

**INTERNAL REVENUE SERVICE**

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April 13, 2001

Re: Revised Schedule of Ruling Amounts

Taxpayer:

Parent:

Plant:

State:

Director:

Location:

Commission A:

Commission B:

Law:

Order:

Dear \_\_\_\_\_ :

This letter responds to the request, dated \_\_\_\_\_, and subsequent submissions, for a revised schedule of ruling amounts in accordance with section 1.468A-3(i) of the Income Tax Regulations. Taxpayer is seeking this revised schedule of ruling amounts because a commission having regulatory

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authority over Taxpayer has changed the date on which the Plant will no longer be in rate base for ratemaking purposes. Taxpayer was previously granted revised schedules of ruling amounts on . Information was submitted pursuant to section 1.468A-3(h)(2).

We understand the facts as presented by Taxpayer to be as follows:

Taxpayer is an investor-owned public utility company engaged in providing electricity to customers within State. Taxpayer is a wholly-owned subsidiary of Parent. Taxpayer is subject to the audit jurisdiction of the District.

Taxpayer owns percent of the Plant, which is located in Location. The Plant began commercial operations in , and its operating license is scheduled to expire at midnight on .

Taxpayer is subject to the ratemaking jurisdiction of Commission A and Commission B. The portion of Taxpayer's sales within the jurisdiction of Commission A and Commission B is percent, respectively. Because the Commission B jurisdictional percentage is so small, rates charged to wholesale customers are generally negotiated with the customer and subsequently submitted to Commission B for acceptance.

Taxpayer's request results from the determinations made by Commission A in Order, which removes the Plant from Taxpayer's rate base as of . Taxpayer represents that, pursuant to Law, nuclear decommissioning costs are collected from its customers through a nonbypassable nuclear decommissioning charge that will continue until the time that the costs are fully recovered notwithstanding the removal of Plant from rate base.

As approved by Commission A in Order, the total estimated cost of decommissioning the Plant is \$ . Using an assumed inflation rate of percent, the total estimated future cost of decommissioning the Plant is \$ . The annual amount of decommissioning costs to be included in Taxpayer's cost of service is \$ through , calculated by using a variable assumed rate of return.

Taxpayer represents that certain figures presented in the text of Order are subject to administrative error, and that Taxpayer has filed a petition to amend those figures. Taxpayer further represents that Commission A nonetheless relied on the

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correct figures in calculating the amount of decommissioning costs included in cost of service for ratemaking purposes.

The funding period extends from . However, because the date that the Plant will no longer be in rate base has been changed to , the level funding limitation period extends from . The estimated period for which the Fund will be in effect extends from , and the estimated useful life of the Plant extends from . Thus, Taxpayer has calculated its qualifying percentage to be percent.

At the present time there are no proceedings pending before Commission A or Commission B that would increase or decrease the amount of decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes.

Section 468A(a) of the Code provides that a taxpayer may elect to deduct for any taxable year the amount of payments made by Taxpayer to a qualified decommissioning fund during the taxable year. Pursuant to section 1.468A-1(a) of the regulations, this deduction is available only to an "eligible taxpayer." An eligible taxpayer, as defined in section 1.468A-1(b)(1), is any taxpayer that has a "qualifying interest" in a nuclear power plant.

Section 1.468A-1(b)(2) of the regulations defines the term "qualifying interest" as, among other things, a direct ownership interest. A direct ownership interest includes an interest held as a tenant in common or joint tenant, but does not include stock in a corporation that owns a nuclear power plant or an interest in a partnership that owns a nuclear power plant.

Under section 468A(b) of the Code, the amount that a taxpayer may pay into a nuclear decommissioning fund for any taxable year is limited to the lesser of: (1) the amount of nuclear decommissioning costs allocable to the nuclear decommissioning fund that is included in Taxpayer's cost of service for ratemaking purposes for the taxable year; or (2) the ruling amount applicable to the nuclear decommissioning fund for the taxable year.

Section 1.468A-1(b)(5) of the regulations defines the term "nuclear decommissioning costs" or "decommissioning costs" as all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal, and

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disposal of the structures, systems, and components of a nuclear power plant that has permanently ceased the production of electric energy. This term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to the plant after the actual decommissioning occurs, such as physical security and radiation monitoring expenses.

Section 468A(d)(1) of the Code provides that no deduction shall be allowed for any payment to a nuclear decommissioning fund unless Taxpayer requests, and receives, from the Secretary a schedule of ruling amounts.

Section 468A(d)(2)(A) of the Code defines the term "ruling amount" as the amount that the Secretary determines to be necessary to fund a portion of the decommissioning costs. This amount is that portion which bears the same ratio to the total nuclear decommissioning costs for the nuclear power plant as the period for which a nuclear decommissioning fund is in effect bears to the estimated useful life of the nuclear power plant. The ruling amount is further restricted under section 468A(d)(2)(B) to the amount necessary to prevent any excessive funding of decommissioning costs or the funding of these costs at a rate more rapid than level funding, taking into account the discount rates as the Secretary deems appropriate.

Section 1.468A-3(a)(1) of the regulations requires the schedule of ruling amounts for a nuclear decommissioning fund to specify the annual payments that, over the taxable years remaining in the funding period, 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 greater than) the amount of decommissioning costs allocable to the nuclear decommissioning fund. The projected fund balance is calculated by taking into account the fair market value of fund assets as of the first taxable year to which the schedule of ruling amounts applies and the estimated rate of return to be earned by the fund assets after payment of administrative costs and incidental expenses to be incurred by the Fund, including all federal, state, and local income taxes to be incurred by the Fund (the "after-tax rate of return").

Section 1.468A-3(a)(2) of the regulations provides that to the extent consistent with the principles and provisions of section 1.468A-3, each schedule of ruling amounts shall be based on the reasonable assumptions and determinations used by the

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applicable public utility commission in establishing or approving the amount of decommissioning costs to be included in cost of service for ratemaking purposes, taking into account amounts that are otherwise required to be included in Taxpayer's income under section 88 of the Code and the regulations thereunder. Thus, for example, each schedule of ruling amounts shall be based on the public utility commission's reasonable assumptions concerning: (i) the after-tax rate of return to be earned by the amounts collected for decommissioning; (ii) the total estimated cost of decommissioning the nuclear power plant; and (iii) the frequency of contributions to a nuclear decommissioning fund for a taxable year.

Under section 1.468A-3(a)(3) of the regulations, the Service shall provide a schedule of ruling amounts that is identical to the schedule proposed by Taxpayer, but no schedule of ruling amounts shall be provided unless Taxpayer's proposed schedule is consistent with the principles and provisions of section 1.468A-3.

Section 1.468A-3(b)(1) of the regulations provides that the ruling amount specified in a schedule of ruling amounts for any taxable year in the level funding limitation period shall not be less than the ruling amount specified in the schedule for any earlier taxable year.

The amount of decommissioning costs allocable to a nuclear decommissioning fund is determined under section 1.468A-3(d) of the regulations. Pursuant to section 1.468A-3(d)(1), this amount is Taxpayer's share of the total estimated cost of decommissioning the nuclear power plant multiplied by the qualifying percentage.

Section 1.468A-3(d)(3) of the regulations provides that Taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning the plant multiplied by Taxpayer's qualifying interest in the plant.

The term "qualifying percentage" is defined in section 1.468A-3(d)(4)(i) of the regulations. This regulation provides that the qualifying percentage for any nuclear decommissioning fund is a fraction, the numerator of which is the number of taxable years in the estimated period for which the fund is to be in effect and the denominator of which is the number of taxable years in the estimated useful life of the nuclear power plant.

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Section 1.468A-3(d)(4)(ii) of the regulations provides that the estimated period for which a nuclear decommissioning fund is to be in effect begins on the later of the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund or the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations. This estimated period ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in Taxpayer's rate base for ratemaking purposes (as determined by the applicable public utility commission at the time the plant was first included in Taxpayer's rate base).

Section 1.468A-3(d)(4)(iii) of the regulations provides that the estimated useful life of the nuclear power plant begins on the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations and ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in Taxpayer's rate base for ratemaking purposes (as determined by the applicable public utility commission at the time the plant was first included in Taxpayer's rate base).

Section 1.468A-3(g) of the regulations provides that the Service shall not provide a taxpayer with a schedule of ruling amounts for any nuclear decommissioning fund unless the public utility commission that establishes or approves rates for electric energy generated by a nuclear power plant to which the nuclear decommissioning fund relates has determined the amount of decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes and has disclosed the after-tax rate of return and any other assumptions and determinations used in establishing or approving the amount.

If rates are established or approved by two or more public utility commissions, the special rules in section 1.468A-3(f) of the regulations apply. Section 1.468A-3(f)(1) and (2) require that a schedule of ruling amounts shall be separately determined for each public utility commission, and this separate determination shall take into account only the portion of the total estimated decommissioning cost that is properly allocated to the ratepayers whose rates are established or approved by the public utility commission. In addition, section 1.468A-3(f)(3) and (4) provide that the schedule of ruling amounts for any taxable year is the sum of ruling amounts for the taxable year determined under the separate schedules of ruling amounts.

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Section 1.468A-3(i)(1)(iii) of the regulations requires a taxpayer to request a revised schedule of ruling amounts for a nuclear decommissioning fund if:

(A) any public utility commission that establishes or approves rates for the furnishing or sale of electric energy generated by the nuclear power plant to which the fund relates (1) increases the proposed period over which the decommissioning costs will be included in cost of service for ratemaking purposes, (2) adjusts the estimated date on which the nuclear power plant will no longer be included in rate base for ratemaking purposes, or (3) reduces the amount of decommissioning costs to be included in cost of service for ratemaking purposes for any taxable year; and

(B) Taxpayer's most recent request for a schedule of ruling amounts did not provide notice to the Service of the action by the public utility commission.

Under section 1.468A-7(a) of the regulations, an eligible taxpayer generally is allowed a deduction for the taxable year in which Taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if Taxpayer elects the application of section 468A of the Code. A separate election is required for each nuclear decommissioning fund and for each taxable year for which payments are to be deducted under section 468A. In the case of an affiliated group of corporations that join in filing a consolidated return for a taxable year, the common parent must make a separate election on behalf of each member whose payments to a nuclear decommissioning fund during each taxable year are to be deducted under section 468A. The election under section 468A for any taxable year is irrevocable and must be made by attaching a statement ("Election Statement") and a copy of the schedule of ruling amounts provided pursuant to the rules of section 1.468A-3 to Taxpayer's federal income tax return (or, in the case of an affiliated group of corporations that join in filing a consolidated return, the consolidated return) for such taxable year. The return to which the Election Statement and a copy of the schedule of ruling amounts is attached must be filed on or before the time prescribed by law (including extensions) for filing the return for the taxable year for which payments are to be deducted under section 468A.

We have examined the representations submitted by Taxpayer. Based solely upon these representations, we reach the following conclusions:

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1. Taxpayer has a qualifying interest in the Plant and, therefore, is an eligible taxpayer under section 1.468A-1(b)(1) and (2) of the regulations.
2. Commissions A and B have authorized decommissioning costs to be included in Taxpayer's cost of service for ratemaking purposes as required by section 1.468A-3(g) of the regulations.
3. As required by section 1.468A-3(f) of the regulations, Taxpayer, subject to the jurisdiction of two public utility commissions for ratemaking purposes, has calculated its share of the total estimated cost of decommissioning the Plant allocable to the ratepayers whose rates are established by Commissions A and B.
4. Taxpayer has calculated its qualifying percentage under section 1.468A-3(d)(4) of the regulations to be       percent.
5. Taxpayer has proposed a schedule of ruling amounts that meets the requirements of section 1.468A-3(a)(1) and (2) of the regulations. The annual payments specified in the proposed schedule are based on the reasonable assumptions and determinations used by Commission A and will result in a projected fund balance at the end of the funding period that is equal to or less than the amount of decommissioning costs allocable to the Fund.
6. Taxpayer's proposed schedule of ruling amounts complies with the level funding requirements of section 1.468A-3(b)(1) of the regulations. No payment specified in the proposed schedule for any taxable year is less than the specified payment for any earlier taxable year.
7. Pursuant to section 468A(b) of the Code, the maximum amount of cash payments made (or deemed made) to the Fund during any taxable year is restricted to the lesser amount of the decommissioning costs included in Taxpayer's cost of service for the taxable year or the ruling amount applicable to the Fund for the taxable year.

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Based on the above determinations, we conclude that Taxpayer's proposed schedule of ruling amounts satisfies the requirements of section 468A of the Code and the regulations thereunder. Therefore, the schedule of ruling amounts requested by Taxpayer under the provisions of section 468A(d)(1) is approved as follows.

APPROVED SCHEDULE OF RULING AMOUNTS

<u>Year</u>	<u>Commission A</u>	<u>Commission B</u>	<u>Total</u>
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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 section 1.468A-3(i)(1)(iii) of the regulations 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 tax 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 10th tax year following the close of the tax year in which the most recent schedule of ruling amounts was received.

The approved schedule of ruling amounts is relevant only to those payments made to the Fund. Payments allocable to any funds other than the Fund, cannot qualify for purposes of the deduction under the provisions of section 468A of the Code. Payments made to such Fund can qualify only to the extent they are made while Taxpayer is the owner of the Plant and only to the extent that they do not exceed the lesser of the decommissioning costs applicable to such Fund or the ruling amounts applicable to this Fund in the tax year.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used

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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's Senior Vice President. Pursuant to section 1.468A-7(a) of the regulations, 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 yours,

Peter C. Friedman  
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Office of Associate Chief Counsel  
(Passthroughs and Special Industries)