

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B05

PLR-159123-04

Date:

January 19, 2005

In Re:

**Legend**

Taxpayer =

X =

County =

Dear :

This letter responds to a letter dated November 5, 2004, submitted on behalf of Taxpayer, requesting a ruling under ' 45 of the Internal Revenue Code.

**FACTS**

Taxpayer is a public utility. Taxpayer plans to place in service a qualified facility to produce electricity from wind (wind facility) before January 1, 2006. This wind facility will be constructed in County. The wind facility will be connected to X's transmission system, an independent power grid, where the electricity produced by the wind facility will become "commingled" with the other electricity transmitted across X's transmission system. The electricity produced by the wind facility (as commingled on X's transmission system) will be delivered by X to Taxpayer's own interconnecting transmission or distribution lines. Taxpayer's electricity, including electricity produced by the wind facility, will be sold to Taxpayer's customers in the ordinary course of business pursuant to public utility commission tariffs. Taxpayer expects to consume a portion of the electricity produced by the wind facility in its buildings and facilities

(whether owned or leased). Other than this self-use of electricity by Taxpayer, no other customers of Taxpayer are related to Taxpayer within the meaning of ' 52(b).

### LAW AND ANALYSIS

Section 38(a) provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(8) provides that the amount of the current year business credit includes the renewable electricity production credit under ' 45(a). Section 45(a) provides a renewable electricity production credit to a taxpayer that produces electricity from wind at a qualified facility and, pursuant to ' 45(a)(2)(B), such electricity is sold to an unrelated person during the taxable year.

To be a qualified facility, the facility must be originally placed in service after December 31, 1993, and before January 1, 2006. Section 45(d)(1).

H.R. Conf. Rep. No. 1018, 102d Cong., 2d Sess. 406 (1992) states the following:

Accordingly, a public utility which owns and operates a qualified facility would be able to claim the credit to the extent that the utility ultimately sells the electricity generated to unrelated parties.

### CONCLUSION

Accordingly, based solely on the foregoing analysis and the representations made by Taxpayer, we conclude that if Taxpayer places in service the wind facility before January 1, 2006, Taxpayer's sales of electricity produced by the wind facility to Taxpayer's customers (other than electricity consumed by Taxpayer in its buildings and facilities) pursuant to public utility commission tariffs will be sold by Taxpayer to unrelated persons for purposes of ' 45(a)(2)(B).

Except as specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the above described facts under any other provision of the Code or regulations. Specifically, no opinion is expressed or implied on whether the placed-in-service requirement will be met.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter should be filed with the federal income tax return for Taxpayer for the first taxable year in which the ' 45 credit is claimed for electricity produced at the wind facility.

In accordance with the power of attorney on file with this ruling request, copies of this letter are being sent to Taxpayer's authorized representatives.

Sincerely,

HAROLD E. BURGHART  
Senior Adviser, Branch 5  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for ' 6110 purposes

cc: