

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:6-PLR-118169-03
Date:
September 29, 2003

In re: Revised Schedule of Ruling Amounts

LEGEND:

Plant =
Taxpayer =

Commission A =
Commission B =
Commission C =
Commission D =

A =
B =
C =
D =
E =
F =
G =
H =
I =
J =
K =
L =
M =
N =
O =
P =
Q =
R =

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S =
T =
U =
V =
W =
X =
Y =
Z =
AA =

Dear :

This letter responds to the request of Taxpayer, dated _____, and supplemental information as submitted by Taxpayer, for a revised schedule of ruling amounts relating to Plant's qualified nuclear decommissioning fund ("Fund") in accordance with section 1.468A-3(i) of the Income Tax regulations. Taxpayer is requesting a new schedule of ruling amounts pursuant to section 1.468A-3(i)(1)(i), which requires a new schedule of ruling amounts ten years after the issuance of the most recent schedule of ruling amounts. Taxpayer previously received a schedule of ruling amounts pertaining to Plant on A. Information was submitted pursuant to section 1.468A-3(h)(2).

Taxpayer owns an undivided B percent of the Plant. The license for the Plant expires on C.

Commission A, Commission B, Commission C, and Commission D have regulatory jurisdiction over the rates charged by Taxpayer with respect to Plant. A portion of Taxpayer's wholesale operations consist of sales to the joint owners of D. Taxpayer and its affiliated corporations file a consolidated tax return and are under the audit jurisdiction of the Industry Director, Natural Resources and Construction (LM:NRC).

The jurisdictional percentages allocable to Commissions A, B, C, and D are X, Y, Z, and AA, respectively.

Commission A, in E, effective F, authorized nuclear decommissioning costs to be included in cost of service for ratemaking purposes for the Plant in the amount of G. Commission B, in H, effective I, authorized nuclear decommissioning costs to be included in cost of service for ratemaking purposes for the Plant in the amount of J. Commission C, in K, effective L, authorized nuclear decommissioning costs to be included in cost of service for ratemaking purposes for the Plant in the amount of M. Commission D, through a series of interconnection agreements of various dates, authorized nuclear decommissioning costs to be included in cost of service for ratemaking purposes.

The Commissions use the same assumptions, estimates, and factors in

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determining decommissioning costs. Therefore, the total estimated cost of decommissioning is N for each of the Commissions. This base cost escalated using an estimated inflation rate of O results in an estimated future cost of P.

The level funding limitation period and the funding period are Q through R. The assumed after-tax rate of return to be earned by the assets of the Fund is O. The rate of escalation to determine the future cost of decommissioning the Plant is O. The proposed method of decommissioning the Plant is prompt removal/dismantling.

Taxpayer has determined the estimated period for which the Fund is to be in effect is S years (T through U) and the estimated useful life of the Plant is V years (T through R). Therefore, the qualifying percentage is W.

Section 468A of the Code provides that a taxpayer may elect to deduct the amount of payments made to a qualified decommissioning fund. However, section 468A(b) limits the amount paid into such fund for any taxable year to the lesser of the amount of nuclear decommissioning costs allocable to this fund which 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 total nuclear decommissioning costs with respect to the nuclear power plant as the period for which the nuclear decommissioning 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 a taxable year if the payment is made on account of such taxable year and is made 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) of the regulations, is a taxpayer that has a "qualifying interest" in, among other things, a direct ownership interest, including an interest 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 (i) the cost of service amount applicable to the

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nuclear decommissioning fund for such tax year; or (ii) the ruling amount applicable to the nuclear decommissioning fund for such tax year. If the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year exceeds the limitation of paragraph (b)(1), the excess is not deductible by the electing taxpayer. In addition, under section 1.468A-5(c) there are rules which provide that the Internal Revenue Service may disqualify a nuclear decommissioning fund if the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year exceeds the limitation of paragraph (b)(1).

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) of the regulations provides that, to the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on the reasonable assumptions and determinations used by the applicable public utility commission in establishing or approving the amount of decommissioning costs to be included in the cost of service for ratemaking purposes. Under sections 1.468A-3(a)(3), the Internal Revenue Service shall provide a schedule of ruling amounts identical to the schedule proposed by the taxpayer, but no such schedule shall be provided by the Service unless the taxpayer's proposed schedule is consistent with the principles and provisions of that section.

Section 1.468A-3(b)(1) of the regulations provides that, in general, the amount for any tax year in the level funding limitation period shall not be less than the ruling amount 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 on which the nuclear power plant 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) 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. Under section 1.468A-3(d)(4), the qualifying percentage for any nuclear decommissioning fund is equal to a fraction, the numerator of which is the number of tax 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 tax years in the estimated useful life of the applicable plant.

Section 1.468A-3(d)(4)(ii) of the regulations provides that the estimated period for which a nuclear decommissioning fund is to be in effect begins on the later of (1) the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund (or deemed made); or (2) 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. According to § 1.468A-3(e)(3), the estimated date on which the nuclear power plant 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(d)(4)(iii) of the regulations provides that 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. According to § 1.468A-3(e)(3), the estimated date on which the nuclear power plant 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(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.

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Sections 1917(a) and (c)(1) of the Energy Policy Act of 1992 (Act) eliminated, for taxable years beginning after December 31, 1992, the investment restrictions contained in section 468A(e)(4)(C). Sections 1917(b) and (c)(2) of the 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.

Section 5.01 of Rev. Proc. 92-54, 1992-2 C.B. 393, provides that if a public utility commission places a nuclear power plant in a taxpayer's rate base within a reasonable period of time after the date the plant begins sustained and substantial generation of electricity for sale to customers, the date of inclusion in rate base will be deemed to be the commercial operations date. A reasonable period of time is one that ends on the last day of the second calendar year after the calendar year in which the nuclear power plant begins sustained and substantial generation of electricity for sale to customers.

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

1. For the period covered by this schedule of ruling amounts, Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under section 1.468A-1(b)(1) of the regulations.
2. Commission A, Commission B, Commission C, and Commission D have determined the 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 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 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.
4. Taxpayer has determined under section 1.468A-3(d)(4) of the regulations that the qualifying percentage is W.
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 cost of service amount 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.

Based solely on the determinations above, we conclude that the Taxpayer's proposed schedule of ruling amounts in regard to the Commissions satisfies the

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requirements of Section 468A of the Code. Accordingly, the schedule of ruling amounts requested by the Taxpayer under section 468A(d)(1) is approved as follows:

APPROVED SCHEDULE OF RULING AMOUNTS
TAXABLE YEARS THROUGH
COMMISSIONS A, B, C, AND D

YEAR	COMM. A	COMM. B	COMM. C	COMM. D	TOTAL
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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.

The approved schedule of ruling amounts is being limited to a five-year period as a result of the statutory changes made by the 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 Act, by the Commissions. This increased after-tax rate of return would, over the life of the Fund, result in a balance in the Fund on the last day of the funding period that would exceed the amount of decommissioning costs allocable to the Fund. In order to prevent the excess accumulation in the Fund this schedule of ruling amounts is limited to a five year period. Approval of a revised schedule of ruling amounts may be approved after a determination by the applicable public utility commissions of an after-tax rate of return that accounts for the reduced tax rate and unrestricted investments.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above.

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 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, we are sending a copy of this letter to the Taxpayer's authorized representative. We are also sending a copy of this letter ruling to the Industry Director, Natural Resources and Construction (LM:NRC). Pursuant to section 1.468A-7(a) of the regulations, a copy of this letter must be attached (with the required Election Statement)

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to the Taxpayer's federal income tax return for each tax year in which the Taxpayer claims a deduction for payments made to the Fund.

Sincerely yours,

PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)