

INTERNAL REVENUE SERVICE

Number: 200121030
Release Date: 5/25/2001
Index Number: 468A.04-02

CC:PSI:6 - PLR-105450-00

February 20, 2001

In re: Revised Schedule of Ruling Amounts for

Legend:

Taxpayer =

Plant =

Location =

Commission A =

Commission B =

Commission C =

Commission D =

State X =

State Y =

States =

Director =

Order A =

PLR-105450-00

Order B =

Order C =

Settlement =

Dear :

This letter responds to your request dated , and subsequent submissions, submitted on behalf of Taxpayer. The request is for a revised schedule of ruling amounts under the review provisions of section 1.468A-3(i) of the Income Tax Regulations for Taxpayer's nuclear decommissioning fund (the "Fund") under the jurisdiction of Commission A, Commission B, Commission C, Commission D (State X), and Commission D (State Y)¹ (the "Commissions"). The required information was submitted on behalf of Taxpayer pursuant to section 1.468A-3(h)(2).

Taxpayer has represented the following facts and information:

Taxpayer is subject to the audit jurisdiction of the District. Taxpayer is an investor-owned electric utility incorporated in State X serving the States.

Taxpayer is the sole owner of the Plant at Location. Taxpayer's nuclear decommissioning costs that are included in Taxpayer's cost of service for ratemaking purposes for the Plant are subject to the jurisdiction of Commission A, which currently represents percent of total electric energy sales, Commission B, which currently represents percent of total sales, Commission C, which currently represents percent of total sales, Commission D (State X), which currently represents the percent of total sales, and Commission D (State Y), which currently represents the remaining percent of total sales. The Commissions have authorized nuclear decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes. The Plant began sustained and substantial generation of electricity for sale to customers in and the operating

1. For purposes of this ruling, Commission D (State X) and Commission D (State Y) are treated as separate public utilities commissions.

PLR-105450-00

license issued by the Nuclear Regulatory Commission (NRC) for the Plant is scheduled to expire on midnight .

On , the Internal Revenue Service approved Taxpayer's initial schedule of ruling amounts under section 468A of the Code for the Plant. A subsequent schedule of ruling amounts was approved in a letter dated , and corrected in a letter dated . Taxpayer has submitted this request for a revised schedule of ruling amounts for through with respect to Commission B, Commission C, and Commission D (State Y) because the Service did not provide a schedule of ruling amounts for these jurisdictions beyond the 1998 taxable year in the prior letters. In addition, Taxpayer has requested a revised schedule of ruling amounts with respect to Commission A for taxable years beginning with because the commission has changed the estimated cost of decommissioning the Plant and, therefore, has changed the amount of decommissioning costs to be collected in Taxpayer's cost of service effective for the year forward. Taxpayer is not requesting any changes to its prior schedule for Commission D (State X).

There are no pending proceedings before the Commissions that may result in an increase or decrease in the amount of decommissioning costs included in Taxpayer's cost of service for ratemaking purposes.

As of , the balance of the Fund was \$. The after-tax rate of return expected to be earned by the assets of the Fund is percent for Commission A and percent for Commission B, Commission C, and Commission D (State Y).

Commission A conducted new rate proceedings during calendar year , resulting in Order A. In Order A, Commission A based the amount of decommissioning costs included in Taxpayer's cost of service upon the "1999 Review of Nuclear Plant Decommissioning," prepared by Taxpayer's Capital Asset Accounting Department. Based on this report, the estimated cost of decommissioning the Plant is \$. Escalating the Commission A's jurisdictional portion of this figure at percent per year yields an estimated future decommissioning cost of \$.

Commission B has not conducted rate proceedings resulting in changes to the amount of nuclear decommissioning costs collected from customers by Commission B since the Service issued its

PLR-105450-00

previous letter. In Order B, Commission B based the amount of decommissioning costs included in Taxpayer's cost of service upon the "1990 Review of Nuclear Plant Decommissioning," prepared in March 1990, by Taxpayer's Capital Asset Accounting Department (formerly known as the Corporate Economic and Depreciation Department) (the "Department Report"). Based on the Department Report, the estimated cost of decommissioning the Plant is \$ _____, escalated at _____ percent per year results in an estimated future decommissioning cost of \$ _____, of which the Commission B jurisdictional amount is \$ _____.

Commission C has not conducted rate proceedings resulting in changes to the amount of nuclear decommissioning costs collected from customers by Commission C since the Service issued its previous letter. Commission C, in Order C, approved a settlement agreement between Taxpayer and the Commission C staff. The amount of decommissioning costs in Order C was based on the Department Report. However, Commission C disallowed recovery of amounts relating to the 25 percent contingency factor that had been incorporated in the Department Report. The estimated cost of decommissioning the Plant is \$ _____. Escalating Commission C's jurisdictional amount by _____ percent per year results in an estimated future decommissioning cost of \$ _____.

Commission D (State Y) has not conducted rate proceedings resulting in changes to the amount of nuclear decommissioning costs collected from customers by Commission D (State Y) since the Service issued its previous letter. Commission D (State Y) in Settlement, based the amount of decommissioning costs to be included in Taxpayer's cost of service on the Department Report. However, Commission D (State Y) incorporated approximately _____ percent of the estimated decommissioning costs of the Plant set forth in the Department Report. The estimated cost of decommissioning the Plant is \$ _____. Escalating Commission D (State Y)'s jurisdictional amount by _____ percent per year results in an estimated future decommissioning cost of \$ _____.

The estimated date on which the Plant will no longer be included in Taxpayer's rate bases for ratemaking purposes is _____ for Commission B, Commission C, and Commission D (State Y). The estimated useful life of the Plant was not adjusted by the Commissions before _____.

PLR-105450-00

The "funding period" and "level funding limitation period" for the Plant extend from _____ for Commission A, and from _____ for Commission B, Commission C, and Commission D (State Y). The estimated period for which the Fund will be in effect is _____ for Commission A and Commission B and _____ for Commission C and Commission D (State Y). The estimated useful life of the Plant is _____ for Commission A and Commission B and _____ for Commission C and Commission D (State Y). Thus, Taxpayer has calculated its qualifying percentages to be _____ percent for Commission A and Commission B, and _____ percent for Commission C and Commission D (State Y).

Section 468A(a) of the 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 taxable 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 taxable year or the ruling amount applicable to that 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 taxable 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 taxable year if the payment is made on account of the taxable year within 2½ months after the close of the taxable year.

Section 1.468A-1(a) of the regulations provides, in part, that an eligible taxpayer may elect to deduct nuclear

PLR-105450-00

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, in part, that the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year shall not exceed the lesser of (i) the cost of service amount applicable to the nuclear decommissioning fund for such taxable year; (ii) or the ruling amount applicable to the nuclear decommissioning fund for such taxable year.

Section 1.468A-3(a)(1) of the regulations generally provides, in part, that a schedule of ruling amounts for a nuclear decommissioning fund is a ruling specifying annual payments that, over the taxable 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) of the regulations provides that, to the extent consistent with the principles and provisions of section 1.468A-3, each schedule of ruling amounts shall be based 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. Thus, for example, 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 taxable year.

Under section 1.468A-3(a)(3) of the regulations, the Internal Revenue Service shall provide a schedule of ruling amounts that is identical to the schedule proposed by the taxpayer, but no such schedule shall be provided unless the

PLR-105450-00

taxpayer's proposed schedule is consistent with the principles and provisions of section 1.468A-3.

Section 1.468A-3(b)(1) of the regulations provides that the ruling amount, specified in a schedule of ruling amounts, for any taxable year in the level funding limitation period shall not be less than the ruling amount specified in such schedule for any earlier taxable year. Under section 1.468A-3(b)(2)(i) and (ii), the level funding limitation period begins on the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund and ends on the last day of the taxable 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.

Section 1.468A-3(c)(1)(i) and (ii) of the regulations provides that the funding period for a nuclear decommissioning fund is the period that begins on the first day of the first taxable year for which a deductible payment is made (or deemed to be made) to such nuclear decommissioning fund and ends the later of the last day of the taxable year that includes the estimated date on which decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's cost of service for ratemaking purposes; or the last day of the taxable year that includes the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes.

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)(i) of the regulations provides, in part, that 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

PLR-105450-00

decommissioning the plant multiplied by the taxpayer's qualifying interest in the plant.

Section 1.468A-3(d)(4)(i) of the regulations provides that the qualifying percentage for any nuclear decommissioning fund is equal to the fraction, the numerator of which is the number of taxable years in the estimated period for which the nuclear decommissioning fund is to be in effect and the denominator of which is the number of taxable years in the estimated useful life of the applicable nuclear power plant.

Under section 1.468A-3(d)(4)(ii) of the regulations, the estimated period for which a nuclear decommissioning fund is to be in effect begins on the later of the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund (or deemed made) or the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); and ends on the last day of the taxable 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.

Under section 1.468A-3(d)(4)(iii) of the regulations, the estimated useful life of a nuclear power plant begins on the first day of the taxable year that includes the date that the plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); and ends on the last day of the taxable 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.

Section 1.468A-3(e)(3) of the regulations provides that, for purposes of section 1.468A-3(d)(4)(ii) and (iii), the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

Section 1.468A-3(f)(1) of the regulations provides that if two or more public utility commissions establish or approve rates

PLR-105450-00

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 amounts for any taxable year is the sum of the ruling amounts for such taxable year determined under the separate schedules of ruling amounts.

Section 1.468A-3(g) of the regulations provides that the 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 to which the nuclear decommissioning fund relates has (1) determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes; and (2) 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(h)(2) of the regulations enumerates the information required to be submitted by a taxpayer in order to receive a ruling amount for any taxable year.

Section 1.468A-3(i)(1)(iii) of the regulations provides that a taxpayer is required to request a revised schedule of ruling 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 (1) increases the proposed period over which decommissioning costs of the nuclear power plant will be included in cost of service for ratemaking purposes; (2) adjusts the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes; or (3) reduces the amount of decommissioning costs to be included in cost of service for any taxable year; and (B) the taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Service of the action by the public utility commission.

PLR-105450-00

Section 1.468A-3(i)(2) of the regulations provides that any taxpayer that has obtained a schedule of ruling amounts pursuant to section 1.468A-3(h) 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); thus, the Service shall not provide a revised ruling amount applicable to a taxable year in response to a request for a schedule of ruling amounts that is filed after the deemed payment deadline date for such taxable year.

Section 1.468A-7(a) of the regulations provides, in general, that an eligible taxpayer is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer elects the application of section 468A. A separate election is required for each nuclear decommissioning fund and for each taxable year with respect to which payments are to be deducted under section 468A. In the case of an affiliated group of corporations that join in filing a consolidated return for a taxable year, the common parent must make a separate election on behalf of each member whose payments to a nuclear decommissioning fund during such taxable year are to be deducted under section 468A. The election under section 468A for any taxable year is irrevocable and must be made by attaching a statement ("Election Statement") and a copy of the schedule of ruling amounts provided pursuant to the rules of section 1.468A-3 to the taxpayer's federal income tax return (or, in the case of an affiliated group of corporations that join in filing a consolidated return, the consolidated return) for such taxable year. The return to which the Election Statement and a copy of the schedule of ruling amounts is attached must be filed on or before the time prescribed by law (including extensions) for filing the return for the taxable year with respect to which payments are to be deducted under section 468A.

Section 1917(a) and (c)(1) of the Energy Act eliminated, for taxable years beginning after December 31, 1992, the investment restrictions contained in section 468A(e)(4)(C) of the Code. Section 1917(b) and (c)(2) of the Energy Act revised section 468A(e)(2) by lowering the tax rate applicable to a nuclear decommissioning fund for taxable years beginning after December 31, 1993.

We have examined the representations and information submitted by Taxpayer in relation to the requirements set forth in the section 468A of the Code and the regulations thereunder.

PLR-105450-00

Based solely on these representations, we reach the following conclusions:

1. 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. The Commissions have authorized decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes as required by section 1.468A-3(g) of the regulations.
3. Taxpayer has determined that the qualifying percentages under section 1.468A-3(d)(4) to be percent for Commission A and Commission B, and percent for Commission C and Commission D (State Y).
4. The maximum amount of cash payments made (or deemed made) to the Fund during any taxable 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.
5. As required under section 1.468A-3(f)(3) of the regulations, Taxpayer is proposing a total ruling amount for each taxable year that is the sum of the separate amounts for the Commissions.
6. Taxpayer has proposed a schedule of ruling amounts which meets the requirements of sections 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

PLR-105450-00

determinations used by the Commissions 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.

Based on the above determinations, we conclude that Taxpayer's proposed schedule of ruling amounts satisfies the requirements of section 468A of the Code. The following schedule of ruling amounts is specifically approved for the Commissions.

APPROVED REVISED SCHEDULE OF RULING AMOUNTS

2

<u>YEAR</u>	<u>COMMISSION A</u>	<u>COMMISSION B</u>	<u>COMMISSION C</u>	<u>COMMISSION D</u>		<u>TOTALS</u>
				<u>STATE X</u>	<u>STATE Y</u>	

2. The ruling amounts for Commission A (1999 only) and Commission D (State X) were approved in a prior schedule of ruling amounts. The ruling amounts for Commission D (State X) are to continue through For purposes of the mandatory review required under section 1.468A-3(i)(1) of the regulations, the date of that prior ruling shall govern the review period for the jurisdiction of Commission D (State X).

PLR-105450-00

With agreement of Taxpayer, this revised schedule of ruling amounts is limited to a 5-year period for the portion of the schedule of ruling amounts for Commission B, Commission C, and Commission D (State Y) because these commissions have not taken into account the statutory changes made to section 468A of the Code by the Energy Act. The elimination of the investment restrictions and the reduction of the tax rate applicable to income earned by the Fund may result in a greater after-tax of return than was estimated, prior to the enactment of the Energy Act, by these commissions. This increased after-tax rate of return could, over the life of the Fund, result in a balance in the Fund on the last day of the funding period that could exceed the amount of decommissioning costs allocable to the Fund.

Thus, in order to prevent the excess accumulation in the Fund, this schedule of ruling amounts is being limited to a 5-year period, except the amounts for Commission A and Commission D (State X), which took into account the amendments made by the Energy Act to section 468A of the Code. Approval of a revised schedule of ruling amounts may be granted after a determination by Commission B, Commission C, and Commission D (State Y) of an after-tax rate of return that accounts for the reduced tax rate and unrestricted investments.

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 this ruling is issued. If any of the events described in section 1.468A-3(i)(1)(iii) of the regulations occur in future years, Taxpayer must request a review and revision of the schedule of ruling amounts. Under section 1.468A-3(i)(1)(iv), Taxpayer is required to file such a request on or before the deemed payment deadline date for the first taxable year in which the rates reflecting such action became effective.

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. As stated above, payments made to the Fund can qualify only to the extent that they do not exceed the lesser of the decommissioning costs applicable to the Fund or the ruling amounts applicable to the Fund in the taxable year.

Except as specifically set forth above, no opinion is expressed concerning the federal income tax consequences of the

PLR-105450-00

above-described facts under any other provision of the Code or regulations. This letter ruling is directed only to Taxpayer who requested it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

In accordance with the power of attorney on file, a copy of this letter is being sent to your authorized legal 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 Taxpayer's federal income tax return for each taxable year in which Taxpayer claims a deduction for payments made to the Fund.

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