Internal Revenue Service

Number: **200546016**
Release Date: 11/18/2005
Index Number: 468A.04-02

Department of the Treasury
Washington, DC 20224

Person To Contact:
ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B06 – PLR-122172-05
Date:
August 11, 2005

Legend:

Parent =

Company =

Holding Company =

Generation =

Consolidation =

Delivery =

Power =

Nuclear =

Plant A =

Plant B =

Plant C =

Commission A =

Commission B =

Commission C =

Commission D =

a =

b =

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, to Parent and Company and their qualified nuclear decommissioning funds, of the merger of Company into Parent and the subsequent contribution of interests in the Units in the context of a reorganization.

Facts:

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

Taxpayer, a registered public utility holding company, generates power (through its subsidiary Generation) and delivers power (through its subsidiary Delivery). Holding Company is a single member limited liability company (LLC). Taxpayer owns the entire membership interest of Holding Company. Holding Company has elected to be treated as a corporation for federal income tax purposes. Generation is a single member LLC, the entire interest in which is owned by Holding Company.

Consolidation is a single member LLC, the entire membership of which is owned by Generation. Consolidation is treated as a disregarded entity and a division of Holding Company. Generation maintains an ownership interest of percent, as a tenant in common, in Plant A (consisting of b units), and a percent interest, as a tenant in common, in Plant B (consisting of b units). Consolidation maintains separate Qualified Nuclear Decommissioning Trusts (QDTs) for each unit in Plants A and B for purposes of decommissioning these units. Holding Company is considered, for federal tax purposes, as the owner of the interests in Plants A and B, as well as in the associated QDTs.

Company is a public utility holding company that, through various subsidiaries, owns and operates generation, transmission, and distribution facilities. Power is a single member LLC that is treated as a disregarded entity, the entire membership interest of which is owned by Company. Nuclear is a single member LLC that is treated as a disregarded entity, the entire membership of which is owned by Power. Power and Nuclear are treated as divisions of Company for federal income tax purposes. Nuclear maintains, as a tenant in common, ownership interests of percent in Plant A (consisting of b units), percent interest in Plant B (consisting of b units), and percent interest in Plant C. Nuclear maintains separate QDTs for each units in Plants A and B as well as a QDT for Plant C, for purposes of decommissioning the units.

On a, Parent and Company executed the merger documents, pursuant to which Company will merge with and into Parent. The merger will take place after necessary regulatory approval is obtained. After the merger, Company will no longer exist, and Parent will own the entire membership interest of Power. Power will own all of the membership interest in Nuclear. Because Power and Nuclear are disregarded entities, immediately after the merger, Parent will own percent in Plant A (consisting of b units), percent interest in Plant B (consisting of b units), and percent interest in Plant C, as well as the concomitant obligation to decommission those units and the QDTs established for that purpose. This transaction is referred to below as the Merger.

The day after the Merger closes, Nuclear will merge with and into Power. Parent will then transfer all of the membership interest in Power to Holding Company in exchange for additional membership interests in Holding Company. This transaction is referred to as the Contribution. Following the Merger and the Contribution, Holding Company will own percent of Plant A, Plant B, and Plant C. Holding Company will combine the QDTs that it had previously maintained for each unit with those previously maintained by Nuclear so that there will be a single QDT for each unit of Plant A, a single QDT for each unit of Plant B, and a QDT for Unit C.

Parent and Company have requested, but have not yet received, approvals from various entities including Commission B and the Nuclear Regulatory Commission relating to both the Merger and the Contribution.

The taxpayer has requested the following rulings:

Requested Ruling #1: The transfer from Company to Parent of Company's QDTs is a disposition that is treated as satisfying the requirements of § 1.468A-6(b) pursuant to the Service's exercise of discretion under § 1.468A-6(g)(1) and thus, after the Merger, each of the QDTs transferred by Company to Parent will be treated as a QDT that satisfies the requirements of § 468A and the regulations thereunder.

Requested Ruling #2: Neither Parent, Company, nor the QDTs that have been transferred in the Merger will recognize any gain or loss or take any income or

deduction into account, as a result of the transfer of the QDTs from Company to Parent.

Requested Ruling #3: The Contribution of the transferred QDTs to Holding Company and the combination of the contributed QDTs with the existing QDTs in Holding Company are treated as dispositions that satisfy the requirements of § 1.468A-6(b) pursuant to the Service's exercise of discretion under § 1.468A-6(g)(1) and thus, immediately after the Contribution, each of the QDTs with respect to the units owned by Holding Company will be treated as a QDT that satisfies the requirements of § 468A and the regulations thereunder.

Requested Ruling #4: Neither Parent, Holding Company, nor the QDTs that have been transferred in the Contribution will recognize any gain or loss or take any income or deduction into account, as a result of the Contribution of the QDTs to Holding Company and the combination of the contributed QDTs with the existing QDTs in Holding Company.

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

Law and Analysis:

Section 1.468A-5(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-5(a)(1)(iii) provides that an electing taxpayer can establish and maintain only one qualified nuclear decommissioning fund for each nuclear power plant. If a nuclear power plant is subject to the ratemaking jurisdiction of two or more public utility commissions and any such public utility commission requires a separate fund to be maintained for the benefit of ratepayers whose rates are established or approved by the public utility commission, the separate funds maintained for such plant (whether or not established and maintained pursuant to a single trust agreement) shall be considered a single nuclear decommissioning fund.

Section 1.468A-6 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. Specifically, section 1.468A-6(b) provides that section 1.468A-6 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;

(iii) Either a proportionate amount (which could include all) of the assets of the transferor's qualified nuclear decommissioning fund is transferred to a qualified nuclear decommissioning fund of the transferee, or the transferor's entire qualified nuclear decommissioning fund is transferred to the transferee, provided in the latter case (or if the transferee receives all of the assets in the transferor's qualified nuclear decommissioning fund, but not the transferor's qualified nuclear decommissioning fund) that the transferee acquires the transferor's entire qualifying interest in the plant; and

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

Section 1.468A-6(c) provides that a disposition that satisfies the requirements of section 1.468A-6(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-6(g), the Service may treat any disposition of an interest in a nuclear power plant occurring after December 27, 1994, 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 Taxpayer and expressly conditioned on Taxpayer's representation that Generation and Nuclear are disregarded entities for federal tax purposes, we reach the following conclusions:

The transfer of the qualified nuclear decommissioning funds from Company to Parent, the Contribution of those QDTs to Holding Company, and the combination of the QDTs contributed to Holding Company with those already established by Holding Company with respect to the units qualify as dispositions under the general provisions of section 1.468A-6. Accordingly, pursuant to § 1.468A-6(c)(1) and § 1.468A-6(c)(2), Parent, Company, Holding Company, and the qualified nuclear decommissioning funds will not recognize any gain or loss or otherwise take any income or deduction into account by reason of the transfer (in the Merger or in the Contribution) of the interests in the qualified nuclear decommissioning trust funds. Further, pursuant to § 1.468A-6(c)(3), after the Merger and Contribution, Holding Company's qualified nuclear decommissioning funds will have a basis in the assets held equal to the basis of such assets in the qualified nuclear decommissioning funds immediately prior to the transfer of the interests in the qualified nuclear decommissioning funds.

While it owns interests in the Plant through its divisions or otherwise, Holding Company 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 addition, no opinion is expressed or implied concerning whether Generation or Nuclear are properly disregarded for tax purposes and treated as divisions of Holding Company.

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: