

Internal Revenue Service

Department of the Treasury

Number: **200326019**
Release Date: 6/27/2003
Index Number: 468A.04-02

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:6-PLR-120777-02
Date:
March 13, 2003

In re: Revised Schedule of Ruling Amounts

LEGEND:

Plant =
Taxpayer =

Parent =

Commission =
Interim Order =
Final Order =
Method =

A =
B =
C =
D =
E =
F =
G =
H =
I =
J =
K =
L =
M =
N =
O =
P =

PLR-120777-02

<u>Q</u>	=
<u>R</u>	=
<u>S</u>	=
<u>T</u>	=
<u>U</u>	=
<u>V</u>	=
<u>W</u>	=
<u>X</u>	=
<u>Y</u>	=
<u>Z</u>	=

Dear :

This letter responds to a request for private letter ruling, dated March 11, 2002, and subsequent submissions, filed on behalf of the above taxpayer pursuant to the mandatory requirements of section 1.468A-3(i)(1) of the Income Tax regulations, requesting a schedule of ruling amounts relating to Plant's qualified nuclear decommissioning fund ("Fund"). Taxpayer is requesting this schedule because Commission, in Final Order, decreased the amount of decommissioning costs to be included in cost of service for Plant. Transferor previously received a schedule of ruling amounts pertaining to Plant on A. Information was submitted pursuant to section 1.468A-3(h)(2).

Taxpayer, a regulated public utility, is a wholly owned subsidiary of Parent. Taxpayer directly owns a B percent interest in the Plant, which is situated in Location. In addition, pursuant to sale/leaseback transactions entered into in C, Taxpayer holds a leasehold interest in D percent of Plant. Taxpayer represents that it is fully and primarily liable under Federal and state law (as well as contractually liable) for decommissioning the portion of Plant subject to Taxpayer's leasehold interest, and that no other person has established, or will establish, a qualified fund with respect to the portion of Plant subject to Taxpayer's leasehold interest. Taxpayer is required to fund the decommissioning expenses for the leased portion of the Plant ratably over the term of the leases, which extend through E. The rates approved in Final Order include decommissioning costs with respect to Taxpayer's leasehold interest in Plant in cost of service only through E.

Commission has sole regulatory jurisdiction over the rates charged by Taxpayer with respect to both its ownership and leasehold interests in Plant. Taxpayer joins Parent in filing a consolidated tax return, and both are under the audit jurisdiction of the Industry Director, Natural Resources and Construction (LM:NRC).

The estimated cost of decommissioning the Plant is \$E, and Taxpayer's share of that cost is \$G. Commission, in Interim Order, provided for decommissioning costs for the Plant to be included in Taxpayer's cost of service for ratemaking purposes. These amounts were subsequently decreased in Final Order retroactive to the period

PLR-120777-02

beginning H. Section 1.468A-2(f)(1)(ii)(C) provides that the amount of the adjustment must be taken into account over the period I. Consequently, Taxpayer will reduce its \$J annual cost of service amount applicable to each year in the period I, and has reduced its requested ruling amounts for the period I, by \$K.

The level funding limitation period begins on L, and ends on M, and the funding period begins on N and ends on O. The assumed after-tax rate of return to be earned by the assets of the Fund is P percent. The rate of escalation to determine the future cost of the Plant is Q percent. The proposed method for decommissioning the Plant is Method.

Taxpayer has determined the estimated period for which the Fund is to be in effect is R years (S through T) and the estimated useful life of the Plant is U years (V through W). Therefore, the qualifying percentage is X percent.

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 decommissioning costs with respect to the 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 a taxable year if the payment is made on account of such taxable 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.

PLR-120777-02

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).

Section 1.468A-2(f)(1)(ii)(C) of the regulations provides that if a retroactive adjustment to rates reduces the amount of decommissioning costs included in cost of service for three or more taxable years ending before the date of the adjustment, at least one-third of the total amount of the reduction must be taken into account for the first taxable year ending on or after the date of the adjustment, at least two-thirds of the total amount of the reduction must be taken into account over the first two taxable years ending on or after the date of the adjustment, and the total amount of the reduction must be taken into account over the first three taxable years ending on or after the date of the adjustment.

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

PLR-120777-02

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.

Section 1.468A-3(d)(4)(i) of the regulations provides that the qualifying percentage for any nuclear decommissioning fund is equal to the fraction, the numerator of which is the number of taxable 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 taxable years in the estimated useful life of the applicable nuclear power plant.

Section 1.468A-3(d)(4)(ii) of the regulations provides that the estimated period for which a nuclear decommissioning fund is to be in effect begins on the later of (1) the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund (or deemed made); or (2) the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); and ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes. According to § 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

Section 1.468A-3(d)(4)(iii) of the regulations provides that the estimated useful life of a nuclear power plant begins on the first day of the taxable year that includes the date that the plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate

PLR-120777-02

base); and ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes. According to § 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

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. For the period covered by this schedule of ruling amounts, Taxpayer had a qualifying interest in the Plant and was, therefore, an eligible taxpayer under section 1.468A-1(b)(1) of the regulations.
2. 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 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.
4. Taxpayer has determined under section 1.468A-3(d)(4) of the regulations that the qualifying percentage for Commission is X percent.
5. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is restricted to the lesser amount of the cost of service amount applicable to the Fund or the ruling amount applicable to the Fund, as set forth under section 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 in regard to the Commissions, 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:

PLR-120777-02

APPROVED SCHEDULE OF RULING AMOUNTS
ALLOCABLE TO THE TAXPAYER

YEAR	AMOUNT
------	--------

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.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above.

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. In particular, because the cost of service amount in years Y, as reduced pursuant to section 1.468A-2(f)(1)(ii)(C), is Z, the contribution to the fund for the years Y may not exceed Z.

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 representatives. We are also sending a copy of this letter ruling to the Industry Director, Natural Resources and Construction (LM:NRC). 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 yours,

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