

Internal Revenue Service

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LEGEND

Taxpayer =
Corporation =
State =
Commission A =
Commission B =
Director =

Month =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =

Dear :

This letter responds to a request for a private letter ruling dated January 22, 2019, submitted by Taxpayer. Taxpayer requests rulings regarding the computation of the pro rata portion of accumulated deferred federal income tax reserve

(“AFDIT”) subject to § 168(i)(9) of the Internal Revenue Code and § 1.167(l)-1 of the Income Tax Regulations (the Normalization Rules) as an adjustment to rate base pursuant to § 1.167(l)-1(h)(6) of the Regulations. The relevant facts as represented in your submission are set forth below.

FACTS

Taxpayer is incorporated in State. Taxpayer employs a calendar year reporting period and uses the accrual method of accounting.

Taxpayer is a wholly-owned subsidiary of Corporation. Corporation and its affiliated group of corporations (that includes Taxpayer) electronically file a consolidated federal income tax return with the IRS. Taxpayer is under the audit jurisdiction of the Large Business and International Division of the IRS.

Taxpayer is principally engaged in the business of supplying and distributing electricity to an area of State, and is subject to regulation as to rates and conditions of service by Commission A and Commission B.

Commission A Rate Proceeding

Taxpayer files annual revenue requirement updates with Commission A to establish rates for its regulated transmission-related activities subject to Commission A’s jurisdiction. On Date 1, Taxpayer filed revisions to Taxpayer’s Transmission Owner Tariff (TO Tariff) that utilizes a formula ratemaking approach (Formula Rate) to compute a transmission revenue requirement (Base Transmission Revenue Requirement or Base TRR) which will determine rates effective Date 2 (the TO Year 1 filing establishes rates for the Rate Year Year 1.) Commission A accepted Taxpayer’s proposed Formula Rate in an order issued on Date 3, subject to refund, and established settlement and hearing procedures.

Taxpayer’s Base TRR equals the sum of the following three components: 1) the Prior Year Transmission Revenue Requirement (“Prior Year TRR”); 2) the Incremental Forecast Period Transmission Revenue Requirement (“IFPTRR”); and 3) the True-Up Adjustment. The combination of the Prior Year TRR and IFPTRR represent the revenue requirement for forecasted costs to be incurred in the Rate Year (“Rate Year TRR”). The True-Up Adjustment represents the difference between the revenue requirement based on actual costs incurred by Taxpayer in a prior year and the actual revenue received by Taxpayer during that prior year.

The Prior Year TRR is the first component of the Rate Year TRR that is calculated based on actual Commission A-related costs, as reflected in Taxpayer’s Commission A Form 1 filed for the most recent year-end prior to the filing of the Formula

Rate ("Prior Year"). Since TO Year 1 was filed with Commission A in Month of Year 2, the Prior Year for TO Year 1 is Year 3.

IFPTRR is the second component of the Rate Year TRR that represents the additional revenue requirement for forecasted incremental costs to be incurred in the Rate Year. The calculation applies: (1) a revenue requirement per dollar of plant (the "Annual Fixed Charge Rate" or "AFCR") to the capital expenditures Taxpayer projects it will make in the Rate Year ("Incremental Capital Costs" or "ICC"), plus (2) a revenue requirement per dollar (the "Specified Fixed Charge Rate" or "SFCR") applied to certain construction work-in-progress ("Incremental CWIP" or "ICWIP").

The True-Up Adjustment is the difference between the revenue requirement based on actual costs incurred by Taxpayer in the Prior Year and the actual revenue received by Taxpayer during the Prior Year. For TO Year 1, the True-Up Adjustment represents the difference between the revenue requirement based on actual costs recorded in Year 3 (per the Year 3 Commission A Form 1) and the transmission revenue actually received in Year 3.

Income tax expense, which is a cost of service component of Taxpayer's Base TRR, is calculated in the Company's Prior Year TRR and True-Up Adjustment based on an income tax formula ("Income Tax Formula") that utilizes applicable corporate income tax rates. Income tax expense under the Income Tax Formula represents the combination of three components. Income tax expense for purposes of IFPTRR is embedded in both the AFCR and SFCR. Neither the income tax expense produced by the Income Tax Formula nor the income tax expense embedded in the AFCR and SFCR distinguish between current tax expense and deferred tax expense.

Accumulated deferred federal and state income tax (together, "ADIT") balances related to Commission A are used to adjust Commission A rate base in the computation of Prior Year TRR and the True-Up Adjustment. To effectuate this ADIT adjustment to rate base, ADIT-related Commission A balance sheet accounts as recorded and reflected in the Prior Year Commission A Form 1 are separately examined to determine the amounts attributable to Commission A transmission and distribution that should be included in the ADIT adjustment to Commission A rate base. The Prior Year year-end balances of these Commission A-related ADIT amounts are used to adjust rate base for purposes of calculating the Prior Year TRR. The Prior Year pro rata calculated balances of these Commission A-related ADIT amounts are used to adjust rate base for purposes of calculating the True-Up Adjustment. Thus, no proration is applied in computing the Rate Year TRR and proration is applied in calculating the True-Up Adjustment. The pro rata balance used to adjust rate base for purposes of the True-Up Adjustment includes a calculation of the 13-month average of: 1) the Prior Year beginning ADIT balance, and 2) the pro rata ADIT balance at the end of the Prior Year. The Incremental Capital Cost balance used to calculate IFPTRR does not include ADIT amounts.

On Date 4, Commission A issued an order, pursuant to section 206 of the Federal Power Act, to institute proceedings to examine the methodology utilized by Taxpayer to apply a regulatory averaging convention to the pro rata methodology described in § 1.167(l)-1(h)(6)(ii) in calculating the ADIT component of rate base. The 206 Order cited a previous Commission A order that denied a request by a taxpayer to use the average of the pro rata calculation of ADIT to adjust rate base in their formula rates. On Date 5, Taxpayer submitted to Commission A its answer to the 206 Order. In summary, this answer noted that the question of eliminating the computation of “the average of” the pro rata portion of ADFIT for ratemaking purposes is a tax normalization question and, therefore, it is particularly important for both Taxpayer and its customers that Taxpayer seek guidance from the IRS on how to address this normalization issue before making a change to its Formula Rate template. On Date 6, Commission A issued an order that, *inter alia*, directed Taxpayer to make a compliance filing within 30 days of the date of that order to revise its transmission Formula Rate to eliminate the use of the two-step averaging methodology for calculating ADIT. Taxpayer intends to comply with Commission A’s Date 6 order by submitting a compliance filing on or before Date 7, prior to receiving the guidance from the IRS requested herein.

Commission B General Rate Case Proceedings

Taxpayer typically files a general rate case (“GRC”) application with Commission B every three years to establish rates for a future three-year period associated with its state-regulated distribution, transmission and generation-related business activities subject to Commission B’s jurisdiction. On Date 8, Taxpayer filed its application to establish rates for the test year Year 1 and post-test years Year 4 and Year 5 (“Year 1 GRC”). Commission B has not issued a final decision as of the filing of this ruling request.

In establishing its rates, Taxpayer utilizes its most recent calendar-year recorded costs as its starting point and forecasts annual costs and related revenue requirements for the subsequent five calendar years. In its Year 1 GRC, Taxpayer is seeking approval for rates to be charged in the years Year 1, Year 4, and Year 5. Taxpayer’s GRCs do not include ratemaking mechanisms that true up actual costs to forecasted costs, although there are various Commission B-related balancing accounts and memorandum accounts for discrete items (including some GRC-related costs) that are typically for a limited or interim period of time. The final approval in rates of the trued-up costs for most of these balancing and memorandum accounts are not included in the GRC proceedings (nor subject to this ruling request), but are generally approved in separate balancing account proceedings.

ADIT balances related to Commission B-jurisdictional assets are used to adjust Commission B rate base in the computation of GRC revenue requirement. To derive the ADIT adjustment to forecast test year rate base, the forecasted ADIT balance at the

beginning of the test year is added to the product of the change in ADIT occurring in the test year multiplied by the pro rata percentage. The pro rata percentage is equivalent to the 13-month average of the resulting pro rata computation of the change in ADIT occurring in the test year as described in § 1.167(l)-1(h)(6)(ii) of the Regulations.

RULINGS REQUESTED

Relating to Commission A Proceedings

1. That reflecting the Prior Year year-end balances of Commission A-related ADIT amounts as adjustments to rate base in the Prior Year TRR computation and reflecting the Incremental Capital Costs in the IFPTRR computation without adjustments for ADIT in the calculation of Taxpayer's Rate Year TRR is not inconsistent with § 1.167(l)-1(h)(6)(ii) and is not subject to § 168(i)(9)(B)(ii) and, as such, is not a violation of the Normalization Rules.

2. That adjusting rate base by the pro rata computation of ADIT subject to the Normalization Rules in Taxpayer's True-Up Adjustment is not inconsistent with § 1.167(l)-1(h)(6)(ii) and, as such, is not a violation of the Normalization Rules.

3. That eliminating the application of the regulatory 13-month averaging convention to the pro rata portion of ADIT subject to the Normalization Rules in computing the adjustment to rate base in Taxpayer's True-Up Adjustment would not be inconsistent with § 1.167(l)-1(h)(6)(ii) nor subject to § 168(i)(9)(B)(ii) and, as such, would not be a violation of the Normalization Rules.

Relating to Commission B Proceedings

4. That utilizing a pro rata percentage portion of ADIT subject to the Normalization Rules as an adjustment to rate base in Taxpayer's GRC test year is consistent with § 1.167(l)-1(h)(6)(ii) and, as such, is not a violation of the Normalization Rules.

5. That eliminating the application of the regulatory 13-month averaging convention to the pro rata percentage portion of ADIT subject to the Normalization Rules as an adjustment to rate base in Taxpayer's GRC test year would not be inconsistent with § 1.167(l)-1(h)(6)(ii) nor subject to § 168(i)(9)(B)(ii) and, as such, would not be a violation of the Normalization Rules.

LAW AND ANALYSIS

Former section 167(l) of the Code generally provided that public utilities were entitled to use accelerated methods for depreciation if they used a "normalization method of accounting." A normalization method of accounting was defined in former

§ 167(l)(3)(G) in a manner consistent with that found in § 168(i)(9)(A). Section 1.167(l)-1(a)(1) provides that the normalization requirements for public utility property pertain only to the deferral of federal income tax liability resulting from the use of an accelerated method of depreciation for computing the allowance for depreciation under § 167 and the use of straight-line depreciation for computing tax expense and depreciation expense for purposes of establishing cost of services and for reflecting operating results in regulated books of account. These regulations do not pertain to other book-tax timing differences with respect to state income taxes, F.I.C.A. taxes, construction costs, or any other taxes and items.

Section 168(f)(2) provides that the depreciation deduction determined under § 168 shall not apply to any public utility property (within the meaning of § 168(i)(10)) if the taxpayer does not use a normalization method of accounting.

In order to use a normalization method of accounting, § 168(i)(9)(A) requires that a taxpayer, in computing its tax expense for establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to public utility property that is the same as, and a depreciation period for such property that is not shorter than, the method and period used to compute its depreciation expense for such purposes. Under § 168(i)(9)(A)(ii), if the amount allowable as a deduction under § 168 differs from the amount that would be allowable as a deduction under § 167 using the method, period, first and last year convention, and salvage value used to compute regulated tax expense under § 168(i)(9)(A)(i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

Under § 1.167(l)-1(h)(6)(i), a taxpayer does not use a normalization method of accounting if, for ratemaking purposes, the amount of the reserve for deferred taxes excluded from the rate base, or treated as cost-free capital, exceeds the amount of the reserve for the period used in determining the taxpayer's ratemaking tax expense. Section 1.167(l)-1(h)(6)(ii) also provides the procedure for determining the amount of the reserve for deferred taxes to be excluded from rate base or to be included as no-cost capital.

Section 1.167(l)-1(h)(6)(ii) provides that for the purpose of determining the maximum amount of the reserve to be excluded from the rate base (or to be included as no-cost capital) under § 1.167(l)-1(h)(6)(i), if solely an historical period is used to determine depreciation for federal income tax expense for ratemaking purposes, then the amount of the reserve account for the period is the amount of the reserve (determined under § 1.167(l)-1(h)(2)) at the end of the historical period. Section 1.167(l)-1(h)(6)(ii) provides that if solely a future period is used for such determination, the amount of the reserve account for the period is the amount of the reserve at the beginning of the period and a pro rata portion of the amount of any projected increase to be credited or decrease to be charged to the account during such period.

Section 1.167(l)-1(h)(6)(ii) provides if, in determining depreciation for ratemaking tax expense, a period (the “test period”) is used which is part historical and part future, then the amount of the reserve account for this period is the amount of the reserve at the end of the historical portion of the period and a pro rata amount of any projected increase to be credited to the account during the future portion of the period. The pro rata amount of any increase during the future portion of the period is determined by multiplying the increase by a fraction, the numerator of which is the number of days remaining in the period at the time the increase is to accrue, and the denominator of which is the total number of days in the future portion of the period.

Section 1.167(l)-1(h)(6)(i) makes it clear that the reserve excluded from rate base must be determined by reference to the same period as is used in determining ratemaking tax expense. A taxpayer may use either historical data or projected data in calculating these two amounts, but it must be consistent. As explained in § 1.167(l)-1(a)(1), the rules provided in § 1.167(l)-1(h)(6)(i) are to insure that the same time period is used to determine the deferred tax reserve amount resulting from the use of an accelerated method of depreciation for cost of service purposes and the reserve amount that may be excluded from the rate base or included in no-cost capital in determining such cost of services.

If a taxpayer chooses to compute its ratemaking tax expense and rate base exclusion amount using projected data then it must use the formula provided in § 1.167(l)-1(h)(6)(ii) of the Regulations to calculate the amount of deferred taxes subject to exclusion from the rate base. This formula prorates the projected accruals to the reserve so as to account for the actual time these amounts are expected to be in the reserve. As explained in § 1.167(l)-1(a)(1), the formula in § 1.167(l)-1(h)(6)(ii) provides a method to determine the period of time during which the taxpayer will be treated as having received amounts credited or charged to the reserve account so that the disallowance of earnings with respect to such amounts through rate base exclusion or treatment as no-cost capital will take into account the factor of time for which such amounts are held by the taxpayer.

The purpose of the proration formula is the same as that of the requirement for consistent periods discussed above: to prevent the immediate flow-through of the benefits of accelerated depreciation to ratepayers. The proration formula stops flow-through by limiting the deferred tax reserve accruals that may be excluded from rate base, and thus the earnings on rate base that may be disallowed, according to the length of time these accruals are actually in the reserve account.

The effectiveness of § 1.167(l)-1(h)(6)(ii) in resolving the timing issue has been limited by its failure to define some key terms. Nowhere does this provision state what is meant by the terms “historical” and “future” in relation to the test period for determining depreciation for ratemaking tax expense. How are these time periods to be

measured? One interpretation focuses on the type or quality of the data used in the ratemaking process. According to this interpretation, the historical period is that portion of the test period for which actual data is used, while the portion of the period for which data is estimated is the future period. The second interpretation focuses on when the utility rates become effective. Under this interpretation, the historical period is that portion of the test period before rates go into effect, while the portion of the test period after the effective date of the rate order is the future period.

The first interpretation, which focuses on the quality of the ratemaking data, is an attractive one. It proposes a simple rule, easy to follow and to enforce: any portion of the reserve for deferred taxes based on estimated data must be prorated in determining the amount to be deducted from rate base. The actual passage of time between the date ratemaking data is submitted and the date rates become effective is of no importance. But this interpretation of the regulations achieves simplicity at the expense of precision; in other words, it is overbroad. The proration of all estimated deferred tax data does serve to magnify the benefits of accelerated depreciation to the utility, but this is not the purpose of normalization. Congress was explicit: normalization “in no way diminishes whatever power the [utility regulatory] agency may have to require that the deferred taxes reserve be excluded from the base upon which the utility’s permitted rate of return is calculated.” H.R. Rep. No. 413, 91st Cong., 1st Sess. 133 (1969).

In contrast, the second interpretation of § 1.167(l)-1(h)(6)(ii) is consistent with the purpose of normalization, which is to preserve for regulated utilities the benefits of accelerated depreciation as a source of cost-free capital. The availability of this capital is ensured by prohibiting flow-through. But whether or not flow-through can even be accomplished by means of rate base exclusions depends primarily on whether, at the time rates become effective, the amounts originally projected to accrue to the deferred tax reserve have actually accrued.

If rates go into effect before the end of the test period, and the rate base reduction is not prorated, the utility commission is denying a current return for accelerated depreciation benefits the utility is only projected to have. This procedure is a form of flow-through, for current rates are reduced to reflect the capital cost savings of accelerated depreciation deductions not yet claimed or accrued by the utility. Yet projected data is often necessary in determining rates, since historical data by itself is rarely an accurate indication of future utility operating results. Thus, the regulations provide that as long as the portion of the deferred tax reserve based on truly projected (future estimated) data is prorated according to the formula in § 1.167(l)-1(h)(6)(ii), a regulator may deduct this reserve from rate base in determining a utility’s allowable return. In other words, a utility regulator using projected data in computing ratemaking tax expense and rate base exclusion must account for the passage of time if it is to avoid flow-through.

But if rates go into effect after the end of the test period, the opportunity to flow through the benefits of future accelerated depreciation to current ratepayers is gone, and so too is the need to apply the proration formula.

In sum, the Normalization Rules were enacted in response to Congressional concerns over the growing number of public utilities commissions that were mandating investor-owned regulated utilities to not retain these tax benefits from accelerated depreciation, but, instead, to immediately flow-through all of these tax incentives to ratepayers in the form of lower income tax expense in regulated cost of service rates. Congress' response was to enact legislation that would preclude regulated investor-owned utilities from utilizing accelerated depreciation methods of tax purposes if the related tax benefits were immediately flowed-through to ratepayers in rates or were flowed-through to ratepayers faster than permitted under the Normalization Rules.

The underlying concept and purpose of the Normalization Rules is to prevent the flow-through of these accelerated depreciation-related tax benefits to ratepayers in regulated rates any faster than permitted by the Normalization Rules. Thus, the flow-through of these tax benefits to ratepayers faster than permitted by the Normalization Rules would result in a normalization violation that would preclude the taxpayer from using any of the accelerated tax depreciation methods on public utility property and, instead, require the taxpayer to use the same depreciation method and period as those used to compute depreciation expense in its cost of service for ratemaking purposes. Conversely, a taxpayer that flows through these tax benefits to ratepayers slower than permitted by the Normalization Rules, or that never flows through any of the tax benefits from accelerated depreciation to ratepayers, would not be in violation of those rules.

Although the Normalization Rules require adjustments to be made to a reserve to reflect the deferral of taxes, the Normalization Rules do not require a minimum amount of the reserve that must be excluded from rate base for ratemaking purposes, but do stipulate a maximum amount of the reserve that can be excluded from rate base.

The calculation of income tax expense for purposes of Taxpayer's Commission A Formula Rate Year TRR (that is, Prior Year TRR plus IFPTRR) is made by reference both to costs from a period (Prior Year TRR) before rates are to become effective (historical period) and to costs from a period (IFPTRR) after rates are to become effective (future period). Thus, the maximum amount of the reserve to be excluded from rate base is the amount of the reserve at the end of the historical portion of the period and a pro rata portion of the amount of any projected increase or decrease to be charged to the reserve account during the future portion of the period. The reflection in Taxpayer's Commission A Formula Rate Year TRR of the Prior Year year-end balance of Commission A related amounts in the Prior Year TRR and the exclusion of ADIT amounts in the IFPTRR as adjustments to Incremental Capital Costs is not inconsistent with § 1.167(l)-1(h)(6)(ii) because the total of such reserve amount is less than the

maximum amount that can be excluded from rate base under the Normalization Rules and, as such, is not a violation of these rules.

Similarly, the calculation of federal income tax expense for purposes of Taxpayer's Commission B GRC utilizes federal tax depreciation that is determined solely from a period (test year) that is after the rate order is to become effective (future period). Thus, the maximum amount of the reserve to be excluded from rate base is the amount of the reserve at the beginning of the future test period (test year) and the pro rata portion of the amount of any projected increase or decrease to be charged to the reserve account during the portion of the future test period. The reflection of the reserve amount at the beginning of the test year and the use of the pro rata percentage portion on the projected increase or decrease to be charged to ADIT as an adjustment to rate base in Taxpayer's Commission B stated rate GRC test year is consistent with the requirement to use the pro rata calculation pursuant to § 1.167(l)-1(h)(6)(ii) and, as such, is not a violation of the Normalization Rules.

Taxpayer's reflection of reserve for deferred taxes in rate base for purposes of the True-Up Adjustment is not inconsistent with the maximum amount allowable under the Normalization Rules because it excludes from rate base the reserve balance at the beginning of the actual period (that is, Prior Year); and a pro rata portion of the amount of the increase or decrease to the reserve account during the portion of the actual period (that is, Prior Year), which together is a reserve amount that is equal to the maximum amount that can be excluded from rate base pursuant to the intent and purposes of the Normalization Rules.

In addition to the Normalization Rules' requirements on the maximum amount of the reserve to be excluded from the rate base (or to be included as no-cost capital), discussed above, the Normalization Rules also impose a 'consistency requirement.' Section 168(i)(9)(B)(i) provides that one way the requirements of § 168(i)(9)(A) will not be satisfied is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with such requirements. Under § 168(i)(9)(B)(ii), such inconsistent procedures and adjustments include the use of an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under § 168(i)(9)(A)(ii), unless such estimate or projection is also used, for ratemaking purposes, with respect to all three of these items and with respect to the rate base (hereinafter referred to as the "Consistency Rule".)

Requests 3 and 5 relate primarily to Taxpayer's compliance with the Consistency Rule. Taxpayer requests that we conclude that eliminating the application of the regulatory 13-month averaging convention to the pro rata percentage portion of ADIT subject to the Normalization Rules as an adjustment to rate base in Taxpayer's True-Up Adjustment (Request 3) and GRC test year (Request 5) would not result in a violation of the Consistency Rule.

We agree that the use of “the average of” the pro rata calculation in Taxpayer’s Commission A Formula Rate True-Up Adjustment and in the Commission B GRC is unnecessary under the Normalization Rules (including § 1.167(l)-1(h)(6)(ii)) and, in particular, not required in order to avoid violation of the Consistency Rule of § 168(i)(9)(B)(ii). As described in § 168(i)(9)(B)(ii), the use of a procedure or adjustment that uses an estimate or projection of any of (1) the taxpayer’s tax expense, (2) depreciation expense, or (3) reserve for deferred taxes under § 168(i)(9)(A)(ii), unless such estimate or projection is also used, for ratemaking purposes, with respect to all three of these items and with respect to the rate base. These three items are not implicated here, and thus, it is not necessary to adjust or further average calculations described in § 1.167(l)-1(h)(6)(ii) in order to mimic the regulatory mandated methods used for the other non-tax related rate base components and avoid violation of the Consistency Rule.

CONCLUSION

Accordingly, we rule as follows:

1. Reflecting the Prior Year year-end balances of Commission A-related ADIT amounts as adjustments to rate base in the Prior Year TRR computation and reflecting the Incremental Capital Costs in the IFPTRR computation without adjustments for ADIT in the calculation of Taxpayer’s Rate Year TRR is not inconsistent with § 1.167(l)-1(h)(6)(ii) and is not subject to § 168(i)(9)(B)(ii) and, as such, is not a violation of the Normalization Rules.

2. Adjusting rate base by the pro rata computation of ADIT subject to the Normalization Rules in Taxpayer’s True-Up Adjustment is not inconsistent with § 1.167(l)-1(h)(6)(ii) and, as such, is not a violation of the Normalization Rules.

3. Eliminating the application of the regulatory 13-month averaging convention to the pro rata portion of ADIT subject to the Normalization Rules in computing the adjustment to rate base in Taxpayer’s True-Up Adjustment would not be inconsistent with § 1.167(l)-1(h)(6)(ii) nor subject to § 168(i)(9)(B)(ii) and, as such, would not be a violation of the Normalization Rules.

4. Utilizing a pro rata percentage portion of ADIT subject to the Normalization Rules as an adjustment to rate base in Taxpayer’s GRC test year is consistent with § 1.167(l)-1(h)(6)(ii) and, as such, is not a violation of the Normalization Rules.

5. Eliminating the application of the regulatory 13-month averaging convention to the pro rata percentage portion of ADIT subject to the Normalization Rules as an adjustment to rate base in Taxpayer’s GRC test year would not be inconsistent with § 1.167(l)-1(h)(6)(ii) nor subject to § 168(i)(9)(B)(ii) and, as such, would not be a violation of the Normalization Rules

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.

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

This ruling is based upon information and representations submitted by Taxpayer and accompanied by penalty of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative. We are also sending a copy of this letter ruling to Director.

Sincerely,

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

cc: