INTERNAL REVENUE SERVICE
Index No.: 468A.04-02

199942038

CC:DOM:P&SI:6 PLR-104492-99
JUL 16 1999

Re: Request for a Revised Schedule of Ruling Amounts

Parent =

Taxpayer =

Plant =

Location =

Commission =

Fund =

District =

Dear

This letter responds to the request of Taxpayer, dated February 16, 1999, and supplemental information submitted by Taxpayer, for a revised schedule of ruling amounts pursuant to section 1.468A-3(i)(2) of the Income Tax Regulations. Taxpayer was previously granted a revised schedule of ruling amounts on July 25, 1997. Information was submitted pursuant to section 1.468A-3(h)(2).

We understand the facts as presented by Taxpayer to be as follows:

Taxpayer is a wholly-owned subsidiary of Parent and files a consolidated federal income tax return with its Parent. Taxpayer, as one of the owners of the Plant has a in the Plant, which is situated in Location. The Plant's operating license expires on Taxpayer proposes to decommission the Plant using the

197

prompt removal/dismantling method. Taxpayer is under the jurisdiction of the District Director of the District. Currently, the jurisdictional percentage for the Commission is

Taxpayer is obligated severally and not jointly to pay all expenditures for operation and maintenance of the Plant in proportion to its ownership interest and is entitled to its proportionate share of the electric power produced by the Plant. The Taxpayer represents that an election to be excluded from the application of Subchapter K of the Internal Revenue Code was filed for the Plant.

The Commission in provided for decommissioning cost for the Plant of The decommissioning cost for the Plant is based on a site-specific study prepared by an outside firm. The estimated cost of decommissioning the Plant is of which Taxpayer's share is The Commission expressed the projected total cost of decommissioning the Plant

The Commission did not take into account the provisions of the Energy Act of 1992.

The funding period and level funding limitation period extends from The estimated useful life of the Plant is and the estimated period for which the Fund will be in effect is . Therefore, the qualifying percentage as calculated by Taxpayer is

At the present time there are no proceedings pending before the Commission 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.

Section 468(A) of the Code 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 tax 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 tax year or the ruling amount applicable to this year.

Section 468A(d)(l) 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 nuclear power plant as the period for which the 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 within 2 1/2 months after the close of 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), 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, among other things, a direct ownership interest, including an interest held 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 the cost of service amount applicable to the nuclear decommissioning fund for such tax year; or the ruling amount applicable to the nuclear decommissioning fund for such tax year.

Section 1.468A-3(a)(l) 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) bases the schedule of ruling amounts 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 of the Code 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 tax year.

Section 1.468A-3(b)(l) of the regulations provides that the ruling amount, specified in a schedule of ruling amounts, for any tax year in the level funding limitation period shall not be less than the ruling amount specified in such schedule for any earlier tax year. Under section 1.468A-3(b)(2), the level funding limitation 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 tax 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.

Section 1.468A-3(d)(l) of the regulations 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) 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.

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)(1)(iii) of the regulations 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: increases the proposed period over which the decommissioning costs of the nuclear power plant will be included in cost of service for ratemaking purposes; adjusts the estimated date on which the nuclear power plant will

200

no longer be included in the taxpayer's rate base for ratemaking purposes; or reduces the amount of decommissioning costs to be included in cost of service for any tax 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 any public utility commission.

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 1917 of the Energy Policy Act of 1992 (Public Law 102-482) (Act) eliminated, for tax years beginning after December 31, 1992, the investment restrictions contained in section 468A(e)(4)(C) of the Code. That section also revised section 468A(e)(2) by lowering the tax rate applicable to a nuclear decommissioning fund.

We have examined the representations and data submitted by the Taxpayer 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. Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under section 1.468A-1(b) 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, as one of the owners of the Plant, has calculated its share of the decommissioning costs under section 1.468A-3(d)(3) of the regulations.

4. Taxpayer has proposed a schedule of ruling amounts which meets the requirements of sections 1.468A-3(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 The 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. Taxpayer has determined that pursuant to section 1.468A-3(d)(4) of the regulations the qualifying percentage is

6. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is restricted to the lesser amount of the decommissioning costs applicable to such Fund or the ruling applicable to this Fund, as set forth under section 1.468A-(2)(b)(1) of the regulations.

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.

APPROVED SCHEDULE OF RULING AMOUNTS
TAX YEARS

YEAR

EACH YEAR

THROUGH

The approved schedule of ruling amounts for the Commission is being limited to a five year period as a result of the statutory changes made by the Act. The elimination of the investment restrictions and the reduction of the tax rate applicable to income earned by the Fund may result in a greater after-tax rate of return than was estimated, prior to the enactment of the Act, by the Commission (which based its determinations as to the approved after-tax rate of return on restricted investments and a higher tax rate). This increased after-tax rate of return would, over the life of the Fund, result in a balance in the Fund on the last day of the funding period that would exceed the amount of decommissioning costs allocable to the Fund. In order to prevent the excess accumulation in the Fund this schedule of ruling amounts is limited to a five year period for the Commission.

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

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 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. As stated earlier, 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.

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.

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 yours,

Peter C. Friedman

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