Internal Revenue Service

Department of the Treasury
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Person To Contact:
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Telephone Number:

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Date:
January 23, 2021

In Re:

LEGEND

Company	=
Parent	=
Unit 1	=
Unit 2	=
Investors Pooling Arrangement	=
State A	=
State B	=
State C	=
State D	=
State E	=
Year 1	=
Year 2	=
Month 1	=
Date 1	=
a	=
b	=
Director	=
Manager	=

Dear :

This letter responds to your request, dated July 5, 2020, for a letter ruling regarding the federal income tax consequences under section 468A of the Internal Revenue Code (Code) with respect to certain planned transactions involving nuclear

decommissioning funds. The relevant facts as represented in your submission are set forth below.

FACTS

Company, a State A corporation, is a holding company and the sole member of Parent, a State A limited liability company that is disregarded for federal income tax purposes. Through its subsidiaries, Company is primarily engaged in energy delivery and the generation and sale of electricity at wholesale and retail. Parent is principally engaged in the generation and sale of electricity at wholesale and retail. Parent owns and operates electric generation facilities, both directly and through limited liability companies wholly owned by Parent and disregarded for federal income tax purposes.

Company owns a operating nuclear reactors (each a Unit, collectively Units) located at b nuclear power stations in State A, State B, State C, and State D, including Unit 1 and Unit 2.

Company has established a qualified nuclear decommissioning fund for each of its Units (each a QF, collectively Company QFs), each of which is organized as a trust under the law of the state in which it is organized. For federal income tax purposes, Company is treated as the contributor to each of the Company QFs. Most of the Company QFs are governed by a single master trust agreement (Master Trust Agreement).

Under the Master Trust Agreement, the use of the assets of each QF is limited to the following statutory purposes: (1) to satisfy the liability for decommissioning costs, (2) to pay administrative costs, or (3) to invest in “Permissible Assets” to the extent that the assets are not required for payment of decommissioning or administrative costs. For purposes of the Master Trust Agreement, Permissible Assets generally include any investment permitted under section 468A and the regulations promulgated thereunder, except for any (1) investment in the securities or obligations of Company or its affiliates, or (2) investment in any entity owning or operating a nuclear power plant (not including any market-indexed or other non-nuclear collective, commingled, or mutual funds).

The Master Trust Agreement specifically permits any QF to pool its assets with another QF provided that (1) the book and tax allocations of the pooling arrangement are made in compliance with section 704, and (2) the pooling arrangement elects to be classified as a partnership for federal income tax purposes.

Each of the Company QFs has used its assets to the extent not currently needed for payment of decommissioning or administrative costs to make investments. Many investments by the Company QFs are single asset investments held directly by the investing QF. Some Company QFs have pooled investments together pursuant to pooling arrangements.

In Year 1, certain Company QFs (including Unit 1 QF) and a pooling arrangement for the other Company QFs formed Investors Pooling Arrangement (a State E limited liability company treated as a partnership for federal income tax purposes) to pool assets for investing. Investors Pooling Arrangement is owned directly and indirectly entirely by Company QFs. Investors Pooling Arrangement owns a variety of privately placed bonds with limited liquidity.

In Month 1 Year 2, Company acquired Unit 2 along with the assets of the qualified and non-qualified nuclear decommissioning funds associated with Unit 2. Company's Unit 2 QF currently holds a variety of investments, including liquid investments and cash. On Date 1, Company ceased operations at Unit 1. Company is currently preparing Unit 1 for decommissioning. Company would like to readjust the investments in Unit 1 to better manage cash flows for decommissioning expenses and to provide flexibility. Because the investment in Investors Pooling Arrangement is relatively illiquid, Unit 1 QF plans to divest itself of its interest in Investors Pooling Arrangement.

To further the investment goals of both Unit 1 QF and Unit 2 QF (each a Fund, collectively Funds), Company plans to engage in the following set of transactions (Proposed Transactions): (1) Unit 2 QF will contribute cash to Investors Pooling Arrangement in an amount equal to the fair market value of Unit 1 QF's interest in Investors Pooling Arrangement; and (2) Investors Pooling Arrangement will redeem the interest of Unit 1 QF by distributing cash equal to the fair market value of Unit 1 QF's interest in complete redemption and liquidation of Unit 1 QF's interest. After the Proposed Transactions, Unit 1 QF will no longer hold an interest in Investors Pooling Arrangement, and Unit 2 QF will hold an interest in Investors Pooling Arrangement equal in value to the amount of cash it contributed. Both the redemption and the contribution will be made at the fair market values of the respective interests in Investors Pooling Arrangement.

RULING REQUESTED

Company requests a ruling that the Proposed Transactions, consisting of (1) the contribution of assets by Unit 2 QF to the Investors Pooling Arrangement, and (2) the complete redemption at fair market value of Unit 1 QF's interest in Investors Pooling Arrangement, will not constitute a prohibited act of self-dealing under section 468A and the regulations promulgated thereunder.

LAW AND ANALYSIS

1. The Proposed Transactions are a sale or exchange for purposes of the section 468A self-dealing rules

Section 707(a)(2)(B) provides that under regulations prescribed by the Secretary, if (i) there is a direct or indirect transfer of money or other property by a partner to a

partnership, (ii) there is a related direct or indirect transfer of money or other property by the partnership to such partner (or another partner), and (iii) the transfers described in section 707(a)(2)(B)(i) and (ii), when viewed together, are properly characterized as a sale or exchange of property, such transfers shall be treated either as a transaction described in section 707(a)(1) or as a transaction between two or more partners acting other than in their capacity as members of the partnership.

Treas. Reg. § 1.707-3(b)(1) provides that a transfer of property (excluding money or an obligation to contribute money) by a partner to a partnership and a transfer of money or other consideration (including the assumption of or the taking subject to a liability) by the partnership to the partner constitute a sale of property, in whole or in part, by the partner to the partnership only if based on all the facts and circumstances – (i) the transfer of money or other consideration would not have been made but for the transfer or property; and (ii) in cases in which the transfers are not made simultaneously, the subsequent transfer is not dependent on the entrepreneurial risks of partnership operations.

Based on the facts submitted and representations made, we conclude that the Proposed Transactions constitute sales or exchanges of real or personal property between the Funds under section 707(a)(2)(B).

2. The Proposed Transactions will not constitute a prohibited act of self-dealing under section 468A

Section 468A(a) provides that a taxpayer may elect to deduct payments made to a nuclear decommissioning reserve fund that meets the requirements of section 468A (i.e. a fund that is a “qualified nuclear decommissioning fund”).

Treas. Reg. § 1.468A-1(b)(4) defines the terms “nuclear decommissioning fund” and “qualified nuclear decommissioning fund” as a fund that satisfies the requirements of § 1.468A-5.

Section 468A(e)(6) provides that the Secretary may disqualify any nuclear decommissioning fund that violates any provision of sections 468A or 4951.

Treas. Reg. § 1.468A-5(c)(1)(i)(B) provides that the Service may, in its discretion, disqualify all or any portion of a nuclear decommissioning fund if at any time during a taxable year the fund and a disqualified person engage in an act of self-dealing.

Section 468A(e)(5) prohibits self-dealing by providing that under regulations prescribed by the Secretary, for purposes of section 4951, a qualified nuclear decommissioning fund shall be treated in the same manner as a trust described in section 501(c)(21) (a black lung trust). Section 4951(a) imposes a tax on each act of self-dealing between a disqualified person and a trust described in section 501(c)(21).

Treas. Reg. § 1.468A-5(b)(1) provides that except as otherwise provided in § 1.468A-5(b), the excise taxes imposed by section 4951 shall apply to each act of self-dealing between a disqualified person and a nuclear decommissioning fund.

Treas. Reg. § 1.468A-5(b)(2) provides that self-dealing means any act described in section 4951(d) except for certain limited exceptions not relevant in this analysis.

Section 4951(d)(1) provides, in relevant part, that for purposes of section 4951, the term “self-dealing” means any direct or indirect sale, exchange, or leasing of real or personal property between a black lung trust and a disqualified person.

Treas. Reg. § 1.468A-5(b)(3) provides that for purposes of § 1.468A-5(b), the term “disqualified person” includes each person described in section 4951(e)(4) and § 53.4951-1(d).

Under section 4951(e)(4), the term “disqualified person” means, with respect to a black lung trust, a person who is:

(A) a contributor to the trust;

(B) a trustee of the trust;

(C) an owner of more than 10 percent of –

(i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise, which is a contributor to the trust;

(D) an officer, director, or employee of a person who is a contributor to the trust;

(E) the spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in (A), (B), (C), or (D) above;

(F) a corporation of which persons described in (A), (B), (C), (D), or (E) above own more than 35 percent of the total combined voting power;

(G) a partnership in which persons described in (A), (B), (C), (D), or (E) above own more than 35 percent of the profits interest; or

(H) a trust or estate in which persons described in (A), (B), (C), (D), or (E) above hold more than 35 percent of the beneficial interest.

The flush language of section 4951(e)(4), following section 4951(e)(4)(H), provides, in part, that for purposes of section 4951(e)(4)(C)(ii) and (iii), (G), and (H), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than section 267(c)(3)), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in section 4951(e)(4)(E).

Section 267(c)(1) provides that stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

Section 267(c)(5) provides, in part, that stock constructively owned by a person by reason of the application of section 267(c)(1) shall, for the purpose of applying section 267(c)(1), be treated as actually owned by such person.

Treas. Reg. § 53.4951-1(a) provides that section 4951 contains provisions that correspond to those of section 4941 (relating to taxes on acts of self-dealing between disqualified persons and private foundations) and section 4946 (relating to definitions and special rules), and that regulations and rulings under these corresponding provisions apply to section 4951 where appropriate.

Treas. Reg. § 53.4946-1(a)(8) provides that for purposes of section 4941 only, the term “disqualified person” does not include organizations described in section 501(c)(3) other than organizations described in section 509(a)(4).

Because the Proposed Transactions constitute sales or exchanges of real or personal property between the Funds, the Proposed Transactions will be acts of self-dealing if Unit 1 QF or Unit 2 QF is a disqualified person with respect to the other party to the sales or exchanges.

Pursuant to Treas. Reg. § 1.468A-5(b)(3) and section 4951(e)(4)(H), disqualified persons with respect to each of Unit 1 QF and Unit 2 QF include a trust in which a contributor to such Fund holds more than 35 percent of the beneficial interest. Each Fund is a trust under the laws of the states in which they have been organized. Further, Company is the sole contributor to each Fund and holds all of the beneficial interests of each Fund. Consequently, Unit 1 QF and Unit 2 QF are disqualified persons with respect to each other unless an exception applies.

Treas. Reg. § 53.4946-1(a)(8) provides such an exception for purposes of the self-dealing rules under section 4941, stating that the term “disqualified person” does not include any organization described in section 501(c)(3) other than section 509(a)(4) organizations. Though qualified nuclear decommissioning funds are not subject to the section 4941 self-dealing rules, section 468A(e)(5) and Treas. Reg. § 1.468A-5(b) provide that, for purposes of section 4951, a qualified nuclear decommissioning fund shall be treated in the same manner as a trust described in section 501(c)(21) (a black lung trust), essentially incorporating sections 4941 and 4946. Section 468A does not directly define the term “disqualified person,” but rather incorporates the list of disqualified persons provided in section 4951(e)(4), and in applying the terms of section 4951, Treas. Reg. § 53.4951-1(a) states that the regulations and rulings under sections 4941 and 4946 are applicable because section 4951 contains provisions that correspond to sections 4941 and 4946. Accordingly, the Treas. Reg. § 53.4946-1(a)(8) exception to the definition of disqualified person applies to qualified nuclear decommissioning funds. Though qualified nuclear decommissioning funds are not organizations described in section 501(c)(3), they are analogous to such organizations by virtue of the cross references between sections

468A, 4951, 4941, and 4946. Consequently, with respect to a qualified nuclear decommissioning fund subject to the self-dealing rules of section 468A, the term "disqualified person" does not include any other qualified nuclear decommissioning fund.

Because Unit 1 QF and Unit 2 QF are not disqualified persons with respect to one another for purposes of section 468A(e)(5), the Proposed Transactions will not constitute prohibited acts of self-dealing under section 468A and the regulations promulgated thereunder.

Except as specifically determined above, no opinion is expressed or implied concerning the federal income or other tax consequences of the transactions described above. This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. This ruling is based upon information and representations submitted by the taxpayer and accompanied by penalties of perjury statements executed by the appropriate parties. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives. Copies of this letter ruling are also being sent to Director and Manager.

Sincerely,

Patrick S. Kirwan
Chief, Branch 6
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

cc: