

INTERNAL REVENUE SERVICE

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CC:PSI:6 PLR-105810-00

February 15, 2001

Re: Revised Schedule of Ruling Amounts

Taxpayer =
Parent =
Plant =
Location =
Commission A =
Order A =
State A =
Statute A =
Commission B =
Approval B =
State B =
Statute B =
Commission C =
Order C =
State C =
Statute C =
Commission D =
Order D =
Director =

PLR-105810-00

Dear :

This letter responds to the request of Taxpayer, dated , and additional information, submitted by your authorized representative for a revised schedule of ruling amounts pursuant to section 1.468A-3(i) of the Income Tax Regulations. Taxpayer is seeking this revised schedule of ruling amounts because three of the public utility commissions having regulatory authority over Taxpayer have changed the date on which the Plant will no longer be in rate base for ratemaking purposes. In addition, the scope of the revised schedule of ruling amounts issued to Taxpayer on September 6, 1995, was limited in part to a five-year period. Information was submitted pursuant to section 1.468A-3(h)(2).

We understand the facts as presented by Taxpayer to be as follows:

Taxpayer is a wholly-owned subsidiary of Parent, and is the owner of percent joint and undivided interest in the Plant, which is situated in Location. The operating license for the Plant expires on . Taxpayer is subject to the jurisdiction of Commission A, percent; Commission B, percent; Commission C, percent; and Commission D, percent, for a total of percent. The total is slightly below 100 percent due to the fact that each Commission determines its jurisdictional percentage at a different point in time. These percentages may fluctuate slightly from year to year. Taxpayer is under the audit jurisdiction of District. Only Commission A took into account the amendments to section 468A enacted as part of the Energy Policy Act of 1992 (Public Law 102-482).

On , Taxpayer entered into an agreement to sell its interest in the Plant to unrelated parties. On the basis of the expected date of sale, Taxpayer has agreed to limit the revised schedule of ruling amounts to the years through . No change has been requested in the annual ruling amounts approved in our letter dated .

Commission A estimated Taxpayer's share of decommissioning costs in the Plant at \$. This cost is based, in part, on the Nuclear Regulatory Commission's minimum financial assurance amount in 10 C.F.R. section 50.75. This estimate of Taxpayer's decommissioning cost escalated at percent annually results in a future decommissioning cost of \$.

PLR-105810-00

Commission A, in Order A, included decommissioning costs of \$ _____ in Taxpayer's cost of service for ratemaking purposes through _____. Of this amount \$ _____ is applicable to the Nuclear Decommissioning Fund ("Fund").

In _____, the governor of State A signed into law Statute A, which provides customers within State A with open access to retail electrical suppliers and prescribes rates that Taxpayer may charge to those customers during a transition period, including an amount for the recovery of anticipated nuclear decommissioning costs. The transition period begins on _____, and ends on _____, for nonresidential customers and on _____, for residential customers. Following this transition period, no generation costs relating to Plant will be included in rates charged to Taxpayer's customers.

Commission B, in Taxpayer's Case _____, estimated Taxpayer's share of decommissioning costs in the Plant at \$ _____. This cost is based, in part, on the Nuclear Regulatory Commission's minimum financial assurance amount in 10 C.F.R. section 50.75. This estimate of Taxpayer's decommissioning cost escalated at _____ percent annually results in a future decommissioning cost of \$ _____.

Commission B, in Taxpayer's Case _____, included decommissioning costs of \$ _____ in Taxpayer's cost of service for ratemaking purposes through _____. Of this amount \$ _____ is applicable to the Fund.

On _____, the governor of State B signed into law Statute B, which provides customers within State B with open access to retail electrical suppliers. Statute B provides a price plan for utilities to follow, but allows for the submission and approval of alternative settlements. In response, Taxpayer submitted a proposal for an alternative price plan. The various interested parties subsequently agreed to a set of settlement proposals, and Commission B issued Approval B permitting recovery of stranded costs from nonresidential customers during a set recovery period, including an amount for the recovery of anticipated nuclear decommissioning costs. The recovery period begins on _____, and ends on _____. Following this transition period, Plant will no longer be considered to be in rate base for purposes of Commission B.

Commission C, in Order C, estimated the Taxpayer's share of decommissioning cost for the Plant at \$ _____. This cost is based, in part, on the Nuclear Regulatory Commission's minimum financial assurance amount in 10 C.F.R. _____.

PLR-105810-00

section 50.75. This share of the Taxpayer's decommissioning cost escalated at percent annually results in a future decommissioning cost of \$.

Commission C, in Order C, included decommissioning costs of \$ in Taxpayer's cost of service for ratemaking purposes through . Of this amount \$ is applicable to the Fund.

In , the governor of State C signed into law Statute C, which provides customers within State C with open access to retail electrical suppliers and requires Commission C to prescribe rates that Taxpayer may charge to those customers during a transition period that begins on , and expires as of . Following this transition period, Plant will no longer be considered to be in rate base for purposes of Commission C. Commission C will not regulate rates for generation service after . Taxpayer has submitted to Commission C a plan detailing how it intends to recover its anticipated nuclear decommissioning costs, but as of the date of the filing of the subject private letter ruling request Commission C has taken no action on the Plan.

Taxpayer has not requested a change in the decommissioning costs previously authorized by Commission D in Order D. Taxpayer now requests to have the previously authorized decommissioning cost of \$ to be extended for a period of three years to the year . Of this amount \$ is applicable to the Fund.

For Commissions A and B the assumed after-tax rate of return to be earned by the assets of the Fund is percent. For Commissions C and D the after-tax rate of return is percent.

The level funding limitation period for Commissions A and B extends from . The level funding limitation period for Commission C extends from . The level funding limitation period for Commission D extends from . The funding period for all four Commissions extends from .

Based on the initial request for a schedule of ruling amounts for Commissions A, B, and C, the estimated useful life of the Plant is and the estimated period for which the Fund is to be in effect is for a qualifying percentage of percent. Based on the initial request for a schedule of ruling amounts for Commission D the estimated useful life of the Plant is and the estimated period for which the Fund is to be effect is for a qualifying percentage of percent.

PLR-105810-00

At the present time there are no proceedings pending before any of the commissions that would increase or decrease the amount of decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes.

Section 468A of the Internal Revenue Code provides that a taxpayer may elect to deduct the amount of payments made to a qualified nuclear decommissioning fund. However, section 468A(b) limits the amount paid into the fund for any tax year to the lesser of the amount of nuclear decommissioning costs allocable to the fund that is included in the taxpayer's cost of service for ratemaking purposes for the tax year or the ruling amount applicable to this year.

Section 468A(d)(1) of the Code provides that no deduction shall be allowed for any payment to the nuclear decommissioning fund unless the taxpayer requests and receives from the Secretary a schedule of ruling amounts. The "ruling amount" for any tax year is defined under section 468A(d)(2) as the amount which the Secretary determines to be necessary to fund that portion of nuclear decommissioning costs which bears the same ratio to the nuclear power plant as the period for which the fund is in effect bears to the estimated useful life of the plant. This term is further defined to include the amount necessary to prevent excessive funding of nuclear decommissioning costs or funding of these costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate.

Section 468A(g) of the Code provides that a taxpayer shall be deemed to have made a payment to the nuclear decommissioning fund on the last day of the tax year if the payment is made on account of this tax year within 2 ½ months after the close of the tax year.

Section 1.468A-1(a) of the regulations provides that an eligible taxpayer may elect to deduct nuclear decommissioning costs under section 468A of the Code. An "eligible taxpayer", as defined under section 1.468A-1(b)(1), is a taxpayer that has a qualifying interest in a nuclear power plant. As defined under section 1.468A-1(b)(2), a "qualifying interest" is, among other things, a direct ownership interest, including an interest held as a tenant in common or joint tenant.

Section 1.468A-2(b)(1) of the regulations provides that the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year shall not exceed the lesser of the cost of service amount applicable to the nuclear decommissioning fund for such tax year; or the ruling amount applicable to the nuclear decommissioning fund for such

PLR-105810-00

tax year. If the amount of cash payments made (or deemed made) to the Fund during the tax year exceeds such limitation, the excess is not deductible by the electing taxpayer.

Section 1.468A-3(a)(1) of the regulations provides that, in general, a schedule of ruling amounts for a nuclear decommissioning fund is a ruling specifying annual payments that, over the tax years remaining in the "funding period" as of the date the schedule first applies, will result in a projected balance of the nuclear decommissioning fund as of the last day of the funding period equal to (and in no event more than) the "amount of decommissioning costs allocable to the fund." Section 1.468A-3(a)(2) bases the schedule of ruling amounts on the reasonable assumptions and determinations used by the applicable public utility commission(s) in establishing or approving the amount of decommissioning costs to be included in the cost of service for ratemaking purposes, taking into account amounts that are otherwise required to be included in the taxpayer's income under section 88 of the Code and the regulations thereunder. Each schedule of ruling amounts shall be based on the public utility commission's reasonable assumptions concerning; (i) the after-tax rate of return to be earned by the amounts collected for decommissioning, (ii) the total estimated cost of decommissioning the nuclear power plant, and (iii) the frequency of contributions to the nuclear decommissioning fund for a tax year.

Section 1.468A-3(a)(5) of the regulations provides that the Service may, in its discretion, provide a schedule of ruling amounts that is determined on a basis other than the rules of paragraphs (a) through (g) if in connection with its request for a schedule of ruling amounts, the taxpayer explains the need for special treatment and sets forth an alternative basis for determining the schedule of ruling amounts and the Service determines that special treatment is consistent with section 468A of the Code.

Section 1.468A-3(b)(1) of the regulations provides that the ruling amount, specified in a schedule of ruling amounts, for any tax year in the level funding limitation period shall not be less than the ruling amount specified in such schedule for any earlier tax year. Under section 1.468A-3(b)(2), the level funding limitation period begins on the first day of the first tax year for which a deductible payment is made to the nuclear decommissioning fund and ends on the last day of the tax year that includes the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes.

PLR-105810-00

Section 1.468A-3(d)(1) of the regulations provides that the amount of decommissioning costs allocable to a nuclear decommissioning fund is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant multiplied by the qualifying percentage.

Section 1.468A-3(d)(2) of the regulations provides that, in general, the total estimated cost of decommissioning a nuclear power plant is the reasonably estimated cost of decommissioning used by the applicable public utility commission in establishing or approving the amount of these costs, to be included in cost of service for ratemaking purposes.

Section 1.468A-3(d)(3) of the regulations provides that a taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning such plant multiplied by the taxpayer's qualifying interest in the plant.

Section 1.468A-3(f)(1) of the regulations provides that if two or more public utility commissions establish or approve rates for electric energy generated by a single nuclear power plant, then the schedule of ruling amounts shall be separately determined pursuant to the rules of sections 1.468A-3(a) through (e) for each public utility commission that has determined the amount of decommissioning costs to be included in the cost of service for ratemaking purposes for this plant. Under section 1.468A-3(f)(2), this separate determination shall be based on the reasonable assumptions and determinations used by the relevant public utility commission and shall take into account only that portion of the total estimated cost of decommissioning that is properly allocable to the ratepayer whose rates are established or approved by the public utility commission. According to section 1.468A-3(f)(3), the ruling amount for any tax year is the sum of the ruling amounts for such tax year determined under the separate schedules of ruling amounts.

Section 1.468A-3(g) of the regulations provides that the Internal Revenue Service shall not provide a taxpayer with a schedule of ruling amounts for any nuclear decommissioning fund unless the public utility commission that establishes or approves the rates for electric energy generated by the plant has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes and has disclosed the after-tax rate of return and any other assumptions and determinations used in establishing or approving the amount.

Section 1.468A-3(i)(1)(iii) of the regulations provides that a taxpayer is required to request a revised schedule of ruling

PLR-105810-00

amounts for a nuclear decommissioning fund if (A) any public utility commission that establishes or approves rates for the furnishing or sale of electric energy generated by a nuclear power plant to which the nuclear decommissioning fund relates reduces the amount of decommissioning costs to be included in cost of service for any tax year and (B) the taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Service of such action by any public utility commission.

Section 1.468A-3(i)(2) of the regulations provides that any taxpayer that has previously obtained a schedule of ruling amounts can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of section 1.468A-3(h). The Internal Revenue Service shall not provide a revised schedule of ruling amounts applicable to a tax year in response to a request for a schedule of ruling amounts that is filed after the deemed deadline date for such tax year.

Section 1.468A-5(c)(2)(ii) of the regulations defines an excess contribution as the amount by which cash payments made (or deemed made) to the Fund during any tax year exceed the payment limitation contained in section 468A(b) of the Code and section 1.468A-2. Section 1.468A-5(c)(2)(iii) provides that the income of the Fund attributable to an excess contribution is required to be included in the gross income of the Fund.

Section 1917 of the Energy Policy Act of 1992 eliminated, for tax years beginning after December 31, 1992, the investment restrictions contained in section 468A(e)(4)(C) of the Code. That section also revised section 468A(e)(2) by lowering the tax rate applicable to a nuclear decommissioning fund.

We have examined the representations and data submitted by the Taxpayer in relation to the requirements set forth in the Code and the regulations. Based solely on these representations of the facts, we reach the following conclusions:

1. The Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under section 1.468A-1(b)(1) and (2) of the regulations.
2. As required by section 1.468A-3(f)(3) of the regulations, the Taxpayer is proposing a total ruling amount for each year that is the sum of the separate amounts with respect to Commissions A, B, C, and D.
3. Commissions A, B, C, and D have authorized decommissioning costs to be included in the Taxpayer's

PLR-105810-00

cost of service for ratemaking purposes as required by section 1.468A-3(g) of the regulations.

4. The Taxpayer has proposed a schedule of ruling amounts which meets the requirements of section 1.468A-3(a)(1) and (2) of the regulations. The annual payments specified in the proposed schedule of ruling amounts are based on the reasonable assumptions and determinations used by Commissions A, B, C, and D and will result in a projected fund balance at the end of the funding period equal to or less than the amount of decommissioning costs allocable to the Fund for that jurisdiction.
5. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is restricted to the lesser amount of the decommissioning cost applicable to the Fund or the ruling amount applicable to the Fund, as set forth under section 1.468A-2(b)(1) of the regulations.
6. Approval of the jurisdictional percentages is granted notwithstanding that the sum of such percentages is presently less than 100 percent and may marginally exceed 100 percent in the future. Taxpayer may adjust the jurisdictional ruling amounts a necessary to take into account fluctuations in the percentages of the Taxpayer's nuclear operations subject to the regulatory jurisdiction of each commission.

Based on the above determinations, we conclude that the Taxpayer's proposed schedule of ruling amounts satisfies the requirements of section 468A of the Code.

APPROVED SCHEDULE OF RULING AMOUNTS

COMMISSIONS A, B, C, AND D

<u>YEAR</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>TOTAL</u>
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Under the provisions of section 1.468A-3(a)(5) of the regulations we hereby authorize Taxpayer to adjust the jurisdictional components of the total annual ruling amounts for the tax years solely to account for

PLR-105810-00

interjurisdictional shifts in the percentage of Taxpayer's operations subject to Commissions A, B, C, and D. However, Taxpayer is not authorized to unilaterally increase the total annual ruling amounts.

Approval of the schedule of ruling amounts is contingent on there being no change in the facts and circumstances, known or assumed, at the time the current ruling is issued. If any of the events described in section 1.468A-3(i)(1)(iii) of the regulations occur in future years, the Taxpayer must request a review and revision of the schedule of ruling amounts. Generally, the Taxpayer is required to file such a request on or before the deemed payment deadline date for the first tax year in which the rates reflecting such action became effective. When no such event occurs, the Taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline of the 10th tax year following the close of the tax year in which the most recent schedule of ruling amounts was received.

The approved schedule of ruling amounts is relevant only to those payments made to the Fund. Payments allocable to any funds other than the Fund, cannot qualify for purposes of the deduction under the provisions of section 468A of the Code. Payments made to such Fund can qualify only to the extent they are made while Taxpayer is the owner of the Plant and only to the extent that they do not exceed the lesser of the decommissioning costs applicable to such Fund or the ruling amounts applicable to this Fund in the tax year.

This ruling is directed only to the Taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives. Pursuant to section 1.468A-7(a) of the regulations, a copy of this letter must be attached (with the required Election Statement) to the Taxpayer's federal income tax return for each year in which the Taxpayer claims a deduction for payments to the Fund.

Sincerely yours,
PETER C. FRIEDMAN
Assistant to the Branch Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)