

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B06 – PLR-114188-04

Date: June 25, 2004

Re:

LEGEND:

Taxpayer =

Parent =

T&D Company =

Plant =

Location =

Method =

Commission =

Fund =

State =

Law =

Dear :

This letter responds to your request, on behalf of Taxpayer, dated

for a revised schedule of ruling amounts pursuant to § 1.468A-3(i) of the Income Tax Regulations. Schedules of ruling amounts were previously issued with regard to the Plant on , and . Ownership of Plant was transferred to Taxpayer in the context of a tax-free reorganization under § 351 of the Internal Revenue Code. The Service ruled on the tax consequences of that transfer on Taxpayer, Parent, and the Fund, by letter dated . The Service also concluded that, pursuant to § 1.468A-6(e)(2)(ii), Taxpayer must request a revised

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schedule of ruling amounts for any tax year subsequent to the tax year in which the Plant is transferred. Thus, Taxpayer seeks a revised schedule of ruling amounts. Information was submitted pursuant to § 1.468A-3(h)(2).

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

Taxpayer is included in the consolidated income tax return of Parent along with, *inter alia*, T&D Company. Taxpayer is engaged in the generation of electricity in State and is under the regulatory jurisdiction of Commission. Parent owns more than

Taxpayer has a direct ownership interest in the Plant of percent as a tenant in common.¹ The Plant is situated at Location. Plant's operating license expires in . The estimated base cost for decommissioning Plant is based on an independent study and the proposed method of decommissioning the Plant is Method.

In , the State enacted Law requiring utility companies in State

In addition, beginning on

Certain costs incurred or to be incurred by utility companies owning generation assets prior to the effective date of Law, including the costs of

Retail electric customers in State remit their payments for electricity to T&D Company,

inclusion of these amounts in the Taxpayer's rate base for purposes of § 468A.

In , effective , Commission authorized the annual collection of nuclear decommissioning costs related to Taxpayer's interest in Plant in the amount of \$ for taxable years through based on a site-specific decommissioning study. Commission estimated the base cost of decommissioning

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Taxpayer's interest in Plant, using Method, as \$ _____ in _____ dollars. Using an escalation rate of _____ percent, Commission estimated the total future costs of decommissioning Taxpayer's interest in Plant as \$ _____ in future dollars. Commission estimated that the assets in the Fund would earn an average rate of _____ percent from _____ through _____ percent from _____ through _____ and _____ from _____ through _____. The estimated year in which Plant will no longer be included in the rate base _____ is _____. The estimated year in which substantial decommissioning costs will first be incurred is _____.

The funding period for the Plant extends from _____ through _____ and the level funding limitation period for the Plant extends from _____ through _____. The estimated period for which the Fund will be in effect is _____ years (_____ through _____). The estimated useful life of the Plant is _____ years (_____ through _____). Thus, the Taxpayer has calculated its qualifying percentage to be _____ percent.

Section 468A provides that a taxpayer may elect to deduct the amount of payments made to a qualified decommissioning fund. However, § 468A(b) limits the amount paid into such fund for any taxable year to the lesser of the amount of nuclear decommissioning costs allocable to this fund which is included in the taxpayer's cost of service for ratemaking purposes for the tax year or the ruling amount applicable to this year.

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 that portion of nuclear decommissioning costs which bears the same ratio to the total nuclear decommissioning costs with respect to the nuclear power plant as the period for which the nuclear decommissioning fund is in effect bears to 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(g) 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.

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,"

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as defined under § 1.468A-1(b)(1) of the regulations, is a taxpayer that has a "qualifying interest" in, among other things, a direct ownership interest.

Section 1.468A-1(b)(2)(ii) provides that the term "qualifying interest" means a leasehold interest in any portion of a nuclear power plant if: (A) The holder of the leasehold interest is subject to the jurisdiction of a public utility commission with respect to such portion of the nuclear power plant; (B) The holder of the leasehold interest is primarily liable under Federal or State law for decommissioning such portion of the nuclear power plant; and (C) No other person establishes a nuclear decommissioning fund with respect to such portion of the nuclear power plant.

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 lesser of the cost of service amount applicable to the nuclear decommissioning fund for such tax year; or the ruling amount applicable to the nuclear decommissioning fund for such tax 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 the reasonable assumptions and determinations used by the applicable public utility commission in establishing or approving the amount of decommissioning costs to be included in the cost of service for ratemaking purposes. 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(b)(1) provides that, in general, the amount for any tax year in the level funding limitation period shall not be less than the ruling amount for any earlier tax year. Under § 1.468A-3(b)(2), the level funding limitation 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 on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes.

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

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estimated cost of decommissioning the nuclear power plant multiplied by the qualifying percentage.

Section 1.468A-3(d)(2) provides that, in general, the total estimated cost of decommissioning a nuclear power plant is the reasonably estimated cost of decommissioning used by the applicable public utility commission in establishing or approving the amount of these costs to be included in cost of service for ratemaking purposes.

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. Under § 1.468A-3(d)(4), the qualifying percentage for any nuclear decommissioning fund is equal to a fraction, the numerator of which is the number of tax years in the estimated period for which the nuclear decommissioning fund is to be in effect and the denominator of which is the number of tax years in the estimated useful life of the applicable plant.

Section 1.468A-3(d)(4)(ii) provides that the estimated period for which a nuclear decommissioning fund is to be in effect begins on the later of (1) the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund (or deemed made); or (2) the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); 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 the taxpayer's rate base for ratemaking purposes. According to § 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

Section 1.468A-3(d)(4)(iii) provides that the estimated useful life of a nuclear power plant begins on the first day of the taxable year that includes the date that the plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); 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 the taxpayer's rate base for ratemaking purposes. According to § 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

Section 1.468A-3(g) provides that the Internal Revenue 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 the rates for electric energy generated by the plant has determined the amount of decommissioning costs to be included in the 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.

Section 1.468A-3(h)(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(i)(2) provides that any taxpayer that has previously obtained a schedule of ruling amounts can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of § 1.468A-3(h). The Internal Revenue 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. Commission has determined the amount of decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes as required by § 1.468A-3(g) of the regulations.
3. Taxpayer, as owner of the Plant, has calculated its share of the total decommissioning costs under § 1.468A-3(d)(3) of the regulations.
4. Taxpayer has determined that, pursuant to § 1.468A-3(d)(4) of the regulations, the qualifying percentage is percent.
5. 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 the reasonable assumptions and

determinations used by Commission, 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.

6. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is restricted to the lesser amount of the decommissioning costs applicable to the Fund or the ruling applicable to the Fund, as set forth under § 1.468A-(2)(b)(1) of the regulations.
7. Taxpayer has calculated its share of the total decommissioning costs, as required by § 1.468A-(3)(f)(2) 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 FOR TAXABLE YEARS THROUGH

YEAR	RULING AMOUNT

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(i)(1)(iii) 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.

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 § 468A of the Code. Payments made to such Fund can qualify 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 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. We are also sending a copy of this letter ruling to the Industry Director, Natural Resources and Construction (LM:NRC). 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 yours,

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