

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200440011**

Release Date: 10/1/04

Index Number: 468A.04-02

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:6 – PLR-114653-04

Date:

June 04, 2004

Re:

Taxpayer =

Parent =

Plant =

Location =

Commission =

A

Commission =

B

Commission =

C

State X =

Order A =

Order B =

Engineer =

Director =

Dear :

This letter responds to the request, dated February 27, 2004, submitted by Parent on behalf of Taxpayer, for a revised schedule of ruling amounts in accordance with section 1.468A-3(i)(1) of the Income Tax Regulations. Taxpayer was previously granted a revised schedule of ruling amounts for Commission B on (the "Prior Schedule"). This revised schedule has been requested because the Prior

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Schedule expired after the Taxpayer's taxable year. Information was submitted pursuant to section 1.468A-3(h)(2).

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

Taxpayer, as one of the owners of the Plant, has a percent interest as a tenant in common. Taxpayer has a pre-asset exchange interest of percent. In an asset exchange, Taxpayer received an additional percent ownership interest in the Plant. However, the decommissioning liability for this additional interest is fully funded, and Taxpayer will not collect any amounts from ratepayers for decommissioning liability relating to this additional interest. Taxpayer also holds an percent interest in certain common facilities relating to the operation of Plant and a second unit. Taxpayer has no ownership interest in the second unit. The Plant is situated in Location.

Taxpayer is under the jurisdiction of Commission A which covers percent of Taxpayer's total sales and Commission B which covers percent; however, percent of Taxpayer's operations consists of sales of electricity to a public utility that is subject to the jurisdiction of Commission C. This request for a revised schedule of ruling amounts applies only to ruling amounts under the jurisdiction of Commission B. Taxpayer proposes to decommission the Plant using the prompt removal/dismantling method. Taxpayer is under the audit jurisdiction of Director.

In Order B, Commission B authorized Taxpayer to include decommissioning costs for the Plant in its cost of service on a basis consistent with Commission A's determination in Order A. Commission A used an estimated cost of \$ (dollars) for decommissioning the Taxpayer's interest in the Plant and the common facilities. This estimate was based upon an independent study by Engineer, which premised this estimate on the prompt removal/dismantling method. The decommissioning study estimated the base cost to decommission the Plant as \$ (dollars).

Commission A's method of calculating the amount of decommissioning costs included in cost of service does not include an escalation factor for computing estimated future decommissioning costs. Instead, Commission A provided for updating these estimated base costs in future ratemaking proceedings to then-current dollars.

According to Commission B, the estimated date on which the Plant will no longer be included in Taxpayer's rate base for ratemaking purposes is . The estimated date on which the common facilities will no longer be included in Taxpayer's rate base for ratemaking purposes is .

The estimated taxable year in which substantial decommissioning costs of the Plant will first be incurred is . The estimated taxable year in which substantial

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completion of decommissioning of the Plant will occur is . The estimated taxable year in which substantial decommissioning costs of the common facilities will first be incurred is . The estimated taxable year in which substantial completion of decommissioning of the common facilities will occur is .

The assumed after-tax rate of return to be earned by amounts collected for decommissioning is percent. The actual after-tax rate of return earned by the assets of the Fund during the year ended , was percent.

With respect to Commission B, the following facts apply. The funding period and the level funding limitation period for the Plant extend from through . The funding period and the level funding limitation period for the common facilities extend from through . The date the Plant and common facilities began commercial operations was . Decommissioning costs for the common facilities were included and will be included in the Taxpayer's cost of service from through . The projected annual amounts that were included and will be included in Taxpayer's cost of service are, during - , \$, and, during - , \$.

As determined in the first ratemaking proceeding in which the Plant was included in Taxpayer's rate base, the estimated useful life of the Plant is years (through), and the estimated period for which the portion of the Fund relating to the Plant will be in effect is years (through). Therefore, the qualifying percentage for the portion of the Fund relating to the Plant is percent.

As determined in the first ratemaking proceeding in which the Plant was included in Taxpayer's rate base, the estimated useful life of the common facilities is years (through), and the estimated period for which the portion of the Fund relating to the Plant will be in effect is years (through). Therefore, the qualifying percentage for the portion of the Fund relating to the Plant is percent.

The estimated useful life of the Plant and of the common facilities (for ratemaking purposes) was not adjusted by Commission B before July 18, 1984, but was adjusted by Commission B in Order B. Therefore, for purposes of determining certain estimated dates relevant to the funding period, the level funding limitation period, and the qualifying percentage, the ratemaking assumptions that were used to determine the last rates that were established or approved by Order B prior to Taxpayer's filing of this request for a revised schedule of ruling amounts are not identical to the ratemaking assumptions used by Commission B in establishing or approving the rates during Commission B's first ratemaking proceeding in which the Plant was included in Taxpayer's rate base.

There are no proceedings before either commission that may result in an increase or decrease in the amount of decommissioning costs for the Plant included in Taxpayer's cost of service for ratemaking purposes..

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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 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)(l) 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 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 468(e)(1) provides that a taxpayer that elects application of section 468A shall establish a qualified fund with respect to each nuclear power plant to which such election applies. Section 468A(f) defines "nuclear power plant" to include any unit thereof.

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 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), 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)(l) of the regulations provides that, in general, a schedule of ruling amounts for a nuclear decommissioning fund is a ruling specifying annual

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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 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

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estimated cost of decommissioning such plant multiplied by the taxpayer's qualifying interest in the plant.

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(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. Section 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.

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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. Commissions A and B have previously 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, as one of the owners of the Plant and the common facilities, has previously calculated its share of the total decommissioning costs under section 1.468A-3(d)(3) of the regulations.
4. The Taxpayer, subject to the jurisdiction of three public utility commissions for ratemaking purposes, has previously calculated its share of the total decommissioning costs allocable to the Commissions, as required by section 1.468A-3(f)(2) of the regulations.
5. The Taxpayer has previously 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 Commissions 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 tax year is 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.
7. The qualifying percentage under section 1.468A-3(d)(4) of the regulations is calculated to be 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 SCHEDULE OF RULING AMOUNTS
TAX YEARS THROUGH ¹
COMMISSIONS A AND B

<u>YEAR</u>	<u>A</u>	<u>B</u>	<u>TOTAL</u>
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With agreement of the Taxpayer, this revised schedule of ruling amounts is limited to a 5-year period for the schedule of ruling amounts for Commission B because the 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 the 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. 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 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.

¹ The ruling amounts for Commission A were approved in a prior schedule of ruling amounts. For purposes of the mandatory review required under section 1.468A-3(i)(1) of the regulations, the date of that prior ruling shall govern the review period for the jurisdiction of Commission A.

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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 applicable to such Fund or the ruling amounts applicable to this Fund in the tax year.

This ruling is directed only to Taxpayer, who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent.

A copy of this letter is being sent to the Director. 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)

Enclosure: 6110 copy