

**INTERNAL REVENUE SERVICE**

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CC:PSI:6 PLR-106516-00

January 02, 2001

Re: Revised Schedule of Ruling Amounts

Taxpayer =  
Plant =  
Location =  
Commission =  
District =  
Order =  
Fund =  
Dear :

This letter responds to the request of Taxpayer, dated March 15, 2000, for a revised schedule of ruling amounts in accordance with section 1.468A-3(i) of the Income Tax Regulations. Taxpayer was previously granted a revised schedule of ruling amounts on .

The Taxpayer is submitting information under the requirements of section 1.468A-3(h)(2) of the regulations and represents that the facts are as follows:

Taxpayer directly owns a percent interest in the Plant, which is situated in Location. The Plant began commercial operations on , and its operating license expires on . The rates for electric energy generated by the Plant are established solely by the Commission. The proposed method of decommissioning the Plant is prompt removal/dismantlement. Taxpayer is under the audit jurisdiction of the District.

In the Order the Commission used a decommissioning cost for the Plant of \$ , of which Taxpayer's

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share is \$ . This decommissioning cost escalated at percent annually results in a total future decommissioning cost of \$ , of which Taxpayer's share is \$ . The cost of decommissioning the Plant is based on a decommissioning study prepared by an outside firm.

The Commission, in Order, provided for decommissioning costs for the Plant of \$ per year to be included in the Taxpayer's cost of service. These amounts of decommissioning costs are calculated by using an assumed after-tax rate of return of percent.

The fair market value of the assets in the Fund as of , is \$ . The amount expected to be earned by the assets of the Fund over the period that begins on , and ends on , is \$ .

The estimated date on which the Plant will no longer be included in the Taxpayer's rate base for ratemaking purposes is . The funding period and level funding limitation period extends from .

The estimated period for which the Fund will be in effect is and the estimated useful life of the Plant is . Therefore, the qualifying percentage is percent.

There are no proceedings pending before the Commission that may result in an increase or decrease in the amount of decommissioning costs for the Plant to be 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 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

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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 ½ months after the close of the tax year. Additionally, a taxpayer that files for a schedule of ruling amounts and receives such schedule of ruling amounts after the 2 ½ month deadline for making a payment to a nuclear decommissioning fund, must make such payment to the fund within 30 days after the date that the taxpayer receives the schedule of ruling amounts for 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 has a "qualifying interest" in, among other things, a direct ownership interest, including an interest 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 (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

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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 sections 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)(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. 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.

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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)(2) of the regulations provides that any taxpayer that has previously obtained a schedule of ruling amounts 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). The Internal Revenue Service shall not provide a revised schedule of ruling amounts applicable to a tax year in response to a request for a schedule of ruling amounts that is filed after the deemed deadline date for such tax year.

We have examined the representations submitted by the Taxpayer. Based solely upon these representations, we reach the following conclusions:

1. The Taxpayer has a qualifying interest in the Plant and, therefore, is an eligible taxpayer under section 1.468A-1(b)(1) and (2) of the regulations.
2. The Commission has 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 has calculated its share of the total decommissioning costs under section 1.468A-3(d)(3) of the regulations.
4. The Taxpayer has determined that        percent is the qualifying percentage as calculated under section 1.468A-3(d)(4) of the regulations.

Based on the above determinations, we conclude that the Taxpayer's proposed schedule of ruling amounts with regard to the Commission satisfies the requirements of section 468A of the Code. Therefore, the schedule of ruling amounts requested by the Taxpayer under the provisions of section 468A(d)(1) is approved as follows:

APPROVED SCHEDULE OF RULING AMOUNTS

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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 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. Under section 1.468A-3(i)(1)(iv), the Taxpayer is required to file such a request on or before the deemed payment deadline 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 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 applies only to those payments made to the Fund. Payments allocable to any funds other than the Fund cannot qualify for the deduction under section 468A of the Code. As stated earlier, payments made to the Fund can qualify only to the extent that they do not exceed the lesser of the decommissioning costs included in the Taxpayer's cost of service for the taxable year or the ruling amounts applicable to this Fund in the tax 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 Associate Chief Counsel  
(Passthroughs and Special Industries)