

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **202046004**  
Release Date: 11/13/2020  
Index Number: 141.03-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.  
Telephone Number:

Refer Reply To:  
CC:FIP:B05  
PLR-104954-20  
Date:  
August 18, 2020

**LEGEND:**

- Bonds =
- City =
- Commission =
- State =
- Utility =
- a =
- Date =

Dear :

This is in response to your request for a ruling that the entire geographic area of City is a “qualified service area” of Commission for purposes of § 141(d) of the Internal Revenue Code.

**Facts and Representations**

Commission is City’s public utilities commission. Commission owns and operates multiple hydroelectric generating plants. For more than 10 years, Commission has generated, scheduled, purchased, sold, transmitted, and distributed electricity to meet

the needs of retail electric customers located throughout the entire geographic area of City ("Program"), as shown in the maps attached to your ruling request ("Service Area").

Commission serves \_\_\_\_\_ of retail electric customers: customers served by Commission's hydroelectric generating plants ("Hydro Power")

Customers of Hydro Power include all municipal departments of City, as well as residential and retail commercial customers in Service Area. Hydro Power customers are dispersed throughout Service Area. Program provides both generation and transmission/distribution services to Hydro Power customers, and Program bills such customers for all electricity services. Electricity generated by Commission's hydroelectric generating plants is transmitted through Commission-owned and operated transmission lines. The transmission facilities also interconnect with Utility's transmission and distribution systems to deliver Commission-generated or purchased power to customers of Commission in Service Area. To provide distribution service to most, but not all, of these customers, Commission purchases wholesale distribution services from Utility.

Utility is an investor-owned electric utility company with a service area located within State. A franchise agreement between City and Utility grants Utility a non-exclusive franchise to provide electric service in Service Area. This franchise is terminable by City and imposes no limitations on Commission's ability to serve retail customers.

Utility owns and operates most of the electric distribution infrastructure within Service Area as well as nearly all the high-voltage transmission lines entering Service Area. Program serves Hydro Power customers in Service Area through City-owned distribution networks at City-owned properties, through City or Commission-owned and operated distribution facilities, and through Utility-owned distribution lines.

City wants to purchase substantially all of Utility's electric distribution and transmission assets needed to provide retail electric service to all electricity customers in Service Area (the "Project"). The acquired assets would become part of Program. The Project does not include any generation facilities of Utility or any assets not necessary to provide electricity within Service Area.

City proposes to pay the purchase price of its acquisition of Project with proceeds of the Bonds. City will complete its purchase of Project after Date. Ninety-five percent or more of the output from the Project will be consumed within Service Area.

### **Law and Analysis**

Section 103(a) provides that gross income does not include interest on any state or local bond. Section 103(b) provides, however, that § 103(a) shall not apply to any private activity bond which is not a qualified bond (within the meaning of § 141).

Section 141(d)(1) provides that the term “private activity bond” includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) for the acquisition by a governmental unit of nongovernmental output property exceeds the lesser of five percent of such proceeds or \$5,000,000.

Section 141(d)(2) defines “nongovernmental output property” generally as any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (within the meaning of § 141(b)(4)) (other than a facility for the furnishing of water).

Section 141(d)(3)(A) provides that nongovernmental output property shall not include any property which is to be used in connection with an output facility 95 percent or more of the output of which will be consumed in (i) a qualified service area of the governmental unit acquiring the property, or (ii) a qualified annexed area of such unit.

Section 141(d)(3)(B)(i) defines “qualified service area,” with respect to the governmental unit acquiring the property, to mean any area throughout which such unit provided (at all times during the ten-year period ending on the date such property is acquired by such unit) output of the same type as the output to be provided by such property.

Section 1.141-1(b) of the Income Tax Regulations defines “output facility” to mean electric and gas generation, transmission, distribution, and related facilities, and water collection, storage, and distribution facilities.

For Service Area to be treated as a “qualified service area” within the meaning of § 141(d)(3)(B)(i), the requirements as applied to this case are that, throughout Service Area, Commission provided output of the same type as the output to be provided by Project at all times for the preceding ten years. These requirements are satisfied. The type of output to be provided by Project is the same type of output as Commission has provided within Service Area: electricity. Further, Commission has provided electricity throughout Service Area at all times for the preceding ten years.

**Conclusion**

Based on the facts represented, we conclude that Service Area is a qualified service area of Commission within the meaning of § 141(d)(3)(B)(i).

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, including whether the interest on the Bonds will be tax-exempt under § 103. 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.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by Commission and accompanied by penalty of perjury statements executed by the appropriate parties. 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 and Products)

By: \_\_\_\_\_  
Johanna Som de Cerff  
Senior Technician Reviewer  
Branch 5

cc: