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Taxpayer =
Buyer =
State A =
Common Parent =

Dear

This letter responds to your request for a private letter ruling on behalf of Taxpayer.

Taxpayer is a regulated public utility that owns undivided fee simple interests in several nuclear power plants (the plants) and certain other facilities and assets associated therewith and ancillary thereto. For federal income tax purposes Taxpayer files a consolidated return with an affiliated group which includes Common Parent (the consolidated group). Taxpayer maintains decommissioning funds (qualified funds) that satisfy the requirements necessary to be treated as "nuclear decommissioning reserve funds" within the meaning of section 468A(a)[1], and as "nuclear decommissioning funds" and as "qualified nuclear decommissioning funds" within the meaning of Treas. Reg. § 1.468A-1(b)(3). Taxpayer also maintains nonqualified decommissioning funds (nonqualified funds) that are valid trusts under State A law and which are considered grantor trusts under sections 671-677. Taxpayer holds the funds for the purpose of decommissioning the plants.

Taxpayer has contracted to sell its interest in the plants and assets related thereto to Buyer. Specifically, Taxpayer has contracted to sell, assign, convey, transfer, and deliver to Buyer its ownership share of the assets held for the use in the operation

[1] Unless provided otherwise, all section references are to the Internal Revenue Code of 1986 as applicable to the taxable years in question.

of the plants, which include the following: the real property; all spent nuclear fuel; machinery and equipment, etc.; leasehold interests and subleases relating to the real property; all permits; certain contracts and agreements; certain documents, correspondence, books, and records; personnel records; intellectual property related to a certain name; Nuclear Regulatory Commission licenses; rights in nuclear fuel; and the assets comprising any qualified or nonqualified funds maintained by Taxpayer with regard to the plants, including all income interest and earnings thereon, together with all related tax accounting, decommissioning studies and cost estimates, and all other books and records related thereto.

In conjunction with the sale Buyer will make certain payments of cash and will assume certain Taxpayer liabilities including decommissioning liabilities with respect to the plants, certain environmental liabilities and encumbrances on acquired assets. On the sale closing date Taxpayer will transfer the assets in its qualified funds to a decommissioning fund Buyer will establish and which Buyer intends to qualify as a qualified decommissioning fund within the meaning of Treas. Reg. § 1.468A-1(b)(3) and a “Nuclear Decommissioning Reserve Fund” within the meaning of section 468A(a). On the sale closing date Taxpayer will also transfer any funds in its nonqualified funds to a nonqualified decommissioning fund that Buyer will establish. Buyer will hold both its qualified fund and nonqualified fund solely for the purpose of decommissioning the plants and any monies or other properties remaining in such funds following the decommissioning of the plants will be distributed to Buyer.

Taxpayer requests a ruling that the portion of any net operating loss that it incurs as a result of the assumption by Buyer of its obligation to decommission the plants will qualify as a specified liability loss within the meaning of section 172(f)(1) that will be eligible for a 10-year carryback under section 172(b)(1)(C).

Section 172(a) allows a net operating loss deduction equal to the aggregate of the net operating loss carryovers and net operating loss carrybacks to a taxable year. With certain modifications, section 172(c) defines a net operating loss as the excess of deductions permitted by Chapter 1 of the Internal Revenue Code (the Code) over gross income.

Section 172(b)(1)(A) provides that generally, a net operating loss is carried back to each of the 2 taxable years preceding the year of the loss and carried forward to each of the 20 taxable years following the year of the loss. Section 172(b)(1)(C) provides that in the case of a specified liability loss, the loss is carried back to each of the 10 taxable years preceding the loss year, rather than 2 years.

Section 172(f)(1)(B)(i) defines a specified liability loss in part as any amount taken into account in computing the net operating loss for the taxable year and that is allowable as a deduction under Chapter 1 of the Code (other than sections 468(a)(1) or 468A(a)) which is in satisfaction of a liability under a federal or state law requiring the decommissioning of a nuclear power plant (or any unit thereof).

We have previously ruled that Taxpayer will be entitled to a deduction in the year of sale for the amount of its decommissioning liability associated with the plants expressly assumed by Buyer and included in Taxpayer's amount realized. To the extent the consolidated group incurs a net operating loss in the taxable year of the sale that loss may be attributable in whole or in part to Taxpayer's deduction for its decommissioning liability assumed by Buyer and included in Taxpayer's amount realized.

To generate a section 172(f)(1)(B)(i) specified liability loss the amount of Taxpayer's deduction for the decommissioning liability assumed by Buyer must be in satisfaction of a liability under federal or state law requiring the decommissioning of a nuclear power plant. Prior to the sale Taxpayer has the obligation to decommission the plants. This obligation arose years ago when Taxpayer obtained its licenses to operate the plants. In addition, the requirement to decommission the plants is imposed by the Nuclear Regulatory Commission (NRC) and thus arises under federal law. See 10 C.F.R. §§ 50.33, 50.82.

As part of the sale of the plants, the operating licences for the plants will be transferred to Buyer, decommissioning funds held by Taxpayer will be transferred to Buyer, and Buyer will expressly assume Taxpayer's obligation to decommission the plants. The express assumption of the decommissioning liability by Buyer as part of the sale of the plants satisfies the economic performance requirement under Treas. Reg. § 1.461-4(d)(5), thereby entitling Taxpayer to a deduction for its decommissioning liability. In addition, as a result of the sale of the plants and Buyer's assumption of the decommissioning liability, Taxpayer's liability under federal law to decommission the plants will be extinguished. Taxpayer has represented that after the sale and licence transfers are complete (including the transfer of the decommissioning funds), the NRC will no longer look to Taxpayer to decommission the plants. To the extent the decommissioning funds are insufficient to fully decommission the plants, Buyer will be responsible for funding the shortage. Thus, the transfer of the plants and related assets to Buyer and the assumption by Buyer of the decommissioning liability results in Taxpayer no longer being required under federal law to decommission the plants.

Further, the deduction allowed to Taxpayer for Buyer's assumption of the liability to decommission the plants is in satisfaction of Taxpayer's liability under federal law requiring the decommissioning of nuclear power plants. Black's Law Dictionary (Seventh Edition, 1999) defines the term "satisfaction" as, among other things, "the giving of something with the intention, express or implied, that it is to extinguish some existing legal or moral obligation." In this case, Taxpayer has, as part of the sale of the plants, transferred the operating licences and decommissioning funds to Buyer. Taxpayer represents that because of this transfer and Buyer's assumption of the decommissioning liability, the NRC, the regulatory agency that imposes the legal obligation to decommission nuclear power plants, will no longer look to Taxpayer to decommission the plants. Thus, Taxpayer's liability under federal law to decommission the plants will be "satisfied" because it has transferred certain assets to Buyer in order to extinguish this legal obligation. The amount of the decommissioning liability

assumed by Buyer and included in Taxpayer's amount realized is allowed as a deduction to Taxpayer. To the extent the deduction generates a net operating loss for the taxable year, that portion of the net operating loss will be a specified liability loss under section 172(f).

We conclude that the portion of any consolidated net operating loss the consolidated group incurs in the year the plants are sold, attributable to the deduction allowed to Taxpayer for Buyer's assumption of Taxpayer's liability to decommission the plants, will be a consolidated specified liability loss that may be carried to each of the consolidated group's 10 taxable years preceding the loss year under section 172(b)(1)(C).

Section 172(f)(3) generally provides that the portion of a specified liability loss that is attributable to amounts incurred in the decommissioning of a nuclear power plant (or any unit thereof) may be carried back to each of the taxable years during the period (i) beginning with the taxable year in which the plant (or unit thereof) was placed in service, and (ii) ending with the taxable year preceding the loss year.

This case does not involve a request for a ruling under section 172(f)(3). Therefore, we make no determination as to whether any portion of any specified liability loss is attributable to amounts incurred in the decommissioning of a nuclear power plant (or any unit thereof) and thus eligible for the carryback provision set forth in section 172(f)(3).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,
Associate Chief Counsel
(Income Tax & Accounting)
By: William A. Jackson
Chief, Branch 5

cc: