Internal Revenue Service

Department of the Treasury

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Person to Contact:

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January 13, 2003

In re: Revised Schedule of Ruling Amounts

LEGEND:

Plant =
Taxpayer =

Parent =

Corporation =

Transferor =

Commission One =
Commission Two =
Order =
Method =
A =
B =
C =
D =
E =
F =
H =
I =
J =
K =
L =

M =
N =
O =
P =
Q =
R =
S =
T =
U =
V =
W =
X =

Dear :

This letter responds to a request for private letter ruling, dated March 14, 2002, filed on behalf of the above taxpayer pursuant to the mandatory requirements of section 1.468A-3(i)(1) of the Income Tax regulations, requesting a schedule of ruling amounts relating to Plant's qualified nuclear decommissioning fund ("Fund"). Taxpayer is requesting this schedule because 1) Plant was transferred from Transferor, a regulated public utility, to Taxpayer, an unregulated electric generation company; 2) the transfer of Plant to an unregulated entity changed the date after which Plant will no longer be included in rate base; and 3) Commission One, in Order, decreased the amount of decommissioning costs to be included in cost of service for Plant, effective A (the date of the transfer of Plant to Taxpayer). Transferor previously received a schedule of ruling amounts pertaining to Plant on B. Information was submitted pursuant to section 1.468A-3(h)(2).

In a reorganization dated A, Taxpayer was formed as a wholly owned subsidiary of Parent, which in turn is a wholly-owned subsidiary of Corporation. In the same reorganization, Transferor became a wholly-owned subsidiary of Corporation and transferred, through a multi-step transaction, its entire interest in Plant and all liability for decommissioning Plant to Taxpayer. As a result, Taxpayer directly owns a C percent interest in the Plant, which is situated in Location. Taxpayer and Transferor join Corporation in filing a consolidated tax return. Commission One (D percent) and Commission Two (E percent) have regulatory jurisdiction over the rates of Taxpayer, and Taxpayer is under the audit jurisdiction of the Industry Director, Natural Resources and Construction (LM:NRC).

The estimated cost of decommissioning the Plant is $F. Commission One, in Order, provided for decommissioning costs for the Plant of $H to be included in Taxpayer's cost of service for ratemaking purposes for the period I. During this period, Transferor will purchase all of Taxpayer's generation capacity for an agreed price.

Pursuant to Order, Transferor will collect decommissioning amounts approved by Commission One from its ratepayers during period J, and will pay over all such collections to Taxpayer who will, in turn, contribute them to its decommissioning funds. During the period J, Transferor has the option of buying power from Taxpayer but is not required to do so under Order, and the amount of decommissioning costs that will be included in Taxpayer's cost of service for ratemaking purposes will be a function of the amount of Taxpayer's capacity that is actually purchased by Transferor.

The level funding limitation period begins on K, and ends on L, and the funding period begins on M and ends on N. The assumed after-tax rate of return to be earned by the assets of the Fund is O percent. The rate of escalation to determine the future cost of the Plant is P percent compounded annually. The proposed method for decommissioning the Plant is Method.

Taxpayer has determined the estimated period for which the Fund is to be in effect is Q years (R through S) and the estimated useful life of the Plant is T years (U through V). Therefore, the qualifying percentage is W percent.

Section 468A of the 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 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 decommissioning costs with respect to the 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 a taxable year if the payment is made on account of such taxable year and is made within 2 ½ 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) 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 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 that section.

Section 1.468A-3(b)(1) of the regulations provides that, in general, the 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 first 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)(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. 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.

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 § 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 § 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 §§ 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 § 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 § 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 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.

We have examined the representations and the data submitted by the Taxpayer in relation to the requirements set forth in the Code and the regulations. Based solely upon these representations of the facts, we reach the following conclusions:

1. For the period covered by this schedule of ruling amounts, Taxpayer had a qualifying interest in the Plant and was, therefore, an eligible taxpayer under section 1.468A-1(b)(1) of the regulations.

2. Commission One has determined the decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes as required by section 1.468A-3(g) of the regulations.

3. 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 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.

4. Taxpayer has determined under section 1.468A-3(d)(4) of the regulations that the qualifying percentage for Commission One is W percent.

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 cost of service amount 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.

6. 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 One and Two, as required by § 1.468A-3(f)(2) of the regulations.

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

APPROVED SCHEDULE OF RULING AMOUNTS
ALLOCABLE TO THE TAXPAYER

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.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. In particular, no opinion is expressed or implied concerning whether the contract termination charge is includible in the gross income of, and deductible by, any entity other than Taxpayer.

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. Payments made to such Fund can qualify only to the extent they are made while Taxpayer is the owner of the Plant and 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.

The portion of this ruling pertaining to contributions to Taxpayer's qualified nuclear decommissioning fund made under the jurisdiction of Commission One is expressly conditioned on the continued direct or indirect ownership and control of Taxpayer, Parent, and Transferor by Corporation during the periods I and J. Specifically, as continuing conditions, 1) Taxpayer and Transferor must be part of the same affiliated group (or be treated as a division of a member of the same affiliated group) as Corporation (and Corporation must satisfy the ownership requirement of section 1504(a)(2)(A) with respect to Taxpayer and Transferor); and 2) Corporation, Taxpayer, and Transferor must file a consolidated tax return (or must be treated for tax purposes as divisions of entities that file a consolidated return with Corporation) for each year for which a deductible payment is made under section 468A. If any of these conditions are no longer applicable no further contributions may be made under the jurisdiction of Commission One to the qualified nuclear decommissioning fund.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. In accordance with the powers of attorney, we are sending a copy of this ruling to your authorized representatives We are also sending a copy of this letter ruling to the Industry Director, Natural Resources and Construction (LM:NRC). 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,

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