

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200845042**

Release Date: 11/7/2008

Index Number: 468A.00-00

Third Party Communication: None

Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:

CC:PSI:B06

PLR-136387-06

Date:

July 09, 2008

LEGEND:

Taxpayer =

Plant =

Parent =

Director =

Location =

Commission A =

Commission B =

Commission C =

Commission D =

Commission E =

Method =

Fund =

Order =

Dear :

This letter responds to your request, dated July 28, 2006, for a schedule of deduction amounts and a revised schedule of ruling amounts pursuant to section 468A(f) of the Internal Revenue Code and § 1.468A-8T of the temporary Income Tax Regulations. You also provided additional information by letters dated March 21, 2007, February 20, 2008, March 3, 2008, and March 19, 2008. Taxpayer was previously granted schedules of ruling amounts, most recently on May 11, 2004. Information was submitted pursuant to § 1.468A-3T(e)(2).

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

Taxpayer, a subsidiary of Parent, is included in a consolidated return filed by Parent. Taxpayer is the sole owner of the Plant. Taxpayer is also the operator of the Plant.

The Plant is situated at Location. Plant's amended operating license is scheduled to expire on . The estimated base cost for decommissioning the Plant is based on an independent study and the proposed method of decommissioning the Plant is Method.

Taxpayer is subject to the jurisdiction of Commission A which covers percent of Taxpayer's total electric sales, Commission B which covers 0.8070 percent, Commission C which covers percent, Commission D which covers percent, and Commission E which covers percent, for a total of percent. These percentages may vary slightly from year to year. There is currently an accounting proceeding pending before Commission E that would result in an increase in the amount of decommissioning costs to be included in Taxpayer's cost of service. There are no other actions pending before any other Commission that may result in an increase or decrease in the amount of decommissioning costs to be included in Taxpayer's cost of service.

Commission A, in Order, recently reviewed and adjusted the amount of nuclear decommissioning costs of the Plant. Based upon the assumptions used in the Order, it is estimated that Fund assets will earn an after-tax rate of return of percent. The total cost of decommissioning Plant is estimated to be \$ in dollars. This base cost of decommissioning Plant is escalated at a percent yearly rate, resulting in a total future cost to Taxpayer of decommissioning Plant of \$. Under ratemaking assumptions used during the first proceeding before Commission A, the Plant would no longer be included in rate base in .

In the prior schedule of ruling amounts, issued under section 468A of the Code as in effect prior to 2006, for Commission A, the estimated useful life of the Plant is years (), and the estimated period for which the Fund is to be in effect is years (). Thus, the percentage of the total estimated costs qualifying for deduction in the schedule of ruling amounts under prior law for Commission A was percent. In the orders submitted for the prior schedule of ruling amounts, Commission A adjusted the ending date of the estimated useful life of the Plant to coincide with the expiration of the Plant's previous operating license in . The estimated useful life of the Plant was not adjusted by Commission A before July 18, 1984.

PLR-136387-06

Section 468A(a), as amended by the Energy Tax Incentives Act of 2005 (the Act), Pub. L. 109-58, 119 Stat. 594, allows an electing taxpayer to deduct payments made to a nuclear decommissioning reserve fund.

Section 468A(b) limits the amount that may be paid into the nuclear decommissioning fund in any year to the ruling amount applicable to that year. Prior to the changes made by the Act, the deduction was limited to the lesser of the amount included in the utility's cost of service for ratemaking purposes or the ruling amount. Generally, as a result, only regulated utilities could take advantage of section 468A. The Act amendment of section 468A eliminated the cost-of-service limitation. Accordingly, decommissioning costs of an unregulated nuclear power plant may now be funded by deductible contributions to a qualified nuclear decommissioning fund.

Section 468A(d)(1) 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 § 468A(d)(2) as the amount which the Secretary determines to be necessary to fund the total nuclear decommissioning cost of that nuclear power plant over 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.

Prior to the changes made by the Act, deductible contributions were limited to the amount necessary for an electing taxpayer to fund the plant's post-1983 nuclear decommissioning costs (determined as if decommissioning costs accrued ratably over the estimated useful life of the plant), provided that the taxpayer elected to establish a fund in 1984. Prior law also did not allow a taxpayer electing to establish a fund later than 1984 to contribute to that fund any amount in excess of that amount necessary to fund the ratable portion of the plant's nuclear decommissioning costs beginning in the year the fund is established.

Section 468A(f)(1) now allows a taxpayer to contribute to a nuclear decommissioning fund the entire cost of decommissioning the plant, including both the pre-1984 amount that was denied under the law prior to the Act as well as any amount attributable to any year after 1983 in which a taxpayer had not established a fund under § 468A. Section 468A(f)(2)(A) provides that the deduction for the contribution of the previously-excluded amount is allowed ratably over the remaining useful life of the nuclear plant.

Section 468A(h) 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

PLR-136387-06

payment is made on account of such taxable year and is made within 2 ½ months after the close of the tax year. This section applies to payments made pursuant to either a schedule of ruling amounts or a schedule of deduction amounts.

Section 1.468A-1T(a) provides that an eligible taxpayer may elect to deduct nuclear decommissioning costs under section 468A of the Code. An "eligible taxpayer," as defined under § 1.468A-1T(b)(1) of the regulations, is a taxpayer that has a "qualifying interest" in any portion of a nuclear power plant. A qualifying interest is, among other things, a direct ownership interest.

Section 1.468A-2T(b)(1) 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 ruling amount applicable to the nuclear decommissioning fund for such taxable year. The limitation on the amount of cash payments for purposes of § 1.468A-2T(b)(1) does not apply to any "special transfer" permitted under § 1.468A-8T.

Section 1.468A-3T(a)(1) 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-3T(a)(2) provides that, to the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on reasonable assumptions concerning the after-tax rate of return to be earned by the amounts collected for decommissioning, the total estimated cost of decommissioning the nuclear plant, and the frequency of contributions to a nuclear decommissioning fund for a taxable year. Under § 1.468A-3T(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-3T(a)(4) provides that the taxpayer bears the burden of demonstrating that the proposed schedule of ruling amounts is consistent with the principles of the regulations and that it is based on reasonable assumptions. That section also provides additional guidance regarding how the Service will determine whether a proposed schedule of ruling amounts is based on reasonable assumptions. For example, if a public utility commission established or approved the currently applicable rates for the furnishing or sale by the taxpayer of electricity from the plant, the taxpayer can generally satisfy this burden of proof by demonstrating that the schedule of ruling amounts is calculated using the assumptions used by the public utility commission in its most recent order. In addition, a taxpayer that owns an interest in a

PLR-136387-06

deregulated nuclear plant may submit assumptions used by a public utility commission that formerly had regulatory jurisdiction over the plant as support for the assumptions used in calculating the taxpayer's proposed schedule of ruling amounts, with the understanding that the assumptions used by the public utility commission may be given less weight if they are out of date or were developed in a proceeding for a different taxpayer. The use of other industry standards, such as the assumptions underlying the taxpayer's most recent financial assurance filing with the NRC, are described by the temporary regulations as an alternative means of demonstrating that the taxpayer has calculated its proposed schedule of ruling amounts on a reasonable basis. Section 1.468A-3T(a)(4) further provides that consistency with financial accounting statements is not sufficient, in the absence of other supporting evidence, to meet the taxpayer's burden of proof.

Section 1.468A-3T(b)(1) provides that, in general, the ruling amount for any tax year in the funding period shall not be less than the ruling amount for any earlier tax year. Under § 1.468A-3T(c)(1), the funding 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 taxable year that includes the last day of the estimated useful life of the nuclear power plant to which the fund relates.

Section 1.468A-3T(c)(2) provides rules for determining the estimated useful life of a nuclear plant for purposes of § 468A. In general, under § 1.468A-3T(c)(2)(i)(A), if the plant was included in rate base for ratemaking purposes for a period prior to January 1, 2006, the date used in the first such ratemaking proceeding as the estimated date on which the nuclear plant will no longer be included in the taxpayer's rate base is the end of the estimated useful life of the nuclear plant. Section 1.468A-3T(c)(2)(i)(B) provides that, if the nuclear plant is not described in § 1.468A-3T(c)(2)(i)(A), the last day of the estimated useful life of the nuclear plant is determined as of the date the plant is placed in service. Under § 1.468A-3T(c)(2)(i)(C), any reasonable method may be used in determining the estimated useful life of a nuclear power plant that is not described in § 1.468A-3T(c)(2)(i)(A).

Section 1.468A-3T(d)(1) 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. Section 1.468A-3T(d)(3) 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-3T(e)(2) 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-3T(f)(2) 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 § 1.468A-3T(e). 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.

Section 1.468A-8T(a)(1) provides that, under the provisions of § 468A(f), as described above, a taxpayer may make a special transfer of cash or property to the nuclear decommissioning fund. This special transfer is not subject to the § 468A(b) limitation. The amount of the special transfer is the present value of the pre-2006 nonqualifying percentage of the estimated future costs of decommissioning the nuclear plant that was disallowed under section 468A prior to the Act.

Section 1.468A-8T(a)(2) defines the pre-2005 nonqualifying percentage as equal to 100 percent reduced by the sum of the qualifying percentage used in determining the taxpayer's last schedule of ruling amounts for the fund under section 468A as it existed prior to the Act and the percentage transferred in any previous special transfer.

Section 1.468A-8T(a)(3) provides that the taxpayer is not required to transfer the entire amount eligible for the special transfer in one year but must take any prior special transfers into account in calculating the pre-2005 qualifying percentage.

Section 1.468A-8T(b) provides that the deduction for the special transfer is allowed ratably over the remaining useful life of the nuclear plant. Under § 1.468A-8T(b)(1)(iii), the deduction for property contributed in a special transfer is limited to the lesser of the fair market value of the property or the taxpayer's basis in the property. Under § 1.468A-8T(b)(4), the taxpayer recognizes no gain or loss on the special transfer of property, the taxpayer's basis in the fund is not increased by reason of the special transfer of property, and the fund's basis in the property transferred in the special transfer is the same as the transferee's basis in that property immediately prior to the special transfer.

Section 1.468A-8T(c) provides that taxpayer may not make a special transfer to a qualified nuclear decommissioning fund unless the taxpayer requests from the IRS a schedule of deduction amounts in connection with such transfer. A request for a schedule of deduction amounts may be made in connection with a request for a schedule of ruling amounts but in such case, the calculations for both the schedule of ruling amounts and the schedule of deduction amounts must be separately stated.

As stated above, prior to the changes made by the Act, deductible contributions were limited to the lesser of (1) the amount necessary to fund the plant's post-1983 nuclear decommissioning costs, or (2) the amount necessary to fund the plant's decommissioning costs for that portion of the plant's estimated useful life for which a fund had been established. Under that prior law, Taxpayer was allowed to contribute to

Commission A, B, and D jurisdiction percent of the amounts necessary to fully decommission its share of the Plant and to Commission C and E jurisdiction percent. Section 468A(f)(1) allows a taxpayer to contribute to the nuclear decommissioning fund the pre-1984 amount that was denied under the law prior to the Act. Thus, Taxpayer is able to contribute to Commission A, B, and D jurisdiction the percent of the amounts necessary to decommission its ownership share of Plant and to Commission C and E jurisdiction percent. This amount is the present value of the pre-2006 non-qualifying percentage of the estimated future cost of decommissioning the Plant that was previously disallowed. Total cost of decommissioning the Plant is \$ in dollars and the total amount Taxpayer is able to contribute as the pre-1984 amount that was denied under the law prior to the Act is \$ in dollars.

Taxpayer, in , has contributed to Fund for each Commission jurisdiction, the assets in the total amount of \$. To the extent that non-cash property was contributed to the Fund, the amount of the assets was determined by Taxpayer using the adjusted basis of that property. Taxpayer proposes to claim the amount of \$ contributed in as a deduction on a straight line basis, utilizing a monthly convention over the period beginning with the month the first contribution occurs through the month of the original license termination date (). Section 1.468A-9T(b)(1) provides that for a taxable year ending on or after January 1, 2006, and before December 31, 2007, a taxpayer may use any reasonable method consistent with the principles and provisions of section 468A to determine the schedule of ruling amounts or the schedule of deduction amounts.

We have examined the representations and information submitted by the Taxpayer in relation to the requirements set forth in § 468A and the regulations thereunder. We find that Taxpayer's proposal to deduct the amount transferred on a straight line basis, utilizing a monthly convention over the period beginning with the month the first contribution occurs through the month of the original license termination date, is based on a reasonable method consistent with the principles and provisions of section 468A for which the special transfer occurred after January 1, 2006, and before December 31, 2007. However, to the extent that non-cash property was contributed to the Fund and the amount of the assets was determined by Taxpayer using the adjusted basis of that property rather than the required lesser of the fair market value or adjusted basis, the amount of the allowable deduction is not based on a reasonable method consistent with the principles and provisions of § 468A. Based solely upon these representations of the facts, we conclude that the Taxpayer is permitted to make a special transfer of \$. However, under § 1.468A-8T(a)(3), a taxpayer is not required to transfer the entire amount eligible for the special transfer in one year but must take any prior special transfers into account in calculating the pre-225 qualifying percentage. Taxpayer represents that it made a special transfer of \$ in , and, subject to the caveats contained herein regarding the determination of the deductible amount of transferred property, may deduct the amount contributed for the tax years, as set forth below.

SCHEDULE OF DEDUCTION AMOUNTS

<u>YEAR</u>	<u>DEDUCTION AMOUNT</u>

We note that, if Taxpayer elects to make a special transfer of property for all or a portion of this special transfer, the amount of the transfer is the lesser of the fair market value of the property transferred or the basis of the property in the hands of the Taxpayer immediately prior to the transfer. If the Taxpayer made a special transfer of property, the fair market value of which was less than the basis at the time of transfer, and calculated the deduction on the basis, rather than the fair market value, Taxpayer must file an amended return to reflect the lesser amount transferred. Further, if the Taxpayer made a special transfer of property, the fair market value of which was less than the basis at the time of transfer, and calculated the amount of the special transfer using the basis of the property, rather than the lower fair market value, Taxpayer may, under certain circumstances, be entitled to an additional special transfer under the provisions of § 1.468A-8T(a)(3). In addition, because Taxpayer has elected to make a special transfer of less than the \$ permitted, Taxpayer is entitled to make an additional special transfer of the difference between the amount permitted to be transferred and the amount transferred. To make an additional special transfer, Taxpayer must request an additional schedule of deductions. Such request must take the prior schedule of deductions into account in calculating the permissible amount of the special transfer.

Furthermore, regarding Taxpayer's request for a revised schedule of ruling amounts, we have examined the representations and information submitted by the Taxpayer in relation to the requirements set forth in § 468A and the regulations thereunder. Based solely upon 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 § 1.468A-1T(b)(1) of the regulations.
2. Taxpayer, as owner of the Plant, has calculated its share of the total decommissioning costs under § 1.468A-3T(d)(3) of the regulations.
3. Taxpayer has proposed a schedule of ruling amounts which meets the requirements of §§ 1.468A-3T(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 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. Pursuant to § 1.468A-3T(a)(4), Taxpayer has demonstrated that, by following the assumptions approved by the Commissions, the proposed schedule of ruling amounts is consistent with the principles of section 468A and the regulations thereunder and that such schedule is based on reasonable assumptions.
5. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is restricted to the ruling amount applicable to the Fund, as set forth under § 1.468A-2T(b)(1) of the regulations.

Based solely on the determinations above, we conclude that the Taxpayer's proposed schedule of ruling amounts satisfies the requirements of § 468A of the Code.

APPROVED SCHEDULE OF RULING AMOUNTS

<u>YEAR</u>	<u>Commission A</u>	<u>Commission B</u>	<u>Commission C</u>	<u>Commission D</u>	<u>Commission E</u>	<u>Total</u>

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 § 1.468A-3T(f)(1) 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.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above.

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 the

Taxpayer. We are also sending a copy of this letter ruling to the Director. Pursuant to § 1.468A-7T(a), 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
(Passthroughs & Special Industries)

cc: