Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B6
PLR-108870-18

Date: August 29, 2018

Re: Revised Schedule of Ruling Amounts

LEGEND:

Taxpayer	=
Subsidiary	=
Company	=
Parent	=
Plant	=
Electric Company	=
State	=
Director	=
Location	=
Commission	=
Order	=
Independent Study 1	=
Independent Study 2	=
Method	=
Fund	=
Date 1	=
Date 2	=
Service A	=
Service B	=

Service C =

Service D =
Service E =
Service F =

Service G =

Service H =
a =
b =
c =
d =
e =
f =
g =
h =
i =
j =
k =
l =
m =
n =
o =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =

Dear :

This letter responds to your request, dated March 15, 2018, for a mandatory revised schedule of ruling amounts under § 1.468A-6(e)(2)(ii) of the Income Tax Regulations. Company was previously granted revised schedules of ruling amounts with respect to the Plant, most recently on Date 1. Taxpayer submitted supplemental information by letter dated May 4, 2018 pursuant to § 1.468A-3(e)(2).

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

Taxpayer is a single-member limited liability company disregarded as separate from its owner, Subsidiary, for federal income tax purposes. Parent is the common

parent of an affiliated group of corporations, including Subsidiary, that file a consolidated federal income tax return on a calendar-year basis using the accrual method of accounting. Taxpayer is engaged in the generation and sale of electric energy in State.

As part of an internal restructuring in Year 3, Company transferred ownership of the Plant, which is situated at Location, to Taxpayer. Consequently, Taxpayer is the sole owner of the Plant. The proposed method of decommissioning the Plant is Method.

Although Taxpayer is not a regulated utility, Taxpayer has a decommissioning funds collection agent agreement with Electric Company, and Electric Company is subject to the rate-of-return ratemaking jurisdiction of Commission. The cost of decommissioning the Plant is included in Electric Company's cost of service by Commission. Pursuant to its agreement with Taxpayer, Electric Company collects an amount intended to fund the cost of decommissioning the Plant that Electric Company must pay over to Taxpayer. Taxpayer deposits these amounts into the Fund maintained by Taxpayer with respect to the Plant.

Commission, in Order effective Date 2, modified the amount of decommissioning costs to be included in Electric Company's cost of service and that will be collected by Electric Company on Taxpayer's behalf. The Order relies on assumptions provided in Independent Study 1 and Independent Study 2.

Based on the assumptions adopted by Commission in Order, it is estimated that the Fund assets will earn an after-tax rate of return between a percent and b percent for Year 2 through Year 7. The estimated cost of $c (Year 1 dollars) was used as a base cost for decommissioning the Plant. This base cost for decommissioning the Plant was escalated at a rate of d percent annually to the year the costs are incurred, resulting in total estimated future decommissioning costs for the Plant of approximately $e (Year 6 to Year 7 dollars). It is estimated that substantial decommissioning costs will first be incurred in Year 6 and that decommissioning will be substantially complete at the end of Year 7.

Taxpayer requests permission to use a formula, pursuant to § 1.468A-3(a)(5), to determine its schedule of ruling amounts. The ruling amount for each year of the period is determined on or before the deemed payment date for the year. Expressed mathematically, Taxpayer proposes to use the following formula to determine the ruling amount (Formula):

$$[(A \times A^1) + (B \times B^1) + (C \times C^1) + (D \times D^1) + (E \times E^1) + (F \times F^1) + (G \times G^1) + (H \times H^1)] \times J = RA$$

Where:

A = kWh – Service A
A^1 = per kWh rate (currently $f)
B = kWh – Service B
B^1 = per kWh rate (currently $g)
C = kWh – Service C
C^1 = per kWh rate (currently $h)
D = kWh – Service D
D^1 = per kWh rate (currently $i)
E = Distribution System billing kW – Service E
E^1 = per kW rate (currently $j)
F = Distribution System billing kW – Service F
F^1 = per kW rate (currently $k)
G = Distribution System billing kW – Service G
G^1 = per kW rate (currently $l)
H = Distribution System billing kW – Service H
H^1 = per kW rate (currently $m)
J = allocation percentage to Plant (currently n%)
RA = Ruling Amount

If the Formula results in a negative number, the ruling amount will be assumed to be zero.

Using the Formula results in a ruling amount of $o for Year 4.

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.

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. 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 (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 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(a)(5) provides that the Service will approve, at the request of the taxpayer, a formula or method for determining a schedule of ruling amounts (rather than providing a schedule specifying a dollar amount for each taxable year) if the formula or method is consistent with the principles and provisions of this section and is based on reasonable assumptions. Section 1.468A-3(f)(1)(ii) further provides a special rule relating to the mandatory review of ruling amounts that are determined pursuant to a formula or method.

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)(ii)(A) requires any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year to file a request for a revised schedule on or before the earlier of the deemed payment deadline for the fifth taxable year that begins after its taxable year in which the most recent formula or method was approved or the deemed payment deadline for the first taxable year that begins after a taxable year in which there is a substantial variation in the ruling amount determined under the most recent formula or method. Additionally, § 1.468A-3(f)(1)(ii)(B) provides that any taxpayer that has determined its ruling amount for any taxable year under a formula prescribed by § 1.468A–6 (which prescribes ruling amounts for the taxable year in which there is a disposition of a qualifying interest in a nuclear power plant) must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for its first taxable year that begins after the disposition.

Section 1.468A-6 generally provides rules for the transfer of an interest in a nuclear power plant (and transfer of the qualified fund) where after the transfer the transferee is an eligible taxpayer. Section 1.468A-6(e)(2)(ii) provides that a transferee of a qualifying interest in a nuclear power plant must file a request for a revised schedule of ruling amounts with respect to that interest on or before the deemed payment deadline for the first taxable year of the transferee beginning after the disposition. See § 1.468A-3(f)(1)(ii)(B). If the transferee does not timely file such a request, the transferee's ruling amount with respect to that interest for the affected year

or years will be zero, unless the Service waives the application of § 1.468A-6(e)(2)(ii) upon a showing of good cause for the delay.

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. 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 the total decommissioning costs under § 1.468A-3(d)(3) of the regulations.

3. Pursuant to § 1.468A-3(a)(4), Taxpayer has demonstrated that by following the assumptions contained in Independent Study 1 and Independent Study 2 that Taxpayer has represented are a standard type of study used in the industry and that were approved by Commission, the proposed schedule of ruling amounts is based on reasonable assumptions and is consistent with the principles of § 468A and the regulations thereunder.

4. Pursuant to § 1.468A-3(a)(5), we approve the Formula for determining the schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of § 468A and the regulations thereunder and that 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 Taxpayer's proposed schedule of ruling amounts satisfies the requirements of § 468A. We have approved the following revised schedule of ruling amounts.

APPROVED SCHEDULE OF RULING AMOUNTS

Year	Ruling Amount
Year 4	$o
Year 5 – Year 6	To be determined from Formula

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, pursuant to § 1.468A-3(f)(1)(ii), Taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline of the fifth taxable year following the close of the tax year in which this schedule of ruling amounts is 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 Study 1 or the Independent Study 2 conforms to industry standards and practices. In addition, we make no determination as to whether Company's transfer of the Plant to Taxpayer satisfies § 1.468A-6.

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-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 yours,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)