

Internal Revenue Service

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

Telephone Number:

In Re: Revised Schedule of Ruling Amounts

Refer Reply To:
CC:PSI:B06
PLR-116801-19
Date:
January 03, 2020

LEGEND:

Taxpayer =

Parent =

Operator =

Plant =

Location =

Commission =

Study =

Method =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

a =

b =

c =

d =

e =

Director =

Fund =

Dear _____ :

This letter responds to your request, dated July 16, 2019, for an elective 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. Taxpayer was previously granted revised schedules of ruling amounts, most recently on Date 1.

Taxpayer represents that, at the time this private letter ruling request was submitted, the facts were as follows:

Taxpayer is an indirect wholly-owned subsidiary of Parent and a member of Parent's affiliated group of corporations that files a consolidated federal income tax return on a calendar year basis using the accrual method of accounting. Taxpayer is engaged in the generation of electricity produced by the Plant and the sale of that electricity at wholesale.

Taxpayer is the sole owner of the Plant, which is situated at Location. The Plant is operated by Operator, a corporate affiliate of Taxpayer.

Taxpayer and the Plant are not subject to the retail ratemaking jurisdiction of any regulator. Taxpayer sells power generated by the Plant at market rates or to customers under negotiated power purchase agreements. Taxpayer and the Plant are subject to the jurisdiction of the Commission with regard to wholesale rates for power sales.

The operation, permanent shutdown, and decommissioning of the Plant are subject to the jurisdiction of the Nuclear Regulatory Commission (NRC). The Plant is authorized to continue operations under a renewed license, issued by the NRC, which expires on Date 3. However, the Plant permanently ceased operations on Date 2.

The estimated decommissioning costs for the Plant are based on the Study and the proposed method for decommissioning is Method. Based upon the assumptions derived from the Study, it is estimated the total cost of decommissioning the Plant is estimated to be a (in Year 1 dollars). The base cost for decommissioning the Plant was escalated at a rate of b percent annually, resulting in an estimated future cost of decommissioning the Plant of c (in Year 1 to Year 3 dollars). The assumed after-tax rate of return the assets of the Fund will earn is d percent. Substantial decommissioning costs for the Plant were first incurred in Year 1 and it is estimated that decommissioning will be substantially complete in Year 3.

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 cost 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 such costs at a rate more rapid than level funding, taking into account 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 cost under § 468A. An “eligible taxpayer,” as defined under § 1.468A-1(b)(1), is a taxpayer that has a “qualifying interest” in any portion of a nuclear power plant. As provided by § 1.468A-1(b)(2)(i), a qualifying interest means, 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 amount 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 amount must be based on reasonable assumptions concerning the after-tax rate of return to be earned by the assets of the qualified nuclear decommissioning fund, the total estimated cost of decommissioning the nuclear power 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 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 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 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 power 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 useful life of a nuclear plant that is not described in § 1.468A-3(c)(2)(i)(A). Section 1.468A-3(c)(2)(ii) provides that if

it can be established that the estimated useful life of a the nuclear power plant will end on a date other than the date determined under § 1.468A-3(c)(2)(i), the taxpayer may use such other date as the last day of the estimated useful life but is not required to do so.

Section 1.468A-3(e) provides the rules regarding the manner of requesting 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 rulings 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 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 the representations of the facts as represented by Taxpayer on the date of the request, we reach the following conclusions:

- 1) Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under § 1.468A-1(b)(1).
- 2) Taxpayer, as owner of the Plant, has calculated its decommissioning costs under § 1.468A-3(d)(1).
- 3) The proposed schedule of ruling amounts was derived by following the assumptions contained in a Study that Taxpayer has represented is a standard type used in the industry. 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.

- 4) 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 the regulations and is based on reasonable assumptions.
- 5) The maximum amount of cash payments made (or deemed made) to the Fund during any tax year shall not exceed the ruling amount applicable to the Fund for such taxable year as provided by § 1.468A-2(b)(1).

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

APPROVED SCHEDULE OF RULING AMOUNTS

Year	Amount
Year 2	<u>e</u>

If any of the events described in § 1.468A-3(f)(1) 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 request on or before the deemed payment deadline date for the first taxable year in which rate 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 tenth taxable year following the close of the tax year in which this schedule of ruling amounts is received. If the taxpayer calculated its most recent schedule of ruling amounts on any basis other than an order issued by a public utility commission, the taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the fifth taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received.

Except as specifically determined above, no opinion is expressed or implied concerning the federal income tax consequences of the transaction described above. In particular, while we have approved the proposed schedule of ruling amounts based on cost estimates contained in the Study, we make no ruling, expressed or implied, whether any particular item contained in that study constitutes a nuclear decommissioning cost within the meaning of § 1.468A-1(b)(6). Additionally, if an event described in § 1.468A-6(a) occurs during a taxable year to which this schedule of ruling amounts relates, the taxpayer is limited to making payments to the Fund prior to the date of such event, regardless of the amount approved in this schedule of ruling amounts.

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 to the Director.

Pursuant to § 1.468A-7(a), 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 payment to the Fund.

Sincerely yours,

Patrick S. Kirwan
Chief, Branch 6
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)