

## Internal Revenue Service

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B06  
PLR-112719-08

Date:  
August 06, 2008

### LEGEND:

Taxpayer	=
Utility	=
Parent	=
Subsidiary	=
Plant	=
Industry Director	=
Location	=
Commission	=
Method	=
Fund	=

Dear

This letter responds to your request, dated , for a schedule of ruling amounts pursuant to section 468A of the Internal Revenue Code and § 1.468A-3T of the Temporary Income Tax Regulations.

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

Taxpayer owns percent interest in the Plant, which is situated in Location. Taxpayer is a wholly-owned subsidiary of Parent. Taxpayer is under the audit jurisdiction of the Industry Director. Taxpayer is subject to the jurisdiction of Commission. Plant's operating license is set to expire in . The method of

PLR-112719-08

decommissioning the Plant is Method. Substantial decommissioning will be completed by .

On , the Utility entered into a settlement agreement before the Commission that specified the framework for deregulation of the Utility's electric generation business. This agreement also provides for the collection and recovery of decommissioning costs relating to deregulated nuclear generation assets as part of the Utility's unbundled delivery service rates.

On , Utility transferred the Plant, the qualified nuclear decommissioning trust funds, and its rights to recover decommissioning cost to Taxpayer in exchange for the stock of Taxpayer pursuant to a tax-free reorganization that qualified under sections 355 and 368(a)(1)(D) of the Code. The Utility then distributed the stock of Taxpayer to Parent. Parent then contributed the stock of Taxpayer to Subsidiary. All parties involved are members of the same consolidated group.

In connection with this restructuring, Parent, Taxpayer, and Utility received a private letter ruling from the Internal Revenue Service dated (PLR- ) which stated, in part, that following the transfer of the Plant and nuclear decommissioning funds to Taxpayer, Taxpayer will be considered as the "eligible taxpayer" and "electing taxpayer" with respect to the nuclear decommissioning funds. As a result, Taxpayer may make deductible contributions to its qualified nuclear decommissioning funds in an amount consistent with section 468A of the Code and the regulations thereunder. This ruling was expressly conditioned (1) on the Utility receiving an order from the Commission requiring that it collect decommissioning costs as an agent for the taxpayer and pay all such collections to the Taxpayer; and (2) on the continued direct or indirect ownership of the Taxpayer by Parent or Subsidiary.

On , Taxpayer requested a revised schedule of ruling amounts for Unit 1. Taxpayer requested a schedule of ruling amounts for Unit 1 of \$ and was the same as the schedule of ruling amounts previously issued to Utility. On , the Service approved Taxpayer's proposed schedule of ruling amounts for \$ for the tax years through .

On , Utility made a compliance filing with Commission setting forth its requested customer contributions for decommissioning pursuant to the settlement agreement effective . The current value of decommissioning as of was determined using the procedures prescribed in the settlement agreement. Specifically, the current value of decommissioning (\$ for Plant) was increased based on the NRC inflation factors through . The current value of decommissioning as of was \$ for Plant. Additionally, in determining the future value of decommissioning and the annual

PLR-112719-08

customer collections, Utility also considered: (1) the balance in the external trust funds as well as internal reserve; (2) a forecasted future earnings rate on the external trust funds of %; (3) a forecasted future earnings rate on the internal reserve of %; (4) a forecasted nuclear inflation factor of %; and (5) decommissioning taking place in . Based on these assumptions, Utility concluded that annual customer collections should be maintained at the current level of \$ per year.

In a letter dated , Commission informed Utility that it had reviewed the compliance filing in accordance with the settlement agreement and had approved the "status quo" customer decommissioning collections of \$ per year. Based on this authorization, customer obligation for decommissioning set forth in the settlement agreement, and other information, Taxpayer has relied on the following four underlying assumptions for purposes of computing the schedule of rulings amounts: (1) An estimated decommissioning cost in dollars of \$ ; (2) a forecasted decommissioning inflation rate (to estimate the cost of decommissioning in future dollars) of %; (3) An assumed after-tax rate of return in the internal reserve of % and (4) An implied forecasted after-tax rate of return of the qualified decommissioning trust of %.

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.

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.

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 payment is made on account of such taxable year and is made within 22 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.

PLR-112719-08

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 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

PLR-112719-08

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)(1) requires a taxpayer that has obtained a schedule of ruling amounts pursuant to § 1.468A-3T(e) to file a request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the 10<sup>th</sup> taxable year

that begins after the taxable year in which the most recent schedule of ruling amounts was received. If the taxpayer calculated its most recent schedule of ruling amounts on any basis other than an order issued by a public utility commission, the taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the 5<sup>th</sup> taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received.

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.

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), as an owner of a deregulated nuclear power plant, Taxpayer has met its burden of proof in showing that the assumptions used by the Commission continue to be valid and reasonable for purposes of demonstrating that its proposed schedule of ruling amounts is consistent with the principles of § 468A and the regulations thereunder.
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>AMOUNT</u>
-  EACH YEAR	\$

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 in this office we are sending a copy of this letter to your authorized representatives. We are 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)