VERIFIED DIRECT TESTIMONY OF SANDRA E. BRUMMITT

Q1. Please state your name, business address and title.

A1. My name is Sandra E. Brummitt. My business address is 290 W. Nationwide Blvd., Columbus, Ohio 43215. I am currently the Vice President and Chief Tax & Procurement Officer for NiSource Corporate Services Company ("NCSC"), a management and services subsidiary of NiSource Inc.

Q2. On whose behalf are you submitting this direct testimony?

A2. I am submitting this testimony on behalf of Joint Petitioners Northern Indiana Public Service Company LLC ("NIPSCO") and Elliott Solar Generation LLC (the "Joint Venture").

Q3. Please describe your educational and employment background.

A3. I received a Bachelor of Economics with an Accounting Emphasis from the University of California, Santa Barbara in 1999. I received a Master's of Business Administration from the Smith School at the University of Maryland, College Park in 2010. I held various tax and finance positions in

the power and utility industry from 2001 through 2012. In 2012, I became Director, Tax for Exelon's Utilities and became Vice President, Tax for Exelon's Utilities in 2016. I served as Senior Director, Global Tax Reporting at Walmart prior to joining NiSource in 2019 as Vice President and Chief Tax Officer. My title recently changed to Chief Tax & Procurement Officer, reflecting the addition of supply chain, procurement, real estate, and facilities functions to my management responsibilities.

Q4. What are your responsibilities as Chief Tax & Procurement Officer?

A4. As Chief Tax & Procurement Officer, I oversee all tax matters, other than employment, benefits, and charitable tax matters and informational return reporting, for NiSource and its subsidiaries, which includes NIPSCO. Included in that scope is the tax work and rate case support around NIPSCO's generation strategy. As noted above, I am also responsible for all supply chain, procurement, real estate, and facilities activities.

Q5. Have you previously testified before this or any other regulatory agency?

A5. Yes. I submitted testimony before the Indiana Utility Regulatory Commission ("Commission") in NIPSCO's requests for a certificate of public convenience and necessity ("CPCN") to purchase and acquire

(indirectly through joint venture structures) in (1) Cause No. 45462 for a (a) 265 megawatt ("MW") solar joint venture (Bridge I Project), (b) 435 MW solar and 75 MW energy storage joint venture (Bridge II Project), and (c) 200 MW solar and 60 MW energy storage joint venture (Cavalry Project), collectively referred to herein as the "Solar Projects;" (2) Cause No. 45511 for a 250 MW solar joint venture (Fairbanks Project); and (3) Cause No. 45524 for a 200 MW solar joint venture (Crossroads Solar Project).

Q6. Are you sponsoring any attachments to your testimony in this Cause?

A6. Yes. I am sponsoring Attachment 6-A, a private letter ruling ("PLR") released by the U.S. Internal Revenue Service ("IRS") on November 15, 2019, which was prepared by me or under my direction and supervision.

Q7. What is the purpose of your direct testimony in this proceeding?

A7. The purpose of my direct testimony is to describe the tax structure of the Joint Venture that provide value to NIPSCO's customers. I also address certain tax considerations that impact the type of contract NIPSCO will utilize to pay for the energy generated by the Elliott Solar Project.

Q8. Has NIPSCO received approval to use the joint venture structure described herein?

A8. NIPSCO requested a certificate of public convenience and necessity ("CPCN") to purchase and acquire (indirectly through a joint venture structure similar to the structure presented in this proceeding) a (1) 102 megawatt ("MW") wind farm (Rosewater Project) in Cause No. 45194, and (2) 302 MW wind farm (Crossroads Wind Project) in Cause No. 45310. Both requests were approved by the Commission. NIPSCO also requested a CPCN to purchase and acquire (indirectly through a joint venture structure like the structure presented in this proceeding) the Solar Projects in Cause No. 45462, the Fairbanks Project in Cause No. 45511, and the Crossroads Solar Project in Cause No. 45524. Unlike in Rosewater and Crossroads Wind where the developer became a member of the joint venture, in the joint venture structure used for the Solar Projects, Fairbanks Project, Crossroads Solar Project, and as proposed in this filing, the developer will not be a member of the joint venture. Instead, the joint venture will simply purchase the project from the developer at completion.

Q9. Please describe the project subject to NIPSCO's request in this proceeding.

A9. The Elliott Project is a solar farm and associated electric transmission line

in Gibson County, Indiana that will have an aggregate nameplate capacity of approximately 200 MW.

Q10. Please describe the joint venture.

A10. The joint venture is a limited liability company that will own and operate the solar generation assets. One-hundred percent (100%) of the energy and capacity of the project will be paid for by NIPSCO through a Contract for Differences ("CFD") or a power purchase agreement ("PPA"). There will be two (or more) members in each joint venture, NIPSCO and a tax equity partner(s).[1]

Contract for Differences

Q11. What is a contract for differences?

A11. As explained by Witness Campbell, a CFD is a financial instrument that is often used in energy markets to establish a fixed price for energy when a party is not physically transacting in the underlying commodity (in this case, the energy from the Elliott Project). Ultimately, as explained by Witness Campbell, utilizing the CFD instead of a PPA will have no

[1] It is possible that there will be more than one tax equity partner for the Elliott Solar Project. For simplicity, however, I will refer to a single "tax equity partner" in testimony.

monetary impact on NIPSCO's customers, as the price that will be paid will be the same under either scenario.

Q12. Why is NIPSCO seeking approval of a CFD, as well as the Build Transfer Agreement ("BTA") PPA?

A12. As noted above, NIPSCO will be a party to the Joint Venture. If the Joint Venture sells electricity to NIPSCO under the BTA PPA, the PPA can make NIPSCO and the Joint Venture each a "related party" for IRS purposes. The sale of electricity generates losses at the joint venture level as a result of accelerated depreciation. Under the IRS rules, a related party relationship disallows the losses created by depreciation – depreciation that is a tax incentive to invest in renewables. NIPSCO has not yet received IRS guidance on the related party matter, which means using the BTA PPA could disallow losses and change the economics of the Elliott Solar Project and negatively impact NIPSCO and its customers.

Therefore, until IRS guidance is issued, NIPSCO must appropriately structure the proposed transactions to remove the risk of not getting the full benefit of tax losses generated at the joint venture level. Because a CFD is a "financial" instead of a "physical" contract, the related party issue does

not come into play. That is why NIPSCO is seeking approval of a CFD, which would be utilized if related party guidance from the IRS is not received. This is discussed more fully by Witness Campbell.

Q13. Has NIPSCO received any guidance from the IRS relating to the joint venture structures?

A13. Yes. In Cause No. 45194, NIPSCO indicated it would be requesting a PLR from the IRS on two issues: normalization and related party. NIPSCO received PLR 201946007 which ruled on normalization but declined to rule on related party. The IRS will not issue a letter ruling or a determination letter if the request presents an issue that cannot be readily resolved before a regulation or any other published guidance is issued. See Attachment 6-A. The IRS is in the process of determining if it can issue general guidance to the utility industry relating to the related party and the use of tax equity partnerships to structure renewable transactions.[2]

Q14. Has NIPSCO requested any further guidance from the IRS?

[2] In the transaction for the Rosewater Project, the tax equity partner was funding more than 50% of the project cost, which meant NIPSCO had less than a 50% stake in the joint venture for IRS purposes. Because of this, the Rosewater Joint Venture and NIPSCO were not considered "related parties" and could enter into a BTA PPA without running into the "related party" issue.

A14. Yes. NIPSCO submitted a PLR request on April 15, 2020 for its solar renewables. The ruling has not yet been issued by the IRS, and, as noted, NIPSCO is still awaiting related party guidance. In the event that related party guidance is not received, NIPSCO is seeking approval of CFD to purchase the energy that will be produced by the Elliott Solar Project and sold by the Joint Venture to NIPSCO.

Q15. What happens if NIPSCO receives IRS guidance that resolves the related party issue?

A15. If this guidance were provided, NIPSCO anticipates utilizing the BTA PPA, rather than the CFD. NIPSCO plans to do so because utilizing the BTA PPA will ensure NIPSCO can fully utilize tax losses related to the project.[3]

Joint Venture Controlling Documents

Q16. What agreements control the Joint Venture?

A16. There will be two documents that control the Joint Venture – a Joint Venture Operating Agreement (the "LLC Agreement"), and an Equity Capital

[3] It is possible that the timing of when guidance is received from the IRS could impact NIPSCO's ultimate decision, as NIPSCO may be too far along with negotiations or signed documents to change from the CFD to the BTA PPA.

Contribution Agreement.

Q17. Please describe the LLC Agreement.

A17. Witness Campbell sponsors Confidential Attachment 2-B, which is an Example Term Sheet for a joint venture agreement. This Term Sheet has not been negotiated between parties and is intended only as an example of the material terms that are typically addressed in joint venture agreements for renewable energy projects such as those presented in this filing. The example Term Sheet outlines all the material items that would be in an LLC Agreement. When the LLC Agreement is finalized, a copy will be filed with the Commission and shared with all parties.

Q18. What are the material terms of the LLC Agreement?

A18. The LLC Agreement sets forth the terms applicable to:

(1) The operation and management of joint venture and the ProjectCo,
(2) The allocation of tax items,
(3) The distribution of net cash flow by the joint venture after the Funding Date,
(4) Managing members,
(5) Milestones for investor returns,
(6) Conditions precedent,
(7) Relationship to other related documents,
(8) Representations and warranties of parties,
(9) Purchase price option, and
(10) Governance.

Q19. Please describe the Equity Capital Contribution Agreement.

A19. The Equity Capital Contribution Agreement is the document that binds the tax equity partner to invest in the Joint Venture if all conditions precedent in the BTA are met. The Equity Capital Contribution Agreement is the document that causes the Joint Venture to issue Class A Interests to the Member and Class B Interests to the Investors, in each case, in accordance with the terms of the LLC Agreement. On the financial closing date, which will coincide with Mechanical Completion, the Joint Venture will acquire all of the outstanding membership interests of the ProjectCo. The purchase price will be paid in installments, with a portion being paid at Mechanical Completion (which will coincide with the closing date of acquisition of the ProjectCo) and the remainder being paid at Substantial Completion. When the Equity Capital Contribution Agreement is finalized, a copy will be filed with the Commission and shared with all parties.

Q20. Which member will be the managing member of each Joint Venture?

A20. NIPSCO will be the managing member of each joint venture and, as noted by Witness Campbell, will *remain* the managing member of each Joint Venture.

Q21. Has the limited liability company been formed yet?

A21. Yes. Elliott Solar Generation LLC was formed on October 1, 2020, with NIPSCO as the sole member. The tax equity partner(s) of the Joint Venture will be added when the Elliott Project reaches Mechanical Completion and is sold to the Joint Venture. Witness Campbell describes the transaction in further detail.

Investment Tax Credits

Q22. When is the Elliott Project expected to be completed?

A22. The Elliott Project is expected to be completed and in-service no later than June 1, 2023.

Q23. Please explain the significance to the date of completion.

A23. The Elliott Project is expected to qualify for Section 48 Investment Tax Credits ("ITCs") as provided under the Internal Revenue Code. If the project began construction in 2019—which this project did—and is completed and in-service by December 31, 2023, the project will qualify for the 30% ITC. These credits are a significant source of value to the project.

Q24. Please briefly explain the ITC and its declining value.

A24. Federal tax incentives are currently in place for solar and paired solar plus

storage resources. Resources are eligible for an ITC, which provides a dollar-for-dollar reduction in the federal income taxes that a company claiming the credit would otherwise pay. The ITC is based on the amount of investment in solar or paired storage property. To qualify for the ITC, projects need to "commence construction" by a certain date and be put into service by a certain date, as reflected in the chart below. The start of construction deadline can be met as long as certain equipment purchases and development costs have been "safe harbored" by federal tax authorities. The safe harbor for beginning of construction is investment of at least 5% of the total project cost on or before the specified date. Safe harbored projects that commenced construction in 2019 are eligible for a 30% ITC, with a step-down over time according to the table below. The Elliott Project is expected to qualify for the 30% ITC.

The chart below reflects the reduction schedule:[4]

Year During Which Construction Begins	Last Year Project Can be Placed in Service	Credit Percentage
2019	2025	30
2020	2025	26

[4] This chart has been updated in accordance with the Consolidated Appropriations Act, 2021 enacted December 27, 2020.

2021	2025	26
2022	2025	26
2023	2025	22
2024 +	2026 +	10

While, as noted above, the Elliott Project is expected to qualify for the full 30% ITC, if the in-service date were to ultimately be delayed from 2023 to 2024 or even later, this updated reduction schedule would not have as large an impact, as the project would still qualify for a 26% ITC.

Q25. What dollar amount of ITCs will the Elliott Project qualify for?

A25. Based upon the estimated project costs, construction start date, and in-service date, the Elliott Project is anticipated to qualify for approximately [redacted] of ITCs.

Joint Venture Structure and Details

Q26. Please describe the financial aspects of the structure of the Joint Venture.

A26. Witness Campbell describes the details of the transactions, including the entities involved in developing and ultimately selling the Elliott Project into the Joint Venture. He also explains the CFD and PPA NIPSCO will enter into to become the exclusive off-taker from the Elliott Project.

Under the terms of an anticipated LLC Agreement (see Example Term Sheet), [redacted] NIPSCO projects that 100% of the ITCs will have been generated and distributed prior to reaching this point.

Q27. Please describe the nature and timing of the cash investments required to be made by the members of the Joint Venture.

A27. As mentioned previously, the cash investments will be in installments. The tax equity partner will provide 20% of its overall committed investment when the Elliott Project reaches Mechanical Completion on or before May 20, 2023, with the balance of its investment being paid at Substantial

Completion. At this time, the tax equity partner is anticipated to provide cash equal to approximately [redacted] of the purchase price of the Elliott Project, and NIPSCO will provide the remaining cash required to make up the purchase price.

Q28. Will the Joint Venture have any debt?

A28. Other than accounts payable and operating lines of credit, the Joint Venture will not have any short- or long-term debt on their balance sheets.

Q29. What is the purpose of the tax equity partner in these transactions?

A29. The tax equity partner brings financial efficiency to the project by virtue of its ability to utilize the tax attributes on a more accelerated basis than NIPSCO. In essence, the tax equity partner is monetizing the tax attributes of the Elliott Project.

Q30. Why is the tax equity partner able to utilize the tax attributes more efficiently than NIPSCO?

A30. NIPSCO is constrained in the use of tax attributes due to previous and anticipated accelerated tax deductions that will limit its utilization of losses and credits over the next several years.

The tax equity partner, on the other hand, is not involved in a capital-intensive industry and not subject to the tax incentives (*i.e.*, accelerated depreciation) provided by Congress for electric utility infrastructure investing and therefore has the capacity to immediately utilize tax credits as they are accumulated by the project. This ability of the tax equity partner to more efficiently utilize the tax attributes is reflected in the upfront cash investment, which reduces the overall investment of NIPSCO in the project (and ultimately the cost to customers) while still allowing NIPSCO to obtain 100% of the non-tax ownership attributes of the project.

Q31. Will the tax equity partner remain a member of the Joint Venture for the life of the Elliott Project?

A31. Under the terms of the LLC Agreement, NIPSCO will have the option to acquire the tax equity partner's remaining ownership interest after the tax equity partner has achieved its negotiated IRR. This buyout option provides for a fair market value purchase price of that remaining ownership interest. The fair value of the ownership interest will be determined on the discounted future cash flows of the project for the remaining ownership interest.

Conclusion

Q32. Does this conclude your prefiled direct testimony?

A32. Yes.

VERIFICATION

I, Sandra E. Brummitt, Vice President and Chief Tax Officer for NiSource Corporate Services Company, affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.

Sandra E. Brummitt

Date: March 31, 2021

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201946007**
Release Date: 11/15/2019

Index Number: 45.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-101794-19
Date:
August 08, 2019

LEGEND

Company	=
Taxpayer	=
State A	=
State B	=
a	=
b	=
County	=
Date 1	=
Date 2	=
Date 3	=
Year 1	=
Year 2	=
Year 3	=
Commission 1	=
Commission 2	=

Dear

This is in response to your recent ruling request concerning the federal income tax consequences with regard to the transaction described below.

BACKGROUND

Taxpayer, a State A corporation, is the parent company of a group of corporations (the Group) that files a U.S. consolidated federal income tax return. The Group includes members that are regulated natural gas and electric utility companies operating in states. The Group files a consolidated federal income tax return on a calendar year basis using accrual methods of accounting.

Company is a State B limited liability company, wholly owned by Taxpayer, and treated as a disregarded entity for U.S. federal income tax purposes. Company is regulated by Commission 1 and participates in a wholesale energy market regulated by Commission 2. As part of its plan to replace a substantial portion of its coal-fueled electric generating fleet, Company intends to invest in and purchase electricity from wind projects. These wind projects are intended to qualify for the production tax credit (PTC) under § 45 of the Internal Revenue Code.

The Facility is located in County. It will have a nameplate capacity of approximately a MW. The Facility is currently being developed by an independent third party developer (Developer). The Facility is owned by Project LLC, a disregarded entity of Developer for U.S. federal income tax purposes. On Date 1, Company entered into a Build Transfer Agreement with Developer pursuant to which Developer will continue to develop the Facility and sell it to Wind JV upon completion. The Facility is expected to be completed before Date 2.

On or before Date 3, Company and an independent investor (Tax Equity Investor) will enter into a joint venture by forming Wind JV LLC (Wind JV). Wind JV will purchase from Developer all of the equity interests in Project LLC. Because Project LLC will be a disregarded entity for U.S. federal income tax purposes, this transaction will be treated as the sale and purchase of the Facility assets.

Wind JV will use the Facility to generate electricity to sell to Company under a wholesale power purchase agreement (PPA). Under the PPA between Company and Wind JV, Company will purchase a% of the electric output and capacity of the Facility. The PPA will have a term of at least b years and will constitute a wholesale PPA under the market-based rate authority of Commission 2. The structure of Wind JV and related transactions, as well as the PPA, are also subject to approval by Commission 1. Prices under the PPA will be determined on a market basis, using a competitive bidding process, and will not be determined on a rate of return basis or cost basis.

Company will also include the electricity purchased from Wind JV under the PPA as part of its system power to provide electric service to Company's retail customers. Company's sale of electricity to its retail customers will be subject to regulation by Commission 1.

Based on the expected completion date, beginning in Year 1 and extending through Year 2, Company will purchase a% of the electrical power produced by the Facility. Accordingly, Company will make ongoing payments to Wind JV pursuant to the PPA. Profits, losses, cash, and PTCs will all be allocated to Company and Tax Equity Investor in accordance with the LLC Agreement.

In Year 3, Company will have an option to purchase all of Tax Equity Investor's interests in Wind JV for fair market value in accordance with the terms of the LLC Agreement. If the option is exercised Company will then own a% of Wind JV.

In the hands of Wind JV, the electricity generated by the Facility will not be subject to rate of return or cost basis regulation by Commission 1.

RULINGS REQUESTED

Rulings have been requested that:

(1) The Facility is not public utility property (or PUP) under § 168(i)(10).
(2) Any losses of Wind JV allocated to Tax Equity Investor will not be disallowed under §707(b).

LAW AND ANALYSIS

Section 168(f)(2) of the Internal Revenue Code (Code) 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.

Section 168(i)(10) of the Code defines, in part, public utility property as property used predominantly in the trade or business of the furnishing or sale of electrical energy if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof.

Prior to the Revenue Reconciliation Act of 1990, the definition of public utility property was contained in § 167(l)(3)(A) and § 168(i)(10), which defined public utility property by means of a cross reference to § 167(l)(3)(A). The definition of public utility property is unchanged. Section 1.167(l)-1(b) provides that under § 167(l)(3)(A), property is public utility property during any period in which it is used predominantly in a § 167(l) public utility activity. The term "section 167(l) public utility activity" means, in part, the trade or business of the furnishing or sale of electrical energy if the rates for such furnishing or

sale, as the case may be, are regulated, i.e., have been established or approved by a regulatory body described in § 167(l)(3)(A). The term "regulatory body described in section 167(l)(3)(A)" means a State (including the District of Columbia) or political subdivision thereof, any agency or instrumentality of the United States, or a public service or public utility commission or other body of any State or political subdivision thereof similar to such a commission. The term "established or approved" includes the filing of a schedule of rates with a regulatory body which has the power to approve such rates, though such body has taken no action on the filed schedule or generally leaves undisturbed rates filed by the taxpayer.

The definitions of public utility property contained in § 168(i)(10) and former § 46(f)(5) are essentially identical. Section 1.167(l)-1(b) restates the statutory definition providing that property will be considered public utility property if it is used predominantly in a public utility activity and the rates are regulated. Section 1.167(l)-1(b)(1) provides that rates are regulated for such purposes if they are established or approved by a regulatory body. The terms established or approved are further defined to include the filing of a schedule of rates with the regulatory body which has the power to approve such rates even though the body has taken no action on the filed schedule or generally leaves undisturbed rates filed.

Pursuant to Code §50(d)(2), rules similar to the rules of former Code §46(f) as in effect on November 5, 1990, continue to determine whether or not an asset is PUP for purposes of the investment tax credit normalization rules. As in effect at that time, former Code §46(f)(5) defined PUP by reference to former Code § 46(c)(3)(B).

The regulations under former § 46, specifically § 1.46-3(g)(2), contain a definition of regulated rates that is expanded somewhat from that contained in § 1.167(l)-1(b)(1). This expanded definition embodies the notion of rates established or approved on a rate of return basis. In addition, there is an expressed reference to rate of return in § 1.167(l)-1(h)(6)(i). The operative rules for normalizing timing differences relating to use of different methods and periods of depreciation are only logical in the context of rate of return regulation. The normalization method, which must be used for public utility property to be eligible for the depreciation allowance available under § 168, is defined in terms of the method the taxpayer uses in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account. Therefore, for purposes of application of the normalization rules, the definition of public utility property is the same for purposes of the investment tax credit and depreciation.

Under both the depreciation and investment tax credit normalization rule definitions, the property must be predominately used in one of a number of enumerated activities. Aside from the description of certain telecommunications services (which has no relevance to Taxpayer 's situation), the list of activities in

the two definitions are virtually identical. One of these activities is the furnishing or sale of electric energy.

There are, therefore, three characteristics all of which a facility must possess in order to be characterized as PUP:

1. It must be predominately used in the trade or business of the furnishing or sale of electric energy;
2. The rates for such sale must be established or approved by one of the enumerated agencies or instrumentalities; and
3. The rates set by that agency or instrumentality must be established or approved on a rate-of-return basis.

The Facility will be predominantly used in the trade or business of the furnishing or sale of electric energy, and therefore, it will possess the first of the three characteristics. Moreover, as a regulated company subject to the jurisdiction of Commission 2, Wind JV will possess the second of the three characteristics. However, Wind JV will use the Facility to generate electricity to sell to Company under a wholesale PPA. The wholesale PPA between Company and Wind JV will be regulated by Commission 2, but prices under the PPA will be set at arm's length pursuant to an RFP provided to Company by Developer and under Commission 2 regulation will be determined on a market basis and will not be determined on a rate of return basis or cost basis. Because rates on the sale of electricity from the Facility will not be regulated by Commission 2 on a rate of return basis, the Facility will not be PUP. Moreover, Commission 1 will not have any jurisdiction over Wind JV or the Facility, and as a result, could not influence the rates Company will pay for the electricity from the Facility.

Therefore, while the Facility will be used to produce electricity and will be subject to the jurisdiction of Commission 2, and thus possesses the first two characteristics of PUP, the Facility must possess all three characteristics to be considered PUP. For property to be PUP, the electricity generated must be sold at rates that are regulated by a government agency or public utility commission on a rate of return basis. Rates for the sale by Wind JV of electricity generated by the Facility are determined on a market basis and not on a rate of return or cost basis. Thus, the Facility is not PUP under § 168(i)(10).

With respect to the second issue, section 6.09 of Rev. Proc. 2019-1, 2019-1 I.R.B. 1, provides that generally, the Service will not issue a letter ruling or a determination letter if the request presents an issue that cannot be readily resolved before a regulation or any other published guidance is issued.

Accordingly, we conclude:

1. The Facility is not Public Utility Property under §168(i)(10).

2. The Service will not rule on the second issue based on § 6.09 of Rev. Proc. 2019-1.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the matters described above under any other provisions of the Code (including other subsections of § 168). Specifically, no opinion is expressed concerning whether the contract to sell electricity constitutes a service contract under § 7701(e). In addition, no opinion is expressed concerning whether the Taxpayer is the owner of the Facility generating electricity for federal income tax purposes. Further, no opinion is expressed or implied on the classification of the property under § 168(e). Except as provided in § 168(e)(3), section 5.03 of Rev. Proc. 87-56, 1987-2 C.B. 674, provides, however, that asset classes in Rev. Proc. 87-56 include property described in such asset classes without regard to whether a taxpayer is a regulated public utility or an unregulated company.

Sincerely,

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