Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

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Date: March 12, 2008

LEGEND:

Taxpayer =

Parent =

State =
Plant =
Location =
Commission A =
Commission B =
Method =
Order 1 =
Order 2 =
Settlement Agreement =

a =
b =
c =
d =
e =
f =
g =
h =
i =
k =
l =
m =
n =
o =
p =

q =
r =
s =
t =
u =
v =
w =
x =

Dear :

This letter responds to your request, dated March 7, 2007, for a schedule of ruling amounts pursuant to section 468A of the Internal Revenue Code and the Temporary Income Tax Regulations thereunder. Taxpayer was previously granted schedules of ruling amounts on a and b and, most recently on c. Information was submitted pursuant to § 1.468A-3T(e)(2).

Taxpayer represents the facts and information relating to its request for a schedule of ruling amounts as follows:

Taxpayer, a State utility company, is the owner of u percent of Plant. Plant, located near Location, was declared commercially operable in d, and initially had an expected service life of e years. Plant was shut down in f. Plant was included in Taxpayer's rate base from d through g, and decommissioning costs were collected in rates for the latter portion of this period. In g, Commission 1 ordered Plant removed from rate base effective h. On j, Taxpayer announced its decision to permanently shut down and decommission Plant. Plant was temporarily placed in a SAFESTOR condition until decommissioning begins. Substantial decommissioning activities are expected to begin in j and are schedule to be completed in k. The method of decommissioning Plant is the Method, the cost of which is based on a site-specific decommissioning study.

Following a corporate reorganization in l, Taxpayer is now owned by Parent, with whom it files a consolidated return on a calendar year basis using the accrual method of accounting.

Commission A and Commission B establish the rates for electric energy sold by Taxpayer.

Taxpayer ceased collecting decommissioning costs from its customer in h. Since that date, the projected cost of decommissioning the Plant has increased, and is expected to exceed the amount set aside for that purpose. Accordingly, Taxpayer sought permission to include in cost of service an increase in the cost of decommissioning Plant. On m, Commission A issued Order 1 (effective m), which included an increased cost of service amount. On n, Commission A issued Order 2, modifying Order 1 to permit additional amounts to be contributed to the qualified nuclear decommissioning fund maintained by Taxpayer with respect to Plant. However, in o Commission A adopted a Settlement Agreement (executed on p) which determined that v of these collections should be retained by the Taxpayer for costs of maintaining the Plant in a safe storage condition. Consequently, Taxpayer submits that its cost of service amount for j is w (i.e., x less y)..

In determining the decommissioning costs for Taxpayer's interest in the Plant, Commission A used an estimated base cost of p. This base cost escalated annually based on a weighted average escalation factor resulting in a future decommissioning cost of q.

The funding period extends r. Pursuant to the taxpayer's previous election under the special transition rule of section 1.468A-8(b)(7)(ii), the qualifying percentage is

The Taxpayer represents that the ruling request submitted for approval complies with the existing regulations and the requirements of section 468A(d)(1) before amendments made by the Energy Policy Act of 2005 ("Energy Act"). Taxpayer is complying with the law in effect before those amendments ("Prior Law") because State has not yet conformed to the amendments made by the Energy Act ("Current Law"). If the Taxpayer sought to contribute to the Fund in 2006 based on the higher schedule of ruling amounts permitted under Current Law, the Taxpayer would risk disqualifying the Fund under State tax law. For this reason, the schedules of ruling amounts are sought by Taxpayer under the limitations and restrictions imposed under Prior Law.

Section 468A(a), as amended by the Energy Act , Pub. L. 109-58, 119 Stat. 954, allows an electing taxpayer to deduct payments made to a nuclear decommissioning reserve fund.

Section 468A(b) limits the amount that may be paid into the nuclear decommissioning fund in any year to the ruling amount applicable to that year. Prior to the changes made by the Act, the deduction was limited to the lesser of the amount included in the utility's cost of service for ratemaking purposes or the ruling amount. Generally, as a result, only regulated utilities could take advantage of section 468A. The Act amendment of section 468A eliminated the cost-of-service limitation. Accordingly, decommissioning costs of an unregulated nuclear power plant may now be funded by deductible contributions to a qualified nuclear decommissioning fund.

Section 468A(d)(1) 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 § 468A(d)(2) as the amount which the Secretary determines to be necessary to fund the total nuclear decommissioning cost of that nuclear power plant over 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.

Prior to the changes made by the Act, deductible contributions were limited to the amount necessary for an electing taxpayer to fund the plant's post-1983 nuclear decommissioning costs (determined as if decommissioning costs accrued ratably over the estimated useful life of the plant), provided that the taxpayer elected to establish a fund in 1984. Prior law also did not allow a taxpayer electing to establish a fund later than 1984 to contribute to that fund any amount in excess of that amount necessary to fund the ratable portion of the plant's nuclear decommissioning costs beginning in the year the fund is established.

Section 468A(f)(1) now allows a taxpayer to contribute to a nuclear decommissioning fund the entire cost of decommissioning the plant, including both the pre-1984 amount that was denied under the law prior to the Energy Act as well as any amount attributable to any year after 1983 in which a taxpayer had not established a fund under § 468A. Section 468A(f)(2)(A) provides that the deduction for the contribution of the previously-excluded amount is allowed ratably over the remaining useful life of the nuclear plant.

Section 468A(h) 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 2½ months after the close of the tax year. This section applies to payments made pursuant to either a schedule of ruling amounts or a schedule of deduction amounts.

Section 1.468A-1T(a) provides that an eligible taxpayer may elect to deduct nuclear decommissioning costs under section 468A of the Code. An "eligible taxpayer," as defined under § 1.468A-1T(b)(1) of the regulations, is a taxpayer that has a "qualifying interest" in any portion of a nuclear power plant. A qualifying interest is, among other things, a direct ownership interest.

Section 1.468A-2T(b)(1) 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 ruling amount applicable to the nuclear decommissioning fund for such

taxable year. The limitation on the amount of cash payments for purposes of § 1.468A-2T(b)(1) does not apply to any “special transfer” permitted under § 1.468A-8T.

Section 1.468A-3T(a)(1) 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-3T(a)(2) provides that, to the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on reasonable assumptions concerning the after-tax rate of return to be earned by the amounts collected for decommissioning, the total estimated cost of decommissioning the nuclear plant, and the frequency of contributions to a nuclear decommissioning fund for a taxable year. Under § 1.468A-3T(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-3T(a)(4) provides that the taxpayer bears the burden of demonstrating that the proposed schedule of ruling amounts is consistent with the principles of the regulations and that it is based on reasonable assumptions. That section also provides additional guidance regarding how the Service will determine whether a proposed schedule of ruling amounts is based on reasonable assumptions. For example, if a public utility commission established or approved the currently applicable rates for the furnishing or sale by the taxpayer of electricity from the plant, the taxpayer can generally satisfy this burden of proof by demonstrating that the schedule of ruling amounts is calculated using the assumptions used by the public utility commission in its most recent order. In addition, a taxpayer that owns an interest in a deregulated nuclear plant may submit assumptions used by a public utility commission that formerly had regulatory jurisdiction over the plant as support for the assumptions used in calculating the taxpayer’s proposed schedule of ruling amounts, with the understanding that the assumptions used by the public utility commission may be given less weight if they are out of date or were developed in a proceeding for a different taxpayer. The use of other industry standards, such as the assumptions underlying the taxpayer's most recent financial assurance filing with the NRC, are described by the temporary regulations as an alternative means of demonstrating that the taxpayer has calculated its proposed schedule of ruling amounts on a reasonable basis. Section 1.468A-3T(a)(4) further provides that consistency with financial accounting statements is not sufficient, in the absence of other supporting evidence, to meet the taxpayer’s burden of proof.

Section 1.468A-3T(b)(1) provides that, in general, the ruling amount for any tax year in the funding period shall not be less than the ruling amount for any earlier tax year. Under § 1.468A-3T(c)(1), the funding 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 taxable year that includes the last day of the estimated useful life of the nuclear power plant to which the fund relates.

Section 1.468A-3T(c)(2) provides rules for determining the estimated useful life of a nuclear plant for purposes of § 468A. In general, under § 1.468A-3T(c)(2)(i)(A), if the plant was included in rate base for ratemaking purposes for a period prior to January 1, 2006, the date used in the first such ratemaking proceeding as the estimated date on which the nuclear plant will no longer be included in the taxpayer's rate base is the end of the estimated useful life of the nuclear plant. Section 1.468A-3T(c)(2)(i)(B) provides that, If the nuclear plant is not described in § 1.468A-3T(c)(2)(i)(A), the last day of the estimated useful life of the nuclear plant is determined as of the date the plant is placed in service. Under § 1.468A-3T(c)(2)(i)(C), any reasonable method may be used in determining the estimated useful life of a nuclear power plant that is not described in § 1.468A-3T(c)(2)(i)(A).

Section 1.468A-3T(d)(1) 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. Section 1.468A-3T(d)(3) 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-3T(e)(2) enumerates the information required to be contained in a request for a schedule of ruling amounts filed by a taxpayer in order to receive a ruling amount for any taxable year.

Section 1.468A-3T(f)(2) 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 § 1.468A-3T(e). The Internal Revenue Service shall not provide a revised schedule of ruling amounts 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-9T(b)(3) provides that the Internal Revenue Service will issue schedules of ruling amounts based on the regulations in effect prior to January 1, 2006, if a taxpayer so requests and if the Internal Revenue Service finds the request to be consistent with the principles and purposes of section 468A,

We have examined the representations and information submitted by the Taxpayer in relation to the requirements set forth in § 468A and the regulations

thereunder. Based solely upon these representations of the facts, we reach the following conclusions:

1. The Taxpayer has demonstrated that its request to apply to regulations in effect prior to January 1, 2006, is reasonable and consistent with the principles and purposes of section 468A.

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

3. Commission A has permitted the amount of 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 (Prior Law).

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

5. The Taxpayer has determined that r percent is the qualifying percentage as calculated under section 1.468A-8(b)(7)(iii)(A) (Prior Law) of the regulations.

Based on the above determinations, we conclude that the Taxpayer's proposed schedule of ruling amounts with regard to Commission A (in light of the State tax law) satisfy the requirements of section 468A of the Code for taxable year .

APPROVED SCHEDULE OF RULING AMOUNTS
TAX YEAR COMMISSION A

YEAR	AMOUNT
	$

If any of the events described in § 1.468A-3T(f)(1) 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.

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

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. We are sending a copy of this letter ruling to the Industry Director. Pursuant to § 1.468A-7T(a), 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.

Sincerely,

/s/

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