

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

September 7, 2000

Legend:

Taxpayer =

Parent =

State =

District =

Plant =

Location =

Commission =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

Act =

This letter responds to your request, submitted on behalf of Taxpayer, dated May

6, 1999, for a revised schedule of ruling amounts under section 468A of the Internal Revenue Code in accordance with section 1.468A-3(i)(2) of the Income Tax Regulations. Taxpayer was previously granted a revised schedule of ruling amounts on September 29, 1988. Information for the schedule of ruling amounts was submitted on behalf of Taxpayer pursuant to section 1.468A-3(h)(2).

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

Taxpayer is a wholly-owned subsidiary of the Parent and is an investor-owned public utility incorporated in State. The Taxpayer is engaged in the production, transmission, and distribution of electric energy. Parent files a consolidated Federal income tax return and is under the audit jurisdiction of the District Director of District.

For most of i, the Taxpayer had a direct ownership interest of a percent in Plant, which is situated at Location. The Plant was sold in n. The Plant is under the regulatory jurisdiction of Commission. The Taxpayer has established and maintained a qualified nuclear decommissioning fund for its interest in the Plant. Plant's operating license expires in b. The estimated base cost for decommissioning the Plant is based on an independent study and is premised on the safe storage with delayed dismantlement method of decommissioning.

Commission authorized nuclear decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes for the plant in the amount of c and estimated an after-tax rate of return on assets of d percent. The Commission also determined the total estimated cost of decommissioning to be e. This base cost escalated using an estimated inflation rate of f percent results in an estimated future decommissioning cost of g. These rates were estimated after taking into consideration the tax and investment changes made to section 468A by section 1917 of the Energy Policy Act of 1992.

Recently, State enacted Act into law which deregulates the sale of electric generation in State. The Act authorizes Taxpayer to continue to recover its nuclear plant decommissioning costs through a separate, nonbypassable charge included in its bills to all customers over a transitional period that varies among Taxpayer's h rate classes of customers. During i, some of Taxpayer's customers elected under the Act to purchase electricity from providers other than Taxpayer; the customers that continued to purchase electricity from Taxpayer paid the same total rates as were in place prior to j, which rates were determined by Commission on the basis of traditional rate-of-return ratemaking procedures.

The funding period and level funding limitation period for the Plant extends from j. The estimated period for which the Fund will be in effect is k years. The estimated useful life of the Plant is l years. Thus, the Taxpayer has calculated its qualifying percentage to be m percent.

Section 468A(a) 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 taxable 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 taxable year or the ruling amount applicable to that year.

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 taxable 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 with respect to the nuclear power plant which bears the same ratio to the total nuclear decommissioning costs with respect to the nuclear power plant as the period for which the fund is in effect bears to the estimated useful life of the nuclear power 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) provides that a taxpayer shall be deemed to have made a payment to the nuclear decommissioning fund on the last day of the taxable year if the payment is made on account of the taxable year within 2½ months after the close of the taxable year.

Section 1.468A-1(a) provides that an eligible taxpayer may elect to deduct nuclear decommissioning costs under section 468A. 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, a direct ownership interest, including an interest held as a tenant in common or joint tenant, and a leasehold interest in any portion of the nuclear power plant if (A) the holder of the leasehold interest is subject to the jurisdiction of a public utility commission with respect to that portion of the nuclear power plant, (B) the holder of the leasehold interest is primarily liable under Federal or state law for decommissioning that portion of the nuclear power plant, and (C) no other person establishes a nuclear decommissioning fund with respect to that portion of the nuclear power plant.

Section 1.468A-2(b)(1) provides that the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year shall not exceed the lesser of (i) the cost of service amount applicable to the nuclear decommissioning fund for the taxable year; or (ii) the ruling amount applicable to the nuclear decommissioning fund for the taxable year.

Section 1.468A-3(a)(1) provides that the maximum amount of ruling amounts for a nuclear decommissioning fund is a ruling specifying annual payments that, over the taxable 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) provides that each schedule of ruling amounts shall be based 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 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 taxable year.

Schedule 1.468A-3(a)(3) permits the Internal Revenue Service to provide a schedule of ruling amounts that is 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) 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 amounts 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. Under section 1.468A-3(b)(3), the ruling amount specified in a schedule of ruling amounts for a taxable year after the end of the level funding limitation period may be less than the ruling amount specified in the schedule for an earlier taxable year. Under section 1.468A-3(b)(4), the ruling amount specified in a schedule of ruling amounts for the last taxable year in the level funding limitation period may be less than the ruling amount specified in the schedule for any earlier taxable year if the applicable public utility commission assumes for cost of service purposes that decommissioning costs will be included in cost of service for only a portion of the last taxable year in the level funding limitation period.

Section 1.468A-3(c)(1) 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) 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) 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) provides that a 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.

Section 1.468A-3(d)(4)(i) 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(d)(4)(ii) provides that the estimated period for which a nuclear decommissioning fund is to be in effect begins on the later of (1) the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund (or deemed made); or (2) the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); 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. According to section 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

Section 1.468A-3(d)(4)(iii) provides that the estimated useful life of a nuclear power plant begins on the first day of the taxable year that includes the date that the plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); 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. According to section 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

Section 1.468A-3(g) 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 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(h)(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-3(i)(1)(iii) 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: (1) increases the proposed period over which decommissioning costs of the nuclear power plant 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 the taxpayer's rate base for ratemaking purposes; or (3) reduces the amount of decommissioning costs to be included in cost of service 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 such action by the public utility commission.

Section 1.468A-3(i)(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 section 1.468A-3(h). 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.

We have examined the representations and information submitted by the Taxpayer in relation to the requirements set forth in section 468A and the regulations thereunder. Based solely on these representations of the facts, we reach the following conclusions:

1. For i, Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under section 1.468A-1(b) .

2. 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) .
3. Taxpayer has determined that pursuant to section 1.468A-3(d)(4) , the qualifying percentage is m percent.
4. Taxpayer has proposed a schedule of ruling amounts which meets the requirements of sections 1.468A-3(a)(1) and (2) . 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.
5. 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 applicable to the fund or the ruling amount applicable to the fund, as set forth under section 1.468A-2(b)(1) .
6. Taxpayer has calculated its share of the total decommissioning costs allocable to the Commission, as required by section 1.468A-3(f)(2) .

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

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 this ruling is issued. If any of the events described in section 1.468A-3(i)(1)(iii) 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.

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 . 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 APPLICABLE TO THE FUND OR THE RULING AMOUNT APPLICABLE TO THE FUND IN THE TAXABLE YEAR.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

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

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,
CHARLES B. RAMSEY
Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)