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Date:
September 28, 2005

Seller =

Buyer =

Plant =
Location =
State =
Seller's Parent =
City =
Commission A =
Commission B =
Trustee =
System Operator =
New Rule =
Order One =
Order Two =

a =
b =
c =
d =
e =
f =
g =

Dear

This letter responds to a letter, dated October 12, 2004, requesting a private letter ruling concerning the tax consequences of the sale of an interest in a nuclear power plant and associated assets and liabilities, including nuclear decommissioning liability, between Seller and Buyer. Specifically, you have requested rulings regarding the tax consequences under section 468A of the Internal Revenue Code to Seller's nuclear decommissioning funds and Buyer's nuclear decommissioning funds as well as rulings regarding the proper realization and recognition of gain and loss on the sale of Seller's interest in the nuclear power plant and associated assets.

Seller and Buyer, in a jointly-filed ruling request, have represented the following facts and information relating to the ruling request:

Plant is located in Location, in State, and consists of two units and associated assets located together on a single property.

Seller, a regulated public utility company, is a wholly-owned subsidiary of Seller's Parent, a public utility holding company that, directly or indirectly, owns several regulated and unregulated energy companies. Seller is a member of Seller's Parent's affiliated group and joins in filing a consolidated return on a calendar year basis using the accrual method of accounting. Seller and Seller's Parent are under the audit jurisdiction of the Industry Director, Natural Resources (LM:NR). Immediately prior to the transfer of the Plant to Buyer, Seller owns a a percent undivided ownership interest in the Plant. Simultaneous with execution of the transaction discussed in this ruling letter, taxpayer will transfer a b percent interest in the Plant to a party unrelated to both Seller and Buyer. This letter ruling, therefore, relates only to the transfer of Seller's remaining c percent interest in Plant.

Prior to the transfer of the Plant to Buyer, Seller's wholesale electric power sales are subject to the jurisdiction of Commissions A and B. Pursuant to a trust agreement between Seller and Trustee, Seller has established, with respect to the decommissioning of its interest in Plant, a nuclear decommissioning fund qualifying under section 468A, and a nuclear decommissioning fund that does not meet the requirements of section 468A, for each unit of Plant. The level of funding in the nuclear decommissioning funds is based on estimates of the future costs that the owner of the Plant will incur upon the decommissioning of the Plant.

Buyer is a unit of City. Buyer represents that the assets of Buyer are owned directly by City and that City operates Buyer as a unit of City. City is a political subdivision and municipal corporation of State incorporated in d. Buyer currently owns a e percent undivided interest as a tenant in common in Plant.

Pursuant to a trust agreement between Buyer and Trustee, Buyer maintains a nonqualified nuclear decommissioning fund with respect to each unit of Plant as a sub-

account under Buyer's decommissioning trust agreement. However, because Buyer is not subject to Federal income tax, it does not maintain qualified nuclear decommissioning funds. Buyer's nonqualified nuclear decommissioning fund created under Buyer's decommissioning trust agreement is a trust under the laws of State. Each of Buyer's nonqualified nuclear decommissioning funds related to Buyer's current ownership interest in Plant is a grantor trust under section 671 and Buyer is the grantor of each trust.

On f, Buyer and Seller entered into the Purchase and Sale Agreement ("PSA"). Under the PSA, Seller is obligated to transfer to Buyer at the closing of the transaction Seller's undivided c percent interest in Plant, including a proportionate amount of the assets constituting or necessary to operate the Plant and a proportionate amount of the assets of the qualified and nonqualified nuclear decommissioning funds maintained by Seller with respect to its interest in the Plant, in exchange for Buyer's payment of the purchase price plus its assumption of certain liabilities and obligations, including Seller's liability and obligation to decommission Plant. Buyer will assume the liabilities of Seller in respect of decommissioning Plant commensurate with the acquired interest.

The assets of the Seller's qualified and nonqualified nuclear decommissioning funds will be transferred to Buyer's nonqualified nuclear decommissioning funds. The transferred assets of Seller's qualified and nonqualified nuclear decommissioning funds will be held by the Trustee in Buyer's nonqualified nuclear decommissioning fund, and the corpus and income of the fund will be held for decommissioning Plant. The PSA requires Buyer to complete, at its expense, the complete retirement and removal from service of the acquired interest in the Plant, including any necessary site restoration. Following the transfer of Seller's c percent interest the Plant to Buyer, Buyer will own, in total, a g percent interest in the Plant. After the sale to Buyer and to the unrelated party, Seller will no longer be engaged in the trade or business of nuclear generation at Plant or any other nuclear facility.

The sale will be reported by Seller as an asset purchase transaction for federal income tax purposes, and Seller will allocate the purchase price among the purchased assets consistent with sections 1060 and 338.

State enacted the New Rule to ensure that adequate funds will be available to decommission nuclear power plants that have been transferred out of State-jurisdictional rate base. The New Rule provides that, following the transfer of a State-jurisdictional nuclear power plant and the associated nuclear decommissioning funds, any remaining costs associated with nuclear decommissioning obligations will remain subject to cost of service regulation based upon a periodic review of the costs. Under New Rule, Seller and Buyer are required to enter into a Decommissioning Funds Collection Agreement (the "Collection Agreement") that governs the administration of the nuclear decommissioning trust funds, the collection of decommissioning revenue from utility customers, and the remittance of the funds to the nuclear decommissioning trust. The Collection Agreement provides generally that Seller's rights to accumulated

and future decommissioning collections and the responsibility for decommissioning Plant shall be transferred to Buyer at closing. Further, New Rule requires Seller to continue to collect rates from Seller's regulated ratepayers for the purpose of collecting decommissioning monies to be remitted to Buyer (the owner of Plant) or Buyer's nonqualified nuclear decommissioning funds. The Collection Agreement specifically provides that in collecting and remitting the decommissioning revenue, Seller is a mere collection agent of Buyer. Both the New Rule and the Collection Agreement provide that the nonqualified nuclear decommissioning funds maintained by Buyer with respect to the c percent interest in Plant acquired from Seller are subject to regulation by Commission A.

The Collection Agreement provides as follows:

> "[Seller] undertakes to perform as collection agent on behalf of [Buyer] the collection duties as are specifically set forth in this Agreement, and no covenants or obligations on the part of [Seller] shall be implied. . . . Prior to remitting the Decommissioning Collections to [Buyer's] Decommissioning Trusts in accordance with this Agreement, [Seller] shall hold such Decommissioning Collections as agent for the benefit of [Buyer's] Decommissioning Trusts, it being expressly understood that all Decommissioning Collections are the property of [Buyer's] Decommissioning Trusts."

The Collection Agreement also provides as follows:

> "Administrative Fee. Unless otherwise expressly provided for herein, [Seller] shall perform its obligations under this Agreement, including collection of the Decommissioning Collections, without charging [Buyer] any administrative or other fees, provided, however, that to the extent Decommissioning Collections authorized by Commission A specifically include a recovery of administrative or other costs incurred by [Seller] in connection with its performance of its obligations under this Agreement, [Seller] may deduct such amount from the Decommissioning Collections before remitting the Decommissioning Collections to the [Buyer's] Decommissioning Trusts. (Underlines in original).

Requested Ruling #1: *Pursuant to section 671 of the Code, Buyer's nonqualified nuclear decommissioning funds are grantor trusts and Buyer will be treated as the grantor of each trust.*

Section 671 provides that where it is specified in sections 673 through 678 that the grantor or another person shall be treated as the owner of any portion of a trust, there shall be included in computing the taxable income and credits of that person those items of income, deduction, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account in computing taxable income or credits against the tax of an individual.

Section 1.671-2(e)(1) of the Income Tax Regulations provides that for purposes of part I of subchapter J, chapter 1 of the Internal Revenue Code, a grantor includes any person to the extent such person either creates a trust, or directly or indirectly makes a gratuitous transfer (within the meaning of § 1.671-2(e)(2)) of property to a trust. For purposes of § 1.671-2, the term property includes cash.

Section 1.671-2(e)(2)(i) provides that a gratuitous transfer is any transfer other than a transfer for fair market value.

Section 1.671-2(e)(2)(ii) provides that for purposes of § 1.671-2(e), a transfer is for fair market value only to the extent of the value of property received from the trust, services rendered by the trust, or the right to use property of the trust.

Section 677 provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such under section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be distributed to the grantor, or held or accumulated for future distribution to the grantor.

Section 1.677(a)-1(d) provides that under section 677 a grantor is, in general, treated as the owner of a portion of a trust whose income is, or in the discretion of the grantor or a nonadverse party, or both, may be applied in discharge of a legal obligation of the grantor.

Because Buyer is treated as purchasing the assets of Sellers' qualified and nonqualified nuclear decommissioning fund for federal income tax purposes, Buyer is treated as contributing those assets as grantor to the Buyer's nonqualified nuclear decommissioning fund. Under the terms of the trust agreement, all income, as well as principal of the Buyer's nonqualified nuclear decommissioning funds is held to satisfy Buyer's legal obligation to decommission Plant. Accordingly, Buyer's nonqualified nuclear decommissioning fund is a grantor trust and Buyer is treated as the grantor and the owner of the entire Buyer's nonqualified nuclear decommissioning fund under section 677 and § 1.677(a)-1(d).

Requested Ruling #2: *Pursuant to section 1.468A-5(c)(1) of the regulations, the transfer of a proportionate amount of the assets from Seller's qualified nuclear decommissioning funds to Buyer's nonqualified nuclear decommissioning funds will disqualify that portion of Seller's qualified nuclear decommissioning funds.*

Section 1.468A-1(b)(3) provides that a "qualified nuclear decommissioning fund" is a fund that satisfies the requirements of § 1.468A-5, and a "nonqualified nuclear decommissioning fund" is a fund that does not satisfy those requirements.

Section 1.468A-5(a)(2) provides that a qualified nuclear decommissioning fund is not permitted to accept any contributions in cash or property other than cash payments with respect to which a deduction is allowed under section 468(a) and § 1.468A-2(a).

Section 1.468A-5(c)(1) provides that, except as otherwise provided in § 1.468A-5(c)(2), if at any time during a taxable year of a nuclear decommissioning fund, the nuclear decommissioning fund does not satisfy the requirements of § 1.468A-5(a), the Internal Revenue Service may, in its discretion, disqualify all or any portion of the fund as of the date that the fund does not satisfy the requirements of § 1.468A-5(a), or as of any subsequent date.

Seller, on the closing date, will transfer a proportionate amount of the assets of its qualified nuclear decommissioning funds and nonqualified nuclear decommissioning funds to Buyer's nonqualified nuclear decommissioning funds, which do not satisfy the requirements of section 1.468A-5 and will not at any time thereafter be maintained as qualified nuclear decommissioning funds. We will exercise our discretion under § 1.468A-5(c)(1) to disqualify the proportionate amount of Seller's qualified nuclear decommissioning fund as a result of this transfer as of the closing date. Accordingly, pursuant to § 1.468A-5(c)(1) of the regulations, the transfer of a proportionate amount of the assets from Seller's qualified nuclear decommissioning funds to Buyer's nonqualified nuclear decommissioning funds will disqualify that portion of Seller's qualified nuclear decommissioning funds.

Requested Ruling #3: *Pursuant to section 1.468A-5(c)(3) of the regulations, the proportionate amount of the assets of Seller's qualified nuclear decommissioning funds transferred to Buyer's nonqualified nuclear decommissioning funds will be deemed to be distributed to Seller on the date of the transfer and be included in Seller's gross income, net of taxes paid by Seller's qualified nuclear decommissioning funds upon such deemed distribution. Seller will take a fair market value basis in the assets deemed distributed.*

Section 1.468A-5(c)(3) provides that, if all or any portion of a nuclear decommissioning fund is disqualified under § 1.468A-5(c)(1), the portion of the nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of the disqualification. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund. In addition, the electing taxpayer must include in gross income for the taxable year that includes the date of disqualification an amount equal to the product of the fair market value of the assets of the fund determined as of the date of disqualification (reduced by certain amounts including any tax that is imposed on the income of the fund, is attributable to income taken into account before the date of the disqualification or as a result of the disqualification, and has not been paid as of the date of the disqualification) and the fraction of the nuclear decommissioning fund that was disqualified under §1.468A-5(c)(1).

Accordingly, the proportionate amount of the assets of Seller's qualified nuclear decommissioning funds transferred to Buyer's nonqualified nuclear decommissioning funds will be deemed to be distributed to Seller on the date of the transfer and be included in Seller's gross income, net of taxes paid by Seller's qualified nuclear decommissioning funds upon such deemed distribution. Seller will take a fair market value basis in the assets deemed distributed.

Requested Ruling #4: *Pursuant to section 1.468A-5(c)(3) of the regulations, Seller's qualified nuclear decommissioning funds will be treated as disposing of the proportionate amount of the assets deemed distributed from Seller's nonqualified nuclear decommissioning funds under section 1001. In determining the amount of gain or loss from such disposition, the amount realized by Seller's qualified nuclear decommissioning funds from such disposition will be the fair market value of such assets as of the date of the transfer.*

As explained above, § 1.468A-5(c)(3) provides that the distribution of any portion of a nuclear decommissioning fund that is disqualified under § 1.468A-5(c)(1) shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund. Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized from the disposition over the adjusted basis of the property. Amount realized is generally the amount of cash and other property received by a taxpayer for the property.

Pursuant to § 1.468A-5(c)(3), Seller’s qualified nuclear decommissioning funds will be treated as disposing of the proportionate amount of the assets deemed distributed from Seller’s nonqualified nuclear decommissioning funds for purposes of section 1001. Accordingly, we conclude that, in determining the amount of gain or loss to Seller from the transfer of Seller’s qualified nuclear decommissioning funds to Buyer’s nonqualified nuclear decommissioning funds, the amount realized by Seller’s qualified nuclear decommissioning funds will be the fair market value of such assets as of the date of the transfer. See § 1.468A-4(c)(2).

Requested Ruling #5: *Pursuant to section 1.461-4(d)(5), for the taxable year that includes the closing date, Seller will be entitled to a current deduction in an amount equal to the total of any amounts treated as realized by Seller as a result of Buyer's assumption of a proportionate amount of Seller's liability for decommissioning Plant.*

Section 461(a) states that, generally, any deduction or credit allowed by subtitle A of the Code is taken into account for the taxable year that is the proper taxable year under the method of accounting used in computing taxable income.

Section 1.446-1(c)(1)(ii)(A) provides that, under an accrual method of accounting, a liability is incurred and generally taken into account for federal income tax purposes in the year in which all events have occurred that establish the fact of the liability, the

amount of the liability can be determined with reasonable accuracy, and economic performance has occurred with respect to the liability.

Section 461(h) makes clear that generally the all events test is not treated as having been met any earlier than the taxable year in which economic performance has occurred with respect to a liability. *See also* § 1.461-4(a)(1).

Section 461(h)(2)(B) provides that in the case of a liability that requires the taxpayer to provide services, economic performance occurs as the taxpayer provides the services. Section 1.461-4(d)(4) provides that economic performance occurs with respect to such service liabilities as the taxpayer incurs costs in connection with satisfaction of the liability.

Section 1.461-4(d)(5) provides an exception to the general economic performance rule for services where the taxpayer sells a trade or business. Where the purchaser expressly assumes a liability arising out of the taxpayer's trade or business that the taxpayer, but for the economic performance requirement, would have been entitled to incur as of the date of the sale, economic performance with respect to the liability occurs as the amount of the liability is properly included in the amount realized on the sale by the taxpayer.

The first prong of the all events test requires that the fact of the liability be established at the time of the deduction. In the present case, this first prong of the all events test is satisfied: the Seller clearly has the obligation to decommission Plant. The fact of this obligation arose many years ago, at the time the Seller obtained its license to operate Plant. *See* 10 C.F.R. § 50.33 and § 72.30, requiring the operator of a nuclear power plant to decommission it. Moreover, Congress recognized the existence of the decommissioning liability when, in 1984, it enacted sections 461(h) and 468A, noting that "[g]enerally, under Federal and State laws, utilities that operate nuclear power plants are obligated to decommission the plants at the end of their useful lives." H.R. Conf. Rep. No. 98-861, 877 (1984). *See also* S. Prt. No. 169, Vol. 1, 98th Cong., 2d Sess. 277 (1984).

The second prong of the all events test requires the amount of the liability to be reasonably determinable. Section 1.461-1(a)(2)(ii). This prong is also satisfied: the amount of the Seller's decommissioning liability has been determined by independent experts in the nuclear decommissioning industry. Further, these calculations have been accepted by both the NRC and Commission A. In addition, there is also support in the Code for finding that the amount of the decommissioning liability is reasonably determinable at the time of the sale. Section 468A(d) generally permits a current deduction for a "ruling amount" based on estimated future decommissioning expenses. To the extent that the decommissioning costs are sufficiently determinable to entitle the utility to a deduction under section 468A, it is reasonable to conclude that the costs also must be sufficiently determinable to satisfy the second prong of the all events test.

Given that the two prongs of the all events test are satisfied, economic performance with respect to the decommissioning liability occurs as of the date of the sale to the extent that the liability is included in Seller's amount realized. Accordingly, we conclude that, for the taxable year that includes the closing date, Seller will be entitled to a current deduction for the amount of its otherwise deductible liability to the extent treated as included in the amount realized by the Seller as a result of Buyer's express assumption of Seller's decommissioning liability.

Requested Ruling #6: (Withdrawn by Taxpayer - no ruling)

Requested Ruling #7: *Neither Buyer nor its nonqualified nuclear decommissioning funds will recognize any gain or loss, or otherwise take any income into account, by reason of the transfer of the assets of Seller's nuclear decommissioning funds to Buyer's nonqualified nuclear decommissioning funds, and neither Buyer nor its nonqualified nuclear decommissioning funds will recognize income upon the receipt of decommissioning costs collected by Seller, in a nonbypassable charge to customers, on behalf of Buyer and remitted to Buyer or its nonqualified nuclear decommissioning funds.*

Taxpayers have represented that City is a political subdivision of State, that the assets of Buyer are owned directly by City, and that City operates Buyer as a unit of City. Rev. Rul. 78-276, 1978-2 C.B. 256, states that the term "political subdivision" has been defined consistently for all Federal tax purposes as denoting "a division of a state or local government that is a municipal corporation ...". Rev. Rul. 87-2, 1987-1 C.B. 18, states that income earned by a political subdivision of a state is generally not taxable, absent a specific statutory authorization for taxing such income.

Accordingly, because Buyer is a unit of City and City is a political subdivision of State, neither Buyer nor its nonqualified nuclear decommissioning funds will recognize any gain or loss, or otherwise take any income into account, by reason of the transfer of the assets of Seller's nuclear decommissioning funds to Buyer's nonqualified nuclear decommissioning funds, and neither Buyer nor its nonqualified nuclear decommissioning funds will recognize income upon the receipt of decommissioning costs collected by Seller, in a nonbypassable charge to customers, on behalf of Buyer and remitted to Buyer or its nonqualified nuclear decommissioning funds.

Requested Ruling #8: *Seller will not realize income upon its receipt of the decommissioning collections after the closing.*

Section 61 defines gross income as all income from whatever source derived, including compensation for services such as fees, commissions, and similar items. However, the mere receipt and possession of money does not by itself constitute gross income. One such instance where the receipt of money does not result in gross income is the receipt of money by a person acting as an agent under the control of, and receiving the payment for the benefit of, another. For example, a rental agent does not

have income upon receipt of a rental payment from a tenant because the agent is a mere conduit for the payment from the tenant to the owner. This concept has been applied in a variety of situations involving agents and other conduits. *See*, *for example*, *Maryland Casualty Co. v. United States*, 381 U.S. 342, 345 (1920) and *Fogarty v. United States*, 780 F.2d 1005 (Fed. Cir. 1986).

The position that the principal, and not the agent, is taxed on amounts received by the agent on the principal's behalf is embodied in numerous revenue rulings. For example, Rev. Rul. 74-581, 1974-2 C.B. 25, involved fees received by a law school's faculty members for their court-appointed representation of indigent defendants while participating in the university's clinical program. Each faculty member must agree, as a condition of participation in the program, that since the time spent in supervising work of students on these cases and in the representation of the client is part of the faculty member's teaching duties for which the faculty member is compensated by a total annual salary, all amounts received for such representation are to be endorsed over to the law school. The attorney-faculty members involved are working solely as agents of the law school, while supervising the law students within the scope of the clinical programs, and realize no personal gain from payments for their services in representing the indigent defendants. The revenue ruling thus holds that the payments received by the faculty members for their representation of clients while participating in the clinical program are not required to be included in their gross income. *See also* Rev. Rul. 69-274, 1974-1 C.B. 36; Rev. Rul. 65-282, 1965-1 C.B. 21; and Rev. Rul. 58-220, 1958-1 C.B. 26.

In the present case, under the Collection Agreement mandated by Commission, the Seller is required to continue to charge Seller's regulated ratepayers for the purpose of collecting decommissioning monies to be remitted to Buyer's nuclear decommissioning trust fund. The purpose of the Collection Agreement is to ensure that Buyer will have adequate funds to decommission the generating facility. The Collection Agreement specifically provides that in collecting and remitting the decommissioning revenue, Seller shall act as Buyer's collection agent. Moreover, Seller receives no benefit from the Decommissioning Collections. Rather, Buyer is the intended recipient of, and the only party benefiting from, the collections. In the present case, under the Collection Agreement, Seller is authorized to retain a portion of the decommissioning collections it receives, to the extent that the decommissioning collections include a recovery of administrative or other costs incurred by Seller.

Accordingly, we conclude that, generally, Seller will not realize income upon Seller's receipt of decommissioning collections after the closing of the sale. If, however, in accordance with the Collection Agreement or for some other reason, Seller retains a portion of the decommissioning collections and does not remit all of such collections to Buyer, Seller must include the amount retained in its gross income.

Although the taxpayers have not requested a ruling concerning the calculation of Seller's overall gain or loss from the sale of the assets transferred to Buyer under the PSA, that issue is relevant in the context of the sale of Plant .

Section 1060 provides that, in the case of an "applicable asset acquisition", the consideration received shall be allocated among the acquired assets in the same manner as amounts are allocated to assets under section 338(b)(5). Section 1.1060-1(a)(1) provides that, in the case of an applicable asset acquisition, the seller and the purchaser each must allocate the consideration paid or received in the transaction under the residual method as described in sections 1.338-6 and 1.338-7 in order to determine, respectively, the amount realized from, and the basis in, each of the transferred assets.

Section 1060(c) defines the term “applicable asset acquisition” as the transfer of assets constituting a trade or business if the acquirer’s basis in the transferred assets is determined wholly by reference to the consideration paid for such assets. Section 1.1060-1(c)(1) defines seller’s consideration as the amount, in the aggregate, realized from selling the assets in the applicable asset acquisition under section 1001(b).

Section 1060 provides no independent basis for determining the amount a taxpayer realizes on the sale of the assets or the time such amount may be taken into account; the amount realized and the time such amount is taken into account are determined solely under generally applicable tax accounting principles.

The residual method is based on a division of assets into seven classes: Class I (generally consisting of cash, and general deposit accounts held in banks, savings and loan associations, and other depository institutions), Class II (generally consisting of actively traded personal property like U.S. government securities and publicly traded stock, but also including certificates of deposit and foreign currency even if they are not actively traded personal property), Class III (accounts receivable, mortgages, and credit card receivables from customers which arise in the ordinary course of business), Class IV (stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business), Class V (all assets other than Class I, II, III, IV, VI, and VII assets), Class VI (all section 197 intangibles, as defined in that section, except goodwill and going concern value), and Class VII (goodwill and going concern value, whether or not it qualifies as a section 197 intangible). Section 1.338-6.

Seller's nuclear assets, including Plant, equipment, operating assets, and the assets of the nonqualified nuclear decommissioning fund, constitute a trade or business in Seller's hands and the gain or loss recognized with respect to those assets will be determined wholly by reference to Seller's amount realized. Thus, Seller's transfer of it's c percent undivided interest in Plant, equipment, operating assets, and the assets of

the nonqualified nuclear decommissioning fund[1] to Buyer in exchange for cash, the assumption of Seller's nuclear decommissioning liability is an applicable asset acquisition as described in section 1060 and the regulations thereunder.

Consequently, Seller's gain or loss on the sale of the proportionate amount of its interest in Plant to Buyer will equal the difference between the proportionate amount of Seller's tax basis in each asset and the amount realized with respect to that asset, taking into account the allocation of consideration pursuant to section 1060 and the regulations promulgated thereunder. Seller's amount realized from the sale of the proportionate amount of its interest in Plant will include the cash received from Buyer and the liabilities assumed by Buyer, including the proportionate liability to decommission Plant, to the extent such liabilities and obligations are taken into account as liabilities for Federal income tax purposes.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative. In addition, we are sending a copy of this letter ruling to the Industry Director, Natural Resources and Construction (LM:NRC). A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)

[1] These nonqualified nuclear decommissioning fund assets include the assets previously treated as part of Seller's qualified nuclear decommissioning fund. Once those previously qualified nuclear decommissioning fund assets are deemed to be distributed (see Ruling #4, above), they are treated as nonqualified nuclear decommissioning fund assets.

cc: