

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:6-PLR-130559-00

Date:

August 9, 2001

Legend:

Taxpayer =

Plant =

Seller =

Parent =

Director =

Location =

Commission =

State =

Law =

Order =

Company 1 =

Company 2 =

Agreement =

a =

b =

c =

d =

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e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

r =

Dear

This letter responds to your request, dated December 12, 2000, and subsequent submission, for a revised schedule of ruling amounts under 1.468A-3(i) of the Income Tax Regulations for the Taxpayer's nuclear decommissioning fund ("Fund") because Taxpayer recently acquired the Plant from Seller. The required information for the schedule of ruling amounts was submitted on behalf of the Taxpayer pursuant to section 1.468A-3(h)(2).

The Taxpayer has represented the following facts and information relating to the ruling request:

Taxpayer is a wholly-owned subsidiary of Parent, an exempt public utility holding company. Taxpayer acquired an undivided a percent interest in the Plant on b from Seller, a public utility that is a wholly-owned subsidiary of Parent. Parent files a consolidated tax return for itself and its subsidiaries under the audit jurisdiction of the Director. The Plant is situated in Location. The collection of decommissioning costs for the Plant is subject to the regulatory jurisdiction of Commission. The operating license

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for the Plant is scheduled to expire in c. The method for decommissioning the Plant is the prompt removal/dismantlement method.

On d, the Governor of State signed the Law, which mandates rate reductions for ratepayers in State and provides for open access to electric energy suppliers. The Law permits Commission to approve restructuring plans submitted by electric utilities within State so long as the plans are consistent with the goals of the Law.

On e, Seller filed a stipulation with Commission outlining the Seller's proposals for implementing Statute. Commission issued a summary order on f, followed by a final order ("Order") on g, adopting most of the proposals submitted in Seller's stipulation. In order to implement Order, all of Seller's generation assets were sold to affiliated companies, subject to a three-year obligation in Taxpayer to provide basic generating service to Seller so that Seller can serve those of its retail customers that choose not to purchase their power supply from other competing suppliers.

Specifically, as part of the restructuring, the following entities (among others) were created: a wholly-owned subsidiary of Parent (Company 1) that operates as a generation holding company and provides administrative and operating support to its subsidiaries; a wholly-owned subsidiary of Company 1 (Taxpayer) that holds and operates the nuclear generation assets formerly owned by Seller, including Plant; and a wholly-owned subsidiary of Company 1 (Company 2) that purchases and markets all of the electric generation capacity and electric energy output of Taxpayer, as well as from other sources. Under the Agreement, Seller transferred ownership of the Plant, the qualified and nonqualified decommissioning funds associated with the Plant, the NRC license for the Plant, and other nuclear generation assets to Taxpayer. Taxpayer also assumed all of Seller's liability for decommissioning the Plant. These entities, as single-member limited liability companies, are treated as divisions of Parent and disregarded for federal income tax purposes.

For a period of three years expiring on h, Seller is required to provide basic generation service to its retail customers that do not choose to purchase power from other providers. During this period, Company 2 will sell capacity and energy to Seller in order to support Seller's basic generation service obligation to its customers at fixed rates established by Commission. Company 2 may compete to sell capacity and energy to Seller beyond h, but such services would be subject to regulatory approval.

Pursuant to Law, Seller will continue to collect decommissioning expenses from all customers in its service area through a non-bypassable societal benefits charge until at least i, and, pursuant to the terms of Agreement, will transfer the funds collected to Taxpayer. Taxpayer and Seller contemplate petitioning Commission to extend the collection of the non-bypassable charge beyond i.

The Taxpayer has proposed the following language be included by Commission in a clarifying order:

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In determining the decommissioning costs for the Plant, the Commission used an estimated base cost of j. This base cost escalated annually at a rate of k percent results in a future decommissioning cost of l.

Taxpayer represents that under the section 468A regulations the defined funding period extends m and the defined level funding limitation period extends n. The estimated useful life of the Plant is o and the estimated period for which the Fund will be in effect is p. Therefore, the qualifying percentage is q percent. The assumed after-tax rate of return to be earned on the assets of the Fund is r percent.

At the present time there are no proceedings 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 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

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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 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

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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.

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.

Section 1.468A-6(e)(2) provides rules for the determination of a schedule of ruling amounts for a transferee of a nuclear power plant.

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. The Taxpayer has a qualifying interest in the Plant and will be treated as an eligible taxpayer under section 1.468A-1(b)(1) of the regulations only during such period as Seller is authorized by Commission to collect decommissioning costs from customers and is obligated to pay the amounts collected to Taxpayer.

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2. The Commission has permitted the amount of decommissioning costs to be included in the Seller's cost of service for ratemaking purposes as required by section 1.468A-3(g) of the regulations for the period covered by this letter ruling.
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 q 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.

APPROVED SCHEDULE OF RULING AMOUNTS

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.

The rulings expressed, herein, are expressly conditioned on the clarifying order remaining in effect. 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 societal benefits 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 that they do not exceed the

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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 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 power of attorney on file with this office, a copy of this letter is being sent to your authorized representative. We are also sending a copy of this letter ruling 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,
PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
Passthroughs and Special Industries