towers.

Moreland said the current taxable valuation is \$28,596,118 which is a partial assessment. He said the taxes at 39.11 per thousand on that assessment amount to \$1,118,394. He said if you took the \$350,000,000 with zero depreciation, using 39.11 per thousand, total taxes generated would be \$13,688,500. Moreland explained the taxable percentage of assessment under the urban revitalization formula starts out at 20% of the valuation to be taxable in the first year, then sliding up to 80% of the valuation to be taxable in the tenth year. He said using the \$350,000,000 at 20% taxable means the assessed valuation will be \$70,000,000 and will generate total taxes of \$2,737,700. He said when you get to the tenth year, using \$350,000,000, 80% of valuation equals \$280,000,000 of taxable valuation with total taxes generated to be \$10,950,800. He said the City's portion is about 40% or 4.4 million. Moreland said after the ten years the property would be depreciated as a ten-year old property.

Tim Krumm said that the purpose of the replacement tax law is to remove tax costs as a factor in the competitive environment in the utility industry. He said the law wasn't written to provide a tax benefit to self-generators or to co-generators, it was written for a completely different purpose. He said their presumption is that what they were requesting in terms of a change in the law has no impact on the utility industry. Krumm also noted that the law says that a stated purpose is tax neutrality for local taxing authorities. He said that purpose is clearly not being met under the law now as to the impact just described by the Mayor and City Assessor.

Krumm said there is a Senate Study Bill 1312 on file. He said essentially what the proposed legislation does is alter the definition of a self-generator. He said current law has a broad exception to the definition of self-generator, meaning that it's easy to be treated not as a self-generator and therefore not subject to local property tax assessment and subject to the replacement tax, even if you are not a utility company. Krumm said what they are asking for is a law change that makes it clear that consumption by a related entity would still define the generator as a self-generator. Bottom line he said they want the definition broadened to include consumption by related parties.

Member Steve Evans asked what percentage of the tax base this tax represented today and in year 10. Assessor Moreland said the total tax base is about 1.25 billion dollars. Evans asked if the constant 39.11 levy rate used in Moreland's 10-year forecast was the current tax rate. Moreland replied yes. Evans asked about what percentage of the rate was the city's. Moreland said 40%. Evans asked how much is the school's and county's? Moreland replied 40%, 40% and 17%.

Member Evans asked if the additional valuation would provide some downward pressure on the levy rate. Mayor Holm said they would do their best to hold down rates, balanced against needs and improving essential services, but the city has lost tax base -- about \$3,000,000 in 2004 due to lost M&E and another \$3,000,000 due to Reinvest Iowa.

Member Evans asked if the plant would be running at more than 20% of its capacity factor in order to make it fully assessable. Moreland said he assumed so.

Andrew Anderson, representing ADM, introduced ADM officials and thanked the Task Force for inviting them, noting it was a bit of a short notice. Anderson distributed pictures of the Clinton project saying it represented hundreds of millions of dollars of substantial investment and years of work in Clinton and the State of Iowa. He said Iowa was the second largest base of ADM facility operations employing 1,800 people. He said ADM has co-generation facilities in both Cedar Rapids and in Clinton noting that the Cedar Rapids plant has been operating for quite a number of years. Anderson said the Clinton plant was 90% complete. He said 790 construction workers are employed to build the Clinton facility and there will be 800 full-time employees upon completion.

Anderson said there are three distinct facilities at the Clinton project site, a corn procession plant, a co-generation plant, and a Polymer plastics plant. He said the plastics plant will make plastic from corn-based materials. He said the co-generation plant produced both electricity and steam.

Anderson said the Cedar Rapids co-generation plant makes both electricity and steam for their corn processing plant. He said the plant also provides energy to Red Star Yeast which is a joint venture between ADM and the French company Lesaffre. Anderson said the Cedar Rapids operation has been selling electricity to the Red Star Yeast factory for the last 4 or 5 years and has been treated as centrally assessed. He said the ADM facility in Clinton will also be selling energy to ADM Polymer Corporation, which is a separate corporation, thus the Department of Revenue ruling to treat the Clinton plant as a centrally assessed facility. Anderson said ADM feels strongly that they are entitled to the same tax benefits as others who generate electricity. Anderson said that in 2006 ADM was already the highest taxpayer in Clinton, 3.5 times larger than the next highest taxpayer. He said ADM makes substantial contributions to local property taxes, jobs, and to purchases of construction materials. He said the decision to locate this facility in Clinton is a phenomenal thing for Clinton.

Anderson said along with ADM's co-generation plant coming on line, ADM's Polymer plant will also be coming on line, saying it was 80% completed. He said the plant has an estimated value of about \$44,000,000, with a potential tax of \$1,600,000 before the application of the abatement, but over time will provide a substantial influx of tax revenues to Clinton. Anderson said with the corn plant alone they are already the largest payer of taxes in Clinton, and with the addition of the Polymer plant, will come close to doubling the tax paid to Clinton over time. He said with the co-generation plant ADM is prepared to step up and pay its fair share of centrally assessed taxes – the generation tax, the transmission tax, and the delivery tax that is assessed under 437A. Anderson said he doesn't want anyone to think that ADM is looking to skirt its duty to pay taxes noting it already is the largest payer of taxes in the area. He said ADM is looking to be treated equitably, and taxed as they are now, in the same manor just as if MidAmerican, Alliant, a municipal utility, or an REC were to own the facility. Anderson said Clinton's attempt to carve out this plant submits ADM to the M&E tax, which has been virtually eliminated for everybody else in the state except for self-generating plants generating over 20%. He said that factor is what spikes the tax that Clinton is looking for, and takes it from a fair and equitable tax to something that will be applied only to ADM, at a very high rate. Anderson says he sees this as inequitable and really unfair in that ADM would be paying \$13,000,000, and every other utility in the state would be paying \$2,800,000, on the same facility.

Anderson said ADM makes substantial contributions in the community and intends on having a long-term relationship with Clinton. He said ADM wants to be fair and equitable noting that in Cedar Rapids ADM has a long-term relationship that has been very profitable for both sides. He said for example ADM recently made a contribution of \$500,000 to the new Cedar Rapids library. He said this past summer during the floods the ADM facility actually sold electricity to Alliant because it needed several months of back-up electricity during the flooded times.

Anderson said he is concerned about how quickly this issue is being rushed through the process. He said there is time to study, address, and to think about it, in order to determine the right thing to do.

Anderson asked that the Task Force make a recommendation to the legislature that SSB 1312 be turned down, denied, and not passed. He said this sort of bill is very chilling to the competitive economic marketplace that ADM looks for and other companies look for. He said it gives the company pause to think about where it makes its investments when it builds a facility like this, then a bill is introduced that changes the tax position.

Joe Robertson said ADM is looking for a fair and equitable tax on their generation plant. Referencing the \$13,000,000 tax in year 11, he said they have five large corn processing plants in four states, and if you add all of the tax on those plants together, it is less than \$10,000,000. He said this would be a huge property tax increase for ADM. He said they have always worked with the City of Clinton and with Assessor Moreland, and they want to continue to have a good relationship, and want to work this out.

Co-Chair Schuling asked member Evans if his earlier question was answered with regard to the capacity factor. Evan said he did not hear an answer. Rich Dye said the plant is going to produce 140 megawatts to support the Clinton facilities. He said that would be the normal load 350 days a year. He said the plant's nameplate rating is 180 megawatts.

Member Evans asked what was modeled for property taxes for this three or four hundred million dollar plant. Robertson said they modeled the local assessment in 2005 when the co-generation plant was announced because they didn't know they would be selling electricity to ADM Polymer in 2009. Evans asked if they economically justified the construction of the plant using the higher taxes. Robertson said yes, but pointed out that when they looked at the ten-year abatement, ADM included the Machinery and Equipment as being abated the same as real property. Evans asked about current M&E law with regard to abatements. Robertson said with regard to manufacturing plants M&E is exempt, so in this plant the M&E is taxable unless there is a ten-year abatement program. Robertson said they consider the M&E as part of the real estate, very similar to when M&E was taxed prior to 1995. Assessor Moreland said that in 1993 M&E was done away with except for co-generation plants. Moreland said M&E in a co-generation plant is real estate. He said M&E is no longer taxed in industrial plants.

Moreland wanted to set the record straight with regard to a comment by Robertson on the 11th year taxes after the abatement. Moreland said the \$13,000,000 stated tax figure is not correct since the property would be 10 years old and would be depreciated accordingly. He said unless ADM adds property the \$10,900,000 property taxes in the tenth year would be the upper threshold.

Member Evans asked about local assessment rules relating to the plant – during the first ten years and then beyond. Moreland said during construction cost would be used. He said when the plant is completed he would go to the Iowa Cost manual to physically value each individual building. He said each building would be individually depreciated. He then would come up with an assessed value and the urban revitalization exemption would be applied. In an example he said if he came up with a \$300,000,000 valuation, the first year taxable valuation would be \$60,000,000, which is 20%.

For clarification co-chair Schuling asked Moreland if he would use depreciated value during the ten-year revitalization period as well. Moreland said yes.

Member Evans asked about the general valuation principles that would be used. Moreland said there are three approaches to value, the cost approach, the market approach, and the income approach. He said normally on industrial properties you use the cost approach because there are very few sales. He said you could use the income stream as a back-up, but normally on industrial properties you use the cost approach, less depreciation. Upon question Moreland clarified that cost means cost adjusted to market, which is replacement cost less depreciation, and there is no trending.

Member Bill Petersen asked that if this generation facility was going to be a utility subject to the replacement tax, would it have been normal for a local government to give

an abatement, since there is generally not much relationship between location and great tax benefit. He said he wonders why the City of Clinton would have expended a lot of money in tax abatement in that case. Joe Robertson said that one of the reasons was that this co-generation plant is used to produce steam, 80% of the production is steam with the other 20% being electricity, so it's really mainly just another part of their production process. Andrew Anderson added that this facility is not just the generation plant, but also the Polymer plant, under the tax abatement. Bill Sueppel said the short answer is that the City would not have worked out the arrangement for the tax abatement if they knew ADM was not going to follow it. Sueppel said what the City is trying to do is simply to go back to the abatement agreement that the parties had worked out, understanding that the City spent considerable money and effort in helping ADM in acquiring property, road improvements, and things like that. He said the City thought there was a partnership in the facility. Sueppel said the City has been carrying on its business as if they had a ten-year tax abatement program and now comes to the Task Force because they found out about this change in January.

Member Alan Kemp said that if you don't add the Polymer plant then all of this is a moot point in that the plant is assessed locally. He said it was the addition of the Polymer plant that caused the change. Kemp asked the relationship between the Polymer plant and ADM. Anderson said Polymer is a wholly-owned subsidiary of ADM, a separate corporate entity. Anderson said one of the things that Clinton gets by adding the Polymer plant is a doubling in the tax base.

Kemp asked if the generation plant and Polymer plant were planned to be added at the same time, or was the generation plant in the works and a later business decision added the Polymer plant. Joe Robertson said it was a later decision, probably a year to a year and one-half later, to add the Polymer plant.

Kemp asked if the \$2,800,000 replacement tax included all the components of the tax or just the generation tax. Alan Harding said the figure included both generation and delivery to ADM and Polymer, and noted that once you lose the self-generation status, you lose the delivery tax exemption for yourself as well. In response to a question, Harding said all of this tax remains at the site.

Co-chair Schuling said Alan Harding would now bring forth some issues with regard to the way the legislation is currently drafted. Alan Harding said that before touching on the issues, he wanted to review why the term self-generator was placed into the replacement tax law in 1999. He said preceding the replacement tax there were multiple self-generators in the State of Iowa providing electricity, steam, etc. to industrial sites. Harding said the replacement tax law continued to hold them locally assessed as a self-generator unless electricity is delivered to any other person, including an owner, a shareholder, a beneficiary, or an associate. He said once you deliver electricity to someone other than yourself in the service area, because of the competitive equity of the tax, you lose your self-generator status and now pay the delivery tax, and you also pay on net generation. He said this holds one of the basic principals of the tax which is competitive equity.

Harding said the ADM facility in Cedar Rapids is also potentially impacted by the proposed legislation. He said it would have to be determined if Red Star Corporation is an associate, etc. of ADM. He said if they are, they would fall under the local assessment and if not, they would continue to be subject to the replacement tax. Harding said he wanted the Task Force to know why this wasn't an issue when the Cedar Rapids ADM facility transitioned from locally to centrally assessed in 2006. He said the key component was that the ADM plant in Cedar Rapids was an older co-generation plant that was depreciated, noting that the generation and delivery taxes were very similar to the property taxes. He contrasted this to the \$350,000,000 ADM facility in Clinton saying the affect of the transition from property to replacement taxes is substantially different.

With regard to the proposed legislation Harding said the first thing he saw was the move from a strict to a broad definition of a self-generator. He said under the broad definition you can deliver to a shareholder, a member, a beneficiary, a partner, or an associate while still maintaining a self-generator status. He says this opens up to interpretation, for instance, who is an associate, who is a beneficiary. He said these terms need to be better defined. Harding noted that even under the proposed legislation ADM could set up a purchase power contract for deliveries to the grid, deliveries to someone not on a connected parcel, or deliveries to a third party, which would remove the self-generator status making taxation of the plant subject to the replacement tax.

Harding said a second thing under the proposal would be that the deliveries of electricity to the Polymer plant are still taxable to Polymer under 437A.4 (2) as a consumer, even though self-generators are exempt from generation and delivery tax. Harding said ADM Polymer is a consumer still subject to paying delivery taxes on electric deliveries to the facility. He said this would be the first time where you would be mixing and matching property taxes with replacement taxes on a power plant producing electricity which doesn't pay on generation, and which doesn't pay on deliveries to itself, but does pay on kilowatts delivered at the plant site. He wondered if there was intent under current law to mix and match property taxes and replacement taxes. Co-chair Schuling said in that particular instance there is a property tax on the plant and a delivery charge on the electricity delivered to the Polymer plant.

Harding said a third issue with the proposed legislation deals with exempting deliveries within a service area. Harding says the deliveries from the ADM plant will cause an 18% increase in deliveries in the IES service area. He said this will drive the delivery tax rate down and will impact every taxpayer and consumer in the IES service area. He said the Task Force needs to analyze this impact on taxpayers and consumers. He said the key problem here is excluding deliveries of electricity in a service area.

In response to a question Harding said the state has over 110 electric service areas. He said each year and for each service area all of the taxpayer deliveries of electricity to consumers are accumulated and then compared to the previous five-year average. He said if those deliveries in the current year exceed 10%, in this case, delivery tax rates are

re-calculated for that service area. He said that calculation is determined by taking prior-year delivery tax times 102%, divided by the new kilowatts delivered, which produces the new rate. Harding said when deliveries go up to this extent, an 18% increase, it's going to drive the delivery tax down to get to the 102% overall increase.

Member Julie Smith asked if IES would have to decrease their rates. Harding didn't know if the lower rate was passed on to the consumers. Smith asked if rates have ever been re-calculated before. Harding said many delivery rates are re-calculated and published in May every year noting that there will be several new rates this year as well.

Member Evans asked Harding for clarification of the components of the \$2,800,000 replacement tax. Harding said the figure is net generation pursuant to information provided by ADM, plus the delivery taxes on kilowatts anticipated to be delivered to both ADM and ADM Polymer. Evans asked if the present rate was used as opposed to the anticipated new threshold rate. Harding said he used the present rate, as it was at a later date he calculated the threshold, so the threshold rate adjustment will drive those taxes down a little.

Member Smith asked why this issue has never come up before. Harding said because there has only been one self-generator start delivering to someone outside of their industrial facility, noting that was in Cedar Rapids, where the cost of that co-generation plant was depreciated and around 20 years old. He said the property tax on the low assessed value was very similar to the replacement tax on generation and delivery. He said what we are comparing to now are property taxes on a new \$350,000,000 plant.

Member Evans asked Harding about how many co-generators there are in the state. Harding did not know. They asked member Rubino if he knew. He did not, but said they did use co-generation plants at some of their facilities noting that Dubuque was one of them. Members Evans and Rubino suggested the plants are below the 20% capacity figure. Harding noted that low-capacity (below 20%) generators are exempt from the replacement tax.

Andrew Anderson said this tax situation is unique to ADM. Harding said yes, on self-generators not being locally assessed but assessed under the replacement tax. Anderson asked if the ADM plant would be the only one with an M&E tax owed. Harding said he was not familiar with the M&E tax.

Member Smith asked how the issue would have been handled had it been on the table when the original tax force legislation was being crafted. Harding said if the situation would have existed then it would have been addressed. Member Evans said what came up was the idea of preserving competitive equity when electricity was delivered outside of the co-generation facility. Evans said the math worked well the first time this happened which was in Cedar Rapids. He said this situation is an extreme as the numbers are very big.

Harding brought another issue to the table saying the site value for utility power plants is limited to the first \$44,000,000 of acquisition cost. He said this limitation came about over 30 years ago when the Duane Arnold Palo plant was built in Linn County. He said this concept was incorporated into the replacement tax as well, noting that in 2003 the law was refined to say the first \$44,000,000 of taxable value calculated from the generation tax stays at the site. He said this prevented tax dollars from being stockpiled at the power plant site. He said locally assessed co-generation plants are not subject to any local amount which contrasts from how taxes from generation plants, subject to the replacement taxes, are treated.

Harding said fiscal impact was analyzed saying the higher valuation would benefit the state because the state's share of school aid funding would decrease. He said there was a huge difference between the property tax and replacement tax. After some questions Co-chair Schuling summarized by saying that if this legislation passes there is a tax benefit to both Clinton and to the State. He said the reason for discussing this is to make sure that Task Force is aware of all of the issues.

Member Evans asked about timing particularly if this issue had to be addressed immediately. He then asked how the tax comparisons looked the first few years. Harding said for the first two or three years there are minimal differences. Co-chair Schuling asked Assessor John Moreland if he could confirm the taxes are pretty consistent the first few years. Moreland confirmed.

Member Alan Kemp asked if this issues boils down to the addition of the Polymer plant on an adjacent site that triggering the rule of law for the opportunity for the different tax treatment. Harding said if the Polymer plant didn't exist, the facility would be a self-generator, and would be locally assessed not subject to the replacement tax. Harding said you still would still have the future possibility that ADM could set up a purchase power contract with a municipal utility, which even under the current proposal, would lose their self-generator status making them subject to the replacement tax.

In response to member Evans' question Co-chair Schuling said the Task Force is meeting as requested by the City of Clinton. Schuling noted that one of the duties of the Task Force was to respond to proposed legislation. He said there was a sub-committee meeting on the proposed legislation last Thursday. Schuling said the subcommittee did not take action on the proposal but knew the Task Force was meeting today and asked that we get back to them with regard to the outcome of this meeting.

Co-chair Krogmeier asked if there was an appeal process with regard to the Department's determination that the facility was no longer a self-generator. Co-chair Schuling said there was but the process lends itself after the assessment has been made. Schuling said he has offered two potential options for the City of Clinton for judicial review, one would be to wait until the assessments come out, which is usually in October, or another would be to send them a letter of the Director's decision. Schuling said he thought the definition was pretty clear and a possible solution, as opposed to a court proceeding, would be to change the definition. Krogmeier asked if there was a pending appeal right

now. Schuling said there was not and there was no assessment at this point in time either. Schuling suggested possible consideration for the legislature to act on this issue next spring.

Member Smith asked what technically triggered the loss of the self-generator status. Member Evans asked about the corporate structure relationship. Harding said the self-generator status was lost because ADM is delivering to another person and current law says deliveries to another person (including beneficiaries, etc.) means loss of the self-generator status. Harding said when he found out ADM was delivering electricity to ADM Polymer he told them they were no longer a self-generator.

Evans noted it would appear that under the current law if the business units were in the same entity, and the property adjoined, the plant would not fall under the replacement tax. He said the way these business units are set up organizationally they are not in the same entity. Evans said the competitive equity issue, set up years ago, looked at the potential of a self-generator enjoying the benefits of local assessment. He said potentially an entity could take those benefits and have a tax advantage in the playing field. He said this could put an entity in the utility marketplace without bearing an equivalent tax, thus the reasoning for the statutory self-generator status. Evans said the laws have worked quite well until this extreme. Evans said there has to be a cure but didn't feel the current proposal did that.

Member Tim Coonan asked the group to think of the unintended consequences of the proposed legislation. Andrew Anderson said it may discourage future industrial investments in Iowa. Member Smith said the law wasn't supposed to be an economic development tool, noting however, that was not bad in and of itself. Anderson voiced concern about being the sole entity singled out for this tax treatment. Tim Krumm said if the law is not changed, ADM will not be the sole entity for long. Krumm said it is pretty easy to set up a wholly-owned entity and move electrical power to such entity. He said he feels there will be abuse once people figure it out.

Member Evans said the earlier potential abuse he pointed out was the opposite fact pattern, but none the less, potential for the other fact-patterns exist. He said considering the proposed language, along with a downturn in the economy, a co-generation plant could put power out on the grid with a different tax base than the utility companies. He said this could distort the competitive equity because not all of the players are working under the same tax base.

Member Coonan noted that in five minutes two unintended consequences were brought forth. He voiced concerned about passing on significant structural changes during an hour and one-half meeting. Co-chair Schuling said the legislative session will be over in about two weeks which doesn't necessarily preclude another meeting prior to that end.

Member Larry Sigel said he shares Tim's concerns. He said obviously it is an issue for both entities. Sigel said that over the years we have learned we have to be very careful about moving too quickly in this area because there are always unintended consequences.

He said there are issues that haven't been thought about yet. Sigel said from the schools perspective they get the same amount of money one way or the other, noting tax rates may go down. He said for entities like cities and counties increased value gives the opportunity for more revenue or to lower rates. Sigel said he is more concerned about undoing what we have in place and creating unintended problems.

Member Jim Henter concurred with what member Sigel said. He said he understands this is major issue but he doesn't think there is a quick fix. He said he is not in a position to support a legislative change this late. Henter said a lot of work has been done on this issue and he really worries about unintended consequences that could be damaging for either party beyond the immediate concerns. Henter said it makes sense to continue to look at the issue to see if there is some middle ground.

Joe Robertson said he wanted to clarify the ownership issue between ADM and ADM Polymer. He said Polymer is a 50% joint venture partner with another company called Metabolics. He said Metabolics has the technology so the company formed a 50-50 joint venture. Robertson said the reason ADM Polymer was set up was to go into the joint venture. Member Evans asked if Metabolics was unrelated to ADM. Robertson replied yes.

Member Kemp said as a Task Force member he appreciates the fact that moving too fast can create unintended consequences. He said, however, there is an equity issue here. Kemp said he doesn't feel we have the revenue neutrality the legislation intended, which seems to be swinging from one party to the other. Kemp said he supports taking a more careful look at the issue but something has to be done. He said possibly something else needs to be looked at to resolve the issue and make things more fair and equitable.

Member Smith said she was mixed. She said she doesn't like the way the operation of this issue is working as she doesn't think it is consistent with the original legislative intent. She added that this is the first year of a two-year session so all bills would still be alive next session. Smith said we shouldn't just let the issue drop if we decide not to support the legislation this year. She suggested that during the summer there could be further discussion on the issue.

Member Michael Rubino echoed the concerns about unintended consequences. He said take for example a company that is co-generating, you could easily put that co-generation facility into a separate legal entity and change the way the company is being taxed. Rubino said issues like this concern him.

Rubino asked, and got confirmation on, various timeline events as follows:
The generation plant construction was started in 2005. The original plan was for the plant to be locally assessed. The urban revitalization plan was set up to phase in the locally assessed property taxes. Some time after the plant was started (about 18 months) the Polymer plant was decided to be built, and at that point in time it was determined that power would be sold to another party, which triggered the central assessment.

Member Evans said the Task Force has worked through a number of issues in the past and very few of them have had quick resolutions. He said this issue is a significant issue and should be fairly addressed within the context of the principles established – revenue neutrality and competitive tax equity, while trying to preserve ease of administration. Evans said there are some pretty quickly identifiable consequences not intended in the cure of the issue. Evans said he was confident that the Department, Members, and others could give this some better thought. He said it looks as if this could be postponed at least to another legislative session so a proper cure could be made after more time and thought. Evans said the Task Force has the track record of being able to do that.

Co-chair Krogmeier said he basically concurs with what Steve just said. He said he was sympathetic to the City situation and doesn't necessarily believe this was what was intended either in the law or the City's arrangement.

Co-chair Schuling asked about the impact on the City budget with regard to the relative closeness of the tax the first year. City Administrator Gary Boden said the budget just built used \$28,000,000 of assessed value which was based on a partial assessment. Boden said they have been working on debt structuring which is projected over the next five to ten years which anticipates the publicized revenue discussed over the past few years. Schuling said he understands that there are long-term tax projections being done, but with regard to the short-term, where there potentially could be more of an immediacy to act quickly, his understanding is that the 09 dollars are pretty close, be they property taxes or replacement taxes. Boden said he would have to defer to the assessor. Assessor Moreland said that is not correct. Moreland said Mr. Harding came up with about \$2,800,000 vs. a first year property tax of \$2,700,000. He said the second year property tax is \$4,100,000 and the third year property tax is at \$5,470,000. Moreland contrasted the increasing property tax to a constant \$2,800,000 excise tax, which he said is not neutral and the City would be losing tax dollars. Moreland further pointed out that the \$2,800,000 is only an estimate with actual dollars to be based upon actual deliveries. Moreland voiced concerns about the potential variability associated with the replacement tax stream.

Co-chair Schuling said he was pretty much in agreement with the other Task Force members. He said that while he wasn't involved with the enactment of the statute, and wasn't involved with the Department when it was passed, it looks like an extremely strict definition, so he presumed that there was some purpose for that definition. He said his concern is that the Task Force is careful because this is something that applies statewide and any changes need to be correct. Schuling said for instance regarding an issue Alan raised where there is the potential of being double-taxed, being charged for both a property tax and a replacement tax, needs to be addressed.

Bill Sueppel said he appreciated the concerns about future unintended consequences. He said the City has a true consequence right now that needs to be taken into consideration. Sueppel said the City has been stuck with a pretty bad situation. Co-chair Schuling said he did not disagree with that and the Task Force makes a recommendation only. He said their recommendation doesn't necessarily translate into what occurs in the legislature.

Sueppel said this could be studied even if the legislation passes this year. Co-chair Schuling agreed that we could still take a look the issue and make other recommendations next year.

Co-chair Schuling called for any last comments, and there being none, asked for any motions from the Task Force in addressing the issues.

It was moved by Evans, seconded by Coonan, to defer on a recommendation without further study, and for the Task Force, or a subcommittee of the Task Force, to address the issue.

Discussion on Motion:

Member Kemp said that while he appreciated the motion he was probably going to vote against it because it specifically recommends not pushing the legislation. He said we need to push this issue quickly and if nothing is done this year in the legislature, then this needs to be studied over the summer so it is ready very early next session with a strong recommendation from the Task Force. Kemp said he is concerned that the legislation gets passed very early before the City's budget becomes an issue. He said he wants to make sure that the City has adequate time for planning.

Co-chair Krogmeier said unless something is passed this year the property will be centrally assessed and that value used for 09. Co-chair Schuling said we have agreed that the tax numbers are pretty close for the first year whether locally or centrally assessed. Schuling said he and Krogmeier can make sure that the Task Force continues, either as a whole or through sub-groups, looking at the issue.

Member Bill Petersen said one of his concerns centers on the ten-year tax abatement that the City has committed to. He said ADM was in agreement with that tax abatement and in their plans they assumed they would be paying a tax based upon a local assessment. Petersen wondered if it would make sense to pursue something that at least held ADM to the local assessment for the period of time spelled out in the agreement. He said then after that period ADM could be centrally assessed. Petersen said this would seem to provide fair treatment to the local government that made a commitment of tax dollars and resources to help fund the project. Petersen said he views the utility replacement tax as just that, a tax on companies operating as utilities, and ADM doesn't seem to be operating as a utility. He said he can't support the motion as there needs to be some faster action. Petersen said that it doesn't seem reasonable, based upon the City's commitment, that they should be left with the tax shortfalls.

Member Coonan said there are issues here that need to be resolved. He said some of the issues may be outside of the purview of the Task Force. He said there was provision in the original legislation for a self-generator to be treated like a utility. Coonan said he goes back to the potential of unintended consequences if we move too quickly.

Co-chair Krogmeier questioned the unintended consequences directly with the City of Clinton. Petersen said we have unintended consequences right now. Member Petersen said ADM was planning on paying \$13,000,000 in tax. Petersen said that while the state

holds schools harmless, it is a lot different for cities, counties, and other local government taxing entities that rely upon locally assessed property to help fund their services. Petersen said there are unintended consequences here and to put this issue off into the future is not the answer. Petersen said he did not believe ADM needs to be stuck in a particular classification forever because business models do change, but they did make a commitment to the City of Clinton, and it appears that commitment may not be fulfilled.

Member Kemp suggested one legislative alternative might be, if not for ten years, some period of years which protects the City, for planning purposes.

Member Rubino asked questions along the lines of the \$350,000,000 plant cost vs. a very small amount of replacement tax when compared to locally assessed property tax. He referred to an earlier comment that the plant was really built to produce steam, yet there is the ancillary activity of electricity being generated. He asked if the cost of the plant was mostly related to the steam production, which such component seems to be not taxed under the central assessment method. Co-chair Schuling asked if the cost of the plant was more related to steam. An ADM official responded that the plant was built to jointly produce steam and electricity in order to support the processing operations. Rubino asked how much of the cost of the plant was related to electricity and how much was related to steam. The ADM officials did not know, but said the 80/20 figure talked about earlier was the thermal output of the plant – 80% from steam production and 20% from electrical production. Rubino suggested that there was no replacement tax on the steam component. Harding confirmed this as true. Rubino asked if this issue is what was really causing the problem. He said from a locally assessed perspective all of the components were being taxed, but for the purposes of the generation tax, only a portion of the plant is being taxed. Harding said the generation tax is based upon kilowatts of electricity generated. Rubino said for replacement tax purposes nothing is owed for the steam. Rubino said what he is trying to understand is why we are getting such a big difference because when the system was set up ten years ago it was neutral.

Co-chair Krogmeier asked member Evans if typically \$350,000,000 would be spent on a plant to generate the amount electricity coming from the ADM plant. Evans said this is over \$3,000 a megawatt. He said his company wouldn't build plants at that much cost per megawatt. Evans said Rubino has an insight that might be one of the avenues to explore for a solution. Evans said a co-generation plant does by definition often generate steam in companionship with an industrial facility. He said the costs for the extra boiler and steam handling equipment pushes the price up. Evans said to spend over \$3,000 a megawatt for an electric plant only is an extremely high amount and his company would not do it. He noted ADM probably wouldn't either, but they are getting steam which they need in their manufacturing processes. Evans said there are probably four or five ways to solve this, none of them administratively easy. Rubino said his thoughts are not to rush into anything and think this through for a long-term solution.

Co-chair Schuling then asked if there was any more discussion, hearing none, he asked for a vote. After hearing a division, co-Chair Krogmeier asked that there be a roll call on the vote and the results were as follows:

Those voting Aye: Coonan, Evans, Henter, Rubino and Schuling

Those voting Nay: Kemp, Krogmeier, Petersen and Smith.

Absent: Krauth and Siegel

The motion carried.

Co-chair Schuling said this was a 5-4 vote and we will pass this on as part of the response to the Senate sub-committee.

Co-chair Schuling asked if there were additional issues. Member Evans said he wanted to make things very clear that the Task Force wants to take action and wondered if the motion needed amended. Co-chairs Krogmeier and Schuling suggested a second motion.

It was moved by Henter, seconded by Smith stating that the Task Force recognizes that this is an issue and will take the steps to address the issue as soon as possible.

Discussion on motion:

Co-chair Krogmeier said the issue will be studied whether or not the legislature takes any action. Krogmeier wondered if there should be a motion or just a statement from the co-chairs that we will re-convene in May and spend the summer studying the issue. Co-chair Schuling suggested leaving "May" out, but making the motion, and passing it along to the sub-committee at the same time. Member Evans wondered if the motion needed to be amended in order to set up a study group to present its results at an early-convened meeting. Evans said he wanted the record clear that the Task Force understands that the City of Clinton and ADM need to have this resolved as soon as possible. Co-chair Schuling said the chairs would cover this in their letter and didn't think it was needed in the motion. Schuling said he will seek people from the Task Force that want to serve on the sub-committee so there can be some recommendations for the next meeting. Member Petersen asked about possibly amending the motion to include holding the Director's ruling in terms of the tax status in abeyance until January 1, 2010. Co-chair Schuling said he didn't think the Task Force could do that. Member Petersen then said he would recommend a legislative action that would hold the Director's decision in abeyance until January of 2010. Petersen said if he heard the discussion correctly, in the first year or two, there is not a difference in the tax, which would give the committee time to study the issue and to make a recommendation to the Legislature for the 2010 legislative session. He said action could be taken at that point to resolve this issue. Member Kemp said he would support that. Member Henter reminded the group that there was a motion on the floor. Petersen said he was amending that motion. Member Henter said he was not looking for amendments to his motion and would withdraw it first. Co-chair Schuling suggested going back to the original motion and then additional motions could be entertained. Schuling then called for a vote on the original motion. The motion carried unanimously.

Co-chair Schuling asked member Petersen if he would like to make another motion.

Member Petersen said no.

Co-chair Schuling asked if there was anything else, hearing none, asked for a motion to adjourn.

Adjournment

It was moved by Henter, seconded by Coonan, to adjourn at 4:02 PM. The motion carried unanimously.