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May 08, 2009

LEGEND:

Issuer =

State =

River =

X Wholesale Customers =

Joint Action Agency Wholesale
Customer =

Y Wholesale Customers =

Utility =

Agency =

Partners =

Partnership =

Plant =

Bonds =

a =

b =

Dear :

This is in response to your request for a ruling that the geographic boundaries of the X Wholesale Customers qualify as “qualified service areas” of Issuer under § 141(d) of the Internal Revenue Code.

Facts and Representations

Issuer is an agency and body politic and corporate of State, created to be a conservation and reclamation district for certain waters of State. The water boundaries of Issuer encompass an a-county area in State within which Issuer may exercise control over the use, distribution, and sale of the waters of the River and its tributaries.

Issuer is authorized under its enabling act to, among other things: (1) generate electricity within the water boundaries of Issuer; and (2) buy, sell, resell, interchange, and distribute electricity and to enter into contracts for such purpose within and outside the water boundaries of Issuer.

Issuer owns and operates conventional hydroelectric, pumped storage hydroelectric, and coal-fired electric generating plants and electric transmission facilities. Issuer currently sells electricity to municipalities and other governmental persons, one electric cooperative, and large industrial and commercial customers. The industrial and commercial customers are served at retail. All other customers are served at wholesale. b wholesale customers are at issue in this ruling request (the “X Wholesale Customers”). The X Wholesale Customers are municipalities or other governmental persons and include a joint action agency (the “Joint Action Agency Wholesale Customer”). We refer to the X Wholesale Customers other than the Joint Action Agency Wholesale Customer as the “Y Wholesale Customers.” The geographic boundaries of the X Wholesale Customers are shown in a map attached to the ruling request.

The X Wholesale Customers own and operate electric systems and purchase electricity from Issuer for resale to their own customers. The contracts between the Issuer and each of the Y Wholesale Customers prohibit the purchase of electricity from Issuer for resale to any wholesaler. The Joint Action Agency Wholesale Customer may sell electricity purchased from Issuer to its members but not to any other wholesaler.

Issuer has determined that additional generation capacity is needed to adequately and reliably serve its existing and projected electric loads. Issuer, Utility (an investor-owned utility), and Agency (a joint action agency of State) have entered into a purchase and sale agreement with Partners pursuant to which Utility will purchase from Partners their ownership interests in Partnership, which owns an existing generation plant, Plant. Partnership does not own any substantial assets other than Plant. Upon purchasing Partnership, Utility will immediately dissolve Partnership and will sell to Issuer and Agency undivided interests in all assets of the Plant. To finance a portion of the acquisition cost of its ownership interest in Plant (the "Project"), Issuer will issue the Bonds.

Issuer will have provided electricity to the X Wholesale Customers at all times during the ten-year period ending on the date Issuer will acquire the Project. The Y Wholesale Customers will have provided electricity throughout their geographic boundaries to customers at retail for at least ten years prior to the date of Issuer's acquisition of the Project. All of the Joint Action Agency Wholesale Customer's members, except one, will have been members of the joint action agency for at least ten years preceding the date of Issuer's acquisition of the Project. All Joint Action Agency Wholesale Customer members will have provided electricity throughout their geographic areas to customers at retail for at least ten years prior to the date of Issuer's acquisition of the Project. Issuer represents that it will not treat the geographic area of the most recent member of the Joint Action Agency Wholesale Customer as a qualified service area for purposes of § 141(d)(3)(B)(i).

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 141(d)(6) provides, with respect to nongovernmental output property acquired by a joint action agency the members of which are governmental units, that the nongovernmental output property rules shall be applied at the member level by treating each member as acquiring its proportionate share of such property.

At all times during the ten-year period ending on the date Issuer will acquire the Project, Issuer will have provided electricity to the Y Wholesale Customers and, in turn, the Y Wholesale Customers will have provided electricity throughout their geographic boundaries to customers at retail. The Y Wholesale Customers are prohibited by contract from reselling to any wholesaler the electricity purchased from Issuer. Thus, at all times during the ten-year period ending on the date Issuer will acquire the Project, Issuer will have provided electricity throughout the geographic boundaries of the Y Wholesale Customers. Issuer will acquire the Project, in part, to provide the additional generation capacity needed to adequately and reliably continue to provide electricity throughout the geographic boundaries of the Y Wholesale Customers. Therefore, the Project will provide output of the same type that the Issuer has been providing throughout the geographic boundaries of the Y Wholesale Customers at all times during the ten-year period ending on the date Issuer will acquire the Project.

At all times during the ten-year period ending on the date Issuer will acquire the Project, Issuer will have provided electricity to the Joint Action Agency Wholesale Customer. At all times during the ten-year period ending on the date Issuer will acquire the Project, the Joint Action Agency Wholesale Customer’s members will have provided electricity throughout their geographic boundaries to their customers at retail. The Joint Action Agency Wholesale Customer may sell electricity purchased from Issuer to their members but not to any other wholesaler. All of the Joint Action Agency Wholesale Customer’s members, except one, will have been members of the joint action agency for at least ten years preceding the date of Issuer’s acquisition of the Project. Issuer represents that it will not treat the geographic area of the most recent member of the Joint Action Agency Wholesale Customer as a qualified service area for purposes of § 141(d)(3)(B)(i). For all other members of the Joint Action Agency Wholesale

Customer, at all times during the ten-year period ending on the date Issuer will acquire the Project, Issuer will have provided output throughout the geographic boundaries of those members. Issuer will acquire the Project, in part, to provide the additional generation capacity needed to adequately and reliably continue to provide electricity throughout the geographic boundaries of the Joint Action Agency Wholesale Customer's members. Therefore, the Project will provide output of the same type that the Issuer has been providing throughout the geographic boundaries of the Joint Action Agency Wholesale Customer's members.

Conclusion

Based on the facts and circumstances represented, we conclude that the areas within the geographic boundaries, as shown in the map attached to your ruling request, of the X Wholesale Customers, with the exception of the geographic area of the most recent member of the Joint Action Agency Wholesale Customer, will qualify as qualified service areas of Issuer under § 141(d)(3)(B).

No opinion is expressed or implied whether at least 95 percent of the output from the Project is consumed in Issuer's qualified service areas or qualified annexed areas.

No opinion is expressed or implied whether the geographic area of the most recent member of Joint Action Agency Wholesale Customer is a qualified service area of Issuer.

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. In particular, no opinion is expressed or implied as to whether the Bonds are private activity bonds under § 141.

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 the authorized representative of Issuer.

The ruling contained in this letter is based upon information and representations submitted by Issuer 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 and Products)

By: _____
James A. Polfer
Chief
Branch 5