

INTERNAL REVENUE SERVICE

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April 12, 2001

Re: Request for Revised Schedule of Ruling Amounts

Taxpayer =

Parent =

Plant =

Location =

Commission A =

Commission B =

Commission C =

Director =

State =

Statute =

Order A =

Settlement =

Order B =

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Dear :

This letter responds to the request, dated , and subsequent submissions, submitted on behalf of Taxpayer for a single-year schedule of ruling amounts for Commission A and a revised schedule of ruling amounts for Commission B in accordance with section 1.468A-3(i) of the Income Tax Regulations. Taxpayer was previously granted a schedule of ruling amounts for Commission B on . As set forth below, we are denying your proposed schedule of ruling amounts for Commission A. We are approving the proposed revised schedule of ruling amounts for Commission B.

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

Taxpayer files a consolidated Federal income tax return with Parent. Taxpayer directly owns a percent undivided interest in the Plant, which is situated in Location. The method for decommissioning the Plant is the prompt dismantlement and removal method. Taxpayer is subject to the jurisdiction of Commission A, Commission B, and Commission C. Taxpayer is under the audit jurisdiction of the Director.

For Commission A, the estimated cost of decommissioning the Plant is \$ and this amount escalated at percent annually results in a cumulative future estimated cost of \$.

In , State enacted Statute, which provides for deregulation of rates for retail sales of electric generation in State beginning . Statute permits nuclear plant decommissioning costs to be recovered by an electric utility through a nonbypassable competitive transition charge ("CTC") paid by all of the utility's customers. In Order A, Commission A determined that Taxpayer may recover the net present value of Taxpayer's remaining unfunded decommissioning costs for the Plant through the CTC over the ten-year period ending .

However, Commission A and the owners of Plant subsequently agreed that Taxpayer would instead recover its remaining unfunded decommissioning costs under the terms of Settlement. Settlement provides that Taxpayer may recover \$, the net present value of Taxpayer's remaining unfunded decommissioning costs for the Plant, in tax year from the proceeds of the sale of

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Taxpayer's generation properties. Under Settlement, no amount of the cost of decommissioning the Plant was included in the CTC or otherwise charged directly or indirectly to ratepayers.

In Order B, as modified, Commission B authorized Taxpayer to include \$ of decommissioning costs in its cost of service for tax years , and \$ for tax year . Commission B estimated the total cost of decommissioning the Plant to be \$. The Taxpayer's share of this amount is \$. Commission B did not estimate the total cost of decommissioning the Plant in future dollars.

For purposes of Commission B, the level funding period begins on , and ends on , and the funding period begins on , and ends on . The estimated period for which the nuclear decommissioning fund ("Fund") is to be in effect is , the estimated useful life of the Plant is , and the qualifying percentage for Commission B is percent.

Commission C has not authorized Taxpayer to include decommissioning costs in its cost of service. Therefore, Taxpayer did not request a schedule of ruling amounts with respect to Commission C.

There are no proceedings pending before Commissions A or B that would may result in an increase or decrease in the amount of decommissioning costs to be included in Taxpayer's cost of service.

Section 468A 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 1.468A-2(b)(2) of the regulations provides that decommissioning costs are included in cost of service for a tax year only to the extent such costs are directly or indirectly charged to customers of the taxpayer by reason of electric energy consumed during such tax year or are otherwise required to be

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included in the taxpayer's income under section 88 and the regulations thereunder

Section 1.88-1 of the regulations provides that the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer that is engaged in the furnishing or sale of electric energy must be included in the gross income of such taxpayer in the same manner as amounts charged for electric energy. For this purpose, decommissioning costs directly or indirectly charged to the customers of a taxpayer include all decommissioning costs that customers are liable to pay by reason of electric energy furnished by the taxpayer during the tax year.

Section 1.468A-3(j)(1) provides a special rule permitting payments to a nuclear decommissioning fund before receipt of a ruling amount applicable to the taxable year if the taxpayer timely filed a request for a ruling amount for the applicable taxable year and has not received the requested schedule of ruling amounts prior to the deemed payment deadline date for that taxable year. However, section 1.468A-3(j)(3) provides that if, as a result of an electing taxpayer making such a payment prior to receiving a schedule of ruling amounts and the ruling amount approved by the Service being less than the ruling amount proposed by the taxpayer there is a excess contribution (as defined in section 1.468A-5(c)(2)(iii)), then the excess contribution is not deductible and must be withdrawn by the electing taxpayer. In addition, any interest earned on account of such excess contribution must be withdrawn.

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 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

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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)(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) 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.

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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 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

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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 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.

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We have examined the representations and data submitted by the Company in relation to the requirements set forth in the Code and the regulations. Based solely on these representations of the facts, we rule as follows:

Commission A

1. Under the Settlement adopted by Taxpayer and Commission, no decommissioning costs have been directly or indirectly charged to customers of Taxpayer by reason of electric energy consumed during the tax year, and no customers are liable to pay decommissioning costs by reason of electric energy furnished by the taxpayer during the tax year. Instead, Taxpayer will fund these costs from the proceeds of the sale of other generating assets. Consequently, under section 1.468A-2(b)(2) of the regulations, 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 is zero. Under the limitations of section 468A(b), Taxpayer may not, with respect to Commission A, make a contribution to the Fund, nor take a deduction, with respect the tax year and is therefore not entitled to a schedule of ruling amounts for that year.

2. As a result of our denial of Taxpayer's requested schedule of ruling amounts with respect to Commission A, in order to avoid disqualification of the Fund under section 1.468A-5, any amounts contributed by the Taxpayer, herein, to the Fund with respect to Commission A for the and subsequent tax years, as well as any earnings with respect to such amounts, must be immediately withdrawn from the Fund (see generally section 1.468A-3(j)).

Commission B

3. The Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under section 1.468A-1(b)(1) and (2) of the regulations.

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

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5. Commission B has 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.

6. The Taxpayer has proposed a schedule of ruling amounts for Commission B which meets the requirements of section 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 Commission B 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 for that jurisdiction.

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

8. 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.

Based on the above determinations, we conclude that the Taxpayer's proposed schedule of ruling amounts for Commission B satisfies the requirements of section 468A of the Code.

APPROVED SCHEDULE OF RULING AMOUNTS FOR COMMISSION B

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.

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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 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.

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

In accordance with the power of attorney on file with this office, this letter is being sent to the Taxpayer's authorized representative. In addition, a copy of this letter is being sent to the Taxpayer and 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
PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)