

INTERNAL REVENUE SERVICE

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October 29, 2000

In re:

Legend:

Parent =
Taxpayer =

Plant =

Location =

Commission A =
Commission B =

Firm =

State X =

Area =

District =

This letter responds to your request dated March 14, 2000, and additional submissions that were submitted on behalf of Parent and the Taxpayer. The request is for a revised schedule of ruling amounts in accordance with section 1.468A-3(i) of the Income Tax Regulations for the Taxpayer's nuclear decommissioning fund (the "Fund") under the jurisdiction of Commission A. The required information for the schedule of ruling amounts was submitted by Parent and the Taxpayer pursuant to section 1.468A-3(h)(2).

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Parent and the Taxpayer have represented the following facts and information:

The Taxpayer is a corporation organized under the laws of State X and is public utility engaged in the purchase, production, transmission, distribution and sale of electricity and natural gas in the Area of State X. The Taxpayer is under the audit jurisdiction of the District Director for the District.

The Taxpayer is the sole owner and operator of the Plant, which is situated at Location. The Plant began commercial operations on . The operating license for the Plant that was issued by the Nuclear Regulatory Commission expires at midnight on . The Taxpayer's electric energy generated from the Plant is subject to the jurisdiction of Commission A, which represents percent of total electric sales, and Commission B, which represents the remaining percent of total electric sales.

On , the Taxpayer filed a request for an initial schedule of ruling amounts for the Fund relating to the Plant covering the Taxpayer's taxable years. The initial schedule of ruling amounts was approved by the Service on . On March 9, 1993, and on March 13, 1997, the Taxpayer filed requests for revised schedules of ruling amounts for the Fund, which were approved by the Service on , respectively. On , the Taxpayer filed an application with Commission A to adjust nuclear plant decommissioning surcharges based on a new decommissioning study completed by the Firm in 1998. On , Commission A issued an Opinion and Order in Case No. that authorized the Taxpayer to decrease its surcharges for Plant but that contemplated later adjustments following reopened proceedings. On , Commission A issued (the "Order") approving a settlement agreement and authorizing amounts for inclusion in cost of service for nuclear decommissioning of Plant. The Taxpayer represents that there currently are no pending proceedings before Commission A that may result in an increase or decrease in the amount of decommissioning costs included in the Taxpayer's cost of service. The amount of decommissioning costs included in the Taxpayer's cost of service for the Plant under the Order is \$

The proposed method of decommissioning the Plant is the SAFSTOR method, delayed removal/dismantling. As estimated by the

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Firm and approved by Commission A, the total estimated cost of decommissioning the Plant is _____ of which _____ is within Commission A's jurisdiction. Escalating these amounts by _____ percent results in future decommissioning costs of _____ of which _____ is within Commission A's jurisdiction. The assumed after-tax rate of return on amounts collected for decommissioning is _____ percent. As of January 1, 1999, the asset balance of the Fund was _____.

The Order demonstrates that Commission A took into account the amendments made by section 1917 of the Energy Policy Act of 1992 to section 468A of the Code when it determined the amount of decommissioning costs included in the Taxpayer's cost of service. The amendments repealed the investment restrictions contained in former section 468A(e)(4)(C), for taxable years beginning after December 31, 1992, and lowered the tax rate applicable to a nuclear decommissioning fund in section 468A(e)(2), for taxable years beginning after December 31, 1993.

The estimated date in which the Plant will no longer be included in the Taxpayer's rate base for ratemaking purposes, as determined under the ratemaking assumptions that were used to determine the last rates that were established or approved by Commission A, is _____. However, the estimated date in which the Plant will no longer be included in the Taxpayer's rate base for ratemaking purposes, as determined under the ratemaking assumptions that were used by Commission A in establishing or approving rates during the first ratemaking proceeding in which the Plant was included in the Taxpayer's rate base, was _____.

The funding period and funding limitation period extend from _____. Pursuant to the Taxpayer's previous election under section 1.468A-8(b)(7)(i) of the regulations, the estimated period for which the Fund is to be in effect is _____ and the estimated useful life of the Plant is _____. Thus, the Taxpayer has calculated the qualifying percentage to be _____ percent.

This request for a revised schedule of ruling amounts is limited to the amounts within Commission A's jurisdiction. Commission B has not determined the amount of decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes within the meaning of section 1.468A-2(b)(2)(ii) of the regulations. Also, there currently are _____.

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no pending proceedings before Commission B that may result in an increase or decrease in the amount of decommissioning costs included in the Taxpayer's cost of service.

Section 468A 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 taxable 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 taxable year or the ruling amount applicable to that 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 taxable 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 taxable year if the payment is made on account of the taxable year within 2½ months after the close of the taxable year.

Section 1.468A-1(a) of the regulations provides, in part, 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, in part, that the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year shall not exceed the lesser of (i) the cost of service amount applicable to

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the nuclear decommissioning fund for such taxable year; (ii) or the ruling amount applicable to the nuclear decommissioning fund for such taxable year.

Section 1.468A-3(a)(1) of the regulations generally provides, in part, that a schedule of ruling amounts for a nuclear decommissioning fund is a ruling specifying annual payments that, over the taxable 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 section 1.468A-3, each schedule of ruling amounts shall be based 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. Thus, for example, 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 taxable year.

Under section 1.468A-3(a)(3) of the regulations, the Internal Revenue Service shall provide a schedule of ruling amounts that is identical to the schedule proposed by the taxpayer, but no such schedule shall be provided unless the taxpayer's proposed schedule is consistent with the principles and provisions of section 1.468A-3.

Section 1.468A-3(b)(1) of the regulations provides that the ruling amount, specified in a schedule of ruling amounts, for any taxable year in the level funding limitation period shall not be less than the ruling amount specified in such schedule for any earlier taxable year. Under section 1.468A-3(b)(2)(i) and (ii), the level funding limitation period begins on the first day of the first taxable 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 estimated date on which the

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nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes.

Section 1.468A-3(c)(1)(i) and (ii) 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 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 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)(i) of the regulations provides, in part, that 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 the 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 the elective special transition rule of section 1.468A-8(b)(7)(i) of the regulations, for purposes of section 1.468A-3(d)(4)(ii), the estimated period for which a nuclear

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decommissioning fund is to be in effect begins on the later of the first day of the taxable year that includes the date that the nuclear power plant began commercial operations; or the first day of the taxable year that includes July 18, 1984. Under the elective special transition rule of section 1.468A-8(b)(7)(ii), for purposes of section 1.468A-3(d)(4)(ii) and (iii), the estimated period for which the nuclear decommissioning fund is to be in effect and the estimated useful life of the nuclear power plant end on the earlier of the last date of the taxable year in which it is estimated that decommissioning will begin; or the last day of the taxable year that includes the expiration date of the Nuclear Regulatory Commission operating license as in effect on July 18, 1984, without regard to any extensions or amendments. Under section 1.468A-3(d)(4)(iii)(A), the estimated useful life of a nuclear power plant begins on the first day of the taxable year that includes the date that the plant begins commercial operations.

Section 1.468A-3(g) of the regulations provides that the 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 to which the nuclear decommissioning fund relates has (1) determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes; and (2) 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(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)(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 (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 decommissioning costs to be included in cost of service for any taxable year; and (B) the taxpayer's most recent request for a

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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 obtained a schedule of ruling amounts pursuant to section 1.468A-3(h) 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); thus, the Service shall not provide a revised 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 deadline date for such taxable 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 the 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.

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2. Commission A has authorized 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 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 A 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.
4. 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 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 was eligible for and properly elected the special transition rule of section 1.468A-8(b)(7)(i) of the regulations. The Taxpayer's qualifying percentage under section 1.468A-3(d)(4) is percent.

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 REVISED SCHEDULE OF RULING AMOUNTS

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

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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 cost of service amount 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 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.

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.

Sincerely yours,
PETER C. FRIEDMAN
Assistant to the Branch Chief, Branch 6
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
6110 copy