Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200302041**
Release Date: 01/10/2003
Index Number: 468A.04-02; 468A.03-04

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:6/PLR-129887-02

Date:
October 7, 2002

Re: Request for a Revised Schedule of Ruling Amounts

Legend

Taxpayer =

Parent =

Plant =

Location =

Commission A =

Commission B =

Fund =

Dear :

This letter responds to the request of Taxpayer, dated May 29, 2002, 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 April 10, 2001 (which was corrected by letter dated June 7, 2001). Information for the schedule of ruling amounts was submitted on behalf of the Taxpayer pursuant to section 1.468A-3(h)(2).

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

Taxpayer is percent owned by Parent and files a consolidated Federal income tax return with Parent. Taxpayer has a direct ownership interest of percent in Plant, which is situated at Location.

Plant's operating license expires in . Taxpayer is subject to the jurisdiction of Commission A which covers percent of the Taxpayer's total electric sales, Commission B which covers percent, for a total of percent. These percentages may vary slightly from year to year. The estimated base cost for decommissioning the Plant is based on an independent study and is premised on the prompt removal/dismantling method.

In , Commission A adopted rules requiring various utilities including Taxpayer to open a portion of their electric load for retail competition by Commission A also allowed utilities to recover stranded costs (the difference between the value of jurisdictional assets used to provide electric service acquired prior to and the assets' market value in a competitive regime). Afterwards, Commission A adopted revised rules for retail electric competition that required various utilities to legally separate all competitive generation assets and services from noncompetitive assets and services through divestiture either to an unaffiliated party or to a separate corporate affiliate or affiliates by (which was extended to , by a settlement agreement between Taxpayer and several major consumer groups, later approved by Commission A). A final modified version of the rules was adopted a year later. The final version provides that decommissioning costs will continue to be collected from consumers over the life of Plant as part of a Systems Benefits Charge (SBC), a pro-rata non-bypassable charge imposed on retail consumers. Proposed rates for the collection of the SBC must be filed and reviewed by Commission A at least every three years. However, on , Commission A indefinitely stayed its previous decisions adopting rules for retail electric competition and ordered Taxpayer to cancel any plans to divest interests in any generating assets.

Commission A, in Decision No. , effective , authorized nuclear decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes for the Plant in the amount of and estimated an after-tax rate of return on assets of percent. The Commission also determined the total estimated cost of decommissioning Taxpayer's interest in Plant to be . This base cost escalated using an estimated inflation rate of percent results in an estimated future decommissioning cost of . The tax and investment changes made to section 468A of the Internal Revenue Code by section 1917 of the Energy Policy Act of 1992 were taken into consideration when estimating these costs.

Commission B, in Docket No. , effective , authorized nuclear decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes for the Plant in the amount of and estimated an after-tax rate of return on

assets of percent. The Commission also determined the total estimated cost of decommissioning to be . This base cost escalated using an estimated inflation rate of percent results in an estimated future decommissioning cost of . The tax and investment changes made to section 468A of the Internal Revenue Code by section 1917 of the Energy Policy Act of 1992 were not taken into consideration when estimating these costs.

There are no proceedings pending before either Commission A or Commission B 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.

The funding period and level funding limitation period for the Plant extends from for Commission A. The funding period and level funding limitation period for the Plant extends from for Commission B. The estimated period for which the Fund will be in effect is for Commission A and for Commission B. The estimated useful life of the Plant is for Commission A and for Commission B. Thus, Taxpayer has calculated its qualifying percentage to be percent for Commission A and percent for Commission B.

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 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 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 taxable year shall not exceed the lesser of (i) the cost of service amount applicable to the nuclear decommissioning fund for such taxable year; or (ii) the ruling amount applicable to the nuclear decommissioning fund for such taxable 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 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 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. 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.

Section 1.468A-3(a)(3) of the regulations requires the Internal Revenue Service to provide a schedule of ruling amounts that is 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 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), 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 nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes.

Section 1.468A-3(c)(1) 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 (i) 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 (ii) 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) 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 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.

Section 1.468A-3(d)(4)(ii) of the regulations provides that the estimated period for which a nuclear decommissioning fund is to be in effect begins on the later of (1) the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund (or deemed made); or (2) the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); and ends on the last day of the taxable 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. According to section 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

Section 1.468A-3(d)(4)(iii) of the regulations provides that 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 (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); and ends on the last day of the taxable 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. According to section 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

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 taxable year is the sum of the ruling amounts for such taxable 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 to which the nuclear decommissioning fund relates 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(h)(2) of the regulations 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(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 schedule of ruling amounts did not provide notice to the Service of such action by the public utility commission.

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 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.

Sections 1917(a) and (c)(1) of the Energy Act eliminated, for taxable years beginning after December 31, 1992, the investment restrictions contained in section 468A(e)(4)(C) of the Code. Sections 1917(b) and (c)(2) of the Energy Act revised section 468A(e)(2) by lowering the tax rate applicable to a nuclear decommissioning fund for taxable years beginning after December 31, 1993.

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 of the facts, we reach the following conclusions:

1. Taxpayer has a qualifying interest in Plant and is, therefore, an eligible taxpayer under section 1.468A-1(b) of the regulations.

2. Commissions A and B 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 one of the owners of Plant, has calculated its share of the total decommissioning costs under section 1.468A-3(d)(3) of the regulations.

4. Taxpayer has determined that pursuant to section 1.468A-3(d)(4) of the regulations, the qualifying percentage is percent for Commission A and percent for Commission B.

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

Commissions A and 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. The maximum amount of cash payments made (or deemed made) to the Fund during any taxable year is restricted to the lesser amount of the decommissioning costs 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.

7. Taxpayer, subject to the jurisdiction of two public utility commissions for ratemaking purposes, has calculated its share of the total decommissioning costs allocable to Commissions A and B, as required by section 1.468A-3(f)(2) 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
TAXABLE YEARS
COMMISSIONS A AND B

YEAR	COMM. A	COMM. B	TOTAL

With agreement of the Taxpayer, this revised schedule of ruling amounts is limited to a 5-year period for the portion of the schedule of ruling amounts for Commission B because this commission has not taken into account the statutory changes made to section 468A of the Code by the Energy 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 Energy Act, by this commission. This increased after-tax rate of return could, over the life of the Fund, result in a balance in the Fund on the last day of the funding period that could exceed the amount of decommissioning costs allocable to the Fund.

Thus, in order to prevent the excess accumulation in the Fund, this schedule of ruling amounts is being limited to a 5-year period, except the amounts for Commission A, which took into account the amendments made by the Energy Act to section 468A of the Code. Approval of a revised schedule of ruling amounts may be granted after a determination by Commission B 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 this 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 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 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 above, payments made to the Fund can qualify only to the extent that they do not exceed the lesser of the decommissioning costs applicable to the Fund or the ruling amounts applicable to the Fund in the taxable year. In addition, payments made to the Fund can qualify only during the period that Taxpayer maintains a qualifying interest in the Plant.

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.

In accordance with the powers of attorney, a copy of this letter ruling is being sent to your authorized representative. A copy of this letter ruling also is being sent to the appropriate Industry Director, LMSB.

Sincerely yours,

PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
6110 copy