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Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
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PLR-109686-15

Date:  
September 02, 2015

Re:

**LEGEND:**

Taxpayer =

Parent =

State =

Industry Director =

Plant =

Location =

Commission A =

Commission B =

Order =

Independent Study =

Method =

Date 1 =

Date 2 =

Date 3 =

a =
$$\underline{\underline{\mathbf{b}}} =$$
$$\underline{C} =$$
$$\underline{d} =$$
$$=$$
$$f =$$

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Fund =

Dear \_\_\_\_\_ :

This letter responds to your request, dated March 13, 2015, for an elective revised schedule of ruling amounts under § 468A(d)(1) of the Internal Revenue Code and § 1.468A-3(f)(2) of the Income Tax Regulations. Taxpayer was previously granted revised schedules of ruling amounts, most recently on Date 1. Taxpayer submitted supplemental information by letters dated August 19, 2015 and August 21, 2015, pursuant to § 1.468A-3(e)(1)(vii).

Taxpayer represents the facts and information relating to its request for a revised schedule of ruling amounts as follows:

Taxpayer, a State corporation, is a public utility operating in State. Taxpayer engages in electricity and natural gas distribution, electricity generation, procurement and transmission, and natural gas procurement, transportation and storage. Taxpayer files a consolidated federal income tax return with its Parent on a calendar year basis using the accrual method of accounting and is under the audit jurisdiction of the Industry Director.

Taxpayer is the sole owner of the Plant. The Plant is situated at Location. The Plant's operating license was extended by the Nuclear Regulatory Commission and expires on Date 3. With respect to the decommissioning costs related to the Plant which are included in the Taxpayer's cost of service for ratemaking purposes, the Taxpayer is subject to regulation by Commission A and Commission B.

Commission A, in Order issued Date 2, reduced the amount of decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes for Year 2 through Year 3. Accordingly, Taxpayer has contributed amounts to the Fund for the Plant that are now excess contributions pursuant to § 1.468A-5(c)(2). Taxpayer intends to withdraw those excess contributions, along with any earnings attributable to those excess contributions, from the fund on or before the date that is 30 days after the date that Taxpayer receives the ruling amount for such taxable year.

The Order relies upon assumptions provided in the Independent Study. The proposed method of decommissioning the Plant is Method. Based on the assumptions adopted by Commission A in Order, it is estimated that Fund assets will earn an average after-tax rate of return that ranges from a percent to b percent for Year 2 through Year 5. Commission approved rates for Taxpayer containing a decommissioning cost component based upon an estimated cost of \$c (in Year 1 dollars) as a base cost for decommissioning the Plant. This base cost for decommissioning the Plant was escalated at the rate of d percent annually to the year that costs are incurred, resulting in total estimated future decommissioning costs for the Plant of \$e (in Year 4 through Year 5 dollars). It is estimated that substantial

decommissioning costs will first be incurred in Year 4 and that decommissioning will be substantially complete at the end of Year 5.

Section 468A(a), as amended by the Energy Tax Incentives Act of 2005 (the Act), Pub. L. 109-58, 119 Stat. 594, allows an electing taxpayer to deduct payments made to a nuclear decommissioning reserve fund.

Section 468A(b) limits the amount that may be paid into the nuclear decommissioning fund in any year to the ruling amount applicable to that year. Prior to the changes made by the Act, the deduction was limited to the lesser of the amount included in the utility's cost of service for ratemaking purposes or the ruling amount. Generally, as a result, only regulated utilities could take advantage of § 468A. The Act amendment of § 468A eliminated the cost-of-service limitation. Accordingly, decommissioning costs of an unregulated nuclear power plant may now be funded by deductible contributions to a qualified nuclear decommissioning fund.

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 § 468A(d)(2) as the amount which the Secretary determines to be necessary to fund the total nuclear decommissioning cost of that nuclear power plant over 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(h) 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 2½ months after the close of the tax year. This section applies to payments made pursuant to either a schedule of ruling amounts or a schedule of deduction amounts.

Section 1.468A-1(a) provides that an eligible taxpayer may elect to deduct nuclear decommissioning costs under § 468A of the Code. An "eligible taxpayer," as defined under § 1.468A-1(b)(1) of the regulations, is a taxpayer that has a "qualifying interest" in any portion of a nuclear power plant. A qualifying interest is, among other things, a direct ownership interest.

Section 1.468A-2(b)(1) 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 ruling amount applicable to the nuclear decommissioning fund for such taxable year. The limitation on the amount of cash payments for purposes of § 1.468A-2(b)(1) does not apply to any "special transfer" permitted under § 1.468A-8.

Section 1.468A-3(a)(1) 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) provides that, to the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on reasonable assumptions concerning the after-tax rate of return to be earned by the amounts collected for decommissioning, the total estimated cost of decommissioning the nuclear plant, and the frequency of contributions to a nuclear decommissioning fund for a taxable year. Under § 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(a)(4) provides that the taxpayer bears the burden of demonstrating that the proposed schedule of ruling amounts is consistent with the principles of the regulations and that it is based on reasonable assumptions. That section also provides additional guidance regarding how the Service will determine whether a proposed schedule of ruling amounts is based on reasonable assumptions. For example, if a public utility commission established or approved the currently applicable rates for the furnishing or sale by the taxpayer of electricity from the plant, the taxpayer can generally satisfy this burden of proof by demonstrating that the schedule of ruling amounts is calculated using the assumptions used by the public utility commission in its most recent order. In addition, a taxpayer that owns an interest in a deregulated nuclear plant may submit assumptions used by a public utility commission that formerly had regulatory jurisdiction over the plant as support for the assumptions used in calculating the taxpayer's proposed schedule of ruling amounts, with the understanding that the assumptions used by the public utility commission may be given less weight if they are out of date or were developed in a proceeding for a different taxpayer. The use of other industry standards, such as the assumptions underlying the taxpayer's most recent financial assurance filing with the NRC, are described by the regulations as an alternative means of demonstrating that the taxpayer has calculated its proposed schedule of ruling amounts on a reasonable basis. Section 1.468A-3(a)(4) further provides that consistency with financial accounting statements is not sufficient, in the absence of other supporting evidence, to meet the taxpayer's burden of proof.

Section 1.468A-3(b)(1) provides that, in general, the ruling amount for any tax year in the funding period shall not be less than the ruling amount for any earlier tax year. Under § 1.468A-3(c)(1), the funding 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 of the taxable year that includes the last day of the estimated useful life of the nuclear power plant to which the fund relates.

Section 1.468A-3(c)(2) provides rules for determining the estimated useful life of a nuclear plant for purposes of § 468A. In general, under § 1.468A-3(c)(2)(i)(A), if the

plant was included in rate base for ratemaking purposes for a period prior to January 1, 2006, the date used in the first such ratemaking proceeding as the estimated date on which the nuclear plant will no longer be included in the taxpayer's rate base is the end of the estimated useful life of the nuclear plant. Section 1.468A-3(c)(2)(i)(B) provides that, if the nuclear plant is not described in § 1.468A-3(c)(2)(i)(A), the last day of the estimated useful life of the nuclear plant is determined as of the date the plant is placed in service. Under § 1.468A-3(c)(2)(i)(C), any reasonable method may be used in determining the estimated useful life of a nuclear power plant that is not described in § 1.468A-3(c)(2)(i)(A).

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. Section 1.468A-3(d)(3) 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(e) provides the rules regarding the manner of requesting a schedule of ruling amounts. Section 1.468A-3(e)(1)(v) provides that the Service will not provide or revise a ruling amount applicable to a taxable year in response to a request for a schedule of ruling amounts that is filed after the deemed payment date (as defined in § 1.468A-2(c)(1)) for such taxable year.

Section 1.468A-3(e)(2) enumerates the information required to be contained in a request for a schedule of ruling amounts filed by a taxpayer in order to receive a ruling amount for any taxable year.

Section 1.468A-3(e)(3) provides that the Service may prescribe administrative procedures that supplement the provisions of §§ 1.468A-3(e)(1) and (2). In addition, that section provides that the Service may, in its discretion, waive the requirements of §§ 1.468A-3(e)(1) and (2) under appropriate circumstances.

Section 1.468A-3(f)(1) describes the circumstances in which a taxpayer must request a revised schedule of ruling amounts. Section 1.468A-3(f)(1)(iv) requires that a taxpayer request a revised schedule of ruling amounts for the fund if the operating license of the nuclear plant to which the fund relates is extended. The request for the revised schedule of ruling amounts must be submitted on or before the deemed payment deadline for the taxable year that includes the date on which the license extension is granted.

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

Section 1.468A-3(g)(3) provides that, if a taxpayer makes and deducts a payment or transfer to a qualified fund based on a proposed ruling request that exceeds the actual ruling amount, the taxpayer must withdraw the excess contribution and the earnings on the excess contribution and file an amended return reflecting the deduction specified in the ruling.

Section 1.468A-5(c)(2) provides that a nuclear decommissioning fund will not be disqualified under paragraph (c)(1) of that section by reason of an excess contribution or the withdrawal of an excess contribution if the withdrawal is performed before the later of the date the tax return is due for the taxable year to which the contribution relates or 30 days after the date the taxpayer receives the ruling amount.

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

1. Pursuant to § 1.468A-3(a)(4), Taxpayer has met its burden of demonstrating that the proposed schedule of ruling amounts is consistent with the principles of the Code and regulations and is based on reasonable assumptions.
2. Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under § 1.468A-1(b)(1) of the regulations.
3. Taxpayer, as owner of the Plant, has calculated its decommissioning costs under § 1.468A-3(d)(3) of the regulations.
4. The proposed schedule of ruling amounts was derived by following the assumptions contained in an Independent Study that Taxpayer has represented is a standard type study used in the industry. In addition, the same underlying assumptions were used by Commission A in Order to calculate the amount of decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes. Thus, Taxpayer has demonstrated, pursuant to § 1.468A-3(a)(4), that the proposed schedule of ruling amounts is based on reasonable assumptions and is consistent with the principles of § 468A and the regulations thereunder.
5. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is restricted to the ruling amount applicable to the Fund, as set forth under § 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 satisfies the requirements of § 468A of the Code. We have approved the following revised schedule of ruling amounts.

## APPROVED SCHEDULE OF RULING AMOUNTS

<u>Years</u>	<u>Commission</u>
Each Year, Year 2 - Year 4	\$f

If any of the events described in § 1.468A-3(f)(1) 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 this schedule of ruling amounts is received.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. In particular, while we have approved the proposed schedule of ruling amounts based on cost estimates contained in Independent Study, we make no ruling, express or implied, whether any particular item contained in that study constitutes a nuclear decommissioning cost within the meaning of § 1.468A-1(b)(6).

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 power of attorney on file with this office, a copy of this letter is being sent to your authorized representative. We are also sending a copy of this letter ruling to the Director. Pursuant to § 1.468A-7(a), 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  
Senior Technician Reviewer, Branch 6  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

cc: