Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

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May 18, 2000

Third Party Contacts
July 1999-May 2000
Public Interest Group

Legend:

Taxpayer/Buyer =

Partner 1 =

Partner 2 =

Parent =

Seller =

Commission A =

Commission B =

District =

Trustee =

a =

b =

c =

d =

Plant =

:

This letter responds to your request, dated August 30, 1999, that we rule on certain tax consequences of the sale of the Plant from Seller to Taxpayer/Buyer. As set forth below, you have requested rulings regarding the tax consequences under section 468A of the Internal Revenue Code to the Seller's qualified nuclear decommissioning fund as well as rulings regarding the proper realization and recognition of gain and loss on the sale of the Plant and the proper allocation of basis.

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

The Taxpayer is a limited liability company, owned by Partner 1 and Partner 2, established to acquire and operate nuclear power plants. The Taxpayer files its partnership return on a calendar year basis using the accrual method of accounting. The Taxpayer is under the audit jurisdiction of the District.

Seller is a wholly owned subsidiary of the Parent. Seller owns a percent of the Plant. Seller is under the jurisdiction of Commissions A and B.

On c, the Buyer entered into an agreement with the Seller to purchase the Plant. The Buyer will pay d and will assume all decommissioning liabilities associated with the Plant. The Seller will transfer to the Buyer all of the assets of the Plant including the power plant, nuclear fuel, real property, machinery, equipment, licenses, certain intangible property, and all of the assets in the qualified and nonqualified decommissioning funds maintained by the Seller. The assets of the Seller' qualified and nonqualified decommissioning funds will be transferred to qualified and nonqualified funds established by the Buyer.

As of the closing date, the aggregate value of the combined qualified and nonqualified funds is required to be b. The Buyer does not plan to make future contributions to either the qualified or nonqualified fund unless such contributions in the future will be those with respect to which the Buyer is allowed a deduction under section 468A. At the conclusion of decommissioning, any assets remaining in these funds will revert to the Buyer.

Requested Ruling #1: Pursuant to section 1.468A-6 of the Income Tax Regulations, the Buyer will not recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of the assets of the qualified fund of the Seller to the qualified fund of the Buyer at closing, and the Buyer's qualified fund will have a carryover basis in the assets received from the qualified fund of the Seller.

Requested Ruling #2: The qualified nuclear decommissioning fund established by the Buyer to hold the assets transferred from the qualified funds of the Seller will be treated as a qualified fund satisfying the requirements of section 468A.

Section 468A(a) provides that a taxpayer may elect to deduct payments made to a nuclear decommissioning reserve fund (the qualified fund). Section 468A(b) limits the annual deduction of the electing taxpayer to the lesser of the ruling amount or the amount of decommissioning costs included in the electing taxpayer's cost of service for ratemaking purposes for the taxable year.

Section 468A(d) provides that the ruling amount means the amount determined by the Service to be necessary to (A) fund that portion of the nuclear decommissioning cost with respect to the nuclear power plant that bears the same ratio to the total nuclear decommissioning costs with respect to such nuclear power plant as the period for which the fund is in effect bears to the estimated useful life of the nuclear power plant, and (B) prevent any excessive funding of such costs or the funding of such costs at a rate more rapid than level funding.

Section 468A(e)(2) provides that the rate of tax on the income of a qualified fund is 20 percent. Section 468A(4) provides, in pertinent part, that the assets in a qualified fund shall be used exclusively for satisfying the liability of any taxpayer contributing to the qualified fund.

Section 1.468A-1(b)(1) of the Federal Income Tax Regulations provides that an eligible taxpayer is a taxpayer that possesses a qualifying interest in a nuclear power plant. Section 1.468A-1(b)(2) provides that a qualifying interest is a direct ownership interest or a leasehold interest meeting certain additional requirements. Section 1.468A-1(b)(4) provides, in part, that a nuclear power plant is any nuclear power reactor that is used predominantly in the trade or business of the furnishing or sale of electric energy, if the rates for such furnishing or sale, have been established or approved by a public utility commission.

Section 1.468A-5(a) sets out the qualification requirements for nuclear decommissioning funds. It provides, in part, that a qualified fund must be established and maintained pursuant to an arrangement that qualifies as a trust under state law. An electing taxpayer can establish and maintain only one qualified fund for each nuclear power plant. Section 1.468A-5(c)(1)(i) provides that if, at any time during the taxable year, a nuclear decommissioning fund does not satisfy the requirements of section 1.468A-5(a) the Service may disqualify all or a portion of the fund as of the date that the fund does not satisfy the requirements. Section 1.468A-5(c)(3) provides that if a qualified fund is disqualified the fair market value (with certain adjustments) of the assets in the fund is deemed to be distributed to the electing taxpayer and included in that taxpayer's gross income for the taxable year.

Section 1.468A-6 generally provides rules for the transfer of an interest in a nuclear power plant (and transfer of the qualified fund) where after the transfer the transferee is an eligible taxpayer. 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.

Under the specific facts herein, the Service will exercise its discretion to treat this sale, under section 1.468A-6(g), as a disposition qualifying under the general provisions of section 1.468A-6. This exercise of discretion is specifically based on the continued general supervision of the qualified fund by the Nuclear Regulatory Agency and the Federal Energy Regulatory Commission. This exercise of discretion, however, applies to the provisions of 1.468-6 except those outlined in 1.468A-6(e) with respect to the calculation of a schedule of ruling amounts subsequent to a sale. Thus, under section 1.468A-6 the qualified nuclear decommissioning fund of the Seller will not be disqualified upon the sale when the assets are transferred to the Buyer's qualified fund and that fund, holding the transferred qualified assets will be treated as a qualified fund of the Buyer.

Section 1.468A-6(c)(2) provides that neither a transferee nor its fund will recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of the assets from a transferor's qualified fund to a transferee's qualified fund. Thus, the Buyer will not recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of the Seller's qualified fund assets to the Buyer's qualified fund.

Finally, section 1.468A-6(c)(3) provides that transfers of assets of a qualified fund to which section 1.468A-6 applies do not affect basis. Accordingly, under section 1.468A-6(c)(3), the Buyer's qualified fund will have a basis in its assets that is the same as the basis of those assets in the qualified fund of the Seller immediately before the sale. Thus, the Buyer's qualified fund will, after the sale, have a carryover basis in the assets after the sale.

Requested Ruling #3: In the taxable year of closing, the Buyer will not recognize any gain or otherwise take any income into account by reason of the transfer of the assets of the Seller's nonqualified decommissioning fund to the Buyer's nonqualified fund.

Generally, a taxpayer does not realize gross income upon its purchase of business assets, even where those assets include cash or marketable securities and, in connection with the purchase, the taxpayer assumes liabilities of the Seller. See Commissioner v. Oxford Paper, 194 F.2d 190 (2d Cir. 1952); Rev. Rul. 55-675, 1955-2 C.B. 567. In this case, Buyer cannot acquire the Plant without assuming the decommissioning liability, which is inextricably associated with ownership and operation of the Plant, and there is no indication that the transaction is other than a bona fide purchase of the business and its associated assets and liabilities. The exception to the general rule set forth in Rev. Rul. 71-450, 1971-2 C.B. 78, does not apply. In Rev. Rul. 71-450, unlike the present situation, the purchaser agreed to assume the prepaid subscription liability in return for a separate cash payment, and the liability was not reflected in the sales price of the business.

Accordingly, Taxpayer will not realize income from its acquisition of the Plant and Seller's interests in the assets in the non-qualified fund except that, if the amount of Class I assets received by Taxpayer exceeds the consideration Taxpayer provided to the Seller, Taxpayer will immediately realize ordinary income in an amount equal to such excess. See sections 1.338-6T(b)(1), 1.1060-1T(c)(2). When, under general principles of tax law, Taxpayer is permitted to take additional consideration into account (e.g., when it satisfies the economic performance requirement with respect to the decommissioning liability assumed), Taxpayer will be entitled to a current deduction (and no capitalization) of an amount equal to the amount reported as ordinary income.

Requested Ruling #4: The Buyer's nonqualified fund shall be considered a grantor trust under section 671 and the Buyer shall be treated as the grantor of such trust.

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

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

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

Because Buyer is treated as purchasing the assets of Seller's nonqualified fund for federal income tax purposes, Buyer is treated as contributing those assets as grantor to the Buyer's nonqualified fund. Under the terms of the Nuclear Decommissioning Master Trust Agreement between Buyer and the trustee, all income, as well as principal of the Buyer's nonqualified fund, is held to satisfy Buyer's legal obligation to decommission the Plant and upon completion of the decommissioning any remaining assets will be distributed to Buyer. Accordingly, Buyer is treated as the owner of the entire Buyer's nonqualified fund under section 677 and section 1.677(a)-1(d). Buyer shall include in computing its taxable income and credits all items of income, deduction, and credits against tax of the Buyer's nonqualified fund to the extent that such items would be taken into account in computing taxable income or credits against the tax of the Buyer.

Requested Ruling #5: At closing, Buyer will have a tax basis in the purchased assets

(excluding the qualified fund) equal to the sum of the purchase price and the assumed liabilities and obligations that will be taken into account as liabilities for federal income tax purposes.

Section 1012 provides in part that the basis of property shall be the cost of such property. Buyer claims that its cost of acquiring the Seller's interests in the Plant and the related assets (including the decommissioning funds) includes the amount of the assumed decommissioning liability. Buyer cites Crane v. Commissioner, 331 U.S. 1 (1947), and Commissioner v. Oxford Paper Co., 194 F.2d 190 (1952), as support for the proposition that for purposes of determining basis, the cost of property generally includes assumed liabilities to which the acquired property is subject to the extent such liabilities can be accurately valued and are not contingent at the time of purchase. Buyer contends that since it will pay cash and assume the liabilities and obligations of the Seller, which includes the decommissioning liabilities in connection with the acquisition of the purchased assets, its total cost of the purchased assets (excluding the qualified fund) will equal the cash paid plus the assumed liabilities and obligations. Consequently, Buyer claims its tax basis under section 1012 equals the sum of the cash paid and the amount of the assumed liabilities and obligations. The Service, however, disagrees with including the amount of the assumed decommissioning liability in the Buyer's cost basis as of the closing.

The Buyer's argument fails to recognize that the assumed decommissioning liability cannot be treated as incurred for any federal income tax purpose -- including basis -- until economic performance occurs with respect to that liability. The legislative history underlying the enactment of section 461(h) makes it clear that Congress intended to exclude an item from being taken into account for tax purposes until economic performance occurs. This treatment applies to capital and well as non-capital transactions. H.R. Rep. No. 432, Pt. 2, 98th Cong., 2d Sess., 1252,1255 (1984); S. Prt. No. 169, Vol. 1, 98th Cong., 2d Sess. 266-267 (1984). Despite criticism from some commentators that the Service lacks authority to apply the economic performance rules broadly enough to include the calculation of basis and cost of goods sold, the Service explicitly stated in the preamble to the final regulations implementing section 461(h) that the Service and Treasury believe the intended scope of the statutory provision is indeed broad enough to apply in this manner. Preamble to T.D. 8408, 57 Fed. Reg. 12411 (Apr. 10, 1992) [1992-1 C.B. 155, 156].

Consistent with this position, the Service amended the regulations under section 446 to clarify that a liability is incurred, and generally is taken into account for federal income tax purposes, in the taxable year in which the all events test is satisfied and economic performance has occurred with respect to the item. Section 1.446-1(c)(1)(ii)(A) of the Income Tax Regulations. The regulations further clarify that applicable provisions , the regulations, and other guidance published by the Secretary prescribe the manner in which a liability that has been incurred is taken into account, and specifically cite to the capitalization provisions of section 263 as an example of a Code provision subordinate to the economic performance requirement. Specifically, the

regulations state, “For example, an amount that a taxpayer expends or will expend for capital improvements to property must be incurred before the taxpayer may take the amount into account in computing its basis in the property.” Section 1.446-1(c)(1)(ii)(B).

Thus, critical to determining whether the Buyer is entitled to treat the future decommissioning liability as a component of its cost basis in the purchased assets at the time of the closing is deciding whether the liability will be incurred for tax purposes as of the closing. It will not. Economic performance does not occur with respect to a service liability such as the decommissioning obligation until and to the extent that costs are incurred in satisfaction of that liability. Section 1.461-4(d)(4). The Buyer states that the all events test will not be satisfied with respect to the decommissioning liability because, among other possible reasons, decommissioning is a liability for which economic performance occurs as decommissioning is undertaken. Because the Buyer will not have performed any services relating to the decommissioning liability at the time of the Plant’s purchase, economic performance will not have occurred, and the liability will not have been incurred at that time for any purpose under the Code, including the cost basis provisions of section 1012.

Accordingly, at the time of closing, the Buyer will have a cost basis in the purchased assets equal to the cash paid to the Seller, as well as any liabilities that are otherwise incurred for federal income tax purposes. The Buyer will not be entitled to treat as a component of its cost basis at the time of the closing any amount attributable to the future decommissioning liability. The Buyer’s cost basis in the purchased assets, including all assets held in the nonqualified decommissioning funds, must be allocated among all such assets in accordance with the residual method provided in section 1060 and sections 1.1060-1T(c), 1.338-6T.

Requested Ruling #6: For purposes of determining Buyer’s tax basis in any specific asset included in the purchased assets (determined immediately after closing), Buyer’s total basis will be allocated among the purchased assets (excluding the qualified fund) pursuant to the residual method required by section 1060 and the regulations thereunder.

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

Section 1060(c) defines the term “applicable asset acquisition” as the transfer of assets constituting a trade or business if the acquirer’s basis is determined wholly by reference to the consideration paid for such assets.

Section 1.1060-1T(c)(1) defines a purchaser's consideration as the amount, in the aggregate, of its cost of purchasing the assets in the applicable asset acquisition that is properly taken into account in basis. Section 1060 provides no independent basis for determining a taxpayer's cost of acquired assets; cost is determined solely under generally applicable rules of tax accounting.

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

Consideration is first reduced by the amount of Class I assets received. The remaining consideration is then allocated to the Class II assets (pro rata, to the extent of their fair market value), then to the Class III assets (pro rata, to the extent of their fair market value), then to the Class IV assets (pro rata, to the extent of their fair market value), then to the Class V assets (pro rata to the extent of their fair market value), then to the Class VI assets (pro rata to the extent of their fair market value), and, finally, any remaining consideration is allocated among the Class VII assets. Sections 1.1060-1T(c)(2), 1.338-6T(b)(1), and 1.338-6T(b)(2).

The following example illustrates the operation of §1060: On Date1, an applicable asset acquisition is made. The assets acquired consist of Class I assets in the amount of $50, Class II assets with a fair market value of $350, Class III assets with a fair market value of $100, Class IV assets with a fair market value of $150, and Class V assets with a fair market value of $100, there are no Class VI or VII assets. The consideration consists of $150 cash and an assumed liability for which economic performance has not occurred. On Date1, the purchaser has provided $150 of consideration that may be allocated as basis; it will be first reduced by $50 (the amount of Class I assets); the remaining $100 will be allocated to Class II assets (pro rata according to fair market value); nothing is allocated to Class III or below. On Date2, economic performance occurs with respect to the liability to the extent of $300; at that time, the purchaser has an additional $300 of basis that may be taken into account. Of that amount, $250 is allocated to Class II assets (which will then have been allocated their full $350 fair market value--as determined on the acquisition date), and the remaining $50 is allocated to the Class III assets (pro rata according to fair market value--as determined on the acquisition date). On Date3, economic performance

occurs to the extent of an additional $400, which is then taken into account as basis. Of that amount, $50 will be allocated to the Class III assets (which will then have been allocated their full $100 fair market value--as determined on the acquisition date), $150 will be allocated to the Class IV assets (which will then have been allocated their full $150 fair market value–as determined on the acquisition date), $100 will be allocated to the Class V assets (which will then have been allocated their full $100 fair market value–as determined on the acquisition date), and the remaining $100 will be allocated to the Class VII (goodwill). The last amount is allocated to goodwill even though goodwill was not identified as a separate asset having value on Date1. If, on Date3, instead of an addition to purchaser's consideration, there is a $100 decrease in consideration, the consideration previously allocated to the Class III assets would be reduced to zero and the consideration previously allocated to the Class II assets would be reduced by the remaining $50 (pro rata according to fair market value).

With respect to the qualified fund, the Federal tax treatment of the transaction is determined exclusively under § 468A and the regulations thereunder. The qualified fund is, therefore, not addressed in this ruling.

With respect to the Plant, equipment, operating assets and nonqualified fund assets, however, these assets comprise a trade or business in Seller's hands and the basis Buyer takes in those assets will be determined wholly by reference to Buyer's consideration. Thus, Seller's transfer of Plant, equipment, operating assets and nonqualified fund assets to Buyer in exchange for cash and the assumption of the decommissioning liability (except to the extent funded by the qualified fund) is an applicable asset acquisition as defined in § 1060(c). As such, its Federal tax treatment is determined under § 1060 and the regulations thereunder.

Accordingly, we rule that, on the acquisition date, Buyer's basis in the assets acquired must be determined by allocating its cost (i.e., the consideration provided by Buyer on the acquisition date, which includes the cash and the issue price of its notes, but not the assumption of the decommissioning liability) among the acquired assets in accordance with the provisions of § 1060 and the regulations thereunder. Specifically, Buyer will first reduce its consideration by the amount of the Class I assets it receives in the transaction (including any Class I assets held in the nonqualified fund); to the extent the Class I assets received exceed the consideration Buyer provides, Buyer will recognize income. To the extent Buyer's consideration exceeds the Class I assets it receives, such excess will be allocated to the Class II assets, pro rata according to the fair market value of those assets, up to their total fair market value. Because the combined value of the Class I and II assets will exceed Buyer's consideration on the acquisition date, the total amount of consideration to be allocated to the Class II assets will be less than their fair market value and no consideration will be allocated to assets in Classes III, IV, V, VI, or VII. When and to the extent additional amounts are paid or incurred for the assets acquired in the applicable assets acquisition (e.g., when and to the extent the nonqualified fund pays or incurs decommissioning expenses), such amounts will be taken into account at that time as increases to Buyer's consideration

and allocated in the same manner and subject to the same conditions as though they were paid or incurred on the acquisition date. Sections 1.1060-1T(a)(1), 1.1060-1T(c)(2), 1.338-6T, and 1.338-7T.

Requested Ruling #7: Nuclear decommissioning expenses paid or incurred by the Buyer will be currently deductible under section 162 and any net operating loss attributable to nuclear decommissioning expenses paid or incurred by the Buyer will qualify under section 172(f)(3).

With respect to the Buyer's ruling request #7, we have determined that the question of whether any particular nuclear decommissioning expenses will be currently deductible under section 162 when paid or incurred is too hypothetical and too far in the future to permit the Service to issue a blanket ruling at this time. For instance, it is impossible for the Service to issue a ruling that all such expenses will be currently deductible under section 162 when the costs attributable to any specific expenditure may, in fact, be more properly capitalized and recoverable through depreciation under sections 263 and 167, respectively. Accordingly, we cannot rule on this request. Moreover, because we are unable to rule on the section 162 issue, we also are precluded from ruling on the section 172(f)(3) issue since the two are inextricably related.

However, section 165(a) provides that there shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Section 1.165-1(d)(1) provides that a loss under section 165 shall be allowed in the taxable year in which the loss occurs, as evidenced by closed and completed transactions and as fixed by identifiable events occurring in that year.

Section 1.165-2(c) provides for the allowance under section 165(a) of losses arising from the permanent withdrawal of depreciable property from use in the trade or business or in the production of income. See section 1.167(a)-8.

Section 1.167(a)-8(a)(4) provides that in order to qualify for the recognition of loss from physical abandonment, the intent of the taxpayer must be irrevocably to discard the asset so that it will neither be used again by him nor retrieved by him for sale, exchange or other disposition.

Legal restrictions upon the physical disposition of property such as a nuclear plant will not themselves preclude a finding of abandonment if all other facts and circumstances demonstrate an intention to irrevocably retire property from use and the requisite overt acts related to abandonment have occurred. The acts necessary to evidence the intent to abandon property need only be appropriate to the particular circumstances. A nuclear power plant is a heavily regulated asset, and one which a taxpayer cannot simply walk away from or dismantle.

Accordingly, if the Buyer takes actions consistent with abandonment and irrevocably commits to decommission the nuclear power plant, then the Buyer will be entitled to an abandonment loss deduction under section 165 to the extent the loss is not compensated for by insurance or otherwise. The proper taxable year for the abandonment loss will be determined by all the relevant facts and circumstances, including the regulations applicable to plant operation and the Buyer's actions during that year.

Accordingly, to summarize the conclusions set forth above, we reach the following conclusions in response to the Taxpayers' requested rulings:

1. The Buyer will not recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of the assets of the qualified funds of the Seller to the qualified fund of the Buyer at closing, and the Buyer's qualified fund will have a carryover basis in the assets received from the qualified funds of the Seller.

2. The qualified nuclear decommissioning fund established by the Buyer to hold the assets transferred from the qualified fund of the Seller will be treated as a qualified fund satisfying the requirements of section 468A.

3. The Buyer will not recognize any gain or otherwise take any income into account by reason of the transfer at the closing of the assets of the Seller's nonqualified trust funds to the Buyer's nonqualified trust fund except to the extent the Class I assets (as defined in section 1.338-6T(b)(1)) it receives exceed the consideration provided by the Buyer.

4. Buyer is treated as the owner of the entire nonqualified fund under section 677 and section 1.677(a)-1(d). Buyer shall include in computing its taxable income and credits all items of income, deduction, and credits against tax of the Buyer's nonqualified fund to the extent that such items would be taken into account in computing taxable income or credits against the tax of the Buyer.

5. At the time of closing, the Buyer will have a cost basis in the purchased assets equal to the cash paid to the Seller, as well as any liabilities that are otherwise incurred for federal income tax purposes. The Buyer will not be entitled to treat as a component of its cost basis at the time of the closing any amount attributable to the future decommissioning liability. The Buyer's cost basis in the purchased assets, including all assets held in the decommissioning funds, must be allocated among all such assets in accordance with the residual method provided in section 1060 and the regulations thereunder.

6. Buyer's basis in the assets acquired must be determined by allocating its cost (i.e., the consideration provided by Buyer on the acquisition date, which includes the cash and the issue price of its notes, but not the assumption of the decommissioning liability) among the acquired assets in accordance with the provisions of section 1060

and the regulations thereunder. Specifically, Buyer will first reduce its consideration by the amount of the Class I assets it receives in the transaction (including any Class I assets held in the nonqualified fund); to the extent the Class I assets received exceed the consideration Buyer provides, Buyer will recognize income. To the extent Buyer's consideration exceeds the Class I assets it receives, such excess will be allocated to the Class II assets, pro rata according to the fair market value of those assets, up to their total fair market value. Because the combined value of the Class I and II assets will exceed Buyer's consideration on the acquisition date, the total amount of consideration to be allocated to the Class II assets will be less than their fair market value and no consideration will be allocated to assets in Classes III, IV, V, VI or VII. When and to the extent additional amounts are paid or incurred for the assets acquired in the applicable assets acquisition (e.g., when and to the extent the nonqualified fund pays or incurs decommissioning expenses), such amounts will be taken into account as increases to Buyer's consideration and allocated in the same manner and subject to the same conditions as though they were paid or incurred on the acquisition date. Sections 1.1060-1T(a)(1), 1.1060-1T(c)(2), 1.338-6T, 1.338-7T.

7. We decline to rule on whether nuclear decommissioning expenses paid or incurred by the Buyer will be currently deductible under section 162 and whether any net operating loss attributable to nuclear decommissioning expenses paid or incurred by the Buyer will qualify under section 172(f)(3). However, if the taxpayer takes actions consistent with abandonment and irrevocably commits to decommission the nuclear power plant, then the taxpayer will be entitled to an abandonment loss deduction under section 165 to the extent the loss is not compensated for by insurance or otherwise. The proper taxable year for the abandonment loss will be determined by all the relevant facts and circumstances, including the regulations applicable to plant operation and the taxpayer's actions during that year.

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 powers of attorney, we are sending a copy of this ruling letter to your authorized representatives. We are also sending a copy of this letter to the Director of the District.

Sincerely,
CHARLES B. RAMSEY, Chief, Branch 6
Office of Assistant Chief Counsel
Passthroughs and Special Industries