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Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-135054-17

Date:
May 02, 2018

Re: Schedule of Ruling Amounts

LEGEND:
Taxpayer =

Company 1 =

Company 2 =
Company 3 =
Company 4 =
Company 5 =
Location =
State A =
Power Station =
Method =

Area =
Trustee =
Commission A =
Independent Study =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =

Date 6 =
Date 7 =
Date 8 =
a =
b =
c =
d =
e =
f =
g =
h =
i =
j =
k =
l =
m =
n =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Year 8 =
Year 9 =
Year 10 =
Year 11 =
Fund =
Director =

Dear :

This letter responds to your request dated Date 6, for a revised schedule of ruling amounts under § 468A(d)(3) of the Internal Revenue Code and § 1.468A-3(f)(1)(ii)(B) of the Income Tax Regulations.

Taxpayer is a limited liability company organized under the laws of State A that is treated as a partnership for federal income tax purposes. Taxpayer's partners are Company 1, and Company 2 . Company 1 is the Tax Matters Partner for the Taxpayer. Companies 1 and 2 are wholly-owned indirectly by Company 3 and are members of the consolidated group of entities of which Company 3 is the parent. Taxpayer is the owner of the Power Station.

The Power Station is located in the town of Location. a percent of the ownership of the Power Station was acquired by Taxpayer from Company 4 in an asset acquisition that was completed in Year 1. The Power Station was an operating nuclear-powered electric generating plant with a b mega-watt boiling water reactor that operated from Year 2 through near the end of Year 3. Electricity generated by the Power Station since Year 1 was sold to wholesale customers or into the Area power market. The facility operating license for the Power Station issued by the Nuclear Regulatory Commission (NRC) was renewed until Year 4. On Date 1, certification was provided to NRC that the Power Station had permanently ceased operation and that all nuclear fuel had been removed from the reactor (Shutdown). The Power Station entered the decommissioning phase of its life cycle on Date 2, and effective on that date the facility operating license for the Power Station was amended by NRC to a status of a "possession-only" license.

The Power Station is maintained by Company 5, a corporate affiliate of Taxpayer. Taxpayer, the owner of the Power Station, and Company 5 are both named on the NRC-issued license, but only the Taxpayer is obligated to complete the Decommissioning of the Power Station. Taxpayer maintains a master nuclear decommissioning trust (Master Trust) that is dedicated to the decommissioning of the Power Station. As part of the Year 1 acquisition of the Power Station, Company 4 transferred assets from its [decommissioning] fund to the Taxpayer's Master Trust. The Master Trust has been maintained by Taxpayer since the Year 1 transfer. The Master Trust is managed and operated by the Trustee, under an agreement with Taxpayer that describes the purpose and operation of the Master Trust. This agreement authorizes the deposit and holding of Master Trust assets in two sub-trusts that are trusts under state law: one that meets the requirements for a nuclear decommissioning reserve fund (Fund) within the meaning of Code § 468A, and one that does not meet those requirements.

The assets of the Master Trust, which are held entirely in the Fund, had a fair market value at Date 3 of approximately $c. Cumulative withdrawals from the Fund from Year 5 through Year 6 to satisfy Taxpayer's decommissioning obligation for the Power Station are projected to be approximately $d. The fair market value of the Fund is projected to grow, net of decommissioning expenditures, to approximately $e as of Date 4.

The Taxpayer is subject to the jurisdiction of the NRC and Commission A. The proposed method of decommissioning the Power Station is Method. The site specific decommissioning cost estimate (DCE), submitted to NRC, in support of the Post-Shutdown Decommissioning Activities Report in Date 5, is the most recent decommissioning study for the Power Station and is used in determining the amount of decommissioning costs in this request. The DCE indicates that substantial decommissioning costs were first incurred (planning activities only) in Year 3. Assets of the Fund were first used to pay costs of decommissioning in Year 5.

The DCE also indicates that the estimated year in which the decommissioning of the Unit will be substantially complete is Year 7. According to the DCE, the total estimated cost to decommission the Power Station expressed in Year 3 dollars is $f. Decommissioning of the Power Station commenced in Year 5 and Fund assets have been withdrawn. Therefore, Taxpayer has reported information related only to the future estimated cost to decommission the Power Station as of Date 5, and does not provide information related to years prior to Year 8. The aggregate amount of decommissioning costs estimated to be incurred after Year 6 expressed in Year 3 dollars is $g, or $h escalated to Year 8 dollars. The total estimated decommissioning expenditures expressed in future dollars during Years 8 to 7 is $i. Taxpayer has reported that the annual estimated costs of decommissioning expressed in future dollars were computed by applying an annual inflation factor of j% to the annual estimated costs of decommissioning expressed in Year 3 dollars per the cost study referred to above. The annual inflation rate of j% is consistent with Company 3's view of the expected inflation rate over time. Taxpayer has provided a schedule setting forth the years the Fund will be in existence, the annual contribution to the Fund, the estimated annual earnings of the Fund, the estimated annual decommissioning costs allocable to the Fund, and the cumulative total balance in the Fund. That schedule assumed after-tax rate of return to be earned by the assets of the Fund is k%. This rate is based on historical market returns for an investment mix of l% invested in equity securities and m% invested in fixed income securities. This rate is consistent with Taxpayer's view of generic long-term forecasted after-tax fund earnings rates with the given investment mix.

The funding period, as defined in Treas. Reg. § 1.468A-3(c), began on Date 7, and ends on Date 8. The first taxable year for which a deductible payment was made to the Fund was Year 9. Under Treas. Reg. § 1.468A-3(c)(2)(ii)(B), the taxable year that includes the last day of the estimated useful life of the plant determined as of the date it was placed in service was Year 10, the original license expiration year.

The fair market value of the assets of the Fund as of the first day of Year 8 is estimated to be $e. Taxpayer has provided the historical after-tax rates of return through Year 11, and projected for Year 6, earned by the Fund for each taxable year in the period that begins with the date the assets of the Fund were transferred to Taxpayer's Master Trust and ends with the first day of the first taxable year to which the revised schedule of ruling amounts will apply. Taxpayer does not have information regarding the rates of return earned by the Fund prior to the transfer of the Fund from Company 4 to Taxpayer in Year 1.

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. 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 (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 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)(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 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.

We have examined the representations and information submitted by 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 an owner of the Plant, has calculated its 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 the Independent Study that Taxpayer has represented is a standard type study used in the industry. Based on that representation, 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. 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.

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

APPROVED SCHEDULE OF RULING AMOUNTS

Year	Ruling Amount
Year 8	$n

If any of the events described in § 1.468A-3(f)(1) occur in future years, Taxpayer must request a review and revision of the schedule of ruling amounts. Generally, Taxpayer is required to file such a request on or before the deemed payment deadline date for the first taxable year in which the rates reflecting such action became effective. When no such event occurs, Taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline of the tenth taxable year following the close of the tax year in which this schedule of ruling amounts is received.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. Specifically, no determination is made whether the Independent Study conforms to industry standards and practices.

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 representatives. We are also sending a copy of this letter ruling to the Director. Pursuant to § 1.468A-7(a), a copy of this letter must be attached (with the required Election Statement) to Taxpayer's federal income tax return for each tax year in which Taxpayer claims a deduction for payments made to the Fund.

Sincerely yours,

Peter C. Friedman

Peter C. Friedman
Senior Technician Reviewer, Branch 6
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)