

**INTERNAL REVENUE SERVICE**

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CC:PSI:6 -- PLR-105804-00

March 1, 2001

Re: Revised Schedule of Ruling Amounts

Taxpayer =

State X =

Director =

Plant =

Location =

Commission A =

Commission B =

Act =

Order =

Dear :

This letter responds to your request dated March 10, 2000, and subsequent submissions, submitted by your authorized legal representative on behalf of the Taxpayer. The request is 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 (the "Fund") under the jurisdiction of Commission A. The Taxpayer was previously granted a revised schedule of ruling amounts on . In exercising our discretion under section 1.468A-3(a)(4), the prior schedule of ruling amounts was limited to a 5-year period under section 1.468A-3(i)(1)(ii)(A). 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:

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The Taxpayer is incorporated in State X and is an operating utility providing electric and gas service in State X. The Taxpayer is subject to the audit jurisdiction of the Director. The Taxpayer owns a            percent undivided interest as a tenant-in-common in the Plant, which is situated at Location. The operating license issued by the Nuclear Regulatory Commission expires at midnight on            . The method for decommissioning the Plant is prompt removal/dismantling.

Taxpayer's nuclear power sales are subject to regulation by Commissions A and B. Commission B prescribes three different rates under which Taxpayer makes sales to customers; the Commission B Wholesale Sales rate, the Commission B Power Sales rate, and the Commission B            Tariff rate. Taxpayer is not requesting a revised schedule of ruling amounts for Commission B.

On            , Act became effective in State. Act provides for a transition to competition in State with respect to the generation and sale of electricity. Act allows electric utilities, including Taxpayer, to recover their stranded costs through a competitive transition charge (CTC) imposed upon consumers of electricity in the utility's service area. The CTC provides for the recovery of stranded costs, but does not include nuclear decommissioning costs for Plant. Rather, the nuclear decommissioning costs for Plant are recovered through an additional nonbypassable charge to all customers over the life of Plant.

Taxpayer transferred its ownership interests in Plant and associated Fund to a related party on            . Accordingly, the requested schedule of ruling amounts is limited to the            year period from            .

Commission A, in Order, authorized nuclear decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes for the Plant in the amount of \$            and estimated an after-tax rate of return on assets of            percent. The Commission also determined the total estimated cost of decommissioning to be \$            . This base cost escalated using an estimated inflation rate of            percent results in an estimated future decommissioning cost of \$            .

The estimated period for which the Fund is to be in effect is            and the estimated useful life of the Plant is            . Thus, the Taxpayer has calculated the qualifying percentage to be            percent.

At the present time there are no proceedings pending before any of the commissions that would increase or decrease the amount

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of decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes.

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

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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 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

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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.

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.

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

1. The Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under section 1.468A-1(b) of the regulations.
2. Commission A 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.

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3. The Taxpayer has calculated the shares of the total decommissioning costs allocable to each of the Commissions, as required by section 1.468A-3(f)(2) of the regulations.
4. The Taxpayer has proposed a schedule of ruling amounts which meets the requirements of section 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 Commission A 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 for that jurisdiction.
5. 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.
6. The qualifying percentage under section 1.468A-3(d)(4) of the regulations is calculated to be           percent.

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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. The following schedule of ruling amounts is specifically approved for the Commissions:

APPROVED REVISED SCHEDULE OF RULING AMOUNTS

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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. 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 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. Payments made to such Fund can qualify only to the extent they are made while Taxpayer is the owner of the Plant and 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. In addition, payments made to the Fund with respect to the tax year in which the Plant was transferred to a related party are subject to the limitations contained in section 1.468A-6(e)(1).

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<sup>1</sup> The ruling amounts for Commission B were approved in a private letter ruling issued . . . . The ruling amount for the portion of Commission B's jurisdiction allocable to Power Sales expired in . . . . The ruling amount for the portion of Commission B's jurisdiction allocable to Wholesale sales and sales under the . . . tariff were extended through . . . under the terms of the . . . letter; however, no amount is shown for . . . for the . . . Tariff because Taxpayer collected decommissioning amounts for that rate during . . . through market-based rates. For purposes of the mandatory review required under section 1.468A-3(i)(1) of the regulations, the date of that prior ruling shall govern the review period for the jurisdiction of Commission B.

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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. 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  
Assistant to the Branch Chief, Branch 6  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure:  
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