Application No.: A.15-01-xxx
Exhibit No.: SDGE-03 (Tables 1 and 2)

TABLES of 2014 SDG&E SONGS COSTS

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

January 30, 2015

SDGE-03 Table 1[1]
2014 SONGS Costs Addressed in Current Application

Description		Sponsoring Witness / Chapter	Provisionally Authorized Revenue Requirement (2014$)	2014 Recorded Costs (Jan 1 - Dec 31)	Decision Authorizing Treatment of Costs	Nuclear Decommissioning Trust Eligible?
SONGS O&M as billed by SCE[2]		Tracy Dalu/ SDGE-01, Chapter 1	$121.6 million	$33.8 million	SCE GRC D.12-11-051	Yes
Non-O&M Costs (excluding Pension & Benefits)	Insurance (Property and Liability)	Tim Curtis/SDGE-01, Chapter 2	$1.9 million	($0.2) million	SDG&E GRC D.13-05-010	Yes
	Property Tax	Tim Curtis/SDGE-01, Chapter 2	$3.1 million	$3.0 million	SDG&E GRC D.13-05-010	Yes
SDG&E Internal Costs[3]		Mike De Marco/SDGE-01, Chapter 3	$0.2 million	$1.1 million	SDG&E GRC D.13-05-010	Yes

[1] The figures contained in this chapter are subject to change. SDG&E will provide a supplemental exhibit with final figures once such information has been made available to SDG&E and SDG&E has reviewed such information.
[2] This amount excludes Seismic Costs, which are shown in SDGE-03 Table 2; Pensions and Benefits billed by SCE are included in this calculation.
[3] Includes SDG&E labor and non-labor; the $1.1 million recorded costs includes Vacation and Sick Time, but does not include exclude Pensions and Benefits, state tax and federal tax. See Chapter 3 of SDGE-01 for more information.

SDGE-03 Table 2[4]
SONGS Costs Addressed in Other Proceedings

Description	Authorized Rev Req (2014$)	2014 Recorded Costs (Jan 1 -Dec 31)	Decision Authorizing Treatment of Costs	ND Trust Eligible?
2014 Marine Mitigation Costs	$0.9 million (SCE TY2012 GRC D.12-11-051)	$1.0 million	OII Settlement D.14-11-042	No
Nuclear Fuel Inventory Costs[5]	N/A	$3.1 million	OII Settlement D.14-11-042	Yes
Costs Related to Pursuing Recoveries from MHI/NEIL[6]	N/A	$4.9 million	OII Settlement D.14-11-042	No
Capital Expenditure Billing from SCE	$28.8 million (SCE TY2012 GRC D.12-11-051)	$5.2 million	OII Settlement D.14-11-042	Yes
Unit 1 Offsite Spent Fuel Storage	$1.1 million	$1.0 million	SDG&E GRC, D.13-05-010	No[7]
Site Easement Costs	$0.02 million	$0.02 million	SDG&E GRC D.13-05-010	Yes
Seismic Studies	Up to $12.8 million total cost	$1.4 million	D.12-05-004, OP6. Recovered in SONGSBA.	No
Unit 1 Decommissioning Costs	Costs paid directly from Unit 1 Trust	$0.8 million	To be addressed in 2015 NDTCP reasonableness review	Yes pursuant to D.99-06-007, SDG&E may access trust to pay for costs as incurred without seeking pre-approval from the CPUC.
SONGS Technical Assistance	Capped at 20% of $150,000; recorded in STAMA[8]; to be transferred to NGBA[9] for recovery	$0.0008 million	D.13-06-013, OP6	No

[4] The figures contained in this chapter are subject to change. SDG&E will provide a supplemental exhibit with final figures once such information has been made available to SDG&E and SDG&E has reviewed such information.
[5] Nuclear Fuel Inventory costs include the costs to store the fuel at third-parties' sites, to reprocess the fuel for resale and to cancel fuel contracts.
[6] Mitsuishi Heavy Industries ("MHI") and Nuclear Electric Insurance Ltd. ("NEIL").
[7] At the time of this submission, SDG&E has a request pending before the IRS to find Unit 1 Offsite Spent Fuel Storage costs to be "decommissioning costs," eligible to be paid with trust funds. SDG&E's request is provided hereto as Attachment A.
[8] SONGS Technical Assistance Memorandum Account ("STAMA").
[9] Non-Fuel Generation Balancing Account ("NGBA").

Attachment A

SDG&E Ruling Request for Offsite Unit 1 Spent Fuel Storage Costs

McDermott
Will & Emery

Boston Brussels Chicago Düsseldorf Frankfurt Houston London Los Angeles Miami
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October 2, 2014

BY HAND DELIVERY

Internal Revenue Service
Associate Chief Counsel
(Passthroughs & Special Industries)
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Avenue, NW
Washington, DC 20224

Re: San Diego Gas & Electric Company (EIN: 95-1184800)
Ruling Request Under Section 468A
Regarding Nuclear Decommissioning Costs

Dear Sir or Madam:

On behalf of San Diego Gas & Electric Company (the "Company"), we respectfully request a ruling from the Internal Revenue Service (the "Service") that the term "nuclear decommissioning costs" in section 468A[1] and Treas. Reg. § 1.468A-1(b)(6), includes fees for off-site spent nuclear fuel storage in the circumstance described herein. The Company currently maintains a qualified nuclear decommissioning reserve fund (the "Fund")[2] for Unit 1 of the San Onofre Nuclear Generating Station and associated facilities ("SONGS 1," or the "Unit"). Subject to a favorable ruling from the Service, the trustee of the Fund may be instructed to disburse assets from the Fund to pay the annual storage fees for the SONGS 1 spent nuclear fuel at the offsite facility incurred after a favorable ruling is received from the Service.

[1] All "section" references are to the Internal Revenue Code of 1986, as amended (the "Code"), and all "Treas. Reg. §" references are to the Treasury regulations promulgated thereunder.
[2] The Fund meets the requirements of a qualified nuclear decommissioning reserve fund under section 468A.

The Company also requests a ruling from the Service that any reimbursement by the Fund to the Company for future off-site spent nuclear fuel storage fees represents a permissible use of the Fund under section 468A(e)(4) and Treas. Reg. §§ 1.468A-5(a)(3)(i) and 1.468A-5(b)(2)(i) and such reimbursement is not a prohibited self-dealing transaction under Treas. Reg. § 1.468A-5(b)(1).

I. STATEMENT OF FACTS

A. The Company

The Company (EIN: 95-1184800) is incorporated in the state of California and is wholly owned by Enova Corporation, which is wholly owned by Sempra Energy, a California corporation (EIN 33-0732627) ("Parent"). The Company is principally engaged in the transmission, distribution, and generation of electric energy in southern California.

The Company's principal place of business is 8306 Century Park Court, San Diego, California, 92123. Parent and its affiliated group of corporations, including the Company, electronically file with the Service a consolidated federal income tax return on a calendar year basis using the accrual method of accounting. The Company is under the audit jurisdiction of the Communications, Technology & Media Industry of the Internal Revenue Service.

B. The Unit

1. Generally

The Unit is located on the coast of southern California in San Diego County. The Company owns a 20-percent interest as a tenant in common in the Unit and is responsible for 20

percent of its decommissioning liability. The remaining 80-percent interest in the Unit is owned by Southern California Edison Company ("SCE").

SONGS 1 commenced commercial operation on January 1, 1968. The Unit was permanently closed in 1992 and decommissioning of the Unit began in 1999. As a result, and pursuant to NRC Regulations (10 C.F.R. § 50.82(a)(2)), the operating license for the Unit no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor's vessels.

The Service issued a schedule of deduction amounts and a revised schedule of ruling amounts to the Company dated July 21, 2011, with respect to SONGS 1 (the "Schedule"). A copy of the Schedule is attached hereto as Exhibit A. As of June 2014, the fair market value of the Fund for SONGS 1 was approximately $133.6 million. This is expected to be more than sufficient to cover the estimated remaining decommissioning costs of SONGS 1.

The Company is subject to regulation by the California Public Utilities Commission ("CPUC").

2. Permanent Retirement of the Unit

After SONGS 1 ceased operations in late 1992, the Unit remained in SAFSTOR[3] until the Company commenced a three-phase decommissioning of the Unit. Phase 1 of decommissioning began in 1998. The reactor was defueled and all remaining SONGS 1 spent nuclear fuel on site was moved into dry storage by 2004. Phase 1 ended on December 31, 2008. Phase 2

[3]SAFSTOR (SAFe STORage) is one of the options for decommissioning a nuclear power plant. Pursuant to this method, the plant is monitored for up to sixty years before complete decontamination and dismantling of the site.

commenced on January 1, 2009 and is expected to end in 2049. In Phase 2, the site is maintained and monitored until the spent nuclear fuel is removed from the project land areas by the Department of Energy ("DOE"). Some Unit 1 spent fuel, specifically 395 assemblies, is currently stored on site at SONGS in independent spent fuel storage installations ("ISFSIs"). Phase 3 is scheduled to take place from 2049-2051.

3. Off-Site Spent Nuclear Fuel Storage in Morris, Illinois

A portion of SONGS 1 spent nuclear fuel is currently stored in an interim storage facility owned and operated by General Electric Company ("GE") in Morris, Illinois (the "Morris Facility"). Very early in the operating life of SONGS 1, SCE made the first of several shipments of SONGS 1 spent nuclear fuel to the Morris Facility. Between March 1972 and September 1980, 270 assemblies of spent nuclear fuel from SONGS 1 were shipped to the Morris Facility. Initially the SONGS 1 owners shipped the Unit 1 spent nuclear fuel to Morris because they intended to have the spent nuclear fuel reprocessed (recycled) and returned to SONGS 1 for re-use under a national program to reprocess spent nuclear fuel. This program was indefinitely suspended by President Jimmy Carter in 1977.[4] Although the ban on nuclear processing was later lifted by President Ronald Reagan in 1981,[5] the fuel remained at the Morris Facility because it would have been too difficult to move. The SONGS 1 owners continued to ship Unit 1 spent nuclear fuel to the Morris Facility because of limited storage capacity in the SONGS 1 spent

[4] Jimmy Carter, "Statement on Nuclear Power Policy," April 7, 1977, *available at* The American Presidency Project, http://www.presidency.ucsb.edu/ws/?pid=7316.
[5] "Ronald Reagan, "Statement Announcing a Series of Policy Initiatives on Nuclear Energy," October 8, 1981, *available at* The American Presidency Project, http://www.presidency.ucsb.edu/ws/?pid=44353.

nuclear fuel pool on site. Other reasons include the detection of a leak in the SONGS 1 spent nuclear fuel pool and compliance with NRC's full core offload requirements.

After suspension of the spent nuclear fuel reprocessing program, it became apparent that the SONGS 1 spent nuclear fuel would remain at the Morris Facility until it was removed by the DOE. Since that time, SCE has continued to pay storage fees for the spent nuclear fuel at the Morris Facility and then bill the Company for its 20-percent share. The Company currently pays approximately $1 million annually for the SONGS 1 storage fees at the Morris Facility. The CPUC has authorized the Company, in its general rate cases, to collect from customers a revenue requirement for these storage fees in rates.[6]

4. Department of Energy Litigation

Pursuant to the Nuclear Waste Policy Act of 1982 ("NWPA"), the Company entered into a Standard Contract, as defined below, with the DOE for the removal of spent nuclear fuel from SONGS 1. The Company agreed to collect from ratepayers a nuclear waste fee which was then paid to the DOE and deposited into the national Nuclear Waste Fund. Under the Standard Contract, the DOE was obligated to accept spent nuclear fuel into a permanent national repository beginning no later than January 31, 1998. Upon retirement of the Unit in 1992, the Company ceased paying to the DOE the nuclear waste fee with respect to SONGS 1.

The DOE failed to construct a permanent repository and currently has no plans to perform under the Standard Contract. In January 2004, SCE (and on behalf of the Company)

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[6] *See, e.g.*, D.13-05-010, 2013 Cal. PUC LEXIS 227 (Cal. PUC 2013) at Finding of Fact 20; D.04-12-015, 2004 Cal. PUC LEXIS 574 (Cal. PUC 2004).

sued the DOE for breach of contract. In 2010, SCE was awarded $142 million for the DOE's failure to comply with the Standard Contract through 2005, $26.8 million of which was compensation for storing the SONGS 1 spent nuclear fuel off-site at the Morris Facility.[7] In 2012, the Company received $5.366 million of the $26.8 million damages award as compensation for its pre-2006 costs for storing spent nuclear fuel at the Morris Facility.

In December 2011, SCE (and on behalf of the Company) filed another breach of contract claim against the DOE for $98 million in damages, including $23 million for Morris Facility storage fees incurred between January 1, 2006, and December 31, 2010.[8] In July 2014, SCE (and on behalf of the Company) amended its complaint in the pending lawsuit against the DOE to include additional damages of $84 million incurred between January 1, 2011 and December 31, 2013. These additional damages include $15 million for Morris Facility storage fees. This lawsuit is ongoing. In addition, SCE will likely file an amended complaint or new complaint against the DOE for damages accrued after 2013.

C. Nature of the Request

The Company respectfully requests the Service to rule that the term "nuclear decommissioning costs" in section 468A and Treas. Reg. § 1.468A-1(b)(6), include the fees paid in the future for spent nuclear fuel storage at the Morris Facility. The Company also requests a ruling from the Service that any reimbursement by the Fund to the Company for future off-site

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[7] *Southern California Edison Company v. United States*, 93 Fed. Cl. 337 (Fed. Cl. 2010), *aff'd* 2011 U.S. App. LEXIS 17514 (Fed. Cir. 2011).

[8] *Southern California Edison Company v. United States*, No. 11-870 (Fed. Cl.). SDG&E has not booked a recovery for storage costs at issue in the pending lawsuit.

spent nuclear fuel storage fees represents a permissible use of the Fund under section 468A(e)(4) and Treas. Reg. §§ 1.468A-5(a)(3)(i) and 1.468A-5(b)(2)(i) and such reimbursement is not a prohibited self-dealing transaction under Treas. Reg. § 1.468A-5(b)(1).

In order to fully decommission, dismantle, and remove a nuclear power plant, and to also restore the site to its regulatory and legally required condition, the owners of the plant must properly store the spent nuclear fuel until it is disposed of by the DOE. Therefore the Company will be required to continue to store the spent nuclear fuel at the Morris Facility and continue to pay the storage fees.

Pending the Service's consideration of this request, the Company will use its general funds to make payments to SCE for the Morris Facility storage fees. However, upon receipt of a favorable ruling from the Service on the issue addressed herein, the trustee of the Fund may be instructed to disburse assets from the Fund to pay the future annual storage fees for the SONGS 1 spent nuclear fuel at the Morris Facility.

II. RULINGS REQUESTED

With respect to costs incurred in connection with the permanent retirement and decommissioning of the Unit, the Company respectfully requests that the Service issue the following ruling:

1. Fees for the Company's portion of future SONGS 1 spent nuclear fuel storage at the Morris Facility constitute "nuclear decommissioning costs" within the meaning of section 468A and Treas. Reg. § 1.468A-1(b)(6), and therefore can be paid out of the Fund for the Unit.

2. Reimbursement by the Fund to the Company of fees related to the Company's portion of future SONGS 1 spent nuclear fuel stored at the Morris Facility represents a permissible use of the Fund under section 468A(e)(4) and Treas. Reg. §§ 1.468A-5(a)(3)(i) and 1.468A-5(b)(2)(i), and is not a prohibited self-dealing transaction under Treas. Reg. § 1.468A-5(b)(1).

III. STATEMENT OF LAW AND DISCUSSION

A. Section 468A – Definition of "Nuclear Decommissioning Costs"

Section 468A provides a deduction for amounts contributed to a qualified nuclear decommissioning fund. Section 468A(e)(4) and Treas. Reg. § 1.468A-5(a)(3)(i) provide that the assets of a qualified nuclear decommissioning fund can only be used to (i) satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the qualified nuclear decommissioning fund relates; (ii) pay administrative costs and other incidental expenses of the qualified nuclear decommissioning fund; and (iii) to the extent that the assets of the qualified nuclear decommissioning fund are not currently required for the purposes described in paragraph (i) or (ii), to make investments.

The term "nuclear decommissioning costs" is defined in Treas. Reg. § 1.468A-1(b)(6), and includes:

> [A]ll otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant, whether that nuclear power plant will continue to produce electric energy or has permanently ceased to produce electric energy....Such term also includes costs incurred in connection with the construction, operation, and ultimate decommissioning of a facility used solely to store, pending acceptance by the government for permanent storage or disposal, spent nuclear fuel generated by the nuclear power plant or plants located

> on the same site as the storage facility....An expense is otherwise deductible for purposes of this paragraph (b)(6) if it would be deductible under chapter 1 of the Internal Revenue Code without regard to section 280B.

The costs incurred by the Company for storing the spent nuclear fuel at the Morris Facility are exactly the type of expenses intended to be covered by Treas. Reg. § 1.468A-1(b)(6) because they are in "connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant." It is an essential part of the decontamination and dismantlement of a nuclear power plant that spent nuclear fuel be removed from a reactor and properly stored until it can be disposed of by the DOE. Therefore, the Morris Facility storage fees constitute "nuclear decommissioning costs" under section 468A and Treas. Reg. § 1.468A-1(b)(6).

The Service has adopted a broad interpretation of the term "nuclear decommissioning costs." For example, in Chief Counsel Advice 200931007[9] ("CCA") the Service stated that the regulation "has always been given a broad reading" and therefore ruled that costs incurred to remove components while the plant remains operational were within the ambit of "nuclear decommissioning costs." Moreover, the Service explicitly rejected a narrow interpretation of the predecessor to Treas. Reg. § 1.468A-1(b)(6) in the CCA, stating that it recognized that the predecessor regulation "can be read more strictly, . . . and that the ambiguity in those regulations may cause uncertainty. However, we believe that the conclusion reached herein is more in concert with the principles underlying 468A and the common practice of the nuclear industry." The Service also recognized the broad interpretation of nuclear decommissioning costs in Private

[9] Mar. 11, 2009.

Letter Ruling 200711015,[10] stating that such costs are "defined broadly to include expenses incurred before, during, and after the actual decommissioning process of the nuclear power plant that has ceased operations."

Clearly, the Morris Facility storage fees associated with the SONGS 1 spent nuclear fuel fit within the broadly interpreted "nuclear decommissioning costs" under Treas. Reg. § 1.468A-1(b)(6).

Although it is evident from the foregoing discussion that the Morris Facility storage fees constitute nuclear decommissioning costs by reference to the first sentence of Treas. Reg. § 1.468A-1(b)(6), additional support can be found in the third sentence of the definition. As noted above, Treas. Reg. § 1.468A-1(b)(6) expressly includes in the definition of nuclear decommissioning costs, "costs incurred in connection with the construction, operation, and ultimate decommissioning of a facility used solely to store, pending acceptance by the government for permanent storage or disposal, spent nuclear fuel generated by the nuclear power plant or plants located on the same site as the storage facility." The fees that the Company pays to store spent nuclear fuel from SONGS 1 at the Morris Facility are comparable to on-site ISFSI costs.[11] Indeed, in promulgating these regulations, the Service and Treasury twice referred to expanding the definition of "nuclear decommissioning costs" to include "costs to store spent

[10] Nov. 30, 2006.
[11] The Service has previously ruled that ISFSI costs are nuclear decommissioning costs. *See, e.g.*, PLRs 200613017 (Dec. 8, 2005); 200612007 (Dec. 8, 2005); 200611005 (Dec. 8, 2005); 200403022 (Sep. 30, 2003); 200403021 (Sep. 30, 2003); 200403006 (Sep. 30, 2003); 200345023 (Jul. 25, 2003); 200345021 (Jul. 25, 2003); 200345018 (Jul. 24, 2003); and 2003045017 (Jul. 24, 2003).

nuclear fuel pending delivery to a permanent repository" without limiting such costs to on-site facilities.[12]

Under the principles of section 468A and the regulations thereunder, off-site spent nuclear fuel storage fees should be treated in the same way as on-site spent nuclear fuel storage fees. In each case, costs are incurred to store spent nuclear fuel at a secure site until the DOE accepts the fuel. The ability to pay such costs from a qualified nuclear decommissioning fund should not depend on the location of the storage facility.

At the time the spent nuclear fuel was initially sent to the Morris Facility, the industry believed that the DOE would build a permanent repository; thus, constructing on-site storage was unnecessary at that time. The fees paid for spent nuclear fuel storage at the Morris Facility are therefore analogous to ISFSI costs and therefore constitute nuclear decommissioning costs.

As noted above, an expense which meets the characteristics of a decommissioning cost also must be "otherwise deductible" in order to constitute a nuclear decommissioning cost for purposes of section 468A. Treas. Reg. § 1.468A-1(b)(6) requires that the expense be deductible under chapter 1 of the Code without regard to section 280B.[13]

Section 162 is included in chapter 1 of the Code and generally provides a deduction for the ordinary and necessary expenses incurred in the carrying on of a trade or business. Such expenses are deductible in full under section 162 in the current taxable year. The Supreme Court

[12] T.D. 9512, 75 Fed. Reg. 80697, at 80698 (Dec. 23, 2010).
[13] Section 280B generally denies a deduction for costs incurred to demolish a structure, and requires such costs to be capitalized.

has noted that the term "ordinary" in section 162 is to clarify the distinction between expenses that are currently deductible rather than expenses that are capital expenditures in nature.[14] Capital expenditures include amounts paid or incurred (1) for permanent improvements or betterments that increase the value of or restores or substantially prolongs the useful life of property;[15] or (2) that adapt property to a new or different use.[16] Capital expenditures also include the costs to acquire, construct, build, install, manufacture, develop or grow tangible real and personal property, such as buildings, machinery and equipment, furniture and fixtures, and similar property.[17] Clearly, the Morris Facility storage fees as incurred by the Company are not capital in nature, but rather are ordinary and necessary business expenses associated with owning, operating and decommissioning a nuclear power plant.

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[14] *See Commissioner v. Tellier*, 383 US. 687, 689-690 (1960) ("The principal function of the term 'ordinary' in [section] 162(a) is to clarify the distinction, often difficult, between those expenses that are currently deductible and those that are in the nature of capital expenditures, which, if deductible at all, must be amortized over the useful life of the asset.").

[15] Treas. Reg. §§ 1.263(a)-1(a) (requires capitalization of amounts paid for permanent improvements or betterments that increase the value of any property or that restores property); 1.263(a)-3(d) (requires capitalization for amounts paid for improving property, defining an improvement as an amount that results in a betterment, restoration or adaption of property); 1.263(a)-3(j)(1) (requires capitalizations of betterments, if the amount paid ameliorates a material condition or defect, is a material addition, or materially increases the productivity, efficiency, strength, quality or output of the property); 1.263(a)-3(k) (requires capitalization, among others, of amounts paid to restore property that results in returning the property to like-new condition or returning property to its ordinarily efficient operating condition if the property has deteriorated to a state of disrepair and is no longer functional for its intended use).

[16] Treas. Reg. § 1.263(a)-3(l) (requires capitalization of amounts paid to adapt property to a new or different use).

[17] Treas. Reg. § 1.263(a)-2(a) (requiring the capitalization of amounts paid to acquire or produce real or personal property). Treas. Reg. §§ 1.263(a)-1(c)(2) and 1.263(a)-2(b)(4) defines "produce" as meaning to "construct, build, install, manufacture, develop, create, raise, or grow." Treas. Reg. § 1.263(a)-2(b)(2) defines "personal property" by reference to Treas. Reg. § 1.48-1(c). Treas. Reg. § 1.48-1(c) defines "tangible personal property" as "any tangible property except land and improvements thereto, such as buildings or other inherently permanent structures." The regulation further provides that production machinery, equipment, furniture and fixtures contained in or attached to a building and all property in the nature of machinery located outside a building, are considered tangible personal property.

An expense otherwise deductible under section 162 may be disallowed if the taxpayer has a "right" or "expectation" of reimbursement. It is generally established that a fixed or contractual right to reimbursement precludes a business expense deduction.[18] Courts have stated that a right to reimbursement is sufficiently fixed when the right has "matured without further substantial contingency."[19] In this situation, the Company does not have a fixed right to reimbursement from the DOE for the future Morris Facility storage fees.[20] Its claim against the DOE has not matured without further substantial contingency because the future litigation concerning the ongoing Morris Facility storage fees for SONGS 1 spent nuclear fuel has not yet been filed, and the outcome of any potential litigation is uncertain.

Furthermore, business deductions under section 162 should not be disallowed "because of the existence of a possibility that at some future date the taxpayer might receive a reimbursement therefore."[21] In *Elec. Tachometer Corp. v. Commissioner*,[22] the taxpayer was evicted because its building was condemned by the state to build a new highway. It incurred expenses to relocate its business and instituted legal proceedings to determine the proper amount of a condemnation award from the state, which were resolved in a later year. The court found that because of the uncertainty of the legal proceedings, the right to reimbursement was not fixed until the

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[18] *Glendinning, McLeish & Co.*, 24 B.T.A. 518, 523 (1931), *affd.* 61 F. 2d 950 (C.A. 2, 1932); Rev. Rul. 79-263, 1979-2 CB 82 (farmer denied deduction for feed costs for which he had received prior authorization for reimbursement under federal emergency assistance program).

[19] *Baloian Co. v. Commissioner*, 68 T.C. 620, 626 (1977), *nonacq. on other gds*, 1978-2 C.B. 3. (moving costs held nondeductible when the right to reimbursement from the city was determined within the taxable year).

[20] Furthermore, SDG&E has not booked a recovery for the costs at issue in the pending lawsuit, which supports SDG&E's belief that recovery of these costs is not certain.

[21] *Elec. Tachometer Corp. v. Commissioner*, 37 T.C. 158, 162 (1961); *Alleghany Corp. v. Commissioner*, 28 T.C. 298, 305 (1957). *See also* Chief Couns. Adv. 200725031 (May 17, 2007) ("A mere possibility of reimbursement does not preclude a deduction.").

[22] 37 T.C. 158 (1961).

condemnation was awarded, thus permitting the taxpayer to deduct the moving expenses in the year they were incurred.[23] As with the uncertainty associated with the taxpayer's recovery of moving expenses in *Elec. Tachometer Corp.*, the Company's possible recovery from the DOE of the future Morris Facility storage fees is not a fixed or contractual right to reimbursement, nor an expectation of reimbursement sufficient to deny a current deduction for such fees pursuant to section 162.

For the reasons described above, the future fees that the Company incurs to store spent nuclear fuel from SONGS 1 at the Morris Facility constitute nuclear decommissioning costs as defined in Treas. Reg. § 1.468A-1(b)(6) and therefore can be paid out of the Fund for the Unit.

B. Section 468A – Self-Dealing and Consequences of Self-Dealing

Section 468A and the regulations thereunder prohibit a qualified nuclear decommissioning fund from engaging in certain self-dealing activities with a disqualified person. Section 468A(e)(5) and Treas. Reg. § 1.468A-5(b) provide that an act of self-dealing with respect to a qualified nuclear decommissioning fund is any *direct* or *indirect act* described in section 4951(d) between the qualified nuclear decommissioning fund and a disqualified person.

Section 4951(d)(1) defines "self-dealing" as including, among others, the following acts engaged in between a qualified nuclear decommissioning fund and a disqualified person: (i) the lending of money or other extension of credit, (ii) the payment of compensation (or reimbursement of expenses), and (iii) the transfer to, or use by or for the benefit of, the income

[23] *Id.* at 163. *See also Varied Invs. Inc. v. Commissioner*, 31 F.3d 651 (8th Cir. 1994) (finding no right to reimbursement because insurance claims were denied despite the fact that taxpayer in fact received reimbursement at a later date).

or assets of the trust.[24] Section 4951(e)(4) defines a "disqualified person" as including, among others, a contributor to the trust.[25]

However, Treas. Reg. § 1.468A-5(b)(2) provides for certain exceptions from the self-dealing rules such that if a qualified nuclear decommissioning fund and a disqualified person engage in one of these acts, such act will not constitute an act of self-dealing. One such exception is a payment by a qualified nuclear decommissioning fund for the purpose of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the qualified nuclear decommissioning fund relates.[26]

As described above in this ruling request, the Morris Facility storage fees are included within the meaning of "nuclear decommissioning costs" under section 468A and Treas. Reg. § 1.468A-1(b)(6). Thus, reimbursement by the Fund to the Company for "nuclear decommissioning costs" such as future Morris Facility storage fees satisfies the exception under Treas. Reg. § 1.468A-5(b)(2). Therefore, reimbursement by the Fund to the Company for future Morris Facility storage fees should constitute a permissible use of the Fund under section 468A(e)(4) and Treas. Reg. §§ 1.468A-5(a)(3)(i) and 1.468A-5(b)(2)(i), and should not be a prohibited self-dealing transaction under Treas. Reg. § 1.468A-5(b)(1).

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[24] Other acts of self-dealing described in section 4951(d)(1) include (i) the sale, exchange, or lease of real or personal property and (ii) the furnishing of goods, services, or facilities.

[25] The statute also provides that a "disqualified person" includes: (i) a trustee of the trust; (ii) an owner of more than 10 percent of the total combined voting power of a corporation, the profits interest in a partnership, or the beneficial interest of a trust or unincorporated enterprise that is a contributor to the trust; (iii) an officer, director, or employee of a person who is a contributor to the trust; (iv) a corporation in which persons described section 4951(e)(4)(A)-(D) own more than 35 percent of the total combined voting power; (v) a partnership in which persons described in section 4951(e)(4)(A)-(D) own more than 35 percent of the profits interest; and (vi) a trust in which persons described in section 4951(e)(4)(A)-(D) own more than 35 percent of the beneficial interest.

[26] Treas. Reg. § 1.468A-5(b)(2)(i). Other exceptions to the self-dealing rules, which are not applicable in this instance, are described in Treas. Reg. § 1.468A-5(b)(2).

PROCEDURAL MATTERS

C. Revenue Procedure 2014-1 Statements

1. The Company represents that, to the best knowledge of the Company and the Company's representatives, no earlier return of the Company (or of a related taxpayer within the meaning of section 267 or of a member of an affiliated group of which the Company is also a member within the meaning of section 1504) that would be affected by the requested letter ruling is under examination, before Appeals, or before a Federal court.

2. The Company represents that, to the best knowledge of the Company and the Company's representatives, the Service has not previously ruled on the same or a similar issue for the Company (or a related taxpayer within the meaning of section 267 or of a member of an affiliated group of which the Company is also a member within the meaning of section 1504) or a predecessor.

3. The Company represents that, to the best knowledge of the Company and the Company's representatives, none of the Company, a related taxpayer of the Company, a predecessor of the Company, or any representative of the Company has previously submitted a request (including an application for change in accounting method) involving the same or a similar issue to the Service and withdrawn the same before a ruling was issued.

4. The Company represents that, to the best knowledge of the Company and the Company's representative, none of the Company, a taxpayer related to the Company, or a predecessor of the Company has previously submitted a request (including an application

for change in accounting method) involving the same or a similar issue to the Service in a ruling request which is currently pending with the Service.

5. The Company represents that, to the best knowledge of the Company and the Company's representatives, none of the Company, a taxpayer related to the Company, or a predecessor of the Company, at the same time of this request, is presently submitting another ruling request (including an application for change in accounting method) involving the same or a similar issue to the Service.

6. The law in connection with this ruling request is certain, and the issues discussed herein are adequately addressed by relevant authorities.

7. The Company represents that the Company and the Company's representatives have no knowledge as to any legislation or pending legislation, Treasury Regulations, revenue rulings, revenue procedures, court decision, or other authority that are contrary to the position advanced in this ruling request.

8. A conference on the issues involved in this ruling is hereby respectfully requested in the event that you reach a tentative adverse conclusion.

9. If you have any questions or need additional information regarding this ruling request, pursuant to the enclosed Power of Attorney, please contact Martha G. Pugh at (202) 756-8368.

10. The Company hereby requests that any document related to this request, including the ruling itself, and any written requests for additional information be sent by facsimile transmission (in addition to being mailed) and waive any disclosure violation resulting from such facsimile transmission. Please fax the ruling and any written requests to Ms.

Pugh at (202) 756-8087. Please mail the ruling and any written requests to Martha G. Pugh, McDermott Will & Emery LLP, 500 North Capitol Street, N.W., Washington, DC, 20001.

D. Administrative

The following are enclosed:

1. A check payable to the Internal Revenue Service in the amount of $19,000.00 in payment for the user fee for this request as set forth in Appendix A of Revenue Procedure 2014-1.
2. The required penalties of perjury statements.
3. The deletions statement required by Revenue Procedure 2014-1.
4. The checklist as required by Revenue Procedure 2014-1.
5. A Power of Attorney.

Sincerely,

Martha Groves Pugh