

**INTERNAL REVENUE SERVICE**

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December 6, 2000

In re: Request for a Revised Schedule of Ruling Amounts

**LEGEND:**

Taxpayer =

Plant =

Location =

Commission =

District =

Settlement =

Dear :

This letter responds to the request dated and supplemental information, submitted by Taxpayer's authorized representative on behalf of Taxpayer for a revised schedule of ruling amounts in accordance with section 1.468A-3(i)(1)(iii) of the Income Tax Regulations. Taxpayer was previously granted a revised schedule of ruling amounts on . Information was submitted pursuant to section 1.468A-3(h)(2).

Taxpayer represents the facts relating to the request for a revised schedule of ruling amounts to be as follows:

Taxpayer is sponsored by several utility companies, which are its sole stockholders. Taxpayer is the sole owner of the Plant, which situated in Location. The rates for wholesale electric energy sold by Taxpayer are established solely by the Commission. The Plant commenced commercial operations on . The energy output of the Plant was sold to the sponsors under identical power contracts, as amended, to

terminate on

. The Plant's operating license expires on . However, on , the owners of the Plant voted to cease operations and to begin the process of decommissioning the Plant. The proposed method of decommissioning the Plant is . Taxpayer is under the audit jurisdiction of the District Director of District.

Taxpayer signed a contract with an outside contractor for the decommissioning of the Plant. The contract, among other things, provides for construction of an Independent Spent Fuel Storage Installation (Installation) and completion of the major decommissioning activities and site restoration by

The Taxpayer represents that only the spent fuel from the Plant will be stored in the Installation constructed onsite at the Plant. No spent fuel from any other nuclear reactor will be stored in the Installation. The Installation does not increase the value of Taxpayer's nuclear facilities nor prolong the useful life of the abandoned Plant. The Installation does not adapt the Plant to a new or different use. The Plant is no longer capable of producing income and the Installation will not produce any income. Taxpayer is allowed to recover from its ratepayers Installation related costs in accordance with the terms of the Settlement.

The Commission, in Settlement, issued a Final Rate Order for new rates to become effective , which included decommissioning costs of \$ per year to be included in Taxpayer's cost of service. The total cost of decommissioning the Plant as estimated by the Commission is \$ . This decommissioning cost escalated at percent annually results in a future estimated decommissioning cost of \$ . The estimated after-tax rate of return to be earned on the assets of the nuclear decommissioning fund ("Fund") is percent. The Final Rate Order assumes that decommissioning will commence in and that the Plant will no longer be included in Taxpayer's rate base as of .

The funding period and funding limitation period for the Plant extends from . The estimated period for which the Fund will be in effect is . The estimated useful life of the Plant is .

. Thus, the Taxpayer has calculated the qualifying percentage to be percent.

There are no proceedings pending before the Commission. Taxpayer must, however, make a filing with the Commission no later than \_\_\_\_\_, for the purpose of examining whether any further rate adjustments are necessary.

Section 468A(a) of the Internal Revenue Code provides that a taxpayer may elect to deduct for any taxable year the amount of payments made to a qualified nuclear decommissioning fund during the taxable year. Pursuant to section 1.468A-1(a) of the regulations, this deduction is available only to an "eligible taxpayer." An eligible taxpayer, as defined in section 1.468A-1(b)(1), is any taxpayer that has a "qualifying interest" in a nuclear power plant.

Section 1.468A-1(b)(2) of the regulations defines the term "qualifying interest" as, among other things, a direct ownership interest. A direct ownership interest includes an interest held as a tenant in common or joint tenant, but does not include stock in a corporation that owns a nuclear power plant or an interest in a partnership that owns a nuclear power plant.

Under section 468A(b) of the Code, the amount that a taxpayer may pay into a nuclear decommissioning fund for any taxable year is limited to the lesser of: (1) the amount of nuclear decommissioning costs allocable to the nuclear decommissioning fund that is included in the taxpayer's cost of service for ratemaking purposes for the taxable year; or (2) the ruling amount applicable to the nuclear decommissioning fund for the taxable year.

Section 468A(d)(1) of the Code provides that no deduction shall be allowed for any payment to a nuclear decommissioning fund unless the taxpayer requests, and receives, from the Secretary a schedule of ruling amounts.

Section 468A(d)(2)(A) of the Code defines the term "ruling amount" as the amount that the Secretary determines to be necessary to fund a portion of the decommissioning costs. This amount is that portion which bears the same ratio to the total nuclear decommissioning costs for the nuclear power plant as the period for which a nuclear decommissioning fund is in effect bears to the estimated useful life of the nuclear power plant. The ruling amount is further restricted under section 468A(d)(2)(B) to the amount necessary to prevent any excessive funding of decommissioning costs or the funding of these costs at a rate more rapid than level funding, taking into account the discount rates as the Secretary deems appropriate.

Section 1.468A-3(a)(1) of the regulations requires the schedule of ruling amounts for a nuclear decommissioning fund to specify the annual payments that, over the taxable years remaining in the funding period, 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 greater than) the amount of decommissioning costs allocable to the nuclear decommissioning fund. The projected fund balance is calculated by taking into account the fair market value of the fund assets as of the first day of the first taxable year to which the schedule of ruling amounts applies and the estimated rate of return to be earned by the fund assets after payment of administrative costs and incidental expenses to be incurred by the fund, including all federal, state, and local income taxes to be incurred by the fund (the "after-tax rate of return").

Section 1.468A-3(a)(2) of the regulations provides that to the extent consistent with the principles and provisions of section 1.468A-3, 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 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. Thus, for example, 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 a nuclear decommissioning fund for a taxable year.

Under section 1.468A-3(a)(3) of the regulations, the Internal Revenue Service shall provide a schedule of ruling amounts that is identical to the schedule proposed by the taxpayer, but no schedule of ruling amounts shall be provided unless the taxpayer's proposed schedule is consistent with the principles and provisions of section 1.468A-3.

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 the schedule for any earlier taxable year.

The amount of decommissioning costs allocable to a nuclear decommissioning fund is determined under section 1.468A-3(d) of

the regulations. Pursuant to section 1.468A-3(d)(1), this amount is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant multiplied by the qualifying percentage.

Under section 1.468A-3(d)(2)(I) of the regulations, the total estimated cost of decommissioning a nuclear power plant generally is the reasonably estimated cost of decommissioning used by the applicable public utility commission in establishing or approving the amount of decommissioning costs to be included in cost of service for ratemaking purposes.

Section 1.468A-3(d)(3) of the regulations provides that the taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning the plant multiplied by the taxpayer's qualifying interest in the plant.

For a nuclear power plant that began commercial operations on or before July 18, 1984, and whose estimated useful life for ratemaking purposes was adjusted by a public utility commission before July 18, 1984, a taxpayer may elect in its request to compute the qualifying percentage under section 1.468A-8(b)(7)(iii) of the regulations. Pursuant to this section, the qualifying percentage equals the percentage of original depreciation costs (determined without regard to capitalized decommissioning costs) for the nuclear power plant that remains to be recovered for ratemaking purposes as of the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund. Under section 1.468A-8(b)(7)(iii)(C), original depreciation costs for a nuclear power plant include only those costs that were taken into account in determining the amount of depreciation for the plant in the first ratemaking proceeding in which the depreciation was treated as a cost of service.

Section 1.468A-3(g) of the regulations provides that the 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 rates for electric energy generated by a nuclear power plant to which the nuclear decommissioning fund relates 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 requires a

taxpayer 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 the nuclear power plant to which the fund relates (1) increases the proposed period over which the decommissioning costs will be included in cost of service for ratemaking purposes, (2) adjusts the estimated date on which the nuclear power plant will no longer be included in rate base for ratemaking purposes, or (3) reduces the amount of decommissioning costs to be included in cost of service for ratemaking purposes for any taxable year; and

(B) the taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Service of the action by the public utility commission.

Section 1.468A-3(i)(2) of the regulations provides that any taxpayer that has obtained a schedule of ruling amounts pursuant to section 1.468A-3(h) can request a revised schedule of ruling amounts. This request must be made in accordance with the rules in section 1.468A-3(h). Thus, the Service shall not provide a revised ruling amount 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 the taxable year.

Under section 1.468A-7(a) of the regulations, an eligible taxpayer generally is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer elects the application of section 468A of the Code. A separate election is required for each nuclear decommissioning fund and for each taxable year for which payments are to be deducted under section 468A. In the case of an affiliated group of corporations that join in filing a consolidated return for a taxable year, the common parent must make a separate election on behalf of each member whose payments to a nuclear decommissioning fund during each taxable year are to be deducted under section 468A. The election under section 468A for any taxable year is irrevocable and must be made by attaching a statement ("Election Statement") and a copy of the schedule of ruling amounts provided pursuant to the rules of section 1.468A-3 to the taxpayer's federal income tax return (or, in the case of an affiliated group of corporations that join in filing a consolidated return, the consolidated return) for such taxable year. The return to which the Election Statement and a copy of the schedule of ruling amounts is attached must be filed on or before the time

prescribed by law (including extensions) for filing the return for the taxable year for which payments are to be deducted under section 468A.

We have examined the representations and data submitted by your authorized representative 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. 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.
2. The Commission 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.
3. Taxpayer has calculated the qualifying percentage pursuant to section 1.468A-8(b)(7)(ii) of the regulations to be                      percent.
4. The Taxpayer has proposed a schedule of ruling amounts that meets the requirements of section 1.468A-3(a)(1) and (2) of the regulations. The annual payments specified in the proposed schedule are based on the reasonable assumptions and determinations used by the Commission and will result in a projected fund balance at the end of the funding period that is equal to or less than the amount of decommissioning costs allocable to the Fund.
5. Pursuant to section 468A(b) of the Code, the maximum amount of cash payments made (or deemed made) to the Fund during any taxable year is restricted to the lesser amount of the decommissioning costs included in the Taxpayer's cost of service for the taxable year or the ruling amount applicable to the Fund for the taxable year.
6. The Taxpayer's proposed schedule of ruling amounts complies with the level funding requirements of section 1.468A-3(b)(1) of the regulations. No payment specified in the proposed schedule for any taxable year is less than the specified payment for any earlier taxable year.

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 and the regulations thereunder. Therefore, the schedule of ruling amounts requested by the Taxpayer under the provisions of section 468A(d)(1) is approved as follows:

APPROVED SCHEDULE OF RETAIL RULING AMOUNTS  
TAX YEARS                      THROUGH

YEAR

\$

Approval of this 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. Under section 1.468A-3(I)(1)(iv), the Taxpayer is required to file such a request on or before the deemed payment deadline for the first taxable year in which the rates reflecting such action become 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 applies only to those payments made to the Fund. Payments allocable to any funds other than the Fund cannot qualify for the deduction under section 468A of the Code. As stated above, payments made to the Fund can qualify only to the extent that they do not exceed the lesser of the decommissioning costs included in the Taxpayer's cost of service for the taxable year or the ruling amounts applicable to the Fund for the taxable year.

Except as specifically set forth above, no opinion is expressed concerning the federal income tax consequences of the above described facts under any other provision of the Code or regulations. This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office the original of this letter is being sent to one of Taxpayer's authorized representatives and a copy is being sent to Taxpayer.



Pursuant to section 1.468A-7(a) of the regulations, a copy of this letter must be attached (with the required Election Statement) to Taxpayer's Federal income tax return for each year in which Taxpayer claims a deduction for payments made to the Fund.

Sincerely yours,  
PETER C. FRIEDMAN  
Assistant to the Branch Chief, Branch 6  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)