

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:Br.6-PLR-152900-01

Date:

December 5, 2001

Re:

LEGEND:

Taxpayer =

Plant =

Location =

Former Parent =

Parent =

Commission =

Dear :

This letter responds to the Taxpayer's request, dated September 26, 2001, for a revised schedule of ruling amounts in accordance with section 1.468A-3(i)(2) of the Income Tax Regulations relating to the Plant's nuclear decommissioning fund ("Fund"). Taxpayer previously received a schedule of ruling amounts on . A revised schedule of ruling amounts was requested on , for the period beginning . In a letter dated , this office granted a revised schedule of ruling amounts beginning with the taxpayer's fiscal year that begins , but determined that the portion of the request pertaining to the period from , through , had not been filed within the period prescribed by section 1.468A-3(i)(1)(i) of the regulations. On , Taxpayer submitted a new request for a schedule of ruling amounts for the period beginning , and ending , along with a request for permission under section 301.9100-3 of the regulations for the , request for revised schedule of ruling amounts to be treated as timely filed. The relief requested under section 301.9100-3 was granted in a letter dated .

Taxpayer, as a part of its restructuring and withdrawal from the power generation industry, expects to sell all of its interest in Plant in the coming months and is requesting an extension of the previous schedule of ruling amounts to cover part of the period through the anticipated sale date. Information was submitted pursuant to section

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1.468A-3(h)(2).

Taxpayer directly owns a _____ percent undivided tenancy in common in the Plant, which is situated in Location. Taxpayer filed a consolidated return with Former Parent through _____. On that date, Former Parent was acquired by Parent, and Taxpayer, as a result of the acquisition, became a wholly-owned subsidiary of Parent. Consequently, after _____, Taxpayer will file a consolidated return with Parent. The Commission has exclusive regulatory jurisdiction over the rates of Taxpayer, and Taxpayer is under the audit jurisdiction of the Industry Director, Natural Resources (LM:NR).

It is expected that the sale of Taxpayer's interest in the Plant will include the facilities, licenses, records, nuclear fuel, and assets comprising both the qualified and nonqualified nuclear decommissioning trust funds relating to Plant. In addition, the entity purchasing Plant is expected to assume Taxpayer's liability for decommissioning Plant, and Taxpayer expects to make no further payments to the qualified nuclear decommissioning trust fund following the sale of Plant.

The estimated cost of decommissioning the Plant is \$ _____, of which Taxpayer's share is \$ _____.

The Commission, in _____, provided for decommissioning costs for the Plant of \$ _____ to be included in Taxpayer's cost of service for ratemaking purposes. Commission has not subsequently redetermined this amount, and Taxpayer will continue to receive the same amount of decommissioning charge as a component of its cost-based rates through the closing date of the sale of Plant. Any additional expenses for decommissioning Plant that are borne by Taxpayer through the date of sale of the Plant will be recouped through a non-bypassable contract termination charge paid with respect to Taxpayer's transmission and distribution activities and collected by Taxpayer's retail distribution company affiliates from their customers.

The funding period and level funding limitation period begins on _____, and ends on _____. The assumed after-tax rate of return to be earned by the assets of the Fund is _____ percent. The rate of escalation to determine the future decommissioning cost of the Plant is _____ percent compounded annually. The estimated date on which the Plant will no longer be included in Taxpayer's rate base for ratemaking purposes is _____. The proposed method for decommissioning the Plant is the prompt removal/dismantling method.

Taxpayer has determined the estimated period for which the Fund is to be in effect is _____ and the estimated useful life of the Plant is _____. Therefore, the qualifying percentage is _____ percent.

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No proceeding is pending before the Commission that may result in an increase or decrease in the amount of decommissioning costs for the Plant to be included in Taxpayer's cost of service.

Section 468A of the 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.

Section 1.468A-1(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-2(b)(1) of the regulations 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 lesser of (i) the cost of service amount applicable to the nuclear decommissioning fund for such tax year; or (ii) the ruling amount applicable to the nuclear decommissioning fund for such tax year. If the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year exceeds the limitation of paragraph (b)(1), the excess is not deductible by the electing taxpayer. In addition, under section 1.468A-5(c) there are rules which provide that the Internal Revenue Service may disqualify a nuclear decommissioning fund if the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year exceeds the limitation of paragraph (b)(1).

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Section 1.468A-3(a)(1) of the regulations 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) of the regulations provides that, to the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on the reasonable assumptions and determinations used by the applicable public utility commission in establishing or approving the amount of decommissioning costs to be included in the cost of service for ratemaking purposes. Under sections 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(b)(1) of the regulations provides that, in general, the amount for any tax year in the level funding limitation period shall not be less than the ruling amount for any earlier tax year. Under section 1.468A-3(b)(2), the level funding limitation 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 on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes.

Section 1.468A-3(d)(1) of the regulations 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 multiplied by the qualifying percentage.

Section 1.468A-3(d)(2) of the regulations provides that, in general, the total estimated cost of decommissioning a nuclear power plant is the reasonably estimated cost of decommissioning used by the applicable public utility commission in establishing or approving the amount of these costs to be included in cost of service for ratemaking purposes.

Section 1.468A-3(d)(3) of the regulations 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. Under section 1.468A-3(d)(4), the qualifying percentage for any nuclear decommissioning fund is equal to a fraction, the numerator of which is the number of tax years in the estimated period for which the nuclear decommissioning fund is to be in effect and the denominator of which is the number of tax years in the estimated useful life of the applicable plant.

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Section 1.468A-3(g) of the regulations provides that the Internal Revenue Service shall not provide a taxpayer with a schedule of ruling amounts for any nuclear decommissioning fund unless the public utility commission that establishes or approves the rates for electric energy generated by the plant has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes and has disclosed the after-tax rate of return and any other assumptions and determinations used in establishing or approving the amount.

We have examined the representations and the data submitted by the Taxpayer in relation to the requirements set forth in the Code and the regulations. 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 section 1.468A-1(b)(1) of the regulations.
2. The Commission has determined the decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes as required by section 1.468A-3(g) of the regulations.
3. Taxpayer, as one of several owners of the Plant, has calculated its share of the total decommissioning costs under section 1.468A-3(d)(3) of the regulations.
4. Taxpayer has proposed a schedule of ruling amounts which meets the requirements of sections 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 the Commission 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.

Based solely on the determinations above, we conclude that the Taxpayer's proposed schedule of ruling amounts in regard to the Commission, satisfies the requirements of Section 468A of the Code. Accordingly, the schedule of ruling amounts requested by the Taxpayer under section 468A(d)(1) is approved as follows:

APPROVED SCHEDULE OF RULING AMOUNTS
ALLOCABLE TO THE TAXPAYER

YEAR

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 section 1.468A-3(i)(1)(iii) of the regulations occur in future years, the Taxpayer must request a review and revision of

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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. 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 10th tax 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. In particular, no opinion is expressed or implied concerning whether the contract termination charge is includible in the gross income of, and deductible by, any entity other than Taxpayer.

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 they are made while Taxpayer is the owner of the Plant and 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 powers of attorney, we are sending a copy of this ruling to your authorized representative. We are also sending a copy of this letter ruling to the Industry Director, Natural Resources (LM:NR). Pursuant to section 1.468A-7(a) of the 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