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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-137462-17

Date:
May 30, 2018

Re:

LEGEND:

Taxpayer	=
Company 1	=
Company 2	=
Company 3	=
Company 4	=
Commission	=
Non-Commission	=
Location	=
METHOD	=
County	=
State	=
Rate Order	=
Plant	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Date 10	=

Date 11 =
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Year 1 =
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Year 3 =
Year 4 =
Year 5 =
Director =

Dear :

This letter responds to your request dated Date 10, for a revised schedule of ruling amounts under § 468A(d)(3) of the Internal Revenue Code and § 1.468A-3(f)(2) of the Income Tax Regulations.

The Taxpayer, a State corporation, is a member of an affiliated group that joins in the filing of a consolidated federal income tax return, the common parent of which is Company 1. Taxpayer is a public utility operating company, principally engaged in the generation, transmission, and distribution of electric energy in the State.

This ruling request relates to Plant. The Plant consists of p nuclear powered electric generating units located in County. The Plant includes supporting facilities which service each of the p nuclear generating units to an equal degree. The extended operating license for the Plant issued by the NRC on Date 1 expires on Date 2.

In three transactions, two occurring on Date 3 with Company 2 and Company 3, and the other occurring on Date 4 with Company 4, Taxpayer sold in the aggregate a percent of its ownership interest in the Plant and entered into lease agreements whereby it leased

back from Companies 1, 2 and 3 the entire undivided interest it had sold. Therefore, Taxpayer is a lessee with respect to an undivided interest of approximately b percent in the Plant) and a fee simple owner of an undivided interest of approximately c percent in the Plant. Under the terms of the lease agreements between Taxpayer and Companies 2, 3 and 4, Taxpayer remains fully responsible for its d percent share of the eventual cost of decommissioning of the Plant. These lease agreements also require that Taxpayer fully fund its obligations with respect to the decommissioning of the Plant through means of an external trust or trusts.

The leases for the respective interests in the Plant were to expire on Date 5. At the end of the respective lease terms, use of the respective undivided interest in the Plant would either be returned to the respective lessor or Taxpayer could exercise a lease renewal option or a purchase option. On Date 6, Taxpayer exercised its option to extend the term of the Company 4 lease until Date 7. On Date 8, Taxpayer exercised its option to extend the terms of the Company 2 and Company 3 leases until Date 9. At the end of the extended lease terms, Taxpayer has the option to purchase the lessor's interest in the Plant at its then fair market value.

With respect to nuclear decommissioning costs of the Plant which are included in Taxpayer's cost of service for ratemaking purposes, Taxpayer is subject to regulation by the Commission and the Federal Energy Regulatory Commission (FERC). The operations of the Plant are allocated below:

Commission	e%
Non- Commission	f%
TOTAL	100.00%

These percentages may fluctuate slightly from year to year. This ruling request does not relate to the Non-Commission operations of the Plant. As a result of the Rate Order, Taxpayer proposes to contribute $g to the nuclear decommissioning fund (Fund) annually for tax Years 1 -2 followed by a prorated amount of $h for tax Year 3.

The assumptions, estimates and other factors used by Taxpayer to determine the amount of decommissioning costs for the Plant were as follows:

The proposed method of decommissioning is METHOD. The estimated year in which substantial decommissioning costs first will be incurred is Year 3. The estimated year in which decommissioning of the Plant is expected to be substantially complete is Year 4. The total estimated cost of decommissioning the Taxpayer's share of the Plant in current dollars is $i (Year 5 dollars) determined by multiplying each year's total estimated cost of decommissioning the Plant by the Taxpayer's d percent ownership interest in the Plant and calculating the sum. The total estimated future cost of

decommissioning the Taxpayer's share of the Plant in Year 3 dollars is $j determined by escalating the Taxpayer's share of the annual estimated decommissioning costs in current (Year 5 dollars) by k percent and discounting those costs to Year 3 using a l percent after-tax return. The estimated cost of decommissioning the Plant in Year 1 dollars was escalated at the rate of k percent annually to the year that the costs are incurred to obtain the estimated cost of decommissioning in future dollars. The average annual after-tax rate of return assumed to be earned by amounts collected for decommissioning is l percent.

The assumptions, estimates and other factors used in determining the proposed revised schedule of ruling amounts are as follows:

The funding period is from Date 11 to Date 12. The assumed after-tax return to be earned by the assets in the Fund is l percent. The fair market value of the assets in the Fund as of Date 11 was $m. The expected earnings of the assets of the Fund over the period Date 11, the first day of the first taxable year to which the revised schedule of ruling amounts would apply, through Date 12, the last day of the funding period, is $n. The amount of decommissioning costs allocable to the Fund pursuant to Treasury Regulations section 1.468A-3(d) is $j (Year 3 dollars). The total estimated future cost of decommissioning the Plant is $o (Year 3 dollars). This amount is calculated by dividing $j (the Taxpayer's share of the future decommissioning cost in Year 3 dollars) by d percent (the Taxpayer's ownership percentage). Taxpayer's share of the total estimated future decommissioning costs pursuant to Treasury Regulations section 1.468A-3(d)(3) is $j (Year 3 dollars) determined by escalating the Taxpayer's share of the annual estimated decommissioning costs in current (Year 5 dollars) by k percent and discounting those amounts to Year 3 dollars using the l percent after-tax return.

Section 468A(a), as amended by the Energy Tax Incentives Act of 2005 (Act), Pub. L. 109-58, 119 Stat. 594, allows an electing taxpayer to deduct payments made to a 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 a direct leaseholder of the Plant as well 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 and the approval of the Commission, 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
Years 1 – 2	$g
Year 3	$h

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