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Person To Contact:
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Telephone Number:

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Date:
January 06, 2014

LEGEND:
Taxpayer =

Company A =
Company B =
Company C =
Company D =
Company E =
Company F =
Company G =
Company H =
Company I =
Company J =
Company K =
Company L =
Location a =
Location b =
State A =
Additive 1 =
Additive 2 =
Date 1 =
Date 2 =
a =
b =
c =
d =
e =
f =
g =
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i =
j =
k =
Research Center =

Energy Center =
Test Reports =

Dear :

This is in response to your request for rulings, submitted by your authorized representative, concerning the federal income tax consequences of the transaction described below:

BACKGROUND

Company G is a State A limited liability company that is classified as a partnership for federal tax purposes. Company G is a calendar year taxpayer and employs the accrual method of accounting for both book and tax purposes. The sole members of Company G are Company A, a State A limited liability company and Company I.

Company A is a wholly owned disregarded entity of Company B. Company B is a wholly owned subsidiary of Company C and has elected to be taxable as a corporation for federal tax purposes. Company C is wholly owned by Company D, which is wholly owned by Company E. Company C is engaged in the business of developing and managing various energy-related projects throughout the United States, including backup power generation projects, power-house operations, cogeneration facilities, coke batteries, and similar energy-related projects. Company E is the holding company for a number of operating companies engaged in energy-related businesses. Company E is also the parent company of Company F, a regulated public electric utility. Other subsidiaries of Company E sell coal and coal transportation services throughout the United States. Company E and its affiliates are calendar-year taxpayers and employ the accrual method of accounting for book and tax purposes.

Taxpayer is a wholly owned, indirect subsidiary of Corporation H, a publicly traded State A corporation. Company H is the common parent of an affiliated group of

corporations, including Taxpayer that join in the filing of a consolidated federal income tax return. Taxpayer formed Company I to acquire a membership interest in Company G. Company I is disregarded as a separate entity from Taxpayer for federal income tax purposes.

The Facilities

Company G constructed a facility consisting of two parallel, independent production lines (each individually, a Facility and collectively, the Facilities) that are designed to produce refined coal (Product). The Facilities are located at Energy Center. Company J owns and operates Energy Center. Energy Center is composed of one coal-fired generating unit with an electric generating capacity of approximately a megawatts. Energy Center consumes approximately b tons of coal a year. All of the Product is used as a fuel at Energy Center to produce steam for the generation of electricity.

Company G contracted with a contractor to design, engineer and construct the Facilities, certain material handling equipment, and a building to enclose the Facilities and equipment. Mechanical Completion of the Facilities was achieved on Date 1. Company G assumed care, custody and control of the Facilities from the contractor on that same day. Mechanical Completion included the completion of all mechanical and electrical equipment necessary to the operation of the Facilities for the production of refined coal. After a brief start-up and testing period, the Facilities began production of the Product on Date 2.

Description of the Process

The process for production of refined coal currently employed at the Facilities involves the mixing of proprietary chemicals (additives) with feedstock coal prior to combustion (the Process). The patent for the Process is owned by Company K and is licensed to Company G. Test results described herein have shown that when mixed with coal, the proprietary additives result in reduced NO_X, SO_2 and mercury emissions during combustion. Different chemicals are targeted at specific pollutants. Based on the characteristics of the feedstock coal burned at the Energy Center, Company G has chosen a combination of additives that target the reduction of NO_X and mercury. In the case of NO_X, Company G understands that Additive 1 is believed to cause a portion of the NO_X to adhere to, or react with, the additive so that it can be captured and is not emitted. In the case of mercury, Company G understands that Additive 2 is believed to react with the elemental mercury in the feedstock coal so that it is converted into a chemical species of mercury (mercury oxide) that can be effectively captured by particulate control devices.

Emissions Reduction Testing

Company D engaged Research Center to conduct tests on behalf of Company G at its pilot-scale combustion furnace (CTF) to determine the emission reductions associated with burning the Product compared to the feedstock coal.

Company D has been working with Research Center for several years in order to investigate and understand the ability of the additives to reduce emissions. The Research Center report described below states:

> The CTF has been extensively used to research and investigate So_x and NO_x emissions and the transformation of toxic trace metals (Hg [mercury], As. and Pb) during the combustion of coal and other fuels or waste materials that are representative of those produced in industrial and full scale pulverized coal-fired boilers.

For purposes of qualifying the Product produced at the Facilities, Research Center conducted several pilot-scale combustion tests at its CTF. Specifically, Research Center conducted tests on four blends of feedstock coals of the type typically burned at the Energy Center. Because the Facilities were not yet operational at the time of that test, Research Center reports that it mixed the coal and additives in a manner consistent with the mixing that would occur at the Facilities.

The Test Reports state that each of the four test results indicate that the refined coal samples achieved the required reductions in both NO_X and total mercury emissions (both determined on a lb/Btu basis) to satisfy the requirements of at least 20% NO_X reduction and at least 40% mercury reduction. Test Reports states that it is "expected that qualifying emissions reductions reported would be achieved at full scale when utilizing [the additive levels tested] to produce the refined coal for all Location a-Location b blends containing at least c% Location a subbituminous coal."

Tested Coal

Energy Center currently burns a blend of subbituminous coal from a number of mines in the Location a and bituminous coal from Location b. Energy Center uses a blend of Location a and Location b coals to generate electricity and Company G intends to produce the Product using a blend of Location a and Location b coals. Variations in the coal blend result from the supply and availability of the Location a and Location b coals and the needs of Energy Center.

Company D requested that Research Center test blends of Location a and Location b coal that represent the range of Location a and Location b coal blends to be used by Company G to produce Product that will be burned to produce steam at Energy Center. The coal blend contains at least c% Location a and no more than d% Location b coal. Accordingly, Research Center tested a e% Location a coal/f% Location b coal blend, a g% Location a coal/h% Location b coal blend, a i% Location a coal/j% Location

b coal blend and a c% Location a coal/d% Location b coal blend. In each case, Research Center states that the refined coal produce with each coal blend met the required emission reduction requirements when compared to the feedstock coal. The Test Reports state that it is "expected that qualifying emissions reductions reported would be achieved at full scale when utilizing [the additive levels tested] to produce the refined coal for all Location a and Location b blends containing at least c% Location a subbituminous coal." Accordingly, for purposes of this ruling letter, the term "Tested Coal" refers to a blend of coals containing at least c% Location a and no more than d% Location b coal.

Company G expects to continue to operate with the blends and additive levels discussed in the Test Reports, which would be consistent with long-term patterns for coal consumed by the Energy Center. Samples will be taken for redetermination testing within six months after the last emissions test satisfying the qualified emission reduction requirement. Thereafter, within six months after such date, another set of samples will be taken for redetermination testing. In each case, samples of feedstock and samples of refined coal will be obtained from the Facilities using automatic samplers. Alternatively, Company G may request that Research Center prepare samples of refined coal for redetermination testing by mixing feedstock coal and additives in a manner consistent with the mixing that would occur at Facilities. Initially, Company G will collect and test samples from each Facility and test each set of samples separately. If the testing results from both samples demonstrate satisfaction of the qualified emission reduction requirement and substantially similar results, Taxpayer plans to collect samples for redetermination testing alternating between the two Facilities.

Although Company G does not currently anticipate making changes to its coal feedstock or additive levels, additional testing will be conducted prior to (i) adding coal from any other coal rank to the Facilities' coal feedstock mix, (ii) changing the percentages of the coal feedstock blend (i.e., using less than c% Location a coal or more than d% Location b coal in the Location a/Location b coal blend), or (iii) changing the minimum levels of additives. Such testing will include testing of samples at the endpoints of the new coal feedstock blend and at intermediate blends between the endpoints, as the qualified expert advises is necessary to conclude that a qualified emissions reduction would be expected for any combination within the limits of the blend. In the case of a change in additive levels, tests will be run at the new minimum levels of additive as the qualified expert advises is necessary to conclude that a qualified emissions reduction will be expected for the new levels of additive.

In addition, in the future, Company G may collect and test weekly samples of feedstock and Product to determine the sulfur and mercury content of the samples. If such samples are collected, a rolling six-month average of the laboratory analyses would be computed to determine whether there has been a change of the sulfur or mercury content by more than ten percent.

Agreements

Under the Company K license agreement, Company K granted a license to Company G to use the Process. The term of the Company K license agreement is through the date that the Section 45 tax credit is no longer available for the Facilities' production unless earlier terminated for cause as set forth in the Company K license agreement.

Company G has entered into various agreements with Company J with respect to the installation and operation of the Facilities at a portion of the Energy Center site (Site).

Company G has the right to place the Facilities on the Site pursuant to a license and services agreement. That agreement provides Company G with the rights necessary to place the Facilities at the Site as well as support services, such as utility connections, necessary to operate the Facilities. In addition, the agreement allows taxpayer to operate the Facilities under certain permits and approvals issued to Company J.

Company G has entered into a coal handling and consulting agreement with Company J under which Company J provides certain coal preparation and handling services. In addition, because of Company J's expertise in the coal markets, Company J assists and advises Company G in procuring coal and transportation services under the coal handling and consulting agreement.

Company G has entered into a refined coal supply agreement with Company J under which Company J purchases all of its requirements for coal and coal-based fuel from Company G.

Company G has entered into an operation and maintenance agreement with an affiliate of Company E to operate and maintain the Facilities. In addition, such affiliate has entered into another operation and maintenance agreement with Company L to provide the labor necessary for the operation and maintenance of the Facilities.

Company G entered into a coal feedstock purchase agreement with Company J under which Company G will purchase the coal feedstock for the Facilities from Company J.

Rulings Requested

1. The refined coal produced by using the Process constitutes "refined coal" within the meaning of section 45(c)(7) of the Code, provided that such refined coal is from feedstock coal that is the same rank as the "Tested Coal" and provided further that the

refined coal satisfies the qualified emission reduction test stated in section 45(c)(7)(B) of the Code.

2. Provided that the feedstock coals used to produce refined coal during any determination period are from the same coal source regions and of the same rank as the Tested Coal, all feedstock coal that satisfies that criteria shall be treated as feedstock coal of the same source and rank for purposes of Section 6.04 of Notice 2010-54, 2010-40 I.R.B. 403, regardless of the mine from which such feedstock coal is purchased.

3. Testing by Research Center for qualified emissions reduction as set forth in its test reports satisfies the requirements of Notice 2010-54. Pilot scale testing conducted at Research Center or a similar pilot-scale combustion testing facility under Notice 2010-54 (and subsequent permitted laboratory testing as required for a redetermination described in section 6.04(2)(a) or (b) of Notice 2010-54) to satisfy the qualified emission reduction test of section 45(c)(7)(B) of the Code may be relied upon.

4. Pursuant to section 6.04(2)(b) of Notice 2010-54, the redetermination requirement of section 6.04 of Notice 2010-54 may be satisfied by laboratory analysis establishing that the sulfur and mercury content of both the feedstock coal and the refined coal, on average, do not vary by more than ten percent below the bottom of (nor more than ten percent above the top of) the range of sulfur and mercury content of the feedstock coal and the refined coal used in the most recent determination that meets the requirements of section 6.03 of Notice 2010-54.

5. The results set forth by Research Center or a similar pilot-scale combustion testing facility in a redetermination test report for production may be relied upon after the date of testing even if the report is not received until after the six-month period specified in section 6.04(1)(i) of Notice 2010-54.

6. Provided a Facility was “placed-in-service” prior to January 1, 2012 within the meaning of section 45(d)(8), relocation of a Facility to a different location or replacement of a part of a Facility will not result in a new placed-in-service date for purposes of section 45 provided that the fair market value of the original property is more than 20 percent of the Facility’s total fair market value at the time of relocation or replacement.

LAW AND RATIONALE

Process and testing of refined coal

Section 45(a) of the Code generally provides a credit against federal income tax for the use of renewable or alternative resources to produce electricity or fuel for the generation of steam. Section 45(e)(8) of the Code provides that, in the case of a producer of “refined coal”, the credit available under § 45(a) of the Code for any taxable

year shall be increased by an amount equal to $4.375 per ton of qualified “refined coal” (i) produced by the taxpayer at a “refined coal production facility” during the 10-year period beginning on the date that the facility was originally placed in service, and which is (ii) sold by the taxpayer to an unrelated person during such 10-year period and such taxable year.

For purposes of § 45 of the Code, section 3.01 of Notice 2010-54 provides that the term “refined coal” means a fuel which -- (i) is a liquid, gaseous, or solid fuel (including feedstock coal mixed with an additive or additives) produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock, (ii) is sold by the taxpayer with the reasonable expectation that it will be used for purpose of producing steam, and (iii) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction. Section 3.04 of the Notice provides that the term “qualified emission reduction” means (1) in the case of refined coal produced at a facility placed in service after December 31, 2008, a reduction of at least twenty percent (20%) of the emissions of nitrogen oxide and at least 40% of the emissions of either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003; in the case of production at a facility placed in service before January 1, 2009, a reduction of at least 20 percent of the emissions of NOx and at least 20 percent of the emissions of either SO2 or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

Section 45(d)(8) of the Code generally provides that the term “refined coal production facility” means a facility which is placed in service after October 22, 2004 and before January 1, 2012.

Section 6.01 of Notice 2010-54 generally provides that a qualified emissions reduction does not include any reduction attributable to mining processes or processes that would be treated as mining (as defined in § 613(c)(2), (3), (4)(A), (4)(C), or (4)(I)) if performed by the mine owner or operator. Accordingly, in determining whether a qualified emission reduction has been achieved, the emissions released when burning the refined coal must be compared to the emissions that would be released when burning the feedstock coal. Feedstock coal is the product resulting from processes that are treated as mining and are actually applied by a taxpayer in any part of the taxpayer’s process of producing refined coal from coal.

Section 613(c)(5) of the Code describes treatment processes that are not considered as mining unless they are provided for in § 613(c)(4) or any necessary or incidental to a process provided for in § 613(c)(4). Any cleaning process, such as a

process that uses ash separation, dewatering, scrubbing though a centrifugal pump, spiral concentration, gravity concentration, flotation, application of liquid hydrocarbons or alcohol to the surface of the fuel particles or to the feed slurry provided such cleaning does not change the physical or chemical structure of the coal, and drying to removed free water, provided such drying does not change the physical or chemical identity of the coal, will be considered as mining.

Section 6.03(1) of the Notice provides, in part, that emissions reduction may be determined using continuous emission monitoring system (CEMS) field testing. Section 6.03(1)(a) provides, in part, that CEMS field testing is testing that meets all the following requirements: (i) the boiler used to conduct the test is coal-fired and steam-producing and is of a size and type commonly used in commercial operations. (ii) Emissions are measured using a CEMS. (iii) If EPA has promulgated a performance standard that applies at the time of the test to the pollutant emission being measured, the CEMS must conform to that standard. (iv) emissions for both the feedstock coal and the refined coal are measured at the same operating conditions and over a period of at least 3 hours during which the boiler is operating at a steady state at least 90 percent of full load. (v) a qualified individual verifies the test results in a manner that satisfies the requirement of section 6.03(1)(b).

Section 6.03(2) of the Notice provides that methods other than CEMS field testing may be used to determine the emissions reduction. If a method other than CEMS field testing is used, the Service may require the taxpayer to provide additional proof that the emission reduction has been achieved. The permissible methods include (a) testing using a demonstration pilot-scale combustion furnace if it established that the method accurately measures the emission reduction that would be achieved in a boiler described in section 6.03(a)(a)(i) and a qualified individual verifies the test results in a manner that satisfies the requirements of section 6.03(1)(c)(i), (ii), (v), and (vi) of the Notice; (b) a laboratory analysis of the feedstock coal and the refined coal that complies with a currently applicable EPA or ASTM standard and is permitted under section 6.03(2)(b)(i) or (ii).

Section 6.04(1) of the Notice provides that a taxpayer may establish that a qualified emission reduction determined under section 6.03 applies to production from a facility by a determination or redetermination that is valid at the time the production occurs. A determination or redetermination is valid for the period beginning on the date of the determination or redetermination and ending with the occurrence of the earliest of the following events: (i) the lapse of six months from the date of such determination or redetermination; (ii) a change in the source or rank of feedstock coal that occurs after the date of such determination or redetermination or (iii) a change in the process of producing refined coal from the feedstock coal that occurs after the date of such determination or redetermination.

Section 6.04(2) of the Notice provides that in the case of a redetermination required because of a change in the process of producing refined coal from the feedstock coal, the redetermination required under section 6.04 must use a method that meets the requirements of section 6.03. In any other case, the redetermination requirement may be satisfied by laboratory analysis establishing that – (a) the sulfur (S) or mercury content of the amount of refined coal necessary to produce an amount of useful energy has been reduced by at least 20 percent (40 percent, in the case of facilities placed in service after December 31, 2008) in comparison to the S or mercury content of the amount of feedstock coal necessary to produce the same amount of useful energy, excluding any dilution caused by materials combined or added during the production process; or (b) the S or mercury content of both the feedstock coal and the refined coal do not vary by more than 10 percent from the S and mercury content of the feedstock coal and refined coal used in the most recent determination that meets the requirements of the Notice.

Finally, section 6.05 of the Notice provides that the certification requirement of section 3.01(1)(c) of the Notice is satisfied with respect to fuel for which the refined coal credit is claimed only if the taxpayer attached to its tax return on which the credit is claimed a certification that contains the following: (a) a statement that the fuel will result in a qualified emissions reduction when used in the production of steam; (b) a statement indicating whether CEMS field testing was used to determine the emissions reduction; (3) if CEMS field testing was not used to determine the emissions reduction, a description of the method used; (4) a statement that the emissions reduction was determined or redetermined within the six months preceding the production of the fuel and that there have been no changes in the source or rank of feedstock coal used or in the process of producing refined coal from the feedstock coal since the emissions reduction was determined or was most recently determined; and (5) a declaration signed by the taxpayer in the following form: “Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief, it is true, correct, and complete.”

Addition or improvement to an existing facility

Section 45(d)(8) of the Code provides that a refined coal production facility must be placed in service within certain timeframes. For purposes of the refined coal credit allowable with respect to steel industry fuel, the facility (or any modification to the facility) must be placed in service before January 1, 2012. For purposes of the refined coal credit allowable with respect to refined coal other than steel industry fuel, the facility must be placed in service after October 22, 2004, and before January 1, 2012. Section 3.07 of the Notice provides that the year in which property is placed in service is determined under the principles of § 1.46-3(d) of the regulations; i.e., when the property is placed in a condition or state of readiness and availability for a specifically assigned function. Section 5.02 of the Notice provides that a refined coal production facility will not be treated as placed in service after October 22, 2004, if more than 20 percent of

the facility's total value (the cost of the new property plus the value of the used property) is attributable to property placed in service on or before October 22, 2004. The Notice also states that the IRS will not issue private letter rulings relating to when a refined coal production facility has been placed in service.

Rulings

With respect to the first issue, the Process starts with several chemical additives added to the feedstock coal prior to its combustion in a furnace. The additives provide the chemical structure that result in the reduction of emissions from NOx and mercury during combustion. Section 6.01 of the Notice provides generally that a qualified emission reduction does not include any reduction attributable to mining processes or processes that would be treated as mining, as further defined in the Code, if performed by the mine owner or operator. Section 613(c)(5) describes certain treatment processes that are not considered as mining unless they are provided for in § 613(c)(4) or are necessary or incidental to a process provide for in § 613(c)(4) of the Code. For example, § 6.01(2) of the Notice provides, in part, that any cleaning process such as the application of liquid hydrocarbons or alcohol to the surface of the fuel particle or to the feed slurry, provided such cleaning does not change the physical or chemical structure of the coal, will be considered mining. In the instant case, the Process is not a mining process. Further, section 3.01 of the Notice clarifies § 45(c)(7) of the Code and specifically provides that refined coal includes feedstock coal mixed with an additive or additives. Thus, additive processes which mix certain chemicals or other additives with the coal in order to achieve emission reductions may qualify for the production tax credit for refined coal. Additionally, section 3.03 defines comparable coal as coal that is of the same rank as the feedstock coal and that has an emissions profile comparable to the emissions profile of the feedstock coal. Accordingly, we conclude that the coal produced by using the Process constitutes "refined coal" within the meaning of § 45(c)(7) of the Code, provided that the refined coal (i) is produced from feedstock coal that is the same source or rank as the "Tested Coal" and (ii) satisfies the qualified emission reduction test stated in § 45(c)(7)(B) of the Code .

With respect to the second issue, the emissions profile of the refined coal product is compared to the emissions profile of either the feedstock coal or a comparable coal predominantly available in the market place as of January 1, 2003. Section 3.03 of the Notice provides that a "comparable coal" is defined as coal that is of the same rank as the feedstock coal and that has an emissions profile comparable to the emissions profile of the feedstock coal. Section 6.04 provides that a determination or redetermination of a qualified emissions reduction is valid until the occurrence of the earliest of the following events: (1) six months have passed since the date of such determination or redetermination; (2) a change in the source or rank of feedstock coal that occurs after the date of such determination or redetermination; or (3) a change in the process of producing refined coal that occurs after the date of such determination or redetermination. In the instant case, Research Center has tested various blends of

Location A and Location B coals (ranging from k% location A to c% Location A/d%Location B coals). Accordingly, we conclude that provided that the feedstock coals during any determination period are from the same coal source regions and of the same rank as Tested Coal, all feedstock coal that satisfies that criteria shall be treated as feedstock coal of the same source or rank for purposes of section 6.04 of Notice 2010-54, regardless of the mine from which such feedstock coal is purchased.

With respect to the third and fourth issues, section 6.03(3) of the Notice provides that any permissible testing method provided for in the Notice can be used in emission testing for any pollutant. That is, a taxpayer can use different testing methods for each of NOx, SO2 or mercury, provided the method used for any pollutant is a permissible method. Section 6.04(1) provides that an emission test establishing a "qualified emission reduction" qualifies the refined coal for a six-month period provided there is no change in the process for producing the refined coal or in the source or rank of the feedstock coal. Therefore, a taxpayer must "redetermine" the emission reductions to qualify for the succeeding six-month period using one or more approved methods. Section 6.04(2) provides that in the context of "redetermination" that the redetermination requirement may be satisfied by laboratory analysis establishing either that (i) the sulfur or mercury content of the amount of refined coal necessary to produce an amount of useful energy has been reduced by at least 20% (40%, in the case of facilities placed in service after December 31, 2008) in comparison to the sulfur or mercury content of the amount of useful thermal energy, excluding any dilution used by materials combined or added during the production process; or (ii) the sulfur or mercury content of both the feedstock coal and the refined coal do not vary by more than 10% from the sulfur or mercury content of the feedstock coal and refined coal used in the most recent determination that meets the requirements of the testing methods for emissions reductions in section 6.03 of the Notice.

In the instant case, Company D engaged Research Center to conduct tests at its CTF to determine the emission reductions associated with burning the refined coal product compared to the feedstock. For purposes of qualifying the refined coal produced at the Facilities, Research Center conducted pilot-scale combustion tests at its CTF in its Test Reports on the blend of feedstock coals burned at Energy Center. Because the Facilities were not yet in service, Research Center mixed the coal and additives in a manner consistent with the mixing that would occur at the Facilities. In Test Reports, Research Center conducted tests on feedstock and refined coal product samples collected from and produced by the Facilities.

In Test Reports, the Research Center reported that the test results indicated that the blend of coal and additives achieved the required emissions reductions. The test results in Test Reports indicated that the refined coal samples achieved the required emissions reductions. Based on the foregoing we conclude that (i) testing by Research Center for qualified emission reductions as set forth in its Test Reports satisfies the requirements of Notice 2010-54. Company G may establish a qualified emission

reduction through testing by Research Center at its combustion research facility or similar pilot-scale combustion testing facilities under Notice 2010-54**,** and (ii) pursuant to section 6.04(2) of Notice 2010-54, the redetermination requirement of section 6.04 of Notice 2010-54 may be satisfied by laboratory analysis establishing that the sulfur and mercury content of both the feedstock coal and the refined coal, on average, do not vary by more than ten percent below the bottom of (nor more than ten percent above the top of) the range of the sulfur and mercury content of the feedstock coal and the refined coal used in the most recent determination that meets the requirements of section 6.03 of Notice 2010-54.

With respect to the fifth issue, it is intended that Company G will engage in redetermination testing every six months, or more frequently if required pursuant to Notice 2010-54. However, Research Center is not always able to issue the written report required by section 6.03(2)(a) of Notice 2010-54 within the six month period. Thus, although redetermination testing is completed within the six month period, the report may be received after the six month period. Nonetheless, Research Center advises Company G of the results of the redetermination testing before the six month anniversary of its previous test, even if the detailed written report is not finalized after such six month anniversary. Nevertheless, the delay by the Research Center in issuing its report cannot be indefinite. Accordingly, we conclude that the results set forth by the Research Center in a redetermination test report for production may be relied upon after the date of testing even if the report is not received until after the six month period specified in section 6.04(1)(i) of Notice 2010-54, so long as Company G receives the written report within 90 days from the date of testing. However, the redetermination of qualified emissions reduction must occur during the earliest of the events described in section 6.04 of notice 2010-54 regardless of the time of the actual receipt of Research Center's test report.

With respect to the sixth issue, we understand that a Facility may be relocated to another location in the future. In that case, all of the essential components of the Facility will be relocated and retained. Similarly, during the life of a Facility it may be necessary to replace certain major components. In the event of relocation of a Facility or replacement of a component, there should be no change in the placed in service date of a Facility so long as the test described in § 5.02 of the Notice has been met. Based on the foregoing, we conclude that provided a Facility was "placed in service" prior to January 1, 2012, within the meaning of § 45(d)(8), relocation of a Facility to a different location after December 31, 2011, or replacement of part of a Facility after that date, will not result in a new placed in service date for a Facility for purposes of § 45 provided the fair market value(the cost of the new property plus the value of the used property) of the original property is more that 20 percent of Facility's total fair market value at the time of relocation or replacement.

This ruling expresses no opinion about any issue not specifically addressed in this ruling letter, including (1) whether any person has sold refined coal to an unrelated

person, or (2) when the facility was “placed in service.” In particular, we express or imply no opinion that the Taxpayer has sufficient risks and rewards of the production activity to qualify as the producer of the refined coal. The Service may challenge an attempt to transfer the credit to a taxpayer who does not qualify as a producer, including transfers structured as partnerships, sales or leases that do not also transfer sufficient risks and rewards of the production activity.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives. A copy of this ruling must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

This ruling is directed only to the Taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. We are sending a copy of this letter ruling to the Industry Director.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel (Passthroughs & Special Industries)