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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PLR-155325-07
Date:

May 29, 2008

In re:

LEGEND:

Taxpayer A	=
Former Name	=
Taxpayer B	=
Plant	=
State A	=
State B	=
Year	=
Partner A	=
Partner B	=
Director	=
Location	=
Commission	=
Method	=
Transfer Date	=
Amount	=
X	=

Dear :

This letter responds to your request, dated December 17, 2007, for an allocation of the previously-approved schedule of ruling amounts for the year due to a transfer of the Plant as described below, under 1.468A-6T of the temporary Income Tax Regulations, for the Taxpayer's nuclear decommissioning fund ("Fund") with respect to the Plant.

The Taxpayers have represented the following facts and information relating to the ruling request:

Taxpayer A, a limited liability company organized under the laws of State A, is engaged in the generation and sale of electric energy in State A. During Year, Taxpayer A has been indirectly owned, through one or more limited liability companies each of which is disregarded for federal tax purposes, by Taxpayer B. During Year, prior to Transfer Date, Taxpayer A was considered the owner of percent of Plant and its qualified nuclear decommissioning fund under the laws of State A. However, during that time Taxpayer A was an entity disregarded for federal tax purposes and thus Taxpayer A was not considered to be the owner of Plant for federal tax purposes. Taxpayer B, a limited liability company organized under the laws of State B, is regarded as a partnership during Year until Date of Transfer. This partnership was owned percent by Partner A and percent by Partner B. During this period when Taxpayer B was a partnership for federal tax purposes, Taxpayer B was considered the owner of Plant and its Fund.

Effective Transfer Date, as part of a liquidation which Taxpayers A and B represent qualifies under § 332, Partner B assigned all of its assets and liabilities to its parent, Partner A. At the same time, Taxpayer B became a disregarded entity when its membership was reduced to a single member, Partner A. Thus, on Transfer Date, the partnership terminated and Plant and its fund were transferred to Taxpayer B. Because Taxpayer B is a disregarded entity, Partner A became owner of Plant and its fund for federal tax purposes on that date.

Taxpayer A, under its Former Name, received a revised schedule of ruling amounts for Plant by letter dated September 29, 2006. That schedule provided a ruling amount for Year, of Amount. Taxpayer A and Taxpayer B request that the Service issue an allocation of the scheduled ruling amount for Year so that the transferor may deduct that portion of the Amount which is the product of multiplying Amount by that fraction in which X is the numerator (the number of days in Year prior to the Date of Transfer) and 365 is the denominator.

Law and Analysis:

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 ½ 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 ½ 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-1T(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-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)(6) provides that the IRS may, in its discretion, provide a schedule of ruling amounts that is determined on a basis other than § 1.468A-3T if the taxpayer explains the need for the special treatment and sets forth an alternative basis

for determining the schedule of ruling amounts. In addition, the IRS must determine that the special treatment is consistent with the purpose of § 468A.

Section 1.468A-5T(a) sets out the qualification requirements for nuclear decommissioning funds. It provides, in part, that a qualified nuclear decommissioning fund must be established and maintained pursuant to an arrangement that qualifies as a trust under state law.

Section 1.468A-5T(a)(1)(iii) provides that an electing taxpayer can establish and maintain only one qualified nuclear decommissioning fund for each nuclear power plant. If a nuclear power plant is subject to the ratemaking jurisdiction of two or more public utility commissions and any such public utility commission requires a separate fund to be maintained for the benefit of ratepayers whose rates are established or approved by the public utility commission, the separate funds maintained for such plant (whether or not established and maintained pursuant to a single trust agreement) shall be considered a single nuclear decommissioning fund.

Section 1.468A-6T provides rules applicable to the transfer of an interest in a nuclear power plant (and transfer of the qualified nuclear decommissioning fund) where certain requirements are met. Specifically, section 1.468A-6T(b) provides that section 1.468A-6T applies if--

(1) Immediately before the disposition, the transferor maintained a qualified nuclear decommissioning fund with respect to the interest disposed of; and

(2) Immediately after the disposition--

(i) The transferee maintains a qualified nuclear decommissioning fund with respect to the interest acquired;

(ii) The interest acquired is a qualifying interest of the transferee in the nuclear power plant;

(3) In connection with the disposition, either—

(i) The transferee acquires part or all of the transferor's qualifying interest in the plant and a proportionate amount of the assets of the transferor's fund is transferred to a fund of the transferee; or

(ii) The transferee acquires the transferor's entire qualifying interest in the plant and the transferor's entire fund is transferred to the transferee; and

(4) The transferee continues to satisfy the requirements of § 1.468A-5T(a)(1)(iii), which permits an electing taxpayer to maintain only one qualified nuclear decommissioning fund for each plant.

Section 1.468A-6T(c) provides that a disposition that satisfies the requirements of section 1.468A-6T(b) will have the following tax consequences at the time it occurs:

(1) Neither the transferor nor the transferor's qualified nuclear decommissioning fund will recognize gain or loss or otherwise take any income into account by reason of the transfer of a proportionate amount of the assets of the transferor's qualified nuclear decommissioning fund to the transferee's qualified nuclear decommissioning fund (or by reason of the transfer of the transferor's entire qualified nuclear decommissioning fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's qualified nuclear decommissioning fund) will not be considered a distribution of assets by the transferor's qualified nuclear decommissioning fund.

(2) Neither the transferee nor the transferee's qualified nuclear decommissioning fund will recognize gain or loss or otherwise take any income into account by reason of the transfer of a proportionate amount of the assets of the transferor's qualified nuclear decommissioning fund to the transferee's qualified nuclear decommissioning fund (or by reason of the transfer of the transferor's entire qualified nuclear decommissioning fund to the transferee). For purposes of the regulations under section 468A, this transfer (or the transfer of the transferor's qualified nuclear decommissioning fund) will not constitute a payment or a contribution of assets by the transferee to its qualified nuclear decommissioning fund.

(3) Transfers of assets of a qualified nuclear decommissioning fund to which this section applies do not affect basis. Thus, the transferee's qualified nuclear decommissioning fund will have a basis in the assets received from the transferor's qualified nuclear decommissioning fund that is the same as the basis of those assets in the transferor's qualified nuclear decommissioning fund immediately before the distribution.

Section 1.468A-6T(e) provides the rules for determining the transferor's schedule of ruling amounts where a transferor transfers or disposes of all or a portion of its qualifying interest in a nuclear power plant in a transaction to which § 1.468A-6T applies. Section 1.468A-6T(e)(1)(i) provides that, if the transferor does not file a request for a revised schedule of ruling amounts on or before the deemed payment date for the year of the transfer, then the transferor's schedule of ruling amounts with respect to that plant for the year of transfer is the ruling amount contained in the transferor's current schedule of ruling amounts multiplied by that portion of the transferor's interest that is transferred or disposed of and by a fraction, the numerator of which is the

number of days in the taxable year that precede the date of transfer and the denominator of which is the number of days in that taxable year. In this case, because the partnership and its taxable year terminated on the Transfer Date, application of the rules in § 1.468A-6T(e) would result in the transferor receiving nearly the entire amount of the ruling amount for that year.

Taxpayers have requested, under the provisions of § 1.468A-3T(a)(6), that we calculate the transferor's ruling amount on the basis of the number of days in the calendar year in which the Transfer Date occurs rather than on the basis of the number of days in the partnership taxable year. We agree that the Taxpayers request for an alternative basis for determining the schedule of ruling amounts is consistent with the principles and provisions of § 468A and the temporary regulations thereunder. Therefore we grant the requested ruling.

Accordingly, we rule that the transferor's ruling amount for Year is $, calculated by multiplying Amount, Transferor's scheduled ruling amount for Year, by Taxpayers' ownership interest (percent) and by a fraction, the numerator or which is X and the denominator of which is 365.

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 ruling dated September 29, 2006, was issued, or of the facts and circumstances described in this ruling, is issued. If any of the events described in section 1.468A-3T(f)(1) of the temporary 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 tax year in which the rates reflecting such action became effective.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. In particular, no opinion is expressed or implied concerning whether the liquidation described above qualifies under any section of the Code. In addition, we have not been asked to rule on whether the transfer described above meets the conditions of § 1.468A-6T and we do not rule on that issue.

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 on file with this office, a copy of this letter is being sent to your authorized representative. We are also sending a copy of this letter ruling to the Director. Pursuant to § 1.468A-7T(a) of the temporary 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.

Sincerely,

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