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Date:
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LEGEND:

Taxpayer =

Company A =
Company B =
Seller A =
Seller B =
Operating Company A =
Operating Company B =
Operating Company C =
State A =
State B =
State C =
State D =
Licensor =
Utility A =
Utility B =
Power Plant 1 =
Power Plant 2 =
Power Plant 3 =
Center =

CTF =
Year a =
Year b =

Date a =
Date b =
Date c =
Date d =
Additive a =

Additive b =

a % =
b % =
Test Rep 1 =

Test Rep 2 =

Test Rep 3 =

Weight X =
Coal Source Region A =

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.

Taxpayer has represented the facts as follows:

Background

Taxpayer, a State A corporation, owns a diverse group of companies engaged in trading operations and investment in a number of industries. Taxpayer is the common parent of an affiliated group that joins in the filing of a consolidated federal income tax return on a calendar year basis using the accrual method of accounting.

Company A is a State B limited liability company and is a disregarded entity for federal income tax purposes. Company A is wholly owned by Taxpayer, through a

series of other single member limited liability companies that are treated as disregarded entities for federal income tax purposes.

On Date a, Company A acquired from Seller A and Seller B all of the interests in Company B, a State B limited liability company which owned all of the interests in Operating Company A, Operating Company B and Operating Company C. Following this acquisition, Company B and each Operating Company were disregarded entities for federal income tax purposes.

The Facilities

Facility A is owned by Operating Company A and is located at a site adjacent to Power Plant 1. Power Plant 1 is owned by Utility A. Facility B is owned by Operating Company B and is located at a site adjacent to Power Plant 2. Power Plant 2 is owned by Utility B. Facility C is owned by Operating Company C and is located at a site adjacent to Power Plant 3. Power Plant 3 is owned by Utility B. Thus for federal income tax purposes, Taxpayer owns (through Company A and the Operating Companies) Facility A, Facility B and Facility C (the Facilities). Each of Facility A, Facility B, and Facility C was placed in service during Year a (prior to the Taxpayer's acquisition of interests in the Operating Companies). Facility A was originally located and operated at a different site in State D, but was relocated to its present location at a site adjacent to Power Plant 1 prior to Taxpayer's acquisition.

The Technology

The Facilities utilize proprietary technology sublicensed from the Licensor to produce refined coal (the Technology). The Technology involves two chemical additives (Additive a and Additive b) that are mixed with the feedstock coal as it is transported through the Facilities on conveyor belts. Additive a and Additive b are applied at rates determined to be necessary to achieve the required emissions reductions in NOx and mercury when the resulting mixture is burned to produce steam. Test results have shown that when mixed with coal, these additives result in reduced NOx and mercury emissions during combustion, and may also have the benefit of increasing fuel efficiency and reducing boiler maintenance. In the case of Additive a, information provided by Licensor indicates that the additive causes a portion of the NOx to adhere to, or react with, the additive so that it can be captured and is not emitted. In the case of Additive b, information provided by Licensor indicates that the additive reacts with the elemental mercury in the feedstock coal so that it is converted into a chemical species of mercury that can be effectively captured by particulate control devices.

At present, Operating Company A expects that all refined coal at Facility A will be made from subbituminous coal sourced from mines in Coal Source Region A. Similarly, Operating Company C expects that all refined coal at Facility C will be made from subbituminous coal sourced from mines in Coal Source Region A. Operating Company

B expects that all refined coal at Facility B will be made from a blend consisting of approximately a % subbituminous coal sourced from mines in Coal Source Region A and approximately b % State C lignite sourced from a mine nearby to Facility B. Operating Company B also expects to maintain this coal blend through at least all of Year b. However, during periods of unusually significant rain, the lignite coal cannot be delivered from the mine and, accordingly, there may be brief periods during which only subbituminous coal sourced from mines in Coal Source Region A can be delivered. Accordingly, while there may be brief periods during which only subbituminous coal sourced from mines in Coal Source Region A can be delivered to Facility B, on average it is expected that the blend will be approximately b % State C lignite and a % subbituminous coal sourced from mines in Coal Source Region A.

Each Operating Company has entered into long-term contracts to sell all of its production from Facility A to Utility A, all of its production from Facility B to Utility B, and all of its production from Facility C to Utility B.

Testing

For purposes of determining emissions reductions under Section 45, each Operating Company will arrange with the research center of a prominent university (the Center) to conduct tests at its pilot scale combustion test furnace (CTF). The Test Reports issued by the Center and described below state:

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

For purposes of qualifying the refined coal produced at the Facilities, the Center most recently conducted pilot-scale combustion tests at its CTF on Date b for Facility A on coal feedstock sourced from mines in Coal Source Region A, on Date c for Facility B on a blend of feedstock consisting of a feedstock coal blend of a % coal sourced from mines in Coal Source Region A and b % State C lignite, which blend represented the anticipated blend to be used at Facility B, and on Date d for Facility C on coal feedstock sourced from mines in Coal Source Region A.

Each of Test Report 1, Test Report 2, and Test Report 3 explain that combustion gas analysis is provided by continuous emission monitors (CEMs) at two locations: the furnace exhaust, which is used to monitor and maintain a specified excess air level for all test periods, and the outlet of the particulate control device, which is used to assess any air inleakage that may have occurred so that emissions of interest sampled at the back end of the system can be corrected for dilution caused by the inleakage. Power Plants 1 and 2 utilize wet scrubbers for pollution control, but Power Plant 3 does not

have a wet scrubber. Accordingly, for the most recent tests for Operating Company A and Operating Company B, flue gas analyses were obtained downstream from the wet scrubber, which was operated at the same approximate efficiency level as the wet scrubbers at Power Plants 1 and 2; for the most recent test for Operating Company C, flue gas analyses were obtained from the duct at the outlet of the bag house. Separate measurements were taken of oxygen, carbon dioxide, carbon monoxide, sulfur dioxide and NOx. Flue gas mercury measurements were obtained separately by a continuous mercury monitor.

The reports issued by the Center state that the test results indicate that in each case the blend of coal and additives achieved at least the required 20 percent NOx reduction and at least the required 40 percent mercury reduction. Although the Center adjusts its CTF to attempt to replicate the conditions anticipated at the applicable Power Plant, due to the numerous variables that can impact combustion effects in a commercial power station, it is not possible to exactly replicate what will be observed in the commercial setting. Nonetheless, the Test Reports conclude that the Center expects that similar emissions reductions would be achieved at full scale using the additive levels specified in the test reports.

The reports issued by the Center are certified under penalties of perjury confirming: (a) the name, address and telephone number of the lead scientist conducting the tests; (b) that such scientist is a “qualified individual” as described in section 6.03(1)(c) of Notice 2010-54, and (c) the amount of emission reductions were determined in accordance with sections 6.01 and 6.02 of Notice 2010-54.

Each Operating Company intends to arrange for periodic testing at the Center or another similar center qualified to perform testing using a pilot-scale combustion furnace at least once every six months (measured from the date of the tests, regardless of when the report is issued). This periodic testing will be performed on composite samples of the coals typically used to produce refined coal at the applicable power plant, and under conditions chosen by the Center to replicate those at such Power Plant.

The process of collecting feedstock samples will vary among the Facilities. None of the Facilities currently have automatic sampling machinery that can be used for these purposes, so all feedstock samples are expected to be taken manually. At Facility C, samples will be collected at a variety of locations around the coal feedstock stockpiles, with these samples aggregated to obtain the sample size that is requested by the Center (currently about Weight X pounds). At Facility A, for operational and safety reasons, it is preferred to divert some of the feedstock being reclaimed from the stockpile rather than engaging in sample collection over the whole stockpile area. At present, this is expected to be accomplished by diverting a portion of the feedstock from the reclaim conveyors into a separate stockpile area each day for several days, with samples taken from the separated stockpile area being aggregated and sampled to obtain the sample size requested by the Center. At Facility B, where feedstock from two separate coal source areas is blended and there are different feedstock stockpiles

for each source, samples of the blend are collected by a “stop belt” method in which the conveyor belt feeding blended feedstock into the facility is temporarily stopped and cuts are taken across the belt. Operating protocols provide general rules for sealing and labeling of samples, chain of custody procedures, sample preparation and the like. Taxpayer anticipates that it will revisit these methods from time to time based on advice of industry sampling consultants.

At the Center, each sample will be subdivided into two representative samples, one of which will be burned untreated to establish a baseline, and the other of which will be mixed with the liquid and powder compounds used in the Technology and then burned to measure the emission reductions. Based on the results of those test burns, the Center will advise each Operating Company of the application rates to be used for the liquid and powder compounds during the operation of its Facility in order to achieve at least a 40 percent reduction in mercury emissions and at least a 20 percent reduction in NOx emissions. The Center will retain a portion of the sample until it issues its final report for each test.

RULINGS REQUESTED

Based on the foregoing, you have requested that we rule as follows:

1. The material produced using the Technology as described herein constitutes “refined coal” within the meaning of Section 45(c)(7), provided that such refined coal is produced from feedstock coal that is of the same source or rank as the coal described below and provided further that the Refined Coal satisfies the qualified emission reduction test stated in Section 45(c)(7)(B).

2. Provided 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 feedstock 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, regardless of the mine from which such feedstock coal is purchased. For this purpose, if the feedstock used is a blend of coal from two or more coal source regions or ranks, so long as the average percentage of each such coal source region or rank in the blends used to produce refined coal over a period of up to six months since the most recent determination or redetermination test does not vary by more than 5 percentage points up or down (for a total of 10 percentage points) from the percentage of such specified coal source region or rank in the coal tested, all feedstock coal blends used in that period will be treated as feedstock coal of the same source and rank as the tested blend.

3. For purposes of establishing a qualified emission reduction, a test or redetermination test may be relied upon after the date of testing even if the report is not received until up to 90 days after the six-month period specified in

section 6.04(1)(i) of Notice 2010-54, or if the testing was conducted prior to the Taxpayer's acquisition of the facility producing the Refined Coal.

4. For such purposes, the redetermination requirement of section 6.04 of Notice 2010-54 may be satisfied by laboratory analysis (of samples taken and analyzed as described below) establishing that the sulfur and mercury content of both the feedstock coal and the refined coal, on average, do not vary by more than 10% below the bottom (nor by more than 10% above the top) of the range of sulfur content and the range of 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. For such purposes, it is not a change in "process" requiring new testing under section 6.03 of Notice 2010-54 to increase the application rate of chemical additives used in producing the Refined Coal to a higher level than the rate shown to have produced a qualified emission reduction in a determination or redetermination test (or to later resume application at the rate used in such a test).

6. If a Facility was placed in service before January 1, 2012 within the meaning of Section 45(d)(8)(B), a subsequent modification or relocation of the Facility will not result in a new placed-in-service date for the Facility for purposes of Section 45, provided the fair market value of the original (used) property of the modified or relocated Facility is more than 20 percent of the Facility's total value (the cost of the new property plus the value of the used property).

7. Testing by the Center for qualified emission reductions as set forth in its Test Reports satisfies the requirements of Notice 2010-54. Taxpayer may rely on the pilot scale testing conducted at the Center to satisfy the qualified emission reduction test of Section 45(c)(7)(B) of the Code.

8. A change in ownership of the Facilities subsequent to their placed-in-service dates will not affect the placed-in-service dates of the Facilities for purposes of Section 45.

LAW AND RATIONALE

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 the 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, 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 forty percent (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.

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) of the Code 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, including any such processes that 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 are 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 through 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 remove 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(a)(1) 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; and (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 emission reduction. The permissible methods include (a) testing using a demonstration pilot-scale combustion furnace if it establishes that the method accurately measures the emission reduction that would be achieved in a boiler described in Section 6.03(1)(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; and (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) of the Notice.

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 the 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 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 sulfur 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 sulfur or mercury content of both the feedstock coal and the refined coal do not vary by more than 10 percent from the sulfur and mercury content of the feedstock coal and refined coal used in the most recent determination that meets the requirements of the Notice.

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 attaches to its tax return on which the credit is claimed a certification that contains the following: (1) a statement that the fuel will result in a qualified emissions reduction when used in the production of steam; (2) 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 the feedstock coal used in the process of producing refined coal from feedstock coal since the emissions reduction was most recently determined or redetermined; 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.”

Finally, § 45(d)(8) 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 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 twenty percent (20%) 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.

With respect to the first and fifth ruling requests, the Technology starts with two chemical additives being added to the feedstock coal as it is transported through the Facilities on conveyor belts. Section 6.01 of the Notice provides generally that a qualified emissions reduction does not include any reduction attributable to mining processes or processes that would be treated as mining if performed by the mine owner or operator. In the instant case, the process used at the Facilities 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 additives. Thus, additive processes that mix certain chemicals or other additives with the coal in order to achieve emissions reductions may qualify for the refined coal production tax credit. 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 (a) the refined coal produced by using the Technology constitutes a “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 and (b) increasing the amounts of chemical additives to the feedstock coal will not be construed as a change in process requiring additional testing for qualified emissions reductions under Section 6.03 of Notice 2010-54 nor will it be construed as a change in process to later resume application at the rate used in the original test.

With respect to the second ruling request, Taxpayer anticipates that it will conduct a single redetermination test every six months using refined coal produced from the blends described above for each of Facility A, Facility B, and Facility C. Taxpayer will treat the blended coals as comparable coal and not a change in the source or rank of feedstock coal so long as the percentages by weight of each component in the average mix over the period is within 5 percentage points up or down of the percentage of that component in the feedstock coal tested (i.e., within a range of 10 percentage points). Taxpayer anticipates that the average blends of the components of the feedstock coal used at each Facility over a redetermination period will be within 5 percentage points up or down of the percentage (by weight of each component in the mix) of the specific component in the tested coal (i.e., within a range of 10 percentage points).

Thus, provided that the average percentage of each component of coal in the blend used to produce refined coal at a Facility over a period of up to six months since the most recent determination or redetermination test does not vary by more than 5 percentage points above or below the percentage of that component in the feedstock coal tested in the most recent determination test or redetermination test, Taxpayer should not be required to conduct redetermination testing based on a change in the source or rank of the feedstock coal. Accordingly, we conclude that all feedstock coals of Facility A, Facility B, or Facility C that are of the same blends as set forth herein will be treated as coal of the same source or rank of feedstock coal during such six month period so long as the average percentages by weight of each component in the mix is within 5 percentage points up or down of the percentage of that component in the feedstock coal tested (i.e., within a range of 10 percentage points).

With respect to the third ruling request, it is expected that the Taxpayer will engage in testing or redetermination testing every six months or more frequently. However, the Taxpayer may not always receive the written report required by Section 6.03(2)(a) of Notice 2010-54 within the six month period. Thus, although the test or redetermination test is completed within the six month period the report may be received after the six month period. Nonetheless, the Taxpayer expects to be informed of the results of the test on the day of the tests so that it will be able to take in account the results of the test or redetermination test within the six month period. Nevertheless, the delay in issuing and receiving the report cannot be indefinite. Further, allowing the Taxpayer to rely on testing and reports conducted before its acquisition of the Facilities on behalf of the Seller is consistent with the rationale behind Notice 2010-54, which

concludes that once a qualified emissions reduction is established, further testing is not required for six months or until there is a change in feedstock or process. Accordingly, we conclude that (i) the results set forth in a redetermination 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 the Taxpayer receives the written report within 90 days from the date of testing and (ii) the Taxpayer can rely on testing and reports conducted before its acquisition of the Facilities. 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 Center's test report.

With respect to the fourth ruling request, Section 6.04(2) of Notice 2010-54 provides that, where a redetermination is required because of a change in the process of producing refined coal, the redetermination must use one of the general methods for satisfying the emissions reduction requirements listed in Section 6.03 of the Notice. However, in any other case Section 6.04(2) of the Notice provides that the redetermination requirement may be satisfied by laboratory analysis establishing that the sulfur and mercury content of both the feedstock coal and the refined coal do not vary by more than 10 percent from the sulfur and mercury content of the feedstock coal and the refined coal used in the most recent determination (which may be the original CEMS test) that meets the requirements of Notice 2010-54. Accordingly, we conclude that 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 average sulfur and mercury contents of both the feedstock coal and the refined coal, do not vary by more than 10 percent from 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.

With respect to the sixth ruling request, Section 5.02 of Notice 2010-54 provides that a refined coal production facility will not be considered to have been placed in service after October 22, 2004 if more than 20 percent of the total fair market value of the facility (the cost of the new property plus the value of the used property) is attributable to property that was placed in service on or before October 22, 2004. This rule provides a test for determining whether modifications to a facility will result in a new placed in service date. Accordingly, we conclude that if a Facility is "placed-in-service" prior to January 1, 2012 within the meaning of § 45(d)(8)(B) of the Code, a subsequent modification or relocation of such Facility will not result in a new placed-in-service date for such Facility for purposes of Section 45, provided that the fair market value of the original (used) property of such Facility is more than 20 percent of such Facility's total value (the cost of the new property plus the value of the used property) at that time. (As noted above, Facility A was in fact relocated from its original location in State D to its present location at a site adjacent to Power Plant 1.)

With respect to the seventh issue, 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 nitrogen oxide, sulfur dioxide 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. In the instant case, pilot-scale combustion testing will be arranged for, and the Operating Companies at do not currently expect to rely on any continuous emissions monitoring system or other field testing, which is permitted under section 6.03 of the Notice. Specifically, the Center will conduct testing (including redetermination testing) at its CTF to determine the emissions reductions associated with burning the refined coal product compared to the feedstock. For purposes of qualifying the refined coal produced at the Facilities, the Center has conducted pilot-scale combustion tests at its CTF as documented in Test Rep 1, Test Rep 2, and Test Rep 3. In conducting such tests, the Center conducted tests on the feedstock, and then mixed a separate sample of the feedstock with the additives so that it could conduct tests on the refined coal product. In each of its reports, the Center reported that the test results indicated that the blend of coal and additives achieved the required emissions reductions. Based on the foregoing, we conclude that testing by the Center for qualified emissions reductions as set forth in its test reports (including interim reports) satisfies the requirements of Notice 2010-54. Qualified emissions reduction through testing by the Center at its combustion research facility or similar pilot-scale combustion testing facilities under Notice 2010-54 may be relied upon.

With respect to the eighth ruling request, Section 45(d)(8) provides that a refined coal facility must be placed in service within certain timeframes. Section 3.07 of Notice 2010-54 provides that the year in which property is placed in service is determined under the principles of Treasury Regulation § 1.46-3(d); i.e., when the property is placed in a condition or state of readiness and availability for a specifically assigned function. The placed-in-service language in Section 45(d)(8) focuses on the facility, and does not, by its terms, require the facility to have been placed in service by the entity that owns and operates the facility (and claims the credit for such production) at a later date. The change in ownership of the Facilities subsequent to their placed-in-service dates will not affect the placed-in-service date of the Facilities for purposes of Section 45.

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 Facilities were “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)

cc: