Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-107674-11

Date:
October 20, 2011

Re:

LEGEND:

Taxpayer	=
Company A	=
Company B	=
Plant	=
Independent Study	=
Method	=
Seller A	=
Seller B	=
Seller C	=
a	=
b	=
c	=
d	=
e	=
f	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=
Year 8	=
Year 9	=
A	=
B	=
C	=
D	=
E	=

F =
G =
H =
I =
J =
K =
Fund =
Director =
Dear :

This letter responds to your request, dated February 18, 2011, for a schedule of deduction amounts pursuant to § 468A(f) of the Internal Revenue Code and § 1.468A-8 of the Income Tax Regulations and for a mandatory revised schedule of ruling amounts under § 468A(f)(3). Prior to the issuance of final regulations under § 468A, Taxpayer requested a schedule of deduction amounts under the provisions of the Temporary Income Tax Regulations under § 468A. The Internal Revenue Service issued a schedule of deduction amounts and a schedule of ruling amounts by letter dated September 15, 2008. Final regulations under § 468A were issued on December 23, 2010, 75 Fed. Reg. 80697. These final regulations, at § 1.468A-8, provide certain limited transitional relief for taxpayers that did not have the certainty provided in the temporary regulations with respect to schedules of deduction amounts. Taxpayer requests a schedule of deduction amounts as allowed by the transitional rules.

Taxpayer represents the facts and information relating to its request for rulings as follows:

Taxpayer, a corporation, is a holding company and the sole member of Company A, a single member limited liability company that is disregarded for federal income tax purposes. Company B, the legal owner of Plant, is a single member limited liability company that is disregarded for federal income tax purposes and is wholly owned by Company A. As a result, Taxpayer is now the sole owner and operator of Plant.

The estimated base cost for decommissioning Plant is based on an Independent Study and the proposed method of decommissioning the Plant is Method. Taxpayer has based the request for the revised schedule of ruling amounts on the Independent Study.

The estimated cost of $a (Year 4 dollars) was used as a base cost for decommissioning Plant. The estimated cost of decommissioning Plant in future dollars is $b (Year 8 though Year 9 dollars). It is estimated that substantial decommissioning costs will first be incurred in Year 8 and that decommissioning will be substantially complete at the end of Year 9. The methodology used to convert the Year 4 dollars to future dollars was by escalating the estimated costs at an inflation rate of A percent to

the year of estimated expenditure. The assumed after-tax rate of return to be earned by the amount collected for decommissioning is B percent.

Regarding the request for a schedule of deduction amounts, Taxpayer represents that it purchased a C percent interest in Plant and related assets from Seller A (D percent interest), Seller B (D percent interest), and Seller C (E percent interest) (collectively "Sellers"). As part of the purchase Sellers transferred the assets of the qualified and nonqualified decommissioning trust funds related to Plant to Taxpayer and Taxpayer assumed all decommissioning liability for Plant.

Due to the fact that the Sellers each established a separate Fund before the transfer to Taxpayer, Taxpayer's Fund is based on three different qualified percentages. Seller A received a prior schedule of ruling amounts, issued under § 468A of the Code as in effect prior to 2006, in which the percentage of the total estimated costs qualifying for deduction in the schedule of ruling amounts under prior law was F percent. Seller B received a prior schedule of ruling amounts, issued under § 468A of the Code as in effect prior to 2006, in which the percentage of the total estimated costs qualifying for deduction in the schedule of ruling amounts under prior law was G percent. Seller C received a prior schedule of ruling amounts, issued under § 468A of the Code as in effect prior to 2006, in which the percentage of the total estimated costs qualifying for deduction in the schedule of ruling amounts under prior law was H percent.

The date used in the first ratemaking proceeding in which the Plant was included for ratemaking purposes as the estimated date on which the nuclear plant will no longer be included in Taxpayer's rate base is Year 7.

Section 468A(a), as amended by the Energy Tax Incentives Act of 2005 (the Act), Pub. L. 109-58, 119 Stat. 594, 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 § 468A. The Act amendment of § 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 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-1(a) provides that an eligible taxpayer may elect to deduct nuclear decommissioning costs under § 468A of the Code. An "eligible taxpayer," as defined under § 1.468A-1(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-2(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-2(b)(1) does not apply to any "special transfer" permitted under § 1.468A-8.

Section 1.468A-3(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-3(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-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(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 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 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-3(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-3(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-3(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-3(c)(2) provides rules for determining the estimated useful life of a nuclear plant for purposes of § 468A. In general, under § 1.468A-3(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-3(c)(2)(i)(B) provides that, if the nuclear plant is not described in § 1.468A-3(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-3(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-3(c)(2)(i)(A).

Section 1.468A-3(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-3(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-3(e) provides the rules regarding the manner of requesting a schedule of ruling amounts. Section 1.468A-3(e)(1)(v) provides that the Service will not provide or revise a 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 date (as defined in § 1.468A-2(c)(1)) for such taxable year.

Section 1.468A-3(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-3(e)(3) provides that the Service may prescribe administrative procedures that supplement the provisions of §§ 1.468A-3(e)(1) and (2). In addition, that section provides that the Service may, in its discretion, waive the requirements of §§ 1.468A-3(e)(1) and (2) under appropriate circumstances.

Section 1.468A-3(f)(1) describes the circumstances in which a taxpayer must request a revised schedule of ruling amounts. Section 1.468A-3(f)(1)(iii) requires that a taxpayer requesting a schedule of deduction amounts must also request a revised schedule of ruling amounts for the fund. The revised schedule of ruling amounts must apply beginning with the first taxable year following the first year in which a deduction is allowed under the schedule of deduction amounts.

Section 1.468A-3(f)(2) provides that any taxpayer that has previously obtained a schedule of ruling amounts may request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of § 1.468A-3(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-8(a)(1) provides that, under the provisions of § 468A(f), as described above, a taxpayer may make a special transfer of cash or property to the nuclear decommissioning fund. This special transfer is not subject to the § 468A(b) limitation. The amount of the special transfer is the present value of the pre-2005 nonqualifying percentage of the estimated future costs of decommissioning the nuclear plant that was disallowed under § 468A prior to the Act.

Section 1.468A-8(a)(2) defines the pre-2005 nonqualifying percentage as equal to 100 percent reduced by the sum of the qualifying percentage used in determining the taxpayer's last schedule of ruling amounts for the fund under § 468A as it existed prior to the Act and the percentage transferred in any previous special transfer.

Section 1.468A-8(a)(3) provides that the taxpayer is not required to transfer the entire amount eligible for the special transfer in one year but must take any prior special transfers into account in calculating the pre-2005 qualifying percentage. Further, pursuant to § 1.468A-8(c)(2), a taxpayer making a special transfer in more than one year must request a new schedule of deduction amounts in connection with each special transfer.

Section 1.468A-8(a)(4)(i) provides that the amount of any special transfer made by a taxpayer on or before the 15th day of the third calendar month after the close of any taxable year (the deemed payment deadline date) shall be deemed made during that taxable year if the taxpayer irrevocably designates the amount of the special transfer as relating to that taxable year.

Section 1.468A-8(a)(4)(ii) provides that a taxpayer may designate certain special transfers as relating to a taxable year beginning after December 31, 2005, and ending before January 1, 2010. A taxpayer must request a ruling from the Service, under the provisions of § 1.468A-8(d), and must actually make the special transfer within 90 days after the taxpayer receives a ruling from the Service relating to that special transfer. In such limited circumstances, the designated special transfer is deemed made during the taxable year designated as the year to which the special transfer relates.

Section 1.468A-8(b) provides that the deduction for the special transfer is allowed ratably over the remaining useful life of the nuclear plant. Under § 1.468A-8(b)(2)(i), the deduction for property contributed in a special transfer is limited to the lesser of the fair market value of the property or the taxpayer's basis in the property, except as provided in § 1.468A-8(b)(2)(ii). Under § 1.468A-8(b)(5), the taxpayer recognizes no gain or loss on the special transfer of property, the taxpayer's basis in the fund is not increased by reason of the special transfer of property, and the

fund's basis in the property transferred in the special transfer is the same as the transferee's basis in that property immediately prior to the special transfer.

Section 1.468A-8(c) provides that taxpayer may not make a special transfer to a qualified nuclear decommissioning fund unless the taxpayer requests from the IRS a schedule of deduction amounts in connection with such transfer. A request for a schedule of deduction amounts may be made in connection with a request for a schedule of ruling amounts but in such case, the calculations for both the schedule of ruling amounts and the schedule of deduction amounts must be separately stated.

Section 1.468A-8(d) describes the manner of requesting a schedule of deduction amounts. Section 1.468A-8(d)(1)(v) provides that, except as provided in § 1.468A-8(d)(1)(vi), the Service will not provide or revise a deduction amount applicable to a taxable year in response to a request for a schedule of deduction amounts that is filed after the deemed payment deadline date for such taxable year. Section 1.468A-8(d)(1)(vi) provides that, for special transfers which relate to a taxable year beginning after December 31, 2005, and ending before January 1, 2010, the Service will not provide a deduction amount in response to a request for a schedule of deduction amounts that is filed after February 22, 2011.

As stated above, prior to the changes made by the Act, deductible contributions were limited to the lesser of (1) the amount necessary to fund the plant's post-1983 nuclear decommissioning costs, or (2) the amount necessary to fund the plant's decommissioning costs for that portion of the plant's estimated useful life for which a fund had been established.

Under that prior law, Seller A was allowed to contribute F percent of the amounts necessary to fully decommission its share of Plant. Seller B was allowed to contribute G percent of the amounts necessary to fully decommission its share of Plant. Seller C was allowed to contribute H percent of the amounts necessary to fully decommission its share of Plant. Section 468A(f)(1) allows a taxpayer to contribute to the nuclear decommissioning fund the pre-1984 amount that was denied under the law prior to the Act.

Thus, for Seller A's Fund, Taxpayer is able to contribute the additional I percent of the amounts necessary to decommission its ownership share of Plant. For Seller B's Fund, Taxpayer is able to contribute the additional J percent of the amounts necessary to decommission its ownership share of Plant. For Seller C's Fund, Taxpayer is able to contribute the additional K percent of the amounts necessary to decommission its ownership share of Plant.

Taxpayer has requested that it be allowed to designate the special transfer, made in Year 7, as taking place in Year 5 under the transitional relief granted in § 1.468A-8 of the final regulations. Section 1.468A-8(d)(1)(v) provides the general rule

that the Service will not provide or revise a deduction amount applicable to a taxable year in response to a request for a schedule of deduction amounts that is filed after the deemed payment deadline date for such taxable year. However, the final regulations provide, in § 1.468A-8(d)(1)(vi), a limited exception for special transfers designated by Taxpayer as relating to a taxable year beginning after December 31, 2005, and ending before January 1, 2010, for requests for schedules of deduction amounts that are filed on or before February 22, 2011. Section 1.468A-8(a)(4)(ii) provides that special transfers, designated by Taxpayer as relating to a taxable year beginning after December 31, 2005, and ending before January 1, 2010, which are actually made within 90 days after Taxpayer receives a ruling from the Service relating to that special transfer are deemed made during the taxable year designated as the year to which the special transfer relates. Under § 1.468A-8(b) the deduction for the special transfer is allowed ratably over the remaining useful life of Plant. The useful life of Plant, for purposes of §§ 1.468A-3(c)(2) and 1.468A-8(b), ends in Year 7.

We have examined the representations and information submitted by Taxpayer in relation to the requirements set forth in § 468A and the regulations thereunder. Based solely upon these representations of the facts, we conclude that the Taxpayer may make a special transfer of $c and designate that transfer as relating to Year 5, and may deduct the amount contributed ratably in Years 5-7, as set forth below.

SCHEDULE OF DEDUCTION AMOUNTS

Year	Deduction Amount
Each Year, Years 5-7	$d

The special transfer amount stated above is the maximum amount permitted to be transferred to the fund under § 468A(f)(1). If Taxpayer transfers a lesser amount to the fund in Year 5, in order to make an additional special transfer in a later year (including a special transfer of the difference between the special transfer amount stated above and the lesser amount transferred in Year 5), Taxpayer must request a new schedule of deduction amounts and in that request must take the Year 5 transfer into account and recalculate the pre-2005 qualifying percentage in such request.

We note that, if Taxpayer elects to make a special transfer of property for all or a portion of this special transfer, the amount of the deduction is the lesser of the fair market value of the property transferred or the basis of the property in the hands of Taxpayer immediately prior to the transfer unless Taxpayer makes the election as described in § 1.468A-8(b)(2)(ii). In either event, the deduction of Taxpayer with respect to the property is limited to Taxpayer's basis in the property.

We have examined the representations and information submitted by 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. Pursuant to § 1.468A-3(a)(4), Taxpayer has met its burden of demonstrating that the proposed schedule of ruling amounts is consistent with the principles of the Code and regulations and is based on reasonable assumptions.

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

3. Taxpayer, as sole owner of the Plant, has calculated its share of the total decommissioning costs under § 1.468A-3(d)(3) of the regulations.

4. The proposed schedule of ruling amounts was derived by following the assumptions contained in an independent decommissioning study that Taxpayer has represented is a standard type study used in the industry. Based on that representation, Taxpayer has demonstrated, pursuant to § 1.468A-3(a)(4), that the proposed schedule of ruling amounts is based on reasonable assumptions and is consistent with the principles of § 468A and the regulations thereunder.

5. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is restricted to the ruling amount applicable to the Fund, as set forth under § 1.468A-2(b)(1) of the regulations.

Taxpayer has been granted, above, a schedule of deduction amounts relating to Years 5-7. Section 1.468A-3(e)(1)(v) provides that the Service will not provide or revise a 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 date (as defined in § 1.468A-2(c)(1)) for such taxable year. The deemed payment date for Year 5 has passed prior to the submission of this request. Section 1.468A-3(e)(3) provides that the Service may, in its discretion, waive the requirements of §§ 1.468A-3(e)(1) and (2) under appropriate circumstances. In this case, Taxpayer has, as is permitted by § 1.468A-8(d)(1)(vi), designated a special transfer as relating to a taxable year beginning after December 31, 2005, and ending before January 1, 2010. Further, § 1.468A-3(f)(1)(iii) requires that a taxpayer requesting a schedule of deduction amounts must also request a revised schedule of ruling amounts for the fund and provides that the revised schedule of ruling amounts must apply beginning with the first taxable year following the first year in which a deduction is allowed under the schedule of deduction amounts. To apply the requirement in § 1.468A-3(e)(1)(v) that a schedule of ruling amounts must be filed before the deemed payment date in this case would render the requirements of the transitional rules of § 1.468A-8(d) a nullity. Therefore, in order to give effect to these transitional rules, the Service is exercising its discretion to waive the requirement in § 1.468A-3(e)(1)(v) that a schedule of ruling amounts must be

filed before the deemed payment date for the taxable year to which the schedule of ruling amounts relates. We note that this waiver is limited and that the Service may not waive these provisions if a taxpayer sought to contribute additional amounts to the fund.

Based solely on the determinations above, we conclude that Taxpayer's proposed schedule of ruling amounts satisfies the requirements of § 468A of the Code. We have approved the following revised schedule of ruling amounts. The mandatory review date for this matter remains the same.

APPROVED SCHEDULE OF RULING AMOUNTS

Year	Ruling Amount
Year 6	$e
Year 7	$f

As noted above, § 1.468A-3(f)(1)(iii) requires that a taxpayer requesting a schedule of deduction amounts must also request a revised schedule of ruling amounts and that such revised schedule of ruling amounts must apply beginning with the first taxable year following the first year in which a deduction is allowed under the schedule of deduction amounts. We have approved the revised schedule of ruling amounts as set forth above. However, pursuant to § 468A(h), Taxpayer is not permitted to contribute these additional amounts to the Fund if the deemed payment deadline has passed for a particular year.

If any of the events described in § 1.468A-3(f)(1) occur in future years, Taxpayer must request a review and revision of the schedule of ruling amounts. Generally, 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, 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. Specifically, no determination is made whether the independent decommissioning study conforms to industry standards and practices.

This ruling is directed only to 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 representatives. We are also sending a copy of this letter ruling to the Director. Pursuant to § 1.468A-7(a), a copy of this letter must be attached (with the required Election Statement) to Taxpayer's federal income tax return for each tax year in which Taxpayer claims a deduction for payments made to the Fund.

Sincerely,

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