Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
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Date:
May 20, 2009

Legend:

Taxpayer =

Company A =

Company B =

Company C =

Company D =

Company E =

Parent =

State A =

State B =

Plant 1 =

Plant 2 =

Plant 3 =

Location 1 =

Location 2 =

Commission A =

Commission B =

a =

Year Y =

Dear :

This letter responds to your request for private letter ruling dated . You requested that we rule on certain tax consequences, under section 468A of the Internal Revenue Code, of the restructuring discussed below.

Facts:

Parent has represented the following facts and information relating to the ruling request:

Parent, a corporation organized in State A, is the parent of an affiliated group of subsidiary corporations. Company A, also organized in State A, is wholly-owned by Transferor and is a member of the affiliated group. Company B, a limited liability company (LLC) organized under the laws of State A and wholly-owned by Parent, has elected to be treated as a corporation for federal income tax purposes. Company D, an LLC disregarded for federal income tax purposes, is wholly-owned by Company B. Company C, an LLC organized under the laws of State A that has elected to be treated as a corporation for federal tax purposes, is also wholly-owned by Company B. Company E, an LLC organized under the laws of State A that has elected to be disregarded for federal tax purposes, is wholly-owned by Company C.

Company B, through the disregarded Company D, is the owner of Plant 1 and Plant 2. Plant 2 is a nuclear power plant located at Location 1. Plant 1, also located at Location 1, has been permanently shut down since a and Company B (through and including the disregarded Company D) is engaged in the generation of electricity produced by Plant 2 and the sale of that electricity at

wholesale to a subsidiary, which then resells the electricity to various wholesale customers. Company B (through and including the disregarded Company D) maintains nuclear decommissioning trusts that are qualified under § 468A (QDT) and separate trusts that are not qualified under § 468A with respect to Plant 1 and Plant2.

Company C, through the disregarded Company E, is the owner of Plant 3. Plant 3 is a nuclear power plant located at Location 2. Company C (through and including the disregarded Company E) is engaged in the generation of electricity produced by Plant 3 and the sale of that electricity at wholesale to a subsidiary, which then resells the electricity to various wholesale customers. Company C (through and including the disregarded Company E) maintains a QDT and a separate trust that is not qualified under § 468A with respect to Plant 3.

Company B (through and including the disregarded Company D) and Company C (through and including the disregarded Company E) are both subject to the jurisdiction of Commission A with regard to the operation and maintenance of Plants 1, 2, and 3, and to the jurisdiction of Commission B with regard to the rates charged to wholesale customers for electricity produced by Plant 2 and Plant 3, respectively.

Parent will undertake a restructuring of the companies discussed above and their assets, followed by a spinoff of the nuclear plants and their respective funds to Taxpayer. While the date is uncertain, Parent expects to complete both the restructuring and spinoff described below during Year Y.

For the restructuring, Company C will be liquidated into Company B in a transaction represented by Parent to be pursuant to § 332. Subsequently, Company B will be liquidated in Company A in a transaction represented by Parent to be pursuant to § 332. Subsequent to these liquidations, Company A will convert, under the laws of State A, into an LLC and will change its name to Company A, LLC. Company A, LLC will elect to be disregarded for federal tax purposes and will be wholly-owned by Parent. As a result of these transactions, Plants 1, 2, and 3, as well as their respective QDTs and nonqualified funds will be owned, for federal tax purposes, by Parent.

Following the restructuring, Parent will contribute Company A, LLC, to Taxpayer in exchange solely for common stock and securities of Taxpayer in a transaction represented by Parent to be under § 368(a)(1)(D). As a result of this spinoff, Plants 1, 2, and 3, as well as their respective QDTs and nonqualified funds will be owned, for federal tax purposes, by Taxpayer.

Parent has requested the following rulings:

Requested Ruling #1: The QDTs were not disqualified by reason of the restructuring described above.

Requested Ruling #2: The QDTs will continue to be treated as QDTs that satisfy the requirements of § 468A and § 1.468A-6T of the temporary Income Tax Regulations after the restructuring described above.

Requested Ruling #3: The QDTs will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the restructuring.

Requested Ruling #4: Neither Parent, Company A, Company B, nor Company C will be required to recognize any gain or loss or take any income or deduction into account as a result of the transfers of the QDTs as a result of the restructuring.

Requested Ruling #5: Pursuant to § 1.468A-6T(c), after the restructuring, the QDTs will have a tax basis in each of their assets that is the same as the tax basis in those assets immediately prior to the restructuring.

Requested Ruling #6: The QDTs were not disqualified by reason of the spinoff to Taxpayer described above.

Requested Ruling #7: The QDTs will continue to be treated as QDTs that satisfy the requirements of § 468A and § 1.468A-6T of the temporary Income Tax Regulations after the spinoff to Taxpayer described above.

Requested Ruling #8: The QDTs will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the spinoff to Taxpayer described above.

Requested Ruling #9: Neither Parent nor Taxpayer will be required to recognize any gain or loss or take any income or deduction into account as a result of the transfers of the QDTs as a result of the spinoff to Taxpayer described above.

Requested Ruling #10: Pursuant to § 1.468A-6T(c), after the restructuring, the QDTs will have a tax basis in each of their assets that is the same as the tax basis in those assets immediately prior to the spinoff to Taxpayer described above.

Law and Analysis:

Section 468A(a) of the Code provides that a taxpayer may elect to deduct payments made to a nuclear decommissioning reserve fund that meets the requirements of section 468A (i.e. a fund that is a "qualified nuclear decommissioning fund").

Section 468A(c)(1) provides that any amount distributed from a qualified nuclear decommissioning fund during any taxable year is includible in the taxable income of the taxpayer for that year.

Section 468A(c)(2) provides that, in addition to contributions to a qualified nuclear decommissioning fund that are deductible under § 468A(a), there is allowable as a deduction the amount of “nuclear decommissioning costs” with respect to which economic performance occurs (within the meaning of § 461(h)(2)) during the taxable year. Nuclear decommissioning costs are defined in § 1.468A-1T(b)(6) as all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal, and disposal of the structures, systems, and components of a nuclear power plant that has permanently ceased the production of electric energy. This term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses. Such term does not include otherwise deductible expenses to be incurred in connection with the disposal of spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (Public Law 97-425). An expense is considered “otherwise deductible” for purposes of § 1.468A-1T(b)(6) if it would be deductible under Chapter 1 of the Code without regard to § 280B.

Section 468A(e)(5) provides that, for purposes of section 4951, a qualified nuclear decommissioning fund is treated as a trust described in section 501(c)(21).

Section 1.468A-1T(b)(4) provides that a "qualified nuclear decommissioning fund" is a fund that satisfies the requirements of section 1.468A-5T.

Section 1.468A-5T(a) sets out the qualification requirements for nuclear decommissioning funds. It provides, in part, that a qualified nuclear decommissioning fund must be established and maintained pursuant to an arrangement that qualifies as a trust under state law.

Section 1.468A-5T(a)(1)(iii) provides that an electing taxpayer can establish and maintain only one qualified nuclear decommissioning fund for each nuclear power plant.

Section 1.468A-6T provides rules applicable to the transfer of an interest in a nuclear power plant (and transfer of the qualified nuclear decommissioning fund) where certain requirements are met. For purposes of § 1.468A-6T, a nuclear power plant includes a plant that previously qualified as a nuclear power plant and that has permanently ceased to produce electricity.

Section 1.468A-6T(b) provides that section 1.468A-6T applies if--

(1) Immediately before the disposition, the transferor maintained a qualified nuclear decommissioning fund with respect to the interest disposed of; and

(2) Immediately after the disposition--

(i) The transferee maintains a qualified nuclear decommissioning fund with respect to the interest acquired;

(ii) The interest acquired is a qualifying interest of the transferee in the nuclear power plant;

(3) In connection with the disposition, either—

(i) The transferee acquires part or all of the transferor's qualifying interest in the plant and a proportionate amount of the assets of the transferor's fund is transferred to a fund of the transferee; or

(ii) The transferee acquires the transferor's entire qualifying interest in the plant and the transferor's entire fund is transferred to the transferee; and

(4) The transferee continues to satisfy the requirements of § 1.468A-5T(a)(1)(iii), which permits an electing taxpayer to maintain only one qualified nuclear decommissioning fund for each plant.

Section 1.468A-6T(c) provides that a disposition that satisfies the requirements of section 1.468A-6T(b) will have the following tax consequences at the time it occurs:

(1) Neither the transferor nor the transferor's qualified nuclear decommissioning fund will recognize gain or loss or otherwise take any income into account by reason of the transfer of a proportionate amount of the assets of the transferor's qualified nuclear decommissioning fund to the transferee's qualified nuclear decommissioning fund (or by reason of the transfer of the transferor's entire qualified nuclear decommissioning fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's qualified nuclear decommissioning fund) will not be

considered a distribution of assets by the transferor's qualified nuclear decommissioning fund.

(2) Neither the transferee nor the transferee's qualified nuclear decommissioning fund will recognize gain or loss or otherwise take any income into account by reason of the transfer of a proportionate amount of the assets of the transferor's qualified nuclear decommissioning fund to the transferee's qualified nuclear decommissioning fund (or by reason of the transfer of the transferor's entire qualified nuclear decommissioning fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's qualified nuclear decommissioning fund) will not constitute a payment or a contribution of assets by the transferee to its qualified nuclear decommissioning fund.

(3) Transfers of assets of a qualified nuclear decommissioning fund to which this section applies do not affect basis. Thus, the transferee's qualified nuclear decommissioning fund will have a basis in the assets received from the transferor's qualified nuclear decommissioning fund that is the same as the basis of those assets in the transferor's qualified nuclear decommissioning fund immediately before the distribution.

Under section 1.468A-6T(f), the Service may treat any disposition of an interest in a nuclear power plant as satisfying the requirements of the regulations if the Service determines that such treatment is necessary or appropriate to carry out the purposes of section 468A.

Conclusions:

Based on the information submitted by Parent, we reach the following conclusions:

Ruling #1: The QDTs were not disqualified by reason of the restructuring described above.

Ruling #2: The QDTs will continue to be treated as QDTs that satisfy the requirements of § 468A and § 1.468A-6T after the restructuring described above.

Ruling #3: Pursuant to § 1.468A-6T(c)(1) and (2), the QDTs will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the restructuring.

Ruling #4: Pursuant to § 1.468A-6T(c)(1) and (2), neither Parent, Company A, Company B, nor Company C will be required to recognize any gain or loss or take any income or deduction into account as a result of the transfers of the QDTs as a result of the restructuring.

Ruling #5: Pursuant to § 1.468A-6T(c)(3), after the restructuring, the QDTs will have a tax basis in each of their assets that is the same as the tax basis in those assets immediately prior to the restructuring.

Ruling #6: The QDTs were not disqualified by reason of the spinoff to Taxpayer described above.

Ruling #7: The QDTs will continue to be treated as QDTs that satisfy the requirements of § 468A and § 1.468A-6T after the spinoff to Taxpayer described above.

Ruling #8: Pursuant to § 1.468A-6T(c)(1) and (2), the QDTs will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the spinoff to Taxpayer described above.

Ruling #9: Pursuant to § 1.468A-6T(c)(1) and (2), neither Parent nor Taxpayer will be required to recognize any gain or loss or take any income or deduction into account as a result of the transfers of the QDTs as a result of the spinoff to Taxpayer described above.

Ruling #10: Pursuant to § 1.468A-6T(c)(3), after the restructuring, the QDTs will have a tax basis in each of their assets that is the same as the tax basis in those assets immediately prior to the spinoff to Taxpayer described above.

While it owns interests in the Plants, Taxpayer is eligible to maintain the qualified nuclear decommissioning funds.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. In particular, we express no opinion on the tax results of either the restructuring or spinoff described above under any section of the Code other than § 468A. In addition, we express no opinion on the tax results of the transfers of the nonqualified decommissioning trust funds as part of either the restructuring or spinoff described above.

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

In accordance with the power of attorney on file with this office, the original of this letter is being sent to Taxpayer's authorized representative. We are also sending a

copy of this letter ruling to Taxpayer and to the Industry Director, Natural Resources (LM:NR).

Sincerely,

PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
Passthroughs and Special Industries

cc: