Internal Revenue Service

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Department of the Treasury

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Washington, DC 20224

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Date: OCT 29 1999

Third Party Contacts
July-November, 1999
Public Interest Group
October 1999
Congressional Contact

Legend:

Taxpayer/Buyer =

Partner 1 =

Partner 2 =

Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Commission A =

Commission B =

PLR-122284-98

Commission C =

District =

a =

b =

c =

d =

e =

f =

Plant =

This letter responds to your request, dated December 14, 1998, and supplemental information, that we rule on certain tax consequences of the sale of the Plant from Parent and Subsidiaries ("Sellers") to 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.

Subsidiaries 1, 2, and 3, are wholly owned by the Parent. With respect to its retail customers, Subsidiary 1 is under the jurisdiction of Commission B and Subsidiaries 2 and 3 are under the jurisdiction of Commission A. With respect to wholesale customers, all the Subsidiaries are under the jurisdiction of Commission C. Subsidiary 2 owns a b percent interest in the Plant. Subsidiaries 1 and 3 each own a a interest in the Plant.

On c, the Buyer entered into an agreement with the Sellers to purchase the Plant. The Buyer will pay d and will assume all decommissioning liabilities associated with the Plant. According to studies performed on behalf of the Buyer, the decommissioning liability for the Plant will be e. The Sellers 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 Sellers. The assets of the Sellers' 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 f. The Buyer does not plan to make future contributions to either the qualified or nonqualified fund. 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 funds of the Sellers 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 Sellers.
Requested Ruling #2: The qualified nuclear decommissioning fund established by the Buyer to hold the assets transferred from the qualified funds of the Sellers 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 funds of the Sellers 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 funds of the Sellers 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 Sellers' nonqualified decommissioning funds 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 Sellers. 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, 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 Sellers' nonqualified trust funds to the Buyer's nonqualified trust fund except to the extent the Class I assets (as defined in section 1.1060-1T(d)(1)) it receives exceed the consideration provided by the Buyer.

Requested Ruling #4: The Buyer's nonqualified fund will have a basis in the assets received from the Sellers's nonqualified fund equal to the fair market value of those assets at closing without diminishing the Buyer's cost basis in the Plant.

Section 1012 of the Code provides in part that the basis of property shall be the cost of such property. The Buyer claims that the cost of acquiring the Plant and the related assets (including the nonqualified fund) includes the amount of the assumed

decommissioning liability. The Buyer argues that the allocation rules of section 1060 of the Code do not apply and that the Purchase and Sale Agreement should govern the allocation of basis.[1] The Buyer seeks to treat the cash payment ($100 million) as the purchase price – and the cost basis – of the Plant and related operating assets (including the nuclear fuel), and the decommissioning liability as the purchase price – and cost basis – of the assets held in the nonqualified fund. We disagree.

First, the Buyer's argument does not recognize that the assumed decommissioning liability cannot be treated as incurred for <u>any</u> 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 of the Code 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). The regulations further clarify that applicable provisions of the Code, the Income Tax Regulations, and other guidance published by the Secretary prescribe the manner in which a liability <u>that has been incurred</u> 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, "[f]or 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 of any asset is deciding

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[1] The Asset Purchase Agreement indicates that the cost of the Plant and related assets is million, to be paid at closing, and the cost of the nuclear fuel is million, to be paid over five years.

whether the liability has been incurred for tax purposes. It has 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 will not incur decommissioning costs until the Plant is removed from service and decommissioning operations begin. This is not expected to occur until sometime after the expiration of the Plant's operating license, and under applicable NRC regulations may not occur for up to sixty years following that date. 10 C.F.R. section 50.82(a)(3). Because the Buyer will not have incurred costs 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 Internal Revenue Code, including the cost basis provisions of section 1012. Accordingly, at the time of the purchase the Buyer's basis will equal only the cash component of the purchase price.

Second, the Buyer's position that this cash component should be allocated to the Plant and related assets while the future decommissioning liability should be allocated to the assets held in the decommissioning fund is not supported by applicable authority. Instead, allocation of the allowable basis (i.e., the cash component of the purchase price) must be made in accordance with the residual method provided in section 1.1060-1T(d) and (e).

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 section 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 in order to determine, respectively, the amount realized from, and the basis in, each of the transferred assets; it further provides that subsequent adjustments to consideration for the transferred assets must also be allocated under the residual method.

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 its cost of the assets. 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 five classes: Class 1 (generally consisting of cash, demand deposits and like accounts in banks and savings and loan associations), Class II (generally consisting of certificates of deposit, U.S.

government securities, readily marketable stock or securities, and foreign currency), Class III (all assets that are not Class I, II, IV, or V assets), Class IV (all section 197 intangibles except those in the nature of goodwill and going concern value), and Class V (section 197 assets in the nature of goodwill and going concern value).

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

Subsequent adjustments to consideration are allocated in a manner that effects the same allocation that would have been made at the time of the acquisition had such amount been paid or incurred on the acquisition date. Section 1.1060-1T(f). Thus, as Buyer makes additional payments to Seller, or as Buyer satisfies the economic performance requirement with respect to the decommissioning liability assumed, such amounts are taken into account as consideration; under § 1.1060-1T(f)(2), those amounts are then allocated among the acquired assets in the same manner as the consideration originally taken into account, with the same fair market value and other limitations, as though they were taken into account on the original acquisition date.

The following example illustrates the operation of section 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, and Class III assets with a fair market value of $100. 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 Classes 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 $100, which is then taken into account as basis. Of that amount, $50 will be allocated to the Class III assets (which then have been allocated their full $100 fair market value determined as of the acquisition date) and the remaining $50 will be allocated to Class V (as an asset in the nature of 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 section 468A and the regulations thereunder. The qualified fund is, therefore, not addressed herein with respect to the rules under section 1060.

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 (to the extent funded by the nonqualified fund) is an applicable asset acquisition as defined in section 1060(c). As such, its Federal tax treatment is determined under section 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 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, or V. 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. Section 1.1060-1(f)(2). Further, Buyer's proposed allocation is not in accordance with the foregoing, and is therefore neither appropriate nor permissible.

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Accordingly, at the time of sale, the Buyer will have a cost basis in the purchased assets equal to the cash paid to the Sellers, 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 purchase any amount attributable to the future decommissioning liability. The Buyer's cost basis in the purchased assets, including all assets held in the nonqualified fund, must be allocated among all such assets in accordance with section 1060 of the Code and the regulations thereunder.

Requested Ruling #5: The Buyer's nonqualified fund shall be considered a grantor trust under section 671 of the Code 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 Sellers' nonqualified funds 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.

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Requested Ruling #6: When the Buyer pays decommissioning expenses, the Buyer will be entitled to a then current deduction for all payments for decommissioning the Plant pursuant to section 162 or 165 of the Code.

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. 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.

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 Sellers 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 Sellers.

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2. The qualified nuclear decommissioning fund established by the Buyer to hold the assets transferred from the qualified funds of the Sellers 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 1.1060-1T(d)(1)) it receives exceed the consideration provided by the Buyer.

4. 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, or V. 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. Section 1.1060-1(f)(2).

5. 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.

6. 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,

(signed) Charles B. Ramsey

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