Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Date:
September 09, 2005

Legend:

Taxpayer =

Parent =

State =
Plant =
Location =
Commission 1 =
Commission 2 =
Method =
Order 1 =
Order 2 =

a =
b =
c =
d =
e =
f =
g =
h =
i =
j =
k =
l =
m =
n =
o =
p =

q =
r =

Dear :

This letter responds to the request of Taxpayer, dated March 15, 2005, and subsequent submissions, for a revised schedule of ruling amounts for Plant pursuant to section 1.468A-3(i)(2) of the Income Tax Regulations. The request for a revised schedule of ruling amounts is the result of Commission 1 increasing the amount permitted to be contributed to the qualified nuclear decommissioning fund maintained by Taxpayer with respect to Plant. Taxpayer was previously granted schedules of ruling amounts on a and b. Information was submitted pursuant to section 1.468A-3(h)(2).

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

Taxpayer, a State utility company, is the owner of a c percent interest in Plant. Plant, located near Location, was declared commercially operable in d, and initially had an expected service life of e years. Plant was shut down in f. Plant was included in Taxpayer's rate base from d through g, and decommissioning costs were collected in rates for the latter portion of this period. In g, Commission 1 ordered Plant removed from rate base effective h. On i, Taxpayer announced its decision to permanently shut down and decommission Plant. Plant was temporarily placed in a SAFESTOR condition until decommissioning begins. Substantial decommissioning activities are expected to begin in j and are scheduled to be completed in k. The method of decommissioning the Plant is the Method, the cost of which is based on a site-specific decommissioning study.

Following a corporate reorganization in l, Taxpayer is now owned by Parent, with whom it files a consolidated return on a calendar year basis using the accrual method of accounting.

Commission 1 and Commission 2 establish the rates for electric energy sold by Taxpayer. The requested schedule of ruling amounts is limited, however, to rates approved by Commission 1.

Taxpayer ceased collecting decommissioning costs from its customers in h. Since that date, the projected cost of decommissioning the Plant has increased, and is expected to exceed the amount set aside for that purpose. Accordingly, Taxpayer sought permission to include in cost of service an increase in the cost of decommissioning Plant. On m, Commission 1 issued Order 1 (effective m), which included an increased cost of service amount. On n, Commission issued Order 2, modifying Order 1 to permit additional amounts to be contributed to the qualified nuclear decommissioning fund maintained by Taxpayer with respect to Plant.

In determining the decommissioning costs for Taxpayer's interest in the Plant, Commission 1 used an estimated base cost of o. This base cost escalated annually based on a weighted average escalation factor results in a future decommissioning cost of p.

The funding period extends q. Pursuant to the taxpayer's previous election under the special transition rule of section 1.468A-8(b)(7)(ii), the qualifying percentage is r.

Section 468A(a) 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 1/2 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 possesses a "qualifying interest" in a nuclear plant. Section 1.468A-1(b)(2) provides that a qualified interest includes a direct ownership interest, including an interest held as a tenant in common or joint tenant, but not including stock in a corporation that owns a nuclear plant or an interest in a partnership that owns a nuclear power plant.

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-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 section 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 this section.

Section 1.468A-3(b)(1) of the regulations provides that, in general, the ruling 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 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) 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 to which the fund relates, 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.

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(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-8(b)(7)(iii) of the regulations provides that in the case of a nuclear power plant that began commercial operations before July 18, 1984, and whose estimated useful life for ratemaking purposes was adjusted by a public utility commission before July 18, 1984, the taxpayer may elect in its request for a schedule of ruling amounts to compute the qualifying percentage in accordance with special rules. Section 1.468A-8(b)(7)(iii)(A) provides that if a taxpayer files a request for a schedule of ruling amounts for the nuclear decommissioning fund maintained with respect to such nuclear power plant on or before June 3, 1988, the qualifying percentage equals the percentage of original depreciation costs (determined without regard to capitalized decommissioning costs) with respect to the nuclear power plant that remains to be recovered for ratemaking purposes as of the first day of the taxable year that includes July 18, 1984.

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. The 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. Commission 1 has permitted 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 has calculated the total decommissioning costs under section 1.468A-3(d) of the regulations.

4. The Taxpayer has determined that r percent is the qualifying percentage as calculated under section 1.468A-8(b)(7)(iii)(A) of the regulations.

Based on the above determinations, we conclude that the Taxpayer's proposed schedule of ruling amounts with regard to Commission 1 satisfies the requirements of section 468A of the Code.

APPROVED SCHEDULE OF RULING AMOUNTS

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 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. Generally, 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. 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 tenth taxable year following the close of the tax year in which the most recent schedule of ruling amounts was received.

Approval of the schedule of ruling amounts is also expressly contingent upon the withdrawal of any funds deposited in Taxpayer's qualified nuclear decommissioning fund during or attributable to any taxable year in excess of the ruling amount for such year, and upon the prompt amendment of Taxpayer's tax return for any taxable year covered by the above schedule of ruling amounts that reflects a deduction for contributions to Taxpayer's qualified nuclear decommissioning fund in excess of the allowable amount for such taxable year.

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 § 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.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

We are 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 taxable year in which the Taxpayer claims a deduction for payments made to the Fund.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)