**Internal Revenue Service**

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Date:
February 28, 2013

LEGEND:

| | |
|---|---|
| Parent | = |
| Taxpayer | = |
| Company A | = |
| Company B | = |
| Date X | = |
| State | = |
| Plant | = |
| Method | = |
| P | = |
| Study A | = |
| Study B | = |
| Location | = |
| X | = |
| Y | = |
| Z | = |
| BA | = |
| FV | = |
| Year A | = |
| Year B | = |
| Year C | = |
| Year D | = |
| Year E | = |
| Year F | = |

Amount A =
Amount B =
T =
PV =
AA =

Dear :

This letter responds to your request, dated September 21, 2012, for an initial schedule of ruling amounts under section 468A of the Internal Revenue Code and § 1.468A-3(e)(1)(i) of the Income Tax Regulations. Information was submitted pursuant to § 1.468A-3(e)(2).

Taxpayer represents the following facts and information relating to the ruling request:

Taxpayer is wholly owned by Parent. Parent, through its subsidiaries, is engaged in the generation, delivery, and sale of electricity at wholesale and retail. Taxpayer owns all of the common stock of Company A. Company A owns P percent of Plant prior to Date X. Plant is located at Location. On Date X, Company A will convert to Company B, a limited liability company organized under the laws of State. Company B is disregarded for Federal tax purposes; thus, Taxpayer is the owner of Plant for Federal tax purposes after Date X. The tax consequences of this transaction were addressed in a ruling issued by the Service to Taxpayer on December 5, 2012. Company A received from the Service an initial schedule of deduction amounts for Plant in a ruling dated August 19, 2010. That schedule of deduction amounts provides for deductions beyond the year of the transfer discussed in the December 5, 2012, ruling.

Taxpayer has a direct ownership interest of P percent in Plant. The estimated base cost for decommissioning Plant is based on Study A, an independent study, and estimates of the escalation of those decommissioning costs are based on Study B. The nuclear decommissioning costs of Plant are no longer included in Taxpayer's (or any other entity's) cost of service for ratemaking purposes and neither Study A nor Study B has been reviewed or adopted by any Public Service Commission. The proposed method of decommissioning the Plant is Method.

The estimated cost of $BA (Year A dollars) was used as a base cost for decommissioning P percent of the Plant. The estimated cost of decommissioning P percent of the Plant in future dollars is $FV. It is estimated that substantial decommissioning costs will first be incurred in Year B and that decommissioning will be substantially complete at the end of Year C. The methodology used to convert the Year A dollars to future dollars was by escalating the estimated costs at an inflation rate of Y percent to the year of estimated expenditure. The assumed after-tax rate of return to be earned by the amount collected for decommissioning is Z percent.

As part of the ruling dated December 5, 2012, the Service stated that the deduction of $X with respect to Plant is an amount allocable to taxable years ending after the date of the transfer which are being allowed as a current deduction to the transferor for the taxable year that includes the date of the fund transfer. Because Company A is related (as defined in § 1.468A-8(b)(4)(ii)(E)) to Company B, under § 1.468A-8(b)(4)(ii) the IRS will not approve a future schedule of ruling amounts for the transferee for taxable years beginning after the date of the transfer unless the ruling amounts are deferred in a manner that results in the recapture of the acceleration amount, as defined in § 1.468A-8(b)(4)(ii)(A). Company A, the transferor, was able to take a current deduction of $T in the year of transfer as a result of the fund transfer. The present value of the stream of deductions that Transferor would have taken absent the transfer, calculated using Z percent, is $PV. The difference between T and PV is the acceleration amount, $AA. Taxpayer has reduced the ruling amount calculated as described above for Year D by $AA to recapture the acceleration amount from the transfer.

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.

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 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-1(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-1(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.

Section 1.468A-2(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-2(b)(1) does not apply to any "special transfer" permitted under § 1.468A-8.

Section 1.468A-3(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-3(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-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 that section.

Section 1.468A-3(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 regulations as an alternative means of demonstrating that the taxpayer has calculated its proposed schedule of ruling amounts on a reasonable basis. Section 1.468A-3(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-3(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-3(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-3(c)(2) provides rules for determining the estimated useful life of a nuclear plant for purposes of § 468A. In general, under § 1.468A-3(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-3(c)(2)(i)(B) provides that, if the nuclear plant is not described in § 1.468A-3(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-3(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-3(c)(2)(i)(A).

Section 1.468A-3(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-3(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-3(e) provides the rules regarding the manner of requesting a schedule of ruling amounts. Section 1.468A-3(e)(1)(v) provides that the Service will not provide or revise a ruling amount applicable to a taxable year in response to a request for a schedule of ruling amounts that is filed after the deemed payment date (as defined in § 1.468A-2(c)(1)) for such taxable year.

Section 1.468A-3(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-3(e)(3) provides that the Service may prescribe administrative procedures that supplement the provisions of §§ 1.468A-3(e)(1) and (2). In addition,

that section provides that the Service may, in its discretion, waive the requirements of §§ 1.468A-3(e)(1) and (2) under appropriate circumstances.

Section 1.468A-3(f)(1) describes the circumstances in which a taxpayer must request a revised schedule of ruling amounts. Section 1.468A-3(f)(1)(iv) requires that a taxpayer request a revised schedule of ruling amounts for the fund if the operating license of the nuclear plant to which the fund relates is extended. The request for the revised schedule of ruling amounts must be submitted on or before the deemed payment deadline for the taxable year that includes the date on which the license extension is granted.

Section 1.468A-3(f)(2) provides that any taxpayer that has previously obtained a schedule of ruling amounts may request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of § 1.468A-3(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.

Under section 1.468A-6(f), the Service may treat any disposition of an interest in a nuclear power plant occurring after December 27, 1994, as satisfying the requirements of the regulations if the Service determines that such treatment is necessary or appropriate to carry out the purposes of section 468A.

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(b) provides that the deduction for the special transfer is allowed ratably over the remaining useful life of the nuclear plant. However, under § 1.468A-8(b)(4)(i), if a special transfer is made to a qualified nuclear decommissioning fund, there is a subsequent transfer of the fund or the assets of the fund, and § 1.468A-6 applies to that transfer, any amount of the deduction under § 1.468A-8(b) allocable to taxable years ending after the date of the transfer will be allowed as a current deduction to the transferor for the taxable year that includes the date of the fund transfer.

Section 1.468A-8(b)(4)(ii) provides that, if a deduction is allowed to the transferor under § 1.468A-8(b)(4)(i) and the transferee is related to the transferor, the IRS will not approve the transferee's schedule of ruling amounts for taxable years beginning after the date of the transfer unless the ruling amounts are deferred in a manner that results in the recapture of the acceleration amount, as defined in § 1.468A-8(b)(4)(ii)(A).

Section 1.468A-8(b)(4)(ii)(E) provides that a transferee and transferor are related if their relationship is specified in § 267(b) or section 707(b)(1) or they are treated as a single taxpayer under §§ 41(f)(1)(A) or (B).

We have examined the representations and information submitted by the 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. Pursuant to § 1.468A-3(a)(4), Taxpayer has met its burden of demonstrating that the proposed schedule of ruling amounts is consistent with the principles of the Code and regulations and is based on reasonable assumptions.

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

3. Taxpayer, as owner of the Plant, has calculated its share of the total decommissioning costs under § 1.468A-3(d)(3) of the regulations.

4. The proposed schedule of ruling amounts was derived by following the assumptions contained in an independent decommissioning study and a financial escalation study that Taxpayer has represented are a standard types of studies used in the industry. In this case it is reasonable to rely on these studies in determining the proposed schedule of ruling amounts. Thus, Taxpayer has demonstrated, pursuant to § 1.468A-3(a)(4), that the proposed schedule of ruling amounts is based on reasonable assumptions and is consistent with the principles of § 468A and the regulations thereunder.

5. Taxpayer has determined the funding period by reference to the useful life of Plant as defined in § 1.468A-3(c)(2)(i)(A). Under that section, 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.

6. 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-2(b)(1) of the regulations.

7. Under § 1.468A-8(b)(4)(ii)(B), the acceleration amount is recaptured if the aggregate present value of the transferor's ruling amounts at the beginning of the acceleration period equals the amount by which the aggregate present value of the transferee's ruling amounts that would have been approved absent § 1.468A-8(b)(4)(ii) exceeds the acceleration amount. Section § 1.468A-8(b)(4)(ii)(D) provides that present values will be determined using the assumptions used in determining the transferee's first schedule of ruling amounts. Taxpayer has recaptured the acceleration amount as defined in § 1.468A-8(b)(4)(ii)(A).

Based solely on the determinations above, we conclude that the Taxpayer's proposed schedule of ruling amounts satisfies the requirements of § 468A of the Code. We have approved the following revised schedule of ruling amounts.

**APPROVED SCHEDULE OF RULING AMOUNTS**

| Year | Ruling Amount |
|---|---|
| Year D | $Amount A |
| Each Year, Year E-Year F | $Amount B |

The rulings contained in this letter are based upon information and representations submitted by the Taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the Taxpayers 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 the Taxpayer.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)

cc: