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April 18, 2012

Re: Request for Extension of Time, Pursuant to § 301.9100 of the Procedure and Administration Regulations, to Withdraw an Excess Contribution Made to a Qualified Nuclear Decommissioning Fund Pursuant to § 468A of the Internal Revenue Code and § 1.468A-5(c)(2) of the Income Tax Regulations

Taxpayer	=
Parent	=
Plant	=
Location	=
$A	=
$B	=
$C	=
X	=
Y	=
Date A	=
Date B	=
Date C	=
Date D	=
Date E	=
Year X	=
Director	=

Dear :

This letter responds to a letter submitted on behalf of Taxpayer on November 30, 2011, requesting an extension of time pursuant to § 301.9100-3 of the for Taxpayer to withdraw an excess contribution made to the qualified nuclear decommissioning fund maintained in connection with Plant, pursuant to § 1.468A-5(c)(2).

Taxpayer has represented the facts as follows: Taxpayer, a wholly-owned subsidiary of Parent, is the owner of Plant. Taxpayer is primarily engaged in the generation, transmission, distribution, and selling of electric energy. Taxpayer operates and owns an X percent interest in the Plant. Taxpayer has established a qualified fund with respect to the Unit as allowed by section 468A. On Date A, the Taxpayer made a special transfer of $A to the qualified fund established with respect to Plant. This special transfer is deemed made in Year X. On Date B, Taxpayer submitted a ruling request to the Internal Revenue Service (IRS) for authorization to make that special transfer and to deduct the special transfer over the relevant number of years. The numbers in Taxpayer's request for that special transfer were calculated based on Y percent of the total anticipated decommissioning liability, the percentage of decommissioning of Plant that Taxpayer is contractually responsible for, rather than X percent. On Date C, after discussions with IRS personnel, Taxpayer submitted revised computations, using X percent of the total anticipated decommissioning liability rather than Y percent. On Date D, the IRS issued a ruling authorizing a special transfer of $B, resulting in an excess contribution of $C to the qualified fund.

Taxpayer was required to withdraw the excess contribution of $C from the qualified fund by Date E.

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 § 468A. The Act amendment of § 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.

Prior to the changes made by the Act, deductible contributions were limited to the amount necessary for an electing taxpayer to fund the plant's post-1983 nuclear decommissioning costs (determined as if decommissioning costs accrued ratably over the estimated useful life of the plant), provided that the taxpayer elected to establish a

fund in 1984. Prior law also did not allow a taxpayer electing to establish a fund later than 1984 to contribute to that fund any amount in excess of that amount necessary to fund the ratable portion of the plant's nuclear decommissioning costs beginning in the year the fund is established.

Section 468A(f)(1) now allows a taxpayer to contribute to a nuclear decommissioning fund the entire cost of decommissioning the plant, including both the pre-1984 amount that was denied under the law prior to the Act as well as any amount attributable to any year after 1983 in which a taxpayer had not established a fund under § 468A. Section 468A(f)(2)(A) provides that the deduction for the contribution of the previously-excluded amount is allowed ratably over the remaining useful life of the nuclear plant.

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 2½ 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-3(g)(3) provides that, if a taxpayer makes and deducts a payment or transfer to a qualified fund based on a proposed ruling request that exceeds the actual ruling amount, the taxpayer must withdraw the excess contribution and the earnings on the excess contribution and file an amended return reflecting the deduction specified in the ruling.

Section 1.468A-5(c)(2) provides that a nuclear decommissioning fund will not be disqualified under paragraph (c)(1) of that section by reason of an excess contribution or the withdrawal of an excess contribution if the withdrawal is performed before the later of the date the tax return is due for the taxable year to which the contribution relates or 30 days after the date the taxpayer receives the ruling amount.

Section 1.468A-8(a)(1) provides that, under the provisions of § 468A(f), as described above, a taxpayer may make a special transfer of cash or property to the nuclear decommissioning fund. This special transfer is not subject to the § 468A(b) limitation. The amount of the special transfer is the present value of the pre-2005 nonqualifying percentage of the estimated future costs of decommissioning the nuclear plant that was disallowed under § 468A prior to the Act.

Section 1.468A-8(a)(2) defines the pre-2005 nonqualifying percentage as equal to 100 percent reduced by the sum of the qualifying percentage used in determining the taxpayer's last schedule of ruling amounts for the fund under § 468A as it existed prior to the Act and the percentage transferred in any previous special transfer.

Section 1.468A-8(a)(3) provides that the taxpayer is not required to transfer the entire amount eligible for the special transfer in one year but must take any prior special

transfers into account in calculating the pre-2005 qualifying percentage. Further, pursuant to § 1.468A-8(c)(2), a taxpayer making a special transfer in more than one year must request a new schedule of deduction amounts in connection with each special transfer.

Section 1.468A-8(a)(4)(i) provides that the amount of any special transfer made by a taxpayer on or before the 15th day of the third calendar month after the close of any taxable year (the deemed payment deadline date) shall be deemed made during that taxable year if the taxpayer irrevocably designates the amount of the special transfer as relating to that taxable year.

Section 1.468A-8(a)(4)(ii) provides that a taxpayer may designate certain special transfers as relating to a taxable year beginning after December 31, 2005, and ending before January 1, 2010. The taxpayer must request a ruling from the Service, under the provisions of § 1.468A-8(d), and must actually make the special transfer within 90 days after the taxpayer receives a ruling from the Service relating to that special transfer. In such limited circumstances, the designated special transfer is deemed made during the taxable year designated as the year to which the special transfer relates.

Section 1.468A-8(b) provides that the deduction for the special transfer is allowed ratably over the remaining useful life of the nuclear plant.

Section 1.468A-8(c) provides that taxpayer may not make a special transfer to a qualified nuclear decommissioning fund unless the taxpayer requests from the IRS a schedule of deduction amounts in connection with such transfer. A request for a schedule of deduction amounts may be made in connection with a request for a schedule of ruling amounts but in such case, the calculations for both the schedule of ruling amounts and the schedule of deduction amounts must be separately stated.

Section 1.468A-8(d) describes the manner of requesting a schedule of deduction amounts. Section 1.468A-8(d)(1)(v) provides that, except as provided in § 1.468A-8(d)(1)(vi), the Service will not provide or revise a deduction amount applicable to a taxable year in response to a request for a schedule of deduction amounts that is filed after the deemed payment deadline date for such taxable year. Section 1.468A-8(d)(1)(vi) provides that, for special transfers which relate to a taxable year beginning after December 31, 2005, and ending before January 1, 2010, the Service will not provide a deduction amount in response to a request for a schedule of deduction amounts that is filed after February 22, 2011.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Section 301.9100-1(b) provides that the term “election” includes an application for relief in respect of tax.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2. A request for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer’s request for an extension of time to withdraw the $C excess contribution and any earnings on that amount is granted. Such withdrawal will be considered timely if made within 120 days of the date of this letter.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code.

We are sending a copy of this letter to the Director.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Peter Friedman
Senior Technician Reviewer, Branch 6
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
copy of this letter
copy for section 6110 purposes

cc: