Internal Revenue Service

Number: **202218022**
Release Date: 5/6/2022

Index Number: 468A.06-03

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:B06
PLR-117118-21

Date:
February 08, 2022

Re: Deemed Transfer of a Qualified Fund under Section 468A

LEGEND

Parent	=
Sub	=
Seller	=
Owner	=
Buyer	=
ProjectCo	=
Unit	=
State A	=
State B	=
State C	=
Commission A	=
Commission B	=
Agency	=
A Method	=
B Method	=
Date 1	=
Date 2	=
Year 1	=
Year 2	=
a	=
b	=
c	=
d	=
e	=

Dear :

This letter responds to your request, dated August 20, 2021, for a letter ruling regarding certain federal income tax consequences under section 468A of the Internal Revenue Code (Code) with respect to a proposed transaction. This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to you. The relevant facts as represented in your submission are set forth below.

FACTS

Owner, a State A corporation, owns a% of the interest in the Unit, a nuclear power generating facility and its associated facilities. Owner was the Unit's last commercial operator. The Unit ceased commercial operations in Year 1. The Unit is currently being decommissioned using the A Method permitted by Commission A. Transfer of all of the Unit's spent nuclear fuel to an independent spent fuel storage installation (ISFSI) owned by Owner was completed in Year 2.

Owner is a wholly-owned subsidiary of Seller, a State B corporation. Seller is a wholly-owned subsidiary of Sub, a State B corporation. Sub is a wholly-owned subsidiary of Parent, a State B corporation. Parent and its subsidiaries (including Seller) are principally involved in the generation, transmission, and distribution of energy. Parent is the common parent of the affiliated group that includes Owner (Seller Group). Seller joins in the consolidated federal income tax return electronically filed for the Seller Group by Parent. Parent files the consolidated return for the Seller Group on a calendar year basis using an accrual method of accounting.

Buyer is the common parent of an affiliated group of corporations (Buyer Group). Buyer files the consolidated federal income tax return for the Buyer Group on a calendar year basis using an accrual method of accounting. Buyer and its affiliates specialize in providing nuclear services, including the decommissioning of commercial nuclear power generation facilities. Buyer owns all of the equity interests in ProjectCo, a State C limited liability company disregarded as a separate entity from Buyer for federal income tax purposes.

Owner maintains a qualified nuclear decommissioning reserve fund with respect to the Unit (QDF) pursuant to a trust agreement (QDF Trust Agreement) and Commission A and other applicable regulatory requirements. Seller, Owner, Buyer, and ProjectCo (collectively, Taxpayers) represent that the QDF is irrevocably committed to the decommissioning of the Unit and is otherwise organized and maintained in a manner intended to satisfy the requirements for a qualified fund within the meaning of § 468A and the regulations promulgated thereunder.

As of Date 1, the total value of the assets of the QDF was approximately $b, with such entire balance set forth in the portion of the trust fund that would be returned to the former ratepayers, if any excess remains after completion of decommissioning and

satisfaction of all associated liabilities. Taxpayers represent that the amount of Owner's nuclear decommissioning liability (NDL) for the Unit has been determined by experts in the nuclear decommissioning industry whose estimates have been accepted by Commission A and Commission B.

Seller intends to sell, through ProjectCo, all of the issued and outstanding shares of capital stock of Owner to Buyer (Transaction). Taxpayers will jointly make an election described in § 338(h)(10) with respect to the Transaction (Election). Taxpayers represent that the Election will result in the deemed transfer from Seller to Buyer, for federal income tax purposes, of all of the assets and liabilities of Owner, including the Unit and the QDF.

Taxpayers represent that as a result of the Transaction, Buyer expects to realize certain decommissioning efficiencies, including a change in the Commission A decommissioning method for the Unit from the A Method to the B Method, which Buyer estimates will shorten the time needed to decommission the Unit.

Seller and Buyer entered into a stock purchase agreement, dated Date 2, under which Seller will sell all of the issued and outstanding shares of capital stock of Owner to Buyer for a purchase price of $c (Purchase Agreement). Taxpayers represent that this transaction will be treated as a sale of assets for federal income tax purposes, and thus, that the Unit and QDF will be treated as transferred to Buyer.

The consummation of the Transaction pursuant to the Purchase Agreement (Closing) is conditional on the approval of an application with Commission A to transfer control of the operating license for the Unit and the general license for ISFSI (collectively, Commission A License) from Seller and the Seller Group to Buyer and the Buyer Group through the Transaction (Commission A Application). Taxpayers filed the Commission A Application, and an application for approval of the Transaction with Commission B, after the execution of the Purchase Agreement.

For the period following the Closing, Owner will be included in the Buyer Group and the Buyer Group's consolidated federal income tax return. From and after the Closing, Owner will continue to maintain the QDF as a qualified fund within the meaning of § 468A.

The Closing is subject to various conditions precedent that Taxpayers represent are customary for a sale such as the Transaction, including the following requirements: (i) receipt of Commission A approval of the Commission A Application, (ii) receipt of Commission B approval of the Transaction, (iii) receipt of favorable rulings from the Internal Revenue Service (Service) pursuant to the ruling request, and (iv) that the balance of the QDF as of the Closing be at least equal to $d (with certain adjustments). Taxpayers represent the dollar amount in this last requirement has been determined by Buyer to be sufficient to decommission the Unit and is consistent with estimates of Owner's NDL that have been, or will be, approved by Owner's regulators.

The Purchase Agreement requires that the Election be jointly made by the Seller Group and the Buyer Group and that such parties and the Owner report the Transaction consistent with the Election for federal income tax purposes. The Purchase Agreement also requires all Owner employees to be reassigned to Seller prior to the Closing, along with all associated employment liabilities and deferred compensation plans.

The Purchase Agreement includes various representations and warranties of the Taxpayers, excluded asset and liability provisions, and associated indemnity obligations therewith, all of which Taxpayers represent are customary for a commercial arrangement such as the Transaction. Taxpayers represent that in general, such terms require Buyer to assume all liabilities arising out of or related to the Unit and Owner as part of the Transaction (other than certain employee-related liabilities, including with respect to Owner employees reassigned to Seller), pre-closing taxes, and liabilities with respect to certain minor excluded assets. Taxpayers represent that in particular, Buyer will assume any and all obligations associated with: (i) the retirement, dismantlement, and removal of the Unit (including the ISFSI constructed for the interim storage of spent nuclear fuel in casks at the Unit site) in compliance with all applicable nuclear laws, rules, and regulations; (ii) the reduction or removal of radioactivity at or around the site to a level permitting the release of all of the site for unrestricted use; (iii) any other process required to restore the site in accordance with all applicable decommissioning studies, laws, and orders to the extent applicable to retirement of a nuclear power plant; and (iv) management of spent nuclear fuel until acceptance by Agency. Taxpayers represent that in critical part, none of these provisions in the Purchase Agreement operate to exclude Buyer from the benefits and burdens of ownership of the Unit and the QDF for the period following the Closing.

The Purchase Agreement also includes a post-Closing QDF § 468A and nuclear regulatory law maintenance covenant that applies to Owner and Buyer Group (QDF Maintenance Covenant). The QDF Maintenance Covenant generally provides that Buyer agrees to maintain the QDF in accordance with all applicable nuclear laws, relevant trust agreements, and § 468A and the regulations promulgated thereunder, in order to ensure that the QDF will be treated as a nuclear decommissioning fund (as defined in § 468A(e)(5) and § 1.468A-5(b)(2)), until the ultimate termination of the qualified status of the fund upon substantial completion of the decommissioning of the Unit.

The Purchase Agreement also provides that Buyer will obtain performance bonds by the Closing to support the decommissioning of the Unit and management of Unit spent fuel. Taxpayers represent that the proceeds of these bonds (totaling up to $e and phasing up and down according to the nature of the work performed in the phases) will be deposited in a nonqualified fund under § 468A, if called upon, and can only be used to facilitate the decommissioning of the Unit or management of Unit spent fuel. Taxpayers also represent that owner and Buyer are required to notify Commission A prior to reducing the value of the performance bonds.

Taxpayers represent that they intend to enter into certain ancillary agreements establishing certain rights and commitments associated with the decommissioning of the Unit (Ancillary Agreements). Taxpayers represent that Buyer will be providing certain limited and customary § 468A eligible decommissioning planning services during the period between the execution date of the Purchase Agreement and the Closing. Taxpayers represent that such services are to help facilitate the receipt of regulatory approvals for the Transaction during such period and in anticipation of the prompt commencement of decommissioning activities following the Closing. Taxpayers represent that the costs of such services are expected to be funded by draws from the QDF, and that such services will be provided pursuant to a purchase order provided pursuant to a planning services agreement attached as an exhibit to the Purchase Agreement.

Taxpayers represent that they anticipate that Seller and Seller Group will provide a variety of § 468A eligible decommissioning services during the post-Closing period that will facilitate the decommissioning of the Unit by Buyer. Taxpayers represent that such services will be compensated at pre-negotiated fixed rates and include: (i) certain decommissioning and decontamination site consulting support services and other ancillary consulting and support services, pursuant to an agreement attached as an exhibit to the Purchase Agreement; (ii) certain management and security services related to the ISFSI and portions of the Unit located outside the ISFSI protected area, pursuant to the form of an agreement attached as an exhibit to the Purchase Agreement; and (iii) certain information technology, data, and personnel-related transition services pursuant to the form of an agreement attached as an exhibit to the Purchase Agreement. Taxpayers represent that such services primarily represent a continuation of various decommissioning-related services already being performed prior to the Closing by Owner and Seller, together with certain information technology and other transition services customary for a commercial arrangement such as the Transaction. Taxpayers represent that a majority of the costs of such services are expected to be funded by draws from the QDF, to the extent permitted by § 468A and the regulations promulgated thereunder, as required by the QDF Maintenance Covenant.

Taxpayers represent that after approval of the Commission A Application and the Closing: (i) Owner (as now controlled by Buyer) will be licensed to possess the Unit and will assume responsibility for all Commission A licensed activities at the Unit site, including responsibility under the Commission A License to complete decommissioning; (ii) neither Seller nor any of its affiliates will be a licensee under the Commission A License or have any authorized rights or obligations under the Commission A License for the Unit; and (iii) Buyer will assume full responsibility for funding the costs of decommissioning the Unit. Taxpayers represent that as part of the Transaction, Buyer will acquire full control and title to the QDF, which is expected to be sufficient to satisfy the expected Unit decommissioning costs, and that in the event that it is insufficient to

do so, Owner (as now controlled by Buyer) and ultimately Buyer Group will be legally responsible to complete the funding of Unit decommissioning.

Assuming that Commission A approves the Transaction and the Commission A Application, Seller represents with respect to the QDF that immediately prior to the Closing: (i) Owner will have a qualifying interest in the Unit within the meaning of § 1.468A-1(b)(2); (ii) Owner will have maintained the QDF as a trust under applicable state law for the exclusive purpose of providing funds for decommissioning of the Unit as such term is defined by § 468A and the regulations promulgated thereunder; (iii) Owner will have maintained the QDF as a separate and its sole § 468A qualified fund for the Unit; (iv) Owner will not have made any contributions to the QDF other than for which an Owner income tax deduction will be allowed under § 468A and the regulations promulgated thereunder; (v) The assets of the QDF will have been used exclusively to: (a) satisfy, in whole or in part, liability for decommissioning costs of the Unit, (b) pay administrative costs and other incidental expenses of the QDF, and (c) make investments, to the extent the assets of the QDF were not needed to satisfy the purposes in (a) and (b) above; (vi) The QDF Trust Agreement provides that all QDF assets must be used as authorized in § 468A and the regulations promulgated thereunder, including the prohibition against self-dealing, and that the QDF Trust Agreement cannot be amended to violate such provisions; and (vii) The QDF will not have engaged in an act of self-dealing.

Assuming that Commission A approves the Transaction and the Commission A Application, Buyer represents that immediately after the Closing: (i) Buyer will cause Owner to maintain the QDF as a trust under applicable state law for the exclusive purpose of providing funds for decommissioning of the Unit; (ii) Buyer will cause Owner to maintain the QDF as a separate and its sole § 468A qualified fund for the Unit; (iii) Owner will not make any contributions to the QDF other than for which an Owner income tax deduction will be allowed under § 468A and the regulations promulgated thereunder; (iv) The assets of the QDF will be used exclusively to: (a) satisfy, in whole or in part, liability for the decommissioning costs of the Unit, (b) pay administrative costs and other incidental expenses of the QDF, and (c) make investments, to the extent the assets of the QDF are not needed to satisfy the purposes in (a) or (b) above; (v) The QDF Trust Agreement provides that all QDF assets must be used as authorized in § 468A and the regulations promulgated thereunder, including the prohibition against self-dealing, and that the QDF Trust Agreement cannot be amended to violate such provisions.

RULINGS REQUESTED

Subject to receipt of approval from Commission A, Taxpayers request the following rulings, effective as of the Closing:

1. The QDF will remain a qualified fund that satisfies the requirements of § 468A and § 1.468A-5 following consummation of the Transaction.

2. The QDF will not be disqualified by reason of the Transaction.

3. The QDF will not recognize gain or loss or otherwise take any income or deduction into account as a result of the Transaction.

4. None of the Taxpayers will be required to recognize gain or loss or otherwise take any income or deduction into account as a result of a deemed transfer of assets from the QDF as part of the Transaction.

5. After the Transaction, the QDF will have a tax basis in each of its assets that is the same as the QDF's tax basis in those assets immediately prior to the Transaction.

LAW AND ANALYSIS

Section 468A(a) provides that a taxpayer that elects the application of § 468A shall be allowed as a deduction for any taxable year the amount of payments made by the taxpayer to a nuclear decommissioning reserve fund during such taxable year.

Section 1.468A-1(b)(1) provides that an "eligible taxpayer" is a taxpayer that possesses a qualifying interest in a nuclear power plant.

Section 1.468A-1(b)(5) provides that the term "nuclear power plant" means any nuclear power reactor used predominantly in the trade or business of the furnishing or sale of electric energy. Each unit (i.e., nuclear reactor) located on a multi-unit site is a separate nuclear power plant. The term "nuclear power plant" includes the portion of the common facilities of a multi-unit site allocable to a unit on that site.

Under § 1.468A-1(b)(2), the definition of the term "qualifying interest" includes a direct ownership interest.

Under § 1.468A-1(b)(3), the term "direct ownership interest" does not include stock in a corporation that owns a nuclear power plant.

Section 468A(e)(1) requires each taxpayer who elects the application of § 468A to establish a nuclear decommissioning reserve fund with respect to each nuclear power plant to which such election applies.

Section 1.468A-1(b)(4) provides that the terms "nuclear decommissioning fund" and "qualified nuclear decommissioning fund" mean a fund that satisfies the requirements of § 1.468A-5 (Qualified Fund). The term "nonqualified fund" means a fund that does not satisfy those requirements.

Section 1.468A-5(a)(1)(i) provides that a Qualified Fund must be established and maintained at all times in the United States pursuant to an arrangement that qualifies as

a trust under state law. Such trust must be established for the exclusive purpose of providing funds for the decommissioning of one or more nuclear power plants, but a single trust agreement may establish multiple funds for such purpose.

Section 1.468A-5(a)(1)(ii) provides that a separate Qualified Fund is required for each electing taxpayer and for each nuclear power plant with respect to which an electing taxpayer possesses a qualifying interest.

Section 1.468A-5(a)(1)(iii) provides that an electing taxpayer can maintain only one Qualified Fund for each nuclear power plant with respect to which the taxpayer elects the application of § 468A.

Section 1.468A-5(a)(3)(i) provides that the assets of a Qualified Fund are to be used exclusively – (A) to satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which such fund relates; (B) to pay administrative costs and other incidental expenses of such fund; and (C) to the extent that the assets of such fund are not currently required for the purposes described in (A) and (B) above, to make investments.

Section 1.468A-5(c)(1)(i) provides that, except as otherwise provided in § 1.468A-5(c)(2), the Service may, in its discretion, disqualify all or any portion of a Qualified Fund if at any time during its taxable year – (A) the fund does not satisfy the requirements of § 1.468A-5(a); or (B) the fund and a disqualified person engage in an act of self-dealing (as defined in § 1.468A-5(b)(2)).

Section 1.468A-6 describes the federal income tax consequences of a transfer of the assets of a Qualified Fund in connection with a sale, exchange, or other disposition by a taxpayer (Transferor) of all or a portion of its qualifying interest in a nuclear power plant to another taxpayer (Transferee).

Section 1.468A-6(a) provides that for purposes of § 1.468A-6, a nuclear power plant includes a plant that previously qualified as a nuclear power plant and that has permanently ceased to produce electricity.

Section 1.468A-6(b) provides that § 1.468A-6 applies if – (1) immediately before the disposition, the Transferor maintained a Qualified Fund with respect to the interest disposed of; and (2) immediately after the disposition – (i) the Transferee maintains a Qualified Fund with respect to the interest acquired; and (ii) the interest acquired is a qualifying interest of the Transferee in the nuclear power plant; and (3) in connection with the disposition, either – (i) the Transferee acquires part or all of the Transferor's qualifying interest in the plant and a proportionate amount of the assets of the Transferor's Qualified Fund (all such assets if the Transferee acquires the Transferor's entire qualifying interest in the plant) is transferred to a Qualified Fund of the Transferee; or (ii) the Transferee acquires the Transferor's entire qualifying interest in the plant and the Transferor's entire Qualified Fund is transferred to the Transferee; and

(4) the Transferee continues to satisfy the requirements of § 1.468A-5(a)(1)(iii), which permits an electing taxpayer to maintain only one Qualified Fund for each plant.

Section 1.468A-6(c) provides that a disposition that satisfies the requirements of § 1.468A-6(b) will have the following tax consequences at the time it occurs:

> (1)(i) Except as provided in § 1.468A-6(c)(1)(ii), neither the Transferor nor the Transferor's Qualified Fund will recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of a proportionate amount of the assets of the Transferor's Qualified Fund to the Transferee's Qualified Fund (or by reason of the transfer of the Transferor's entire Qualified Fund to the Transferee). For purposes of §§ 1.468A-1 through 1.468A-9, this transfer (or the transfer of the Transferor's Qualified Fund) will not be considered a distribution of assets by the Transferor's Qualified Fund.
>
> (1)(ii) Notwithstanding § 1.468A-6(c)(1)(i), if the Transferor has made a special transfer under § 1.468A-8 prior to the transfer of a Qualified Fund (or its assets), any deduction with respect to that special transfer allowable under § 468A(f)(2) for a taxable year ending after the date of the transfer of the Qualified Fund or its assets (the unamortized special transfer deduction) is allowed under § 468A(f)(2)(C) for the taxable year that includes the date of the transfer of the Qualified Fund or its assets. If the taxpayer transfers only a portion of its interest in a nuclear power plant, only the corresponding portion of the unamortized special transfer deduction qualifies for the acceleration under § 468A(f)(2)(C).
>
> (2) Neither the Transferee nor the Transferee's Qualified Fund will recognize gain or loss or otherwise take any income or deduction into account by reason of the transfer of a proportionate amount of the assets of the Transferor's Qualified Fund to the Transferee's Qualified Fund (or by reason of the transfer of the Transferor's Qualified Fund to the Transferee). For purposes of §§ 1.468A-1 through 1.468A-9, this transfer (or the transfer of the Transferor's Qualified Fund) will not constitute a payment or a contribution of assets by the Transferee to its Qualified Fund.
>
> (3) Transfers of assets of a Qualified Fund to which this section applies do not affect basis. Thus, the Transferee's Qualified Fund will have a basis in the assets received from the Transferor's Qualified Fund that is the same as the basis of those assets in the Transferor's Qualified Fund immediately before the disposition.

Under § 1.468A-6(f), the Service may treat a disposition as satisfying the requirements of § 1.468A-6 if it determines that this treatment is necessary or appropriate to carry out the purposes of § 468A and §§ 1.468A-1 through 1.468A-9.

RULINGS

Based solely on the information submitted and representations made, we reach the following conclusions, effective as of the Closing:

1. The QDF will remain a qualified fund that satisfies the requirements of § 468A and § 1.468A-5 following consummation of the Transaction.

2. The QDF will not be disqualified by reason of the Transaction.

3. The QDF will not recognize gain or loss or otherwise take any income or deduction into account as a result of the Transaction.

4. None of the Taxpayers will be required to recognize gain or loss or otherwise take any income or deduction into account as a result of a deemed transfer of assets from the QDF as part of the Transaction.

5. After the Transaction, the QDF will have a tax basis in each of its assets that is the same as the QDF's tax basis in those assets immediately prior to the Transaction.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the matters described above under any other provision of the Code and the regulations thereunder. Specifically, no opinion is expressed or implied concerning any result of any election made under § 338 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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. This ruling is specifically conditioned on the approval of the Transaction by the regulatory bodies with jurisdiction over the Transaction.

In accordance with the powers of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives. A copy of this letter

ruling is also being sent to the LB&I Policy Office.

Sincerely,

Patrick S. Kirwan

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

Enclosure
Copy for § 6110 purposes

cc: