

INTERNAL REVENUE SERVICE
Index No.: 468A.04-02

Number: **199910008**
Release Date: 3/12/1999

CC:DOM:P&SI:6 PLR-107125-98

Dec. 1, 1998

Re: Revised Schedule of Ruling Amounts

Taxpayer =
Parent =
Plant =
Location =
Commission =
State A =
District =
Fund =
Law =

Dear

This letter responds to the request of Taxpayer, dated March 13, 1998, and supplemental information submitted by Taxpayer, for a revised schedule of ruling amounts in accordance with section 1.468A-3(i)(1)(iii)(A)(2) of the Income Tax Regulations. Taxpayer is requesting a review of the prior revised schedule of ruling amounts since, pursuant to the Law, the estimated date on which the Plant will no longer be included in Taxpayer's rate base for ratemaking purposes has been revised. Taxpayer was previously granted a revised schedule of ruling amounts on April 25, 1997. Information was submitted pursuant to section 1.468A-3(h)(2).

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

PLR-107125-98

Taxpayer files a Federal income tax return with its Parent. Taxpayer, as one of the owners of the Plant, has a interest as a tenant in common. The Plant is situated in Location. The Plant's operating license is schedule to expire on Taxpayer proposes to decommission the Plant using the prompt removal/dismantling method. Taxpayer is under the audit jurisdiction of the District Director of District.

On the governor of State A signed the Law. Under the Law, certain costs relating to generation-related assets and obligations including the Plant, which are being collected by the Commission approved rates on

In the Commission determined that the costs of the Plant were the Because of the Law, the previous

The Law did not change the amount of decommissioning costs for the Plant included in Taxpayer's cost of service as set forth in nor the Commission underlying assumptions regarding such decommissioning costs including the period of years over which decommissioning costs for the Plant will be included in Taxpayer's cost of service.

There will be no change in the decommissioning costs for the Plant, nor the ruling amounts that were authorized in Taxpayer's prior revised schedule of ruling amounts dated the Commission included decommissioning costs of in Taxpayer's cost of service for ratemaking purposes. The Commission used a base cost of for decommissioning the Taxpayer's interest in the Plant. The cost of decommissioning the Plant escalated at variable rates results in a future decommissioning cost of

PLR-107125-98

The funding period for the Plant extends from
The level funding limitation period extends from
The estimated useful life of the Plant is
The estimated period for which the
Fund will be in effect is
Therefore, the qualifying percentage is The
after-tax rate of return expected to be earned on the assets of
the Fund is The Energy Policy Act of 1992 was not
taken into account in determining the after-tax rate of return.

There are no proceedings before the Commission 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.

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 1/2 months after the close of the tax year.

PLR-107125-98

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

PLR-107125-98

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 tax year in the level funding limitation period shall not be less than the ruling amount specified in such schedule for any earlier tax year. Under section 1.468A-3(b)(2), the level funding limitation 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 tax 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(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(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.

PLR-107125-98

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 (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: increases the proposed period over which the decommissioning costs of the nuclear power plant will be included in cost of service for ratemaking purposes; 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 reduces the amount of decommissioning costs to be included in cost of service for any tax year; and (B) the taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Service of such action by any public utility commission.

Section 1917 of the Energy Policy Act of 1992 (Public Law 102-482) (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 section also revised section 468A(e)(2) by lowering the tax rate 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. The Commission has previously 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 previously calculated its share of the total decommissioning costs under section 1.468A-3(d)(3) of the regulations.
4. The Taxpayer has previously proposed a

PLR-107125-98

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 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.

5. 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.
6. The qualifying percentage under section 1.468A-3(d)(4) of the regulations is calculated to be

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

YEAR

EACH YEAR

THROUGH

The approved schedule of ruling amounts for the Commission 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

PLR-107125-98

after-tax of return than was estimated, prior to the enactment of the Act, by the Commission (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 the Commission. 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.

The approved schedule of ruling amounts for the Commission 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 the Commission (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 the Commission. 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.

PLR-107125-98

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(j)(3) of the Code provides it may not be used or cited as precedent.

Pursuant to a copy of the power of attorney on file with this office a copy of this letter is being sent to your authorized representatives. 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,

CHARLES B. RAMSEY
Chief, Branch 6
Office of Assistant Chief
Counsel
(Passthroughs and Special
Industries)