

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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CC:PSI:6-PLR-114825-02
Date:
June 20, 2002

Re: Request for a Revised Schedule of Ruling Amounts

Taxpayer =

Parent =

NuclearCo =

Plant =

Location =

Commission A =

Commission B =

Director =

Fund =

a =

b =

c =

d =

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e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

u =

v =

w =

x =

y =

z =

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aa =

Dear :

This letter responds to your request, dated March 12, 2002, and subsequent submission, for a revised schedule of ruling amounts under section 1.468A-3(i) of the Income Tax Regulations for the Taxpayer's nuclear decommissioning fund ("Fund") because Taxpayer acquired its interest in Plant pursuant to a tax-free "spin-off" transaction. The required information for the schedule of ruling amounts was submitted on behalf of the Taxpayer pursuant to section 1.468A-3(h)(2).

The Taxpayer has represented the following facts and information relating to the ruling request:

Taxpayer is a percent owned by Parent and files a consolidated Federal income tax return with Parent. Taxpayer owns a b percent interest as a tenant in common in the Plant, which is situated at Location. Taxpayer received its interest in the Plant and the Fund from NuclearCo on c pursuant to a tax-free "spin-off" transaction that qualified for nonrecognition treatment pursuant to sections 368(a)(1)(D) and 355 of the Internal Revenue Code.

In d, the State enacted Law effective on e. Pursuant to Law, Commission A approved inclusion of nuclear decommissioning costs in stranded costs to be recovered by means of a non-bypassable transmission and distribution charge called a f.

In g, Commission A approved NuclearCo's comprehensive restructuring proposal. Specifically, as part of the restructuring, NuclearCo transferred ownership of the Plant and associated qualified and nonqualified decommissioning funds to Taxpayer in constructive exchange for Taxpayer stock. NuclearCo then distributed the stock of Taxpayer to Parent, such that Taxpayer became, and NuclearCo remained, first-tier subsidiaries of Parent. The NRC license was transferred to Taxpayer and Taxpayer assumed the decommissioning liability. NuclearCo continued to collect decommissioning expenses through the non-bypassable transmission and distribution charge and transferred the funds collected to Taxpayer through capacity reservation charges contained in power purchase agreements between NuclearCo, a marketing company, and Taxpayer.

The Taxpayer proposed the following language be included by Commission A in a clarifying order:

In connection with the corporate realignment and transfer of generation facilities, is directed to take appropriate action to provide that amounts recovered through the

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for nuclear decommissioning are transferred through to the owner of the _____, as long as said owner is an entity owned and controlled directly or indirectly by _____.

Taxpayer is under the audit jurisdiction of the Director. Taxpayer is subject to the jurisdiction of Commission A which covers i percent of the Taxpayer's total electric sales and Commission B which covers j percent, for a total of a percent. The operating license for the Plant is scheduled to expire on h.

Taxpayer is requesting review of its prior schedule of ruling amounts for the Fund, because Taxpayer determined its ruling amount for the year k by prorating NuclearCo's schedule of ruling amounts to reflect Taxpayer's acquisition of the Plant on l in accordance with section 1.468A-6(e)(2)(i). Pursuant to section 1.468A-6(e)(2)(ii), Taxpayer must request a schedule of ruling amounts for the years following Taxpayer's acquisition of the Plant. Commission A has authorized nuclear decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes by authorizing such costs to be collected by NuclearCo and transferred to Taxpayer.

As part of the restructuring of NuclearCo and its transfer of its interest in the Plant to Taxpayer, Commission A approved the continued collection of the same amount of decommissioning costs previously authorized for NuclearCo, but through a non-bypassable charge over a shorter period of time (m years). In its Final Order entered on n at Docket No. o, Commission A authorized the collection of decommissioning costs for Taxpayer's interest in two plants, including Plant, in the amount of \$p. Based on an allocation method provided by Commission A in a previous order, Taxpayer determined \$q to be included in Taxpayer's cost of service. In determining the amount of decommissioning costs for Taxpayer's interest in the Plant to be collected from Commission A's jurisdictional customers, Commission A used an estimated cost of \$r (s dollars) as a base cost for decommissioning the Plant. This base cost escalated annually at the rate of t percent results in a future decommissioning cost of \$u (v dollars).

For Commission A, the defined funding period and defined level funding limitation period extends from w. The estimated useful life of the Plant is x years and the estimated period for which the Fund will be in effect is y years. Therefore, the qualifying percentage is z percent. The assumed after-tax rate of return to be earned on the assets of the Fund is aa percent.

Ruling amounts for Commission B were not requested and are not specifically reviewed herein. At the present time there are no proceedings before Commission A or Commission B that may result in an increase or decrease in the amount of decommissioning costs for the Plant to be included in Taxpayer's cost of service for ratemaking purposes.

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Section 468A(a) of the Internal Revenue Code provides that a taxpayer may elect to deduct the amount of payments made to a qualified decommissioning fund. However, section 468A(b) limits the amount paid into such fund for any taxable year to the lesser of the amount of nuclear decommissioning costs allocable to this fund which 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 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 total nuclear power plant as the period for which the nuclear decommissioning 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 fund on the last day of the tax year if the payment is made on account of this tax year and is made within 2 ½ months after the close of the tax year. Additionally, a taxpayer that files for a schedule of ruling amounts and receives such schedule of ruling amounts after the 2 ½ month deadline for making a payment to a nuclear decommissioning fund, must make such payment to the fund within 30 days after the date that the taxpayer receives the schedule of ruling amounts for 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) of the regulations, is a taxpayer that has a "qualifying interest" in, among other things, a direct ownership interest, including an interest 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 (i) the cost of service amount applicable to the nuclear decommissioning fund for such tax year; or (ii) the ruling amount applicable to the nuclear decommissioning fund for such tax year. If the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year exceeds the limitation of paragraph (b)(1), the excess is not deductible by the electing taxpayer. In addition, under section 1.468A-5(c) there are rules which provide that the Internal Revenue Service may disqualify a nuclear decommissioning fund if the amount

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of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year exceeds the limitation of paragraph (b)(1).

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) of the regulations provides that, to the extent consistent with the principles and provisions of this section, 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 the cost of service for ratemaking purposes. Under sections 1.468A-3(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 this section.

Section 1.468A-3(b)(1) of the regulations provides that, in general, the ruling amount for any tax year in the level funding limitation period shall not be less than the ruling amount for any earlier tax year. Under section 1.468A-3(b)(2), the level funding limitation period begins on the first day of the tax year for which a deductible payment is made to the nuclear decommissioning fund and ends on the last day 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)(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. Under section 1.468A-3(d)(4), the qualifying percentage for any nuclear decommissioning fund is equal to a fraction, the numerator of which is the number of tax 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 tax years in the estimated useful life of the applicable plant.

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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)(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.

Section 1.468A-6(e)(2) provides rules for the determination of a schedule of ruling amounts for a transferee of a nuclear power plant.

We have examined the representations and the data submitted by the Taxpayer in relation to the requirements set forth in the Code and the regulations. Based solely upon these representations of the facts, we reach the following conclusions:

1. The Taxpayer has a qualifying interest in the Plant and will be treated as an eligible taxpayer under section 1.468A-1(b)(1) of the regulations only during such period as NuclearCo is authorized by Commission A to collect decommissioning costs from customers and is obligated to pay the amounts collected to Taxpayer.
2. As required by section 1.468A-3(g) of the regulations, Commission A has authorized decommissioning costs to be included in the NuclearCo's cost of service for ratemaking purposes. We deem this authorization to be effective for the Taxpayer as well, but only during such period as NuclearCo is authorized by Commission A to collect decommissioning costs and is obligated to pay the amounts collected to the Taxpayer.
3. The Taxpayer has calculated its share of the total decommissioning costs under section 1.468A-3(d)(3) of the regulations.
4. The Taxpayer has determined that x percent is the qualifying percentage as calculated under section 1.468A-3(d)(4) of the regulations.

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

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APPROVED SCHEDULE OF RULING AMOUNTS
COMMISSION A

YEAR

COMMISSION A

2001

2002

2003

2004

2005

2006

2007

2008

2009

2010

2011

2012

2013

2014

2015

2016

2017

2018

2019

2020

2021

2022

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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. 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.

In addition, approval of this schedule of ruling amounts is expressly conditioned (1) on the continued existence of the Commission A order requiring that NuclearCo collect decommissioning costs on behalf of the Taxpayer and pay all such collections to the Taxpayer; and (2) on the continued direct or indirect ownership of the Taxpayer by NuclearCo.

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. In particular, no opinion is expressed or implied concerning whether the collection of decommissioning costs by NuclearCo and payment of those collections to the Taxpayer is includible in the gross income of, and deductible by, any entity other than the Taxpayer.

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 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.

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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 with this office, a copy of this letter is being sent to your authorized representative. We are also sending a copy of this letter ruling 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,

PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
Passthroughs and Special Industries

Enclosure: 6110 Copy