Internal Revenue Service

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Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B6
PLR-111357-14
Date:
September 8, 2014

Re: Revised Schedule of Ruling Amounts and Schedule of Deductions

LEGEND:

Taxpayer	=
Plant	=
Parent	=
Director	=
Location	=
X	=
Commission A	=
Commission B	=
Commission C	=
Agency	=
State	=
A	=
B	=
C	=
D	=
E	=
F	=
G	=
H	=
I	=
J	=

K =
L =
M =
Report =
Study =

Settlement =
Date A =
Date B =
Date C =
Date D =
Amount A =
Amount B =
Amount C =
Amount D =
Amount E =
Amount F =
Year A =
Year B =
Year C =
Year D =
Year E =
Method =
Fund =

Dear :

This letter responds to your request, dated March 4, 2014, for a revised schedule of ruling amounts pursuant to § 1.468A-3(e) of the Income Tax Regulations, and for a schedule of deduction amounts pursuant to section 468A(f) of the Internal Revenue Code and § 1.468A-8. Taxpayer was previously granted a schedule of deductions on May 29, 2008. The request for a revised schedule of ruling amounts is mandatory, within the meaning of § 1.468A-3(f)(1)(iii). Information was submitted pursuant to § 1.468A-3(e)(2).

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

Taxpayer, a subsidiary of Parent, is included in a consolidated return filed by Parent. Taxpayer has a joint and undivided ownership interest of X percent in the Plant. Taxpayer is also the operator of the Plant.

The Plant is situated at Location. Plant's amended operating license is scheduled to expire on Date A. The estimated base cost for decommissioning Plant is based on an independent study and the proposed method of decommissioning the Plant is Method.

Taxpayer is subject to the regulatory jurisdiction of Commission A, Commission B, and Commission C. In addition, Taxpayer has a contractual agreement to sell power to Agency. The operations of Plant are allocated as follows: Commission A, A percent; Commission B, B percent; Commission C, C percent; and Agency, D percent.

On Date B, Taxpayer filed an application for a general rate increase with Commission A. As part of the application, Taxpayer sought an increase in the amount of its annual nuclear decommissioning expense in State based on assumptions set out in Report, which in turn were based upon the Study. Commission A proposed that some of the assumptions proposed by Taxpayer be revised and, following negotiations, Commission A and Taxpayer agreed on a Settlement on Date C. The Settlement reduced the amount Taxpayer sought initially for its annual decommissioning expense. The assumptions used by Taxpayer to calculate the schedule of ruling amounts approved herein are those approved by Commission A. Further, Commission B has included, with respect to Plant, in cost of service for ratemaking purposes for Year A and beyond, Amount B. Since the last amended schedule of ruling amounts, there have been no new ratemaking proceedings before any of the other commissions.

Based on the assumptions used by Commission A, it is estimated that assets in the Fund will earn a pre-tax rate of return of E percent prior to the decommissioning period and F percent for the first seven years of decommissioning and G percent for the remainder of the decommissioning period. Further, the cost of decommissioning the Plant will escalate at H percent per year until the year in which costs are incurred. The total cost of decommissioning Taxpayer's interest in Plant is estimated to be $Amount A in future dollars (based on the year of anticipated expenditure).

For Commission A and Commission B, the funding period for Plant extends from Year B to Year C.

With respect to the schedule of deductions, Taxpayer received, on Date D, a schedule of deductions. In that schedule, under ratemaking assumptions used during the first proceeding before Commission A, Commission B, Commission C, and Agency, the Plant would no longer be included in rate base in Year C. In the prior schedule of ruling amounts, issued under section 468A of the Code as in effect prior to 2006, the

estimated useful life of the Plant is I years (Year D-Year C), and the estimated period for which the Fund is to be in effect is J years (Year B-Year C). Thus, the percentage of the total estimated costs qualifying for deduction in the schedule of ruling amounts under prior law was K percent. The issued schedule of deductions allowed Taxpayer to transfer to the Fund the additional L percent of the total decommissioning costs, a total of Amount C over several years, of which amount Taxpayer actually transferred Amount D. Taxpayer now seeks to transfer to the Fund the present value of the remaining M percent of the total estimated decommissioning costs, or Amount E.

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 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 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 2 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 section 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.

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 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-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)(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(f)(1) describes those situations in which a taxpayer must request a revised schedule of ruling amounts. Section 1.468A-3(f)(1)(iii) provides that any taxpayer requesting a schedule of deduction amounts under § 1.468A-8 must also request a revised schedule of ruling amounts for that fund. Such a request must be made in accordance with the rules of § 1.468A-3(e).

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.

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. 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.

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 prior law, Taxpayer was allowed to contribute K percent of the amounts necessary to fully decommission its share of the 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, Taxpayer is able to contribute the additional L percent of the amounts necessary to decommission its

ownership share of Plant. Taxpayer has made contributions pursuant to a previous schedule of deductions of almost the entire L percent. Taxpayer has taken into account all previous special transfers made. Taxpayer now seeks to contribute the present value of the remaining M percent in a single special transfer in Year A. Taxpayer's share of the total future decommissioning costs is $Amount A (future dollars) and the present value of M percent of that amount is $Amount E. A special transfer may be made in Year A of $Amount E.

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 conclude as set forth below.

SCHEDULE OF DEDUCTION AMOUNTS

YEAR	DEDUCTION AMOUNT
A	$Amount E

The special transfer amount stated above is the maximum permitted to be transferred to the Fund under § 468A(f)(1) for that special transfer. If Taxpayer transfers a lesser amount to the Fund, the Taxpayer may deduct the lesser amount in Year A. Further, in the event that the Taxpayer transfers a lesser amount, 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 actually transferred), Taxpayer must request a new schedule of deduction amounts and that in that request must take all special transfers made 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 transfer is the lesser of the fair market value of the property transferred or the basis of the property in the hands of the Taxpayer immediately prior to the transfer. In either event, the deduction of the Taxpayer with respect to the property is limited to the Taxpayer's basis in the property.

Furthermore, regarding Taxpayer's request for a revised schedule of ruling amounts, 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. Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under § 1.468A-1(b)(1) of the regulations.

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

3. Taxpayer has proposed a schedule of ruling amounts which meets the requirements of §§ 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.

4. Pursuant to § 1.468A-3(a)(4), Taxpayer has demonstrated that, by following the assumptions approved by Commission A, the proposed schedule of ruling amounts is consistent with the principles of section 468A and the regulations thereunder and that such schedule is based on reasonable assumptions.

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.

Based solely on the determinations above, we conclude that the Taxpayer's proposed schedule of ruling amounts satisfies the requirements of § 468A of the Code.

APPROVED SCHEDULE OF RULING AMOUNTS

Year		Ruling Amount
Each Year, Year A–Year E		$Amount F

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 current ruling is issued. If any of the events described in § 1.468A-3(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. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your designated 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 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 the Associate Chief Counsel
(Passthroughs & Special Industries)