Internal Revenue Service

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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:B6
PLR-118968-22
Date: July 10, 2024

Re: Schedule of Ruling Amounts

LEGEND:

Taxpayer	=
Plant	=
Company A	=
Company B	=
Company C	=
Company D	=
Company E	=
Company F	=
Location	=
X	=
z	=
State A	=
Commission A	=
Commission B	=
Date A	=
Report	=
Amount A	=
Amount B	=
Amount C	=
Amount D	=

Year A =
Year B =
Year C =
Year D =
Year E =
Year F =
Year G =
Method =
Fund =

Dear :

This letter responds to your request, dated October 3, 2022, on behalf of Taxpayer and its subsidiaries discussed below, for a schedule of ruling amounts pursuant to § 1.468A-3(e) of the Income Tax Regulations. To Taxpayer's knowledge, no request for a schedule of ruling amounts for the Plant has been filed within the past ten years. The request for a schedule of ruling amounts is mandatory, within the meaning of § 1.468A-3(f)(1)(iii). Information was submitted pursuant to § 1.468A-3(e)(2).

Taxpayer represents the facts and information relating to its request for a schedule of ruling amounts as follows:

Taxpayer, a corporation of State A, is a holding company and the sole owner of Company A, a limited liability company of State A, which is a disregarded entity for federal income tax purposes. Through its subsidiaries, Taxpayer is engaged in the sale of electricity, natural gas, and other energy related products to various types of customers across multiple geographic regions, and owns and operates nuclear, wind, solar, and hydroelectric assets throughout the United States. Company A indirectly owns X percent of Company B, which has elected to be treated as a corporation for federal income tax purposes, through its subsidiaries, Company C and Company D, both of which are treated as disregarded entities for federal income tax purposes. Company B owns X percent of Company E, which is treated as a disregarded entity for federal income tax purposes, and is the sole owner of the Plant. The rulings below are given to Taxpayer and the subsidiaries described above and we refer to these entities collectively below as "Taxpayer."

The Plant is situated at Location. The Plant's operating license issued and extended by Commission A is scheduled to expire on Date A. The estimated base cost for decommissioning the Plant is based on the Report prepared by Taxpayer and the proposed method of decommissioning the Plant is Method. The Plant is not currently subject to the ratemaking authority of any jurisdiction.

The Plant was built and first operated by Company F beginning in Year A. As of Year A, it was expected that Plant would be decommissioned in Year G. In Year B, pursuant to Commission B's electric energy restructuring initiatives, Company F sold the

Plant to Company E, along with the associated qualified decommissioning fund (the Fund).

Taxpayer has based this request for a schedule of ruling amounts on information in a decommissioning study for the Plant (Report). Report was used by Taxpayer for purposes of estimating future decommissioning costs of the Plant. The Taxpayer's Qualified Fund has a balance of Amount A as of the end of Year C. The estimated cost of decommissioning Plant is Amount B in Year C dollars. Total expenditures, escalated to the year of expenditure, is Amount C. It is estimated that substantial decommissioning costs will first be incurred in Year D and that decommissioning will be substantially complete at the end of Year E. The assumed after-tax rate of return to be earned by the Fund is z%.

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 section 468A. The Act's amendment of section 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.

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(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 2 ½ 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 section 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.

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 temporary 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, determined as of the day the plant was placed in service.

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). Plant was placed in service in Year A and as of that time, it was expected that it would be decommissioned in Year G, as above. Therefore, Plant's useful life, for purposes of determination of the funding period under the regulations under § 468A, is no later than Year G.

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(e)(1)-(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)(i) provides that any taxpayer that has obtained a schedule of ruling amounts pursuant to § 1.468A-3(e) must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the 10th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was 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 5th taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received.

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

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

3. Taxpayer has proposed a schedule of ruling amounts which meets the requirements of §§ 1.468A-3(a)(1) and (2) of the regulations. The annual payments specified in the proposed schedule of ruling amounts are based on reasonable assumptions and determinations used by Taxpayer, and will result in a projected fund balance at the end of the funding period equal to or less than the amount of decommissioning costs allocable to the Fund.

4. Pursuant to § 1.468A-3(a)(4), Taxpayer has demonstrated that the proposed schedule of ruling amounts is consistent with the principles of section 468A and the regulations thereunder and that such schedule is based on reasonable assumptions.

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 the Taxpayer's proposed schedule of ruling amounts satisfies the requirements of § 468A of the Code.

APPROVED SCHEDULE OF RULING AMOUNTS

Year	**Ruling Amount**
Year F	$Amount D

Approval of the schedule of ruling amounts is contingent on there being no change in the facts and circumstances, known or assumed, at the time the current ruling is issued. 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 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, 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 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. Specifically, no determination is made as to whether Report conforms to industry standards and practices or whether any particular item contained in that study constitutes a nuclear decommissioning cost under § 1.468A-1(b)(6). In addition, no determination is made concerning whether all amounts contained in the qualified fund prior to this ruling request were made pursuant to the regulations under § 468A.

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 designated representatives. 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 payments made to the Fund.

Sincerely,

/s/

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

cc: