Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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PLR-140706-05

Date:
December 08, 2005

In re: Revised Schedule of Ruling Amounts

Legend:

Taxpayer =

Parent =

Plant =
State =
Location =
Commission A =
Commission B =
Method =
Order =

a =
b =
c =
d =
e =
f =
g =
h =
i =
j =
k =

l =
m =
n =
o =
p =

Dear

This letter responds to a letter dated July 29, 2005, and subsequent submissions, submitted by Taxpayer's authorized representatives, requesting a revised schedule of ruling amounts for Plant pursuant to section 1.468A-3(i)(1) of the Income Tax Regulations. Taxpayer was previously granted a schedule of ruling amounts on a. 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 an investor-owned electric utility incorporated in State and serving customers predominantly located in State. Taxpayer is owned by Parent, with whom it files a consolidated return on a calendar year basis using the accrual method of accounting.

Plant is situated in Location. Taxpayer previously owned a b percent interest in Plant. Taxpayer sold c percent of its overall interest in Plant to unrelated purchasers and entered into agreements with those purchasers to lease back the entire c percent interest. Therefore, Taxpayer is a lessee with respect to an undivided interest of approximately d percent of Plant and a fee simple owner of approximately e percent of Plant. Under the lease agreements, Taxpayer remains fully responsible for decommissioning both the leased interest and the retained fee simple interest in Plant, and Taxpayer is required to fully fund its decommissioning obligations through means of external trusts.

The collection of decommissioning costs for Plant from ratepayers with respect to Taxpayer's interest in Plant is subject to the regulatory jurisdiction of Commission A and Commission B. The method for decommissioning Plant is the Method, the cost of which is based on a site-specific decommissioning study. The regulatory percentage for Commission A is f percent.

Commission A and Commission B have determined the amount of decommissioning costs for Plant to be included in Taxpayer's cost of service for ratemaking purposes. There are no proceedings pending before the Commissions that would may result in an increase or decrease in the amount of decommissioning costs to be included in Taxpayer's cost of service. This request for a revised schedule of ruling amounts applies only to ruling amounts under the jurisdiction of Commission A.

In determining the decommissioning costs for Plant in Order, Commission A used an estimated base cost of $g. Commission A escalated these costs annually at a rate of h percent, resulting in a future decommissioning cost of $i. In addition to the escalated base cost, Commission A also included in the future estimated cost of decommissioning $j of pre-shutdown and post-shutdown interim spent fuel storage installation costs for Taxpayer's interest in Plant. Commission A also approved an assumed after-tax rate of return of k percent for the assets of the qualified nuclear decommissioning fund.

Taxpayer represents that under the section 468A regulations the defined level funding limitation period and the defined funding period extend through l. The estimated period for which the Fund will be in effect is m and the estimated useful life of Plant is n. Therefore, the qualifying percentage is o percent.

Taxpayer had previously submitted a request for a schedule of ruling amounts with regard to Commission B. That request was withdrawn from consideration on p. Prior to withdrawing its request, Taxpayer contributed amounts computed under the jurisdictional percentage for Commission B to the qualified nuclear decommissioning fund for Plant. Taxpayer intends to withdraw those excess contributions, along with any earnings attributable to those excess contributions, from the fund on or before the due date for the fund's federal income tax return for the taxable year to which the excess contribution relates.

Taxpayer has requested an additional ruling that the excess contribution described above does not disqualify the qualified nuclear decommissioning fund maintained with respect to Plant so long as Taxayer withdraws the excess contributions, along with any earnings attributable to those excess contributions, from the fund on or before the due date for the fund's federal income tax return for the taxable year to which the excess contribution relates, and a ruling that the amount earned by the qualified nuclear decommissioning fund on the excess contributions is included in the gross income of the fund.

Section 468A(a) of the Internal Revenue 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 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 the tax year if the payment is made on account of this tax year and is made within 2 1/2 months after the close of the tax year. Additionally, a taxpayer that files for a schedule of ruling amounts and receives such schedule of ruling amounts after the 2 1/2 month deadline for making a payment to a nuclear decommissioning fund, must make such payment to the fund within 30 days after the date that the taxpayer receives the schedule of ruling amounts for 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 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 this section.

Section 1.468A-3(b)(1) of the regulations provides that, in general, the ruling 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 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(c)(1(i) and (ii) of the regulations provide 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 is 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 the 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) 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 such plant multiplied by the taxpayer's qualifying interest in the plant.

Section 1.468A-3(d)(4) of the regulations provides that 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(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 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 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(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-5(a)(2) of the regulations provides that a nuclear decommissioning fund is not permitted to accept any contributions in cash or property other than cash payments with respect to which a deduction is allowed under section 468A(a) and section 1.468A-2(a).

Section 1.468A-5(c)(1) of the regulations provides in part that, except as provided in section 1.468A-5(c)(2), if at any time during a taxable year of a nuclear decommissioning fund the nuclear decommissioning fund does not satisfy the requirements of section 1.468A-(5)(a), the Internal Revenue Service may, in its discretion, disqualify all or a portion of the fund as of the date that the fund does not satisfy the requirements of section 1.468A-5(a), or as of any subsequent date.

Section 1.468A-5(c)(2)(i) of the regulations provides that a nuclear decommissioning fund will not be disqualified under paragraph 1.468A-5(c)(1) by reason of an excess contribution or the withdrawal of such excess contribution by an electing taxpayer if the amount of the excess contribution is withdrawn by the electing taxpayer on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the taxable year to which the excess contribution relates. Section 1.468A-5(c)(2)(ii) defines "excess contribution" as the

amount by which cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceed the payment limitation contained in section 468A(b) and section 1.468A-2(b). Section 1.468A-5(c)(2)(iii) provides that the income of a nuclear decommissioning fund attributable to an excess contribution is required to be included in the gross income of the nuclear decommissioning fund under section 1468A-4(b).

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. The Taxpayer has a qualifying interest in Plant and is, therefore, an eligible taxpayer under sections 1.468A-1(b)(1) and (2) of the regulations.

2. Commission A has permitted an amount for decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes as required by section 1.468A-3(g) of the regulations.

3. The Taxpayer has calculated the total decommissioning costs under section 1.468A-3(d) of the regulations.

4. Taxpayer has determined that, under section 1.468A-3(d)(4) of the regulations, o percent is the qualifying percentage for Commission A.

5. The Taxpayer has proposed a schedule of ruling amounts that 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 Commission A 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 proposed schedule of ruling amounts with regard to the Commission satisfies the requirements of section 468A of the Code.

APPROVED SCHEDULE OF 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 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. Generally, the 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. 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 tenth taxable 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 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.

In addition, we conclude that the excess contributions made by Taxpayer to the qualified nuclear decommissioning fund maintained by Taxpayer with respect to Plant will not cause the fund to be disqualified under section 1.468A-5(c)(1) because Taxpayer has complied with section 1.468A-5(c)(2). However, this relief is granted with the understanding that the excess contribution represents a one-time inadvertent error by Taxpayer. Any income to the qualified nuclear decommissioning fund attributable to the excess contribution must be included in the gross income of the nuclear decommissioning fund.

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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)

cc: