

INTERNAL REVENUE SERVICE
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Feb. 26, 1999

Re: Revised Schedule of Ruling Amounts

Taxpayer =
Parent =
Plant =
Location =
Commission A =
Commission B =
Commission C =
Customer =
State =
District =
Fund =

Dear

This letter responds to the request of Taxpayer, dated March 12, 1998, and supplemental information submitted by Taxpayer, for a revised schedule of ruling amounts in accordance with section 1.468A-3(i)(1)(iii) of the Income Tax Regulations as each of the commissions has reduced the amount of decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes. Taxpayer was last granted a revised schedule of ruling amounts on August 19, 1996. Information was submitted in accordance with section 1.468A-3(h)(2).

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

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Taxpayer is a wholly-owned subsidiary of Parent. Taxpayer owns a undivided interest in the Plant, which is situated in Location. The Plant's operating license expires on Taxpayer is subject to the audit jurisdiction of the District Director of District. The jurisdictional percentage for each commission and Customer for are as follows:

Commission A,	Commission B,
Commission C,	and Customer,

for a total of The jurisdictional percentages for are as follows: Commission A, Commission B, Commission C, and Customer, for a total of

The proposed method of dismantling the Plant is the prompt removal/dismantling.

On Taxpayer filed a revision of its with Commission A. This revised was approved in Commission A's This revised authorized a decommissioning cost of to be included in Taxpayer's cost of service for ratemaking purposes, effective

It also updated the projected after tax rate of return, the weighted average interest rate, trustee fees, and the inflation rates used for decommissioning.

The decommissioning costs for are based on the total estimated cost of decommissioning the Plant being of which Commission A's jurisdictional amount is This total estimated cost escalated annually at various rates of inflation results in a future total estimated cost of of which Commission A's jurisdictional amount is

On Taxpayer filed an annual revision to its with Commission A. It was approved in Commission A's This revised authorized decommissioning costs ranging from to be included in Taxpayer's cost of service for ratemaking purposes, effective It also updated the projected after tax rates of return, interest rates, trustee fees, and the inflation rates, used for decommissioning cost estimates.

The decommissioning costs for and thereafter are based on the total estimated cost of decommissioning the Plant

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being

of which Commission A's

jurisdictional amount is This total estimated cost escalated annually at various rates of inflation results in a future total estimated cost of of which Commission A's jurisdictional amount is

In Taxpayer filed with Commission B predetermined charges under Taxpayer's wholesale formula rates. This update to wholesale rates used the same decommissioning costs as Commission A approved in their Commission B authorized decommissioning costs of to be included in Taxpayer's cost of service for ratemaking purposes, effective

The decommissioning costs for are based on the total estimated cost of decommissioning the Plant being of which Commission B's jurisdictional amount is This total estimated cost escalated annually at various rates of inflation results in a future total estimated cost of of which Commission B's jurisdictional amount is

In Taxpayer filed with Commission B predetermined charges under Taxpayer's wholesale formula rates. This update to wholesale rates used the same decommissioning costs as Commission A approved in their Commission B authorized decommissioning costs ranging from to be included in Taxpayer's cost of service for ratemaking purposes, effective

The decommissioning costs for and thereafter are based on the total estimated cost of decommissioning the Plant being of which Commission B's jurisdictional amount is This total estimated cost escalated annually at various rates of inflation results in a future total estimated cost of of which Commission B's jurisdictional amount is

On Taxpayer filed to revise its which was then approved by Commission C. Commission C's decommissioning cost was based on Commission A's

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and Commission A's assumptions in regard to interest rates, assumed after tax rates of return, and rate of inflation. Commission C authorized decommissioning costs of to be included in Taxpayer's cost of service for ratemaking purposes, effective

The decommissioning costs for are based on the total estimated cost of decommissioning the Plant being of which Commission C's jurisdictional amount is This total estimated cost escalated annually at various rates of inflation results in a future total estimated cost of of which Commission C's jurisdictional amount is

In Taxpayer filed to revise its which was then approved by Commission C. Commission C's decommissioning was Commission A's and the assumptions as stated in the previous paragraph. Commission C authorized decommissioning costs ranging from

The decommissioning costs for and thereafter are based on the total estimated cost of decommissioning the Plant being of which Commission C's jurisdictional amount is This total estimated cost escalated annually at various rates of inflation results in a future total estimated cost of of which Commission C's jurisdictional amount is

For the Commissions A, B, and C, the assumed after tax rate of return is

On Taxpayer State to Customer. Customer's rates are under the jurisdiction of Commission B and its rates are set pursuant to Commission B's Commission B in its included

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decommissioning costs for the Plant the same as Commission A approved in their Commission B authorized a decommissioning cost of _____ to be included in Taxpayer's cost of service for ratemaking purposes, effective _____

The decommissioning costs are based on the total estimated cost of decommissioning the Plant being _____ of which Commission B's Customer's jurisdictional amount is _____. This total estimated cost escalated annually at various rates of inflation results in a future total estimated cost of _____ of which Commission B's Customer's jurisdictional amount is _____

For Customer the assumed after tax rate of return is _____

The assumed rate of inflation is _____

The Energy Policy Act of 1992 (Act) was not taken into account in determining the after-tax rate of return.

The Plant began commercial operation in _____ The funding period and funding limitation period extends from _____ The estimated useful life of the Plant is _____ and the estimated period for which the Fund will be in effect is _____ Therefore, the qualifying percentage is _____

At the present time there are no proceedings pending before Commissions A or C that may increase or decrease the amount of decommissioning costs included in Taxpayer's cost of service for ratemaking purposes. At the present time there is a rate filing before Commission B.

Section 468A(a) of the 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 _____

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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.

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

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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(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.

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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)(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) eliminated for the tax years beginning after December 31, 1992, the investment restrictions contained in

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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. Commission's A, B, and C 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. Taxpayer, as owner of the Plant, has calculated the total decommissioning costs under section 1.468A-3(d)(3) of the regulations.
4. Taxpayer, subject to the jurisdiction of three public utility commissions for ratemaking purposes, has calculated total decommissioning costs allocable to each commission, as required by section 1.468A-3(f)(2) of the regulations.
5. 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 Commission 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. Taxpayer has determined that pursuant to section 1.468A-3(d)(4) of the regulations the qualifying percentage is
7. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is

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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

COMMISSIONS A, B, C, and CUSTOMER

<u>YEAR</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>CUSTOMER</u>	<u>TOTAL</u>
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EACH YEAR

THROUGH

EACH YEAR

THROUGH

The approved schedule of ruling amounts for the Commission C Customer 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 rate of return than was estimated, prior to the enactment of the Act, by Commission C in regard to Customer (which based its determinations as to the approved after-tax rate

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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 C Customer. Approval of a revised schedule of ruling amounts may be approved after a determination by the applicable public utility commission 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 included in ratemaking cost of service 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 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.

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Sincerely yours,

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