

Internal Revenue Service

Number: **201609005**

Release Date: 2/26/2016

Index Number: 54A.00-00

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:FIP:B05

PLR-129228-15

Date:

November 23, 2015

LEGEND:

Cooperative =

State =

Bonds =

Facility A =

Facility B =

Facility C =

Owner =

a =

b =

c =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This is in response to your request under section 54A(d)(2)(B)(iii) of the Internal Revenue Code (the Code) for an extension of the expenditure period for the available project proceeds of new clean renewable energy bonds.

Facts and Representations

Cooperative is a generation and transmission cooperative that provides wholesale electric power to distribution systems. Organized in State, Cooperative is a not-for-profit corporation privately held by its member distribution cooperatives.

Cooperative issued the Bonds on Date 1 and designated the Bonds as new clean renewable energy bonds within the meaning of § 54C(a). All available project proceeds of the Bonds were to be spent on three power generating plants ("Facility A", "Facility B", and "Facility C") (together, "Project").

The original three-year expenditure period for the Bonds under section 54A(d)(2)(B)(i) will expire on Date 2 (the "Original Expenditure Period"). At the time the Bonds were issued, Cooperative expected that all available project proceeds of the Bonds would be spent on the Project not later than Date 2. However, unexpected events have resulted in an unforeseen delay in the expenditure of \$a of the available project proceeds of the Bonds.

Cooperative intends the \$a of unspent proceeds to be expended for Facility A. However, these proceeds cannot be expended until the owner of Facility A (the "Owner") receives an air permit, which requires State approval (the "Permit"). The request for the Permit was timely filed with State. As of Date 1, Cooperative estimated State would issue the Permit within b days. This estimate was based in part on its previous experience with air permit applications. After c months, a Permit draft was provided by State to Owner for comment. One month later, Owner provided its comments on the draft Permit to State. As of the date of this ruling request, State has not issued the Permit. Because a draft Permit has already been provided to Owner by State, Cooperative believes the Permit will be issued with sufficient time to permit expenditure of the remaining project proceeds within 24 months after the Original Expenditure Period expires.

In order to spend the remaining available project proceeds of the Bonds, Cooperative requests an extension of the expenditure period for the available project proceeds until Date 3, which is 24 months after the Original Expenditure Period expires.

Cooperative submitted this request for a ruling prior to Date 2.

Law and Analysis

Section 54A(d)(1) provides that a new clean renewable energy bond is treated as a qualified tax credit bond for purposes of Section 54A.

Section 54A(d)(2)(B)(i) provides in part that to the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period.

Section 54A(d)(2)(B)(ii) provides that for purposes of this subpart, the term “expenditure period” means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

Section 54A(d)(2)(B)(iii) provides that upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

Section 54A(d)(2)(C)(ii) provides that for purposes of this paragraph, in the case of a new clean renewable energy bond, a “qualified purpose” means a purpose specified in § 54C(a)(1).

Section 54A(e)(4) of the Code defines “available project proceeds” to mean (A) the excess of (i) the proceeds from the sale of an issue, over (ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and (B) the proceeds from any investment of the excess described in subparagraph (A).

At the time the Bonds were issued, Cooperative reasonably expected to spend all available project proceeds within the Original Expenditure Period. The expected failure to spend all available project proceeds of the Bonds by the expiration of the Original Expenditure Period was due to reasonable cause. The expected failure was caused by events that were not reasonably expected at the time the Bonds were issued and were beyond the control of Cooperative. These events caused a significant delay in committing and spending the Bond proceeds.

Cooperative will continue to spend the remaining available project proceeds on the Project with due diligence. Cooperative expects to spend all available project proceeds not later than Date 3, which is 24 months after the Original Expenditure Period expires.

Conclusion

Under the facts and circumstances of this case, we conclude that Cooperative's failure to expend the available project proceeds of the Bonds by Date 2 is due to reasonable cause and that Cooperative's continued expenditure of the proceeds for qualified purposes will proceed with due diligence. Therefore, Cooperative is granted an extension of the Original Expenditure Period with respect to the Bonds until Date 3.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

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.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to Cooperative's authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Cooperative and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions & Products)

/S/

By: _____
James Polfer
Chief, Branch 5