Internal Revenue Service

Department of the Treasury

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Date:
May 6, 2002

Re: Request for a Revised Schedule of Ruling Amounts

Taxpayer =

Utility =
Parent =
Subsidiary =
Plant =
Location =
Commission =
Fund =

Dear :

This letter responds to the request of Taxpayer, dated February 21, 2002, and supplemental information as submitted by Taxpayer, for a revised schedule of ruling amounts in accordance with sections 1.468A-3(i) and 1.468A-6(e)(2)(ii) of the Income Tax Regulations. The request is the result of the Commission decreasing the decommissioning costs. Utility was previously granted a revised schedule of ruling amounts by letter dated February 22, 1996. Information was submitted in accordance with section 1.468A-3(h)(2).

Taxpayer owns 100 percent of the Plant, which is situated in Location. The proposed method of decommissioning the Plant is prompt removal/dismantling. The license for the Plant expires on .

On , the Commission issued Order No. , approving an increase in the annual decommissioning costs included in cost of service for the Plant

to $. This increase was due to the completion of an independent site-specific study of the Taxpayer's Plant for decommissioning purposes. The Nuclear Regulatory Commission (NRC) permits utilities to use such studies in place of its generic decommissioning formulas, which were used previously in calculating the decommissioning cost for Taxpayer.

On , the Utility entered into a settlement agreement before the Commission that specified the framework for deregulation of the Utility's electric generation business. This agreement also provides for the collection and recovery of decommissioning costs relating to deregulated nuclear generation assets as part of the Utility's unbundled delivery service rates. As part of that settlement agreement, annual decommissioning costs for the Plant were reduced to $.

On , Utility transferred the Plant, the qualified nuclear decommissioning trust funds, and its rights to recover decommissioning costs to Taxpayer in exchange for the stock of Taxpayer pursuant to a tax-free reorganization that qualified under sections 355 and 368(a)(1)(D) of the Code. The Utility then distributed the stock of Taxpayer to Parent. Parent then contributed the stock of Taxpayer to Subsidiary. All the parties involved are members of the same consolidated group.

In connection with this restructuring, Parent, Taxpayer, and Utility received a private letter ruling from the Internal Revenue Service dated March 9, 2001 (PLR 200123042) which stated, in part, that following the transfer of the Plant and nuclear decommissioning funds to Taxpayer, Taxpayer will be considered as the "eligible taxpayer" and "electing taxpayer" with respect to the nuclear decommissioning funds. As a result, Taxpayer may make deductible contributions to its qualified nuclear decommissioning funds in an amount consistent with section 468A of the Code and the regulations thereunder. This ruling was expressly conditioned (1) on the Utility receiving an order from the Commission requiring that it collect decommissioning costs as an agent for the Taxpayer and pay all such collections to the Taxpayer; and (2) on the continued direct or indirect ownership of the Taxpayer by Parent or Subsidiary.

The estimated cost of decommissioning the Plant is $ (dollars), which includes percent of the cost of decommissioning the ISFSI, which is equally shared with . The estimated future cost of decommissioning the Plant escalated at percent annually is $ (dollars).

The funding period and levelized funding limitation period began on

and ends on . The assumed after-tax rate of return to be earned on the assets of the Fund is percent. The estimated date on which the Plant will no longer be included in Taxpayer's rate base is .

Pursuant to the Utility's previous election under section 1.468A-8(b)(7) of the regulations, the estimated period for which the Fund will be in effect is years (through) and the estimated useful life of the Plant is years (through). Therefore, the qualifying percentage is percent.

No proceedings are pending before the Commission that may result in an increase or decrease in the amount of decommissioning costs for the Plant to be included in Taxpayer's cost of service for ratemaking purposes.

Section 468A 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 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 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 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(f) of the Code defines the term "nuclear powerplant" as including any unit thereof. Section 1.468A-1(b)(4) of the regulations further defines the term "nuclear power plant" as any nuclear power reactor that is used predominantly in the trade or business of the furnishing or sale of electric energy, if the rates for such furnishing or sale, as the case may be, have been established or approved by a public utility commission. Each unit (i.e., nuclear reactor) located on a multi-unit site is a separate nuclear power plant.

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 1/2 months after the close of the tax year.

Section 1.468A-1(a) of the regulations provides, in part, 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, in part, 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 nuclear decommissioning fund for such tax year; (ii) or the ruling amount applicable to the nuclear decommissioning fund for such tax 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 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 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 tax year.

Under section 1.468A-3(a)(3) of the regulations, the 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 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 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.

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 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 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 nuclear power plant.

Under the special elective transition rule of section 1.468A-8(b)(7)(i) of the regulations, for purposes of section 1.468A-3(d)(4)(ii), the estimated period for which a nuclear decommissioning fund is to be in effect begins on the later of the first day of the taxable year that includes the date that the nuclear power plant began commercial operations; or the first day of the taxable year that includes July 18, 1984. Under the special elective transition rule of section 1.468A-8(b)(7)(ii), for purposes of section

1.468A-3(d)(4)(ii) and (iii), the estimated period for which the nuclear decommissioning fund is to be in effect and the estimated useful life of the nuclear plant both end on the earlier of the last day of the taxable year in which it is estimated that decommissioning will begin; or the last day of the taxable year that includes the expiration date of the Nuclear Regulatory Commission operating license as in effect on July 18, 1984, without regard to any extensions or amendments thereto.

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(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 tax 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) adjust 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.

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-6 generally provides rules for the transfer of an interest in a nuclear power plant (and transfer of the qualified fund) where after the transfer the transferee is an eligible taxpayer. Under section 1.468A-6(g), the Service may treat any disposition of an interest in a nuclear power plant occurring after December 27, 1994, as satisfying the requirements of the regulations if the Service determines that such treatment is necessary or appropriate to carry out the purposes of section 468A.

Section 1.468A-6(e)(2)(ii) of the regulations provides that a transferee of a qualifying interest in a nuclear power plant must file a request for a revised schedule of ruling amounts with respect to that interest on or before the deemed payment deadline for the first taxable year of the transferee beginning after the disposition. See section 1.468A-2(i)(1)(ii)(B). If the transferee does not timely file such a request, the transferee’s ruling amount with respect to that interest for the affected year or years will be zero, unless the Internal Revenue Service waives the application of section 1.468A-6(e)(2)(ii) upon a showing of good cause for the delay.

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.

We have examined the representations submitted by the Taxpayer. Based solely on these representations, we reach the following conclusions:

1. The Taxpayer has a qualifying interest in the Plant and, therefore, will be treated as an eligible taxpayer under section 1.468A-1(b)(1) and (2) of the regulations.

2. As required by section 1.468A-3(g) of the regulations, the Commission has authorized decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes. This authorization is effective only during such period as the Utility is authorized to collect decommissioning costs and is obligated to pay such amounts to the Taxpayer.

3. The Taxpayer was eligible for and properly elected the special transition rules of section 1.468A-8(b)(7) of the regulations. The Taxpayer's qualifying percentage under section 1.468A-3(d)(4) is percent.

4. The 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 Commission 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 the Taxpayer's revised schedule of ruling amounts satisfies the requirements of section 468A of the Code.

APPROVED SCHEDULE OF RULING AMOUNTS
TAX YEARS THROUGH

YEAR	AMOUNT
	$

EACH YEAR

THROUGH

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, the Taxpayer must request a review and revision of the schedule of ruling amounts. Under section 1.468A-3(i)(1)(iv), 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. In addition, approval of the schedule of ruling amounts is expressly conditioned (1) on the continued existence of the Commission order requiring that the Utility collect decommissioning costs as an agent for the Taxpayer and pay all such collections to the Taxpayer; and (2) on the continued direct or indirect ownership of the Taxpayer by Parent or Subsidiary.

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 tax year.

Further, approval of the schedule of ruling amounts is contingent on the continued direct or indirect ownership and control of Taxpayer by the Parent or its subsidiary.

Except as specifically set forth above, no opinion is expressed concerning the federal income tax consequences of the above described facts under any other provision of the Code or regulations. In particular, no opinion is expressed or implied concerning whether the collection of decommissioning costs by the Utility and payment of those collections to the Taxpayer is includible in the gross income of, and deductible by, any entity other than the Taxpayer.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent. 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 tax year in which the Taxpayer claims a deduction for payments made to the Fund. Copies of this letter are being sent to your authorized representatives and to the Industry Director, Natural Resources (LM:NR).

Sincerely yours,

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

cc: