

Internal Revenue Service

Number: **200506017**

Release Date: 2/11/2005

Index Number: 468A.04-02

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:6

PLR-147506-04

Date:

October 29, 2004

Re: Revised Schedule of Ruling Amounts

Taxpayer =

Parent =

Plant =

Location =

Commission =

A

Commission =

B

Prior =

Schedule

Fund =

Dear :

This letter responds to the request of Taxpayer, filed September 8, 2004, and supplemental information submitted by your authorized representatives, for a revised schedule of ruling amounts pursuant to section 1.468A-3(i)(2) of the Income Tax Regulations. Commission A has increased Taxpayer's cost of service amount. Information was submitted pursuant to section 1.468A-3(h)(2).

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

Taxpayer owns a percent interest in the Plant as a tenant in common. The Plant is situated in Location. Taxpayer is a wholly-owned subsidiary of Parent. The Plant's operating license expires in . The allocable jurisdictional percentages for

Commission A is _____ percent and for Commission B, _____ percent, for a total of _____ percent. These percentages may fluctuate from time to time. The total is approved notwithstanding the fact that it marginally exceeds 100 percent, based on representation that each commission used different times and methods for determining the jurisdictional percentages. The estimated cost for decommissioning the Plant is based on an independent study and is premised on the DECON method.

The estimated date on which the Plant will no longer be included in Taxpayer's rate base for ratemaking purposes, as determined under the ratemaking assumptions that were used to determine the last rates that were established or approved by Commission A prior to the filing of the instant request (Docket No. _____

referencing Docket No. _____), is _____. The estimated date on which the Plant will no longer be included in Taxpayer's rate base for ratemaking purposes, as determined under the ratemaking assumptions that were used by Commission A in establishing or approving rates during the first ratemaking proceeding in which the Plant was included in Taxpayer's rate base, was _____. Commission A did not adjust the life of the Plant prior to July 18, 1984.

In Docket No. _____, Commission A authorized Taxpayer to include annual decommissioning costs for the Plant of \$ _____ for _____ through _____, and \$ _____ for _____. In determining the decommission costs for the Plant, Commission A estimated the total cost of decommissioning the Plant to be \$ _____ (_____ dollars), with Taxpayer's share being \$ _____. This estimated cost escalated at _____ percent annually results in a future decommissioning cost of \$ _____ (_____ to _____ dollars). Taxpayer's portion of this future expense is \$ _____.

There are no proceedings pending before either commission that may result in an increase or decrease in the amount of decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes.

The projected fair market value of the Fund as of _____, was \$ _____. The annual after-tax rate of return earned by the assets of the Fund between the date of the initial contribution to the Fund and _____, was approximately _____ percent.

The funding period and level funding limitation period extends from _____ through _____. The estimated useful life of the Plant is _____ years (_____ through _____) and the estimated period for which the Fund will be in effect is _____ years (_____ through _____). Therefore, the qualifying percent is _____ percent. The assumed annual after-tax rate of return expected to earned by Commission A jurisdictional assets of the Fund ranges from _____ percent to _____ percent depending on the investment mix during the funding and decommissioning period. Commission A took the tax rate change and the removal

of the investment restrictions as a result of the Energy Policy Act of 1992 (Public Law 102-482) (the "Act") into account in determining the after-tax rate of return. The amount expected to be earned by the assets of the Commission A jurisdictional assets of the Fund over the period that begins on the first day of the first taxable year to which the revised schedule of ruling amounts will apply () and the last day of the funding period () is \$. The assumed annual after-tax rate of return for the Commission B jurisdictional assets of the fund is percent.

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)(l) 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."

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 Internal Revenue 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(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.

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.

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.

Section 1917 of the Act eliminated, for the tax years beginning after December 31, 1992, the investment restrictions contained in section 468A(e)(4)(C) of the Code. That restriction also revised section 468A(e)(2) by lowering the tax applicable to a nuclear decommissioning fund.

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. Commissions A and B have 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 public utility commissions for ratemaking purposes, has calculated the total decommissioning costs allocable to Commission A and to Commission B, 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. The annual payments specified in the proposed schedule of ruling amounts are based on the reasonable assumptions and determinations used by Commissions A and B 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 tax 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
COMMISSIONS A and B

<u>YEAR</u>	<u>A</u>	<u>B</u>
-------------	----------	----------

In utilizing the DECON method to estimate the cost for decommissioning the Plant, Commission A assumed that the Nuclear Regulation Commission will extend the scheduled expiration date for Plant's amended operating license by an additional 20 years. Thus, although Taxpayer represents that the Plant's current amended operating license will expire in , the submitted Schedule of Ruling amounts is premised, in part, on an expiration date of .¹ Accordingly, we are limiting the approved schedule of ruling amounts for Commission A to a four-year period. Taxpayer must settle this issue with Commission A prior to submitting a subsequent request for a revised schedule of ruling amounts.

PLR-147506-04

Moreover, the approved schedule of ruling amounts for Commission B is being limited to a five-year period as a result of the statutory changes made by the Act. The elimination of the investment restrictions and the reduction of the tax rate applicable to income earned by the Fund may result in a greater after-tax of return than was estimated, prior to the enactment of the Act, by Commission B (which based its determinations as to the approved after-tax rate of return on restricted investments and a higher tax rate). This increased after-tax rate of return would, over the life of the Fund, result in a balance in the Fund on the last day of the funding period that would exceed the amount of decommissioning costs allocable to the Fund. In order to prevent the excess accumulation in the Fund this schedule of ruling amounts is limited to a five year period for Commission B. Approval of a revised schedule of ruling amounts may be approved after a determination by the applicable public utility commissions of an after-tax rate of return that accounts for the reduced tax rate and unrestricted investments.

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.

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 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.

Pursuant to the power of attorney on file with this office a copy of this letter is being sent to your authorized representatives. A copy of this letter is also being sent to the Industry Director, Natural Resources (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,

/s/ Peter C. Friedman

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