

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:6-PLR-116345-03

Date:

July 25, 2003

Re: Revised Schedule of Ruling Amounts

Taxpayer =

Parent =

Plant =

Location =

Commission A =

Commission B =

Fund =

Independent Engineer A =

Prior Schedule =

State =

Dear :

This letter responds to the request of Taxpayer, filed March 11, 2003, for a revised schedule of ruling amounts pursuant to § 1.468A-3(i)(1)(iii)(A)(3) of the Income Tax Regulations. Information was submitted pursuant to section 1.468A-3(h)(2).

We understand the facts as submitted by Taxpayer to be as follows:

The Taxpayer is the operator and owns a percent joint and undivided interest in the Plant. The Plant is situated in Location. Taxpayer files a consolidated Federal income tax return with Parent. The Plant's operating license expires on . The allocable jurisdictional percentages for Commission A is percent and for Commission B, percent, for a total of percent. These percentages may fluctuate slightly from year to year.

Commission A, in Docket No. , effective , approved rates to be included in Taxpayer's cost of service for ratemaking purposes. When

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determining the decommissioning costs to be included in cost of service, Commission A assumed that the Plant will no longer be in a rate base as of _____, as required by Nuclear Regulatory Commission. Commission A also changed the depreciation rate for the Plant based upon a number of factors until _____.

In determining the amount of decommissioning costs for the Plant included in Taxpayer's cost of service, Commission A used an estimated cost of \$ _____ (_____ dollars) as a base cost for decommissioning the entire Plant, with Taxpayer's _____ % ownership share being \$ _____ (_____ dollars). The cost is based upon the decommissioning study prepared by Independent Engineer A dated _____. The base cost for decommissioning Taxpayer's share of the Plant was escalated at the rate of _____ % annually, resulting in a total estimated future decommissioning cost of \$ _____ (_____ dollars).

The cost to decommission Taxpayer's interest in the Plant, based upon the minimum financial assurance amount calculated pursuant to regulations of Nuclear Regulatory Commission, was \$ _____ (_____ dollars), or \$ _____ (_____ dollars) using the _____ % escalation rate prescribed by Commission A's rate order.

In issuing the rate order, Commission A determined that the estimated future decommissioning cost for Taxpayer's interest in the Plant would be \$ _____ (_____ dollars) by adjusting Nuclear Regulatory Commission's minimum amount to reflect (1) estimated costs of spent fuel disposal and (2) that the fund would earn interest during the decommissioning period.

The assumed after-tax rate of return to be earned by amounts collected for decommissioning is _____ %. Commission A estimated this rate after taking into consideration the changes to § 468A by the Energy Policy Act of 1992.

Commission A projected decommission costs for the Plant to be included in Taxpayer's cost of service for ratemaking purposes through _____. The projected amount that was included in Taxpayer's cost of service in each taxable year to which this ruling request applies, as approved by Commission A, is \$ _____ (_____ through _____). For purposes of determining the amount of decommissioning costs to be included in cost of service, Commission A assumed that the Plant will no longer be included in Taxpayer's rate base as of _____. Pursuant to Commission A's assumptions when determining the decommissioning costs to be included in cost of service, the funding period and the level funding limitation period for the Plant extends from _____, through _____.

Commission B's order issued with respect to the most recent Commission B ratemaking proceeding did not specifically address nuclear decommissioning expenses. Accordingly, deductions for decommissioning expenses associated with the portion of the plant dedicated to wholesale jurisdictions (i.e., non-Commission A) are not included in Taxpayer's proposed schedule of ruling amounts.

There are no pending proceedings before Commission A or Commission B that may result in an increase or decrease in the amount of decommissioning costs for the Plant included in Taxpayer's cost of service for ratemaking purposes.

The qualifying percentage for the Fund, as determined in the initial schedule of ruling amounts dated _____, is ____%. The estimated period for which the decommissioning fund is to be in effect is ____ years (_____ through _____) and the estimated useful life of the Plant is ____ years (_____ through _____).

Section 468A(a) of the Internal Revenue Code provides that a taxpayer may elect to deduct the amount of payments made to a qualified nuclear decommissioning fund. However, section 468A(b) limits the amount paid into the fund for any tax year to the lesser of the amount of nuclear decommissioning costs allocable to the fund that 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 nuclear power plant as the period for which the 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 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), is a taxpayer that has a qualifying interest in a nuclear power plant. As defined under section 1.468A-1(b)(2), a "qualifying interest" is, among other things, a direct ownership interest, including an interest held 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 the cost of service amount applicable to the nuclear decommissioning fund for such tax year; or the ruling amount applicable to the nuclear decommissioning fund for such tax year.

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."

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Section 1.468A-3(a)(2) bases the schedule of ruling amounts on the reasonable assumptions and determinations used by the applicable public utility commission(s) in establishing or approving the amount of decommissioning costs to be included in the cost of service for ratemaking purposes, taking into account amounts that are otherwise required to be included in the taxpayer's income under section 88 of the Code and the regulations thereunder. Each schedule of ruling amounts shall be based on the public utility commission's reasonable assumptions concerning; (i) the after-tax rate of return to be earned by the amounts collected for decommissioning, (ii) the total estimated cost of decommissioning the nuclear power plant, and (iii) the frequency of contributions to the nuclear decommissioning fund for a tax year.

Section 1.468A-3(a)(3) of the regulations permits the Service to 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 this section.

Section 1.468A-3(b)(1) of the regulations provides that the ruling amount, specified in a schedule of ruling amounts, for any taxable year in the level funding limitation period shall not be less than the ruling amount specified in such schedule for any earlier taxable year. Under section 1.468A-3(b)(2), the level funding limitation period begins on the first day of the first taxable 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 estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes.

Section 1.468A-3(c)(1) of the regulations provides that the funding period for a nuclear decommissioning fund is the period that begins on the first day of the first taxable year for which a deductible payment is made (or deemed to be made) to such nuclear decommissioning fund and ends the later of (i) the last day of the taxable year that includes the estimated date on which decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's cost of service for ratemaking purposes; or (ii) the last day of the taxable year that includes the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates 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

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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.

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(f)(1) of the regulations provides that if two or more public utility commissions establish or approve rates for electric energy generated by a single nuclear power plant, then the schedule of ruling amounts shall be separately determined pursuant to the rules of sections 1.468A-3(a) through (e) for each public utility commission that has determined the amount of decommissioning costs to be included in the cost of service for ratemaking purposes for this plant. Under section 1.468A-3(f)(2), this separate determination shall be based on the reasonable assumptions and determinations used by the relevant public utility commission and shall take into account only that portion of the total estimated cost of decommissioning that is properly allocable to the ratepayer whose rates are established or approved by the public utility commission. According to section 1.468A-3(f)(3), the ruling amounts for any tax year is the sum of the ruling amounts for such tax year determined under the separate schedules of ruling amounts.

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.

Section 1.468A-3(i)(1)(i) of the regulations provides that any taxpayer that has obtained a schedule of ruling amounts must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the 10th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received. The first taxable year to which the revised schedule of ruling applies shall be the 10th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received.

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Section 1.468A-3(i)(1)(iii) of the regulations provides that a taxpayer is required to request a revised schedule of ruling amounts for a nuclear decommissioning fund if: (1) any public utility commission that establishes or approves rates for the furnishing or sale of electric energy generated by a nuclear power plant to which the nuclear decommissioning fund relates (a) increases the proposed period over which decommissioning costs of such nuclear power plant will be included in cost of service for ratemaking purposes, (b) adjusts the estimated date on which such nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes, or (c) reduces the amount of decommissioning costs to be included in cost of service for any taxable year; (2) the taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Service of such action by the public utility commission; and (3) in the case of a taxpayer that determines its schedule or ruling amounts under a formula or method obtained under section 1.468A-3(a)(4), the item increased, adjusted, or reduced is a fixed (rather than a variable) element of that formula or method.

Section 1.468A-3(i)(2) of the regulations provides that any taxpayer that has previously obtained a schedule of ruling amounts can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of section 1.468A-3(h). The Internal Revenue Service shall not provide a revised schedule of ruling amounts applicable to a tax year in response to a request for a schedule of ruling amounts that is filed after the deemed deadline date for such tax year.

We have examined the representations and data submitted by the Taxpayer in relation to the requirements set forth in the Code and the regulations. Based solely on 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) of the regulations.
2. Commission A has determined the amount of decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes as required by section 1.468A-3(g) of the regulations.
3. The Taxpayer, as one of the owners of the Plant, has calculated its share of the decommissioning costs under section 1.468A-3(d)(3) of the regulations.
4. The Taxpayer, subject to the jurisdiction of two or more public utility commissions for ratemaking purposes, has calculated the total decommissioning costs allocable to Commission A as required by section 1.468A-3(f)(2) of the regulations.
5. The Taxpayer has proposed a schedule of ruling amounts which meets the requirements of sections 1.468A-3(a)(1) and (2) of the regulations.

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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.

6. Pursuant to section 1.468A-3(d)(4) of the regulations Taxpayer has determined that percent is the qualifying percentage.
7. The maximum amount of cash payments made (or deemed made) to the Fund during any taxable year is restricted to the lesser amount of the decommissioning costs applicable to such Fund or the ruling applicable to this Fund, as set forth under section 1.468A-2(b)(1) of the regulations.

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

APPROVED SCHEDULE OF RULING AMOUNTS
TAX YEARS THROUGH
COMMISSION A

In estimating the cost for decommissioning the Plant, Commission A changed the depreciation life of the Plant to end in . Thus, although Taxpayer represents that Commission A assumed that the Plant will no longer be included in Taxpayer's rate base for ratemaking purposes as of , the submitted Schedule of Ruling amounts is premised, in part, on an expiration date of . Accordingly, we are limiting the approved schedule of ruling amounts for Commission A to a five-year period. In order to prevent possible overfunding of the Fund, Taxpayer must settle this issue with Commission A prior to submitting a subsequent request for a revised schedule of ruling amounts.

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 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.

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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. As stated earlier, 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 taxable 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.

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.

A copy of this letter is being sent to the Industry Director, Natural Resources (LM:NRC).

Sincerely yours,

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

cc: