

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:6
PLR-111852-05

Date:
April 21, 2005

Re: Revised Schedule of Ruling Amounts

Taxpayer =
Plant =
Location =
Commission A =
Commission B =
Commission C =
State =
Independent =
Engineer =
Prior Schedule =

Dear :

This letter responds to the request of Taxpayer, filed February 28, 2005, for a revised schedule of ruling amounts pursuant to section 1.468A-3(i)(2) of the Income Tax Regulations. Commission B has increased the amount of decommissioning costs to be included in Taxpayer's cost of service. Information was submitted pursuant to section 1.468A-3(h)(2).

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

Taxpayer owns a _____ % interest as tenant-in-common in Plant, which is situated at Location. Plant's amended 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, and Commission C which covers _____ percent, for a total of _____ percent. These percentages may fluctuate slightly from year to year. The total is approved notwithstanding the fact that it marginally exceeds 100 percent, based on Taxpayer's representation that each commission used different times for determining the jurisdictional percentages.

On _____, Taxpayer filed _____ in compliance with Commission B's final Order issued _____, in _____, which required Taxpayer to file a general rate compliance filing. After several proceedings in the case, the parties to the action filed an unopposed settlement agreement (the "Stipulation") to resolve the case. The Stipulation was filed on _____.

Commission B adopted, approved, and accepted as finding and conclusions of Commission B's Certification of Stipulation in Final Order Case No. _____, dated _____. Exhibit 4 of the Stipulation provides that the Commission B-jurisdictional amount of decommissioning expenses included on an annual basis in Taxpayer's cost of service from _____ through _____ is \$ _____. Commission B based this amount on the testimony of several witnesses. Moreover, the Stipulation provides that during the three-year rate period and until Commission B approves changes to Taxpayer's base rates in a future proceeding, these decommissioning expenses are deemed to fully fund State's share of Taxpayer's annual obligation.

In determining the amount of decommission costs for the Plant included in Taxpayer's cost of service, Commission B estimated Taxpayer's share of the total cost of decommissioning the Plant to be \$ _____ (_____ through _____ dollars) as a base cost for decommissioning the Commission B-jurisdictional amount of Taxpayer's interest in the Plant. This estimated cost is based on the decommissioning study prepared by Independent Engineer, dated _____, and is premised on the DECON decommissioning method.

This base cost for decommissioning the Plant was escalated at _____ percent annually to _____, resulting in a future decommissioning cost of \$ _____ (_____ to _____ dollars).

For purposes of determining certain "estimated dates" relevant to the funding period, the level funding limitation period, and the qualifying percentage, the ratemaking assumptions used by Commission B to determine the rates in the last ratemaking proceedings are identical to the ratemaking assumptions used to determine the rates in the first ratemaking proceeding in which Commission B included the Plant in Taxpayer's rate base. The estimated life of the Plant was not adjusted by Commission B before July 18, 1984.

As of _____, the fair market value of the Commission B-jurisdictional portion of the Nuclear Decommissioning Fund (the "Fund") was \$ _____. The annual after-tax rate of return earned by the assets of the Fund between the date of the initial contribution to the Fund and _____, was approximately _____ percent, on average.

Both the "funding period" and the "level funding limitation period" for the Plant, as these terms are defined in section 1.468A-3, extend from _____ through _____. The estimated useful life of the Plant is _____ years (_____ through _____). The Plant began sustained and substantial generation of electricity for sale to customers in _____ and the Plant was first included in Taxpayer's rate base by State in _____. The estimated period for which the Fund will be in effect is _____ years (_____ through _____). The "qualifying percentage," as determined in the Prior Schedule, is _____ percent.

The assumed after-tax rate of return expected to be earned by the assets of the Fund is _____ percent. The amount expected to be earned by the assets of the Fund over the period that begins on the first day of the taxable year to which the revised schedule of ruling amounts will apply (_____) and the last day of the funding period (_____) is \$ _____.

There are no pending proceedings before Commission A, Commission B, or Commission C 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.

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 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 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 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 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 such 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(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)(i) of the regulations provides that any taxpayer that has obtained a schedule of ruling amounts must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for the 10th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received. The first taxable year to which the revised schedule of ruling applies shall be the 10th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received.

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: (1) 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 (a) increases the proposed period over which decommissioning costs of such nuclear power plant will be included in cost of service for ratemaking purposes, (b) adjusts the estimated date on which such nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes, or (c) reduces the amount of decommissioning costs to be included in cost of service for any taxable year; (2) 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; and (3) in the case of a taxpayer that determines its schedule or ruling amounts under a formula or method obtained under section 1.468A-3(a)(4), the item increased, adjusted, or reduced is a fixed (rather than a variable) element of that formula or method.

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 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, B, and C 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. The Taxpayer, as one of the owners of the Plant, has calculated its share of the decommissioning costs under section 1.468A-3(d)(3) of the regulations.

4. The Taxpayer, subject to the jurisdiction of two or more public utility commissions for ratemaking purposes, has calculated the total decommissioning costs allocable to Commission A, Commission B, and Commission C, as required by section 1.468A-3(f)(2) of the regulations.
5. 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 Commissions A, B, and C 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 Nuclear Decommissioning Fund.
6. Pursuant to section 1.468A-3(d)(4) of the regulations Taxpayer has determined that percent is the qualifying percentage.
7. The maximum amount of cash payments made (or deemed made) to the Nuclear Decommissioning Fund during any tax year is restricted to the lesser amount of the decommissioning costs applicable to such Nuclear Decommissioning Fund or the ruling applicable to this Nuclear Decommissioning Fund, as set forth under section 1.468A-2(b)(1) 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
 TAX YEARS THROUGH ¹
 COMMISSIONS A AND B

<u>YEAR</u>	<u>A</u>	<u>B</u>	<u>TOTAL</u>
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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

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.

The approved schedule of ruling amounts is relevant only to those payments made to the Nuclear Decommissioning Fund. Payments allocable to any funds other than the Nuclear Decommissioning Fund, cannot qualify for purposes of the deduction under the provisions of section 468A of the Code. As stated earlier, payments made to such Nuclear Decommissioning Fund can qualify only to the extent that they do not exceed the lesser of the decommissioning costs applicable to such Nuclear Decommissioning Fund or the ruling amounts applicable to this Nuclear Decommissioning Fund in the tax year.

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.

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 Nuclear Decommissioning Fund.

Pursuant to the power of attorney on file with this office a copy of this letter is being sent to your authorized representative. A copy of this letter is also being sent to the Industry Director, Natural Resources (LM:NRC).

Sincerely yours,
(signed) Peter C. Friedman

PETER C. FRIEDMAN
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