

Internal Revenue Service

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Department of the Treasury
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Person To Contact:
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PLR-153841-06
Date:
September 03, 2008

LEGEND:

Taxpayer:

State:
Plant:
Location:
Date 1:
Date 2:
Date 3:
Date 4:
Date 5:
Date 6:
Commission:
Method:
Fund:

a:

b:

c:

d:

e:

Year 1:

Year 2:

Year 3:

Year 4:

Year 5:

Year 6:

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Dear _____ :

This letter responds to your request, dated November 15, 2006, for a revised schedule of ruling amounts pursuant to § 468A(d) of the Internal Revenue Code and § 1.468A-3T of the temporary Income Tax Regulations. You also provided additional information by letters dated May 23, 2008, June 26, 2008, and August 4, 2008. Taxpayer was previously granted schedules of ruling amounts, most recently on Date 1. Information was submitted pursuant to § 1.468A-3T(e)(2). Taxpayer now requests an elective review of the most recent revised schedule of ruling amounts pursuant to § 1.468A-3T(f)(2).

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

Taxpayer was organized in State on Date 2 for the purpose of owning and operating the Plant. Taxpayer is sponsored by several utility companies (Sponsors) which are its sole stockholders. Taxpayer has an ownership interest in the Plant of a%, and the Plant is situated at Location.

The Plant began commercial operations in Year 1 and its operating license expires in Year 4. The energy output of the Plant was sold to the sponsors under identical power contracts, as amended, to terminate in Year 4. However, Taxpayer ceased generating electricity at the Plant on Date 3. Taxpayer is under the jurisdiction of Commission. Substantial decommissioning activities began in Year 2 and are scheduled to be completed in Year 6. The method of decommissioning the Plant is Method.

On Date 4, Taxpayer filed with Commission an updated schedule of decommissioning costs, including proposed revisions to its power contracts, based on a Year 3 estimate to complete decommissioning and fuel storage at the Plant, until assumed removal of the fuel by Year 6. The updated estimate was higher than the previous estimate and Taxpayer requested a rate filing increase. On Date 5, a settlement agreement was entered into and Commission extended the period over which decommissioning costs of the Plant are included in cost of service to Year 3 through Year 5.

The average annual after-tax rate of return on the assets is estimated to be b%. The base cost of decommissioning the Plant is calculated by applying a cost inflation factor of c% to the cost estimates in Year 3 dollars for Year 4 through Year 6, and adding the sum of these amounts to the actual and projected decommissioning costs

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incurred between Year 2 and Year 3. The total estimated cost of decommissioning is \$d in Year 3 dollars. The total estimated future cost of decommissioning the Plant is \$e in Year 5 dollars, and Taxpayer's share of this amount is a%. On Date 6, Commission approved the settlement agreement.

There are currently no proceedings pending before Commission that may result in an increase or decrease in the amount of decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes.

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.

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 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 § 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.

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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 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

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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 10th 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 5th 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 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 an 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 Commission, the proposed schedule of ruling amounts is consistent with the principles of § 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 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</u>	<u>TOTAL</u>
(each year)	\$	\$

If any of the events described in § 1.468A-3T(f)(1) occur in future years, Taxpayer must request a review and revision of the schedule of ruling amounts. Generally, 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, 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 expressly 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 requesting it. Section 6110(k)(3) of the Code provides that 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 your authorized representatives. 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 Taxpayer's federal income tax return for each tax year in which Taxpayer claims a deduction for payments made to the Fund.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

cc: