

Internal Revenue Service

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Washington, DC 20224

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PLR-159496-04

Date:

April 18, 2005

In Re: Revised Schedule of Ruling Amounts

Taxpayer =

Parent =

Plant =

Location =

Commission =

Year 1 =

a =

D1 =

D2 =

D3 =

D4 =

Dear :

This letter responds to Taxpayer's request dated November 10, 2004, and additional correspondence, for a revised schedule of ruling amount in accordance with § 1.468A-3(i)(1)(i) of the Income Tax Regulations with respect to Taxpayer's interest in Plant and the related Nuclear Decommissioning Reserve Fund (Fund) under the jurisdiction of the Commission. The required information for the schedule of ruling amounts was submitted pursuant to section 1.468A-3(h)(2).

On May 18, 2004, Taxpayer submitted a request for permission under § 301.9100-3 of the Procedure and Administration Regulations for an extension of time to file a request for a revised schedule of ruling amounts for Plant under § 1.468A-

3(i)(1)(i) for the period beginning D1. The relief requested under section 301.9100-3 was granted in a letter dated September 14, 2004.

Taxpayer has represented the following facts and information relating to its request for a revised schedule of ruling amounts:

Taxpayer owns a percent of Plant, which is situated in Location. Taxpayer is a single, integrated electric utility engaged in the generation, purchase, transmission, distribution, and retail sale of electricity. Plant was abandoned, by submission of Taxpayer's decision to the Nuclear Regulatory Commission on D2. The plant has been in the process of decommissioning from Year 1 through the current period.

Taxpayer is subject to the jurisdiction of Commission, which has authorized and determined nuclear decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes. Commission, in Order No. _____, entered D3, used an estimated cost of \$ _____ (_____ dollars) as the estimated total cost of decommissioning Taxpayer's interest in Plant. The estimated cost of decommissioning plant is premised on the prompt removal/dismantlement method. The date Plant was no longer included in Taxpayer's rate base under ratemaking used by Commission in establishing or approving rates was D4. The taxable year in which substantial costs of Plant first occurred was _____. The "funding period" as defined in section 1.468A-3, extends from _____ to _____.

The useful life of Plant as estimated when first included in rates was _____ years (_____ through _____). The remainder of the originally estimated useful life for which the Fund will be in effect is _____ years (_____ through _____). Thus, Taxpayer has calculated its qualifying percentage to be _____ percent.

Since the Prior Schedule was issued, Commission issued Order No. _____, requiring continuance of the cost of service requirement set in Order No. _____. There are no proceedings pending before Commission that may result in an increase or decrease in the amount of decommissioning costs for Plant included in Taxpayer's cost of service for ratemaking purposes.

The assumed after-tax rate of return to be earned by amounts collected for decommissioning is _____ percent. The fair market value of the assets of Fund as of the first day of the first taxable year to which the schedule applies was \$ _____.

Section 468A(a) 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 amount of the 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) 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-1(b)(5) of the regulations defines the term “nuclear decommissioning costs” or “decommissioning costs” to mean all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant that has permanently ceased the production of electrical energy. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to the plant after the actual decommissioning occurs, such as physical security and radiation monitoring expenses. Such term does not include otherwise deductible expenses to be incurred in connection with the disposal of spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (Pub. L. 97-425). An expense is otherwise deductible for purposes of section 1.468A-1(b)(5) if it would be deductible under chapter 1 of the Code without regard to 280B.

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 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(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 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.

Under section 1.468A-3(d)(4)(ii) of the regulations, the estimated period for which a nuclear decommissioning fund is to be in effect: (A) begins on the later of the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund or the first day of the taxable year that includes the date that the nuclear power plant begins commercial operation; and (B) ends on 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. Likewise, under section 1.468A-3(d)(4)(iii), the estimated useful life of a nuclear power plant: (A) begins on the first day of the taxable year that includes the date that the plant begins commercial operations; and (B) 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(e)(3) of the regulations provides that, for purposes of section 1.468A-3(d)(4)(ii) and (iii), 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 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 468A(f) of the Code defines the term "nuclear power plant" as including any unit thereof. Section 1.468A-1(b)(4) of the regulations further defines the term "nuclear power plant" as any nuclear power reactor that is used predominantly in the trade or business of the furnishing or sale of electric energy, if the rates for such furnishing or sale, as the case may be, have been established or approved by a public

utility commission. Each unit (i.e., nuclear reactor) located on a multi-unit site is a separate nuclear power plant.

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 amounts.

Section 1.468A-3(h)(2) of the regulations enumerates the information required to be submitted by a taxpayer in order to receive a ruling amount for any taxable year.

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 amounts 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)(i) of the regulations provides that a taxpayer is required to request a revised schedule of ruling amounts for a nuclear decommissioning fund if (a) 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 (1) increases the proposed period over which decommissioning costs of the nuclear power plant will be included in cost of service for ratemaking purposes; (2) adjusts the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes; or (3) reduces the amount of any decommissioning costs to be included in cost of service for any taxable year; and (b) the taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Service of the action by the public utility commission.

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 1.468A-7(a) of the regulations provides, in general, that an eligible taxpayer is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund

only if the taxpayer elects the application of section 468A of the Code. A separate election is required for each nuclear decommissioning fund and for each taxable year with respect to which payments are to be deducted under section 468A. In the case of an affiliated group of corporations that join in filing a consolidated return for a taxable year, the common parent must make a separate election on behalf of each member whose payments to a nuclear decommissioning fund during such taxable year are to be deducted under section 468A. The election under section 468a for any taxable year is irrevocable and must be made by attaching a statement ("Election Statement") and a copy of the schedule of ruling amounts provided pursuant to the rules of section 1.468A-3 to the taxpayer's federal income tax return (or, in the case of an affiliated group of corporations that join in filing a consolidated return, the consolidated return) for such taxable year. The return to which the Election Statement and a copy of the schedule of ruling amounts is attached must be filed on or before the time prescribed by law (including extensions) for filing the return for the taxable year with respect to which payments are to be deducted under section 468A.

We have examined the representations and information submitted by the Taxpayer in relation to the requirements set forth in section 468A of the code and the regulations thereunder. Based solely on these representations, we reach the following conclusions:

1. The Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under section 1.468A-1(b)(1) and (2) of the regulations.
2. The Commission has authorized decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes as required by section 1.468-3(g) of the regulations.
3. The qualifying percentage under section 1.468A-3(d)(4) of the regulations is calculated to be percent.
4. 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 cost 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.
5. The Taxpayer has proposed a schedule of ruling amounts which meets the requirements of section 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 on the above determinations, we conclude that the Taxpayer's proposed schedule of ruling amounts satisfies the requirements of section 468A of the Code. The following schedule of ruling amounts is specifically approved for the Commission.

APPROVED REVISED SCHEDULE OF RULING AMOUNTS
TAXABLE YEARS THROUGH
FOR THE COMMISSION

EACH YEAR

THROUGH

\$

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 this 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. Under section 1.468A-3(i)(1)(iv), the 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.

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 above, payments made to the Fund can qualify only to the extent that they do not exceed the lesser of the decommissioning costs applicable to the Fund or the ruling amounts applicable to the Fund in the taxable year.

Except as specifically set forth above, no opinion is expressed concerning the federal income tax consequences of the above described facts under any other provision of the Code or regulations. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that 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 taxable year in which the Taxpayer claims a deduction for payments made to the Fund. We are sending a copy of this letter ruling to the Industry Director,

Natural Resources and Construction (LM:NRC).

Sincerely yours,

PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
(Passthroughs and Special Industries)

Enclosures:

Copy of this letter

Copy for section 6110 purposes

cc: