Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B6
PLR-145118-08
Date:
January 16, 2009

Re: Schedule of Deductions

LEGEND:

Taxpayer =

Plant =
Parent =

Director =

Location =
Commission A =
Commission B =
Method =
Fund =

Dear :

This letter responds to your request, dated October 17, 2008, for a schedule of deduction amounts pursuant to section 468A(f) of the Internal Revenue Code and § 1.468A-8T of the temporary Income Tax Regulations. The Internal Revenue Service issued a schedule of deduction amounts with respect to the taxable year to the Taxpayer by letter dated February 8, 2008. The Taxpayer elected not to make the special transfer for the taxable year as approved by that letter; rather, the Taxpayer requests a schedule of deduction amounts for taxable year . Taxpayer

was previously granted schedules of ruling amounts, most recently on June 6, . Information was submitted pursuant to § 1.468A-3T(e)(2).

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

Taxpayer, a subsidiary of Parent, is included in a consolidated return filed by Parent. Taxpayer has a joint and undivided ownership interest of percent in the Plant. Taxpayer is also the operator of the Plant.

The Plant is situated at Location. Plant's amended operating license is scheduled to expire on . The estimated base cost for decommissioning Plant is based on an independent study and the proposed method of decommissioning the Plant is Method.

Taxpayer is subject to the jurisdiction of Commission A and Commission B. Neither Commission A nor Commission B have amended any aspects of Taxpayer's recovery of decommissioning costs since the most recent schedule of ruling amounts.

Based upon the assumptions used in Taxpayer's most recent schedule of ruling amounts (as adopted by Commission A and Commission B), it is estimated that Fund assets will earn an after-tax rate of return of percent. The total cost of decommissioning Plant is estimated to be $ in dollars. This base cost of decommissioning Plant is escalated at a percent yearly rate, resulting in a total future cost to Taxpayer of decommissioning Plant of $ in dollars. Of this total, $ is Taxpayer's share based on its ownership percentage. Under ratemaking assumptions used during the first proceeding before Commission A, the Plant would no longer be included in rate base in .

In the prior schedule of ruling amounts, issued under section 468A of the Code as in effect prior to , the estimated useful life of the Plant is years ( ), and the estimated period for which the Fund is to be in effect is years ( ). Thus, the percentage of the total estimated costs qualifying for deduction in the schedule of ruling amounts under prior law was percent.

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 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(f)(1) now allows a taxpayer to contribute to a nuclear decommissioning fund the entire cost of decommissioning the plant, including both the pre-1984 amount that was denied under the law prior to the Act as well as any amount attributable to any year after 1983 in which a taxpayer had not established a fund under § 468A. Section 468A(f)(2)(A) provides that the deduction for the contribution of the previously-excluded amount is allowed ratably over the remaining useful life of the nuclear plant.

Section 468A(f)(3) provides that no deduction is allowed for the transfer to a fund of any previously-excluded amount described in § 468A(f)(1) unless the taxpayer requests a new schedule of ruling amounts in connection with that transfer.

Section 1.468A-3T(f)(1)(iii) provides that a taxpayer requesting a schedule of deduction amounts must also request a revised schedule of ruling amounts for the fund. The revised schedule of ruling amounts must apply beginning with the first taxable year for which a deduction is allowed under the schedule of deduction amounts.

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-1T(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-1T(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-2T(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-2T(b)(1) does not apply to any "special transfer" permitted under § 1.468A-8T.

Section 1.468A-3T(c)(2) provides rules for determining the estimated useful life of a nuclear plant for purposes of § 468A. In general, under § 1.468A-3T(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-3T(c)(2)(i)(B) provides that, If the nuclear plant is not described in § 1.468A-3T(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-3T(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-3T(c)(2)(i)(A).

Section 1.468A-8T(a)(1) provides that, under the provisions of § 468A(f), as described above, a taxpayer may make a special transfer of cash or property to the nuclear decommissioning fund. This special transfer is not subject to the § 468A(b) limitation. The amount of the special transfer is the present value of the pre-2005 nonqualifying percentage of the estimated future costs of decommissioning the nuclear plant that was disallowed under section 468A prior to the Act.

Section 1.468A-8T(a)(2) defines the pre-2005 nonqualifying percentage as equal to 100 percent reduced by the sum of the qualifying percentage used in determining the taxpayer's last schedule of ruling amounts for the fund under section 468A as it existed prior to the Act and the percentage transferred in any previous special transfer.

Section 1.468A-8T(a)(3) provides that the taxpayer is not required to transfer the entire amount eligible for the special transfer in one year but must take any prior special tranfers into account in calculating the pre-2005 qualifying percentage.

Section 1.468A-8T(b) provides that the deduction for the special transfer is allowed ratably over the remaining useful life of the nuclear plant. Under § 1.468A-

8T(b)(1)(iii), the deduction for property contributed in a special transfer is limited to the lesser of the fair market value of the property or the taxpayer's basis in the property. Under § 1.468A-8T(b)(4), the taxpayer recognizes no gain or loss on the special transfer of property, the taxpayer's basis in the fund is not increased by reason of the special transfer of property, and the fund's basis in the property transferred in the special transfer is the same as the transferee's basis in that property immediately prior to the special transfer.

Section 1.468A-8T(c) provides that taxpayer may not make a special transfer to a qualified nuclear decommissioning fund unless the taxpayer requests from the IRS a schedule of deduction amounts in connection with such transfer. A request for a schedule of deduction amounts may be made in connection with a request for a schedule of ruling amounts but in such case, the calculations for both the schedule of ruling amounts and the schedule of deduction amounts must be separately stated.

As stated above, prior to the changes made by the Act, deductible contributions were limited to the lesser of (1) the amount necessary to fund the plant's post-1983 nuclear decommissioning costs, or (2) the amount necessary to fund the plant's decommissioning costs for that portion of the plant's estimated useful life for which a fund had been established. Under that prior law, Taxpayer was allowed to contribute percent of the amounts necessary to fully decommission its share of the Plant. Section 468A(f)(1) allows a taxpayer to contribute to the nuclear decommissioning fund the pre-1984 amount that was denied under the law prior to the Act. Thus, Taxpayer is able to contribute the additional percent of the amounts necessary to decommission its ownership share of Plant. Taxpayer's share of the total future decommissioning costs is $ (dollars) and percent of that amount is $ (dollars). The present value of that amount is $ (dollars).

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 conclude that the Taxpayer may make a special transfer of $ in , and may deduct that amount for the tax year, as shown below.

SCHEDULE OF DEDUCTION AMOUNTS

YEAR	DEDUCTION AMOUNT

We note that, if Taxpayer elects to make a special transfer of property for all or a portion of this special transfer, the amount of the transfer, and thus the deduction allowed, is the lesser of the fair market value of the property transferred or the basis of the property in the hands of the Taxpayer immediately prior to the transfer. In either

event, the deduction of the Taxpayer with respect to the property may not exceed the Taxpayer's basis in the property.

We further note that the letter issued to the Taxpayer on February 8, 2008, is superceded by this letter and is void; the Taxpayer may not make any special transfers or take any deduction based on the February 8, 2008, letter.

As discussed above, under § 468A(f)(3) and § 1.468A-3T(f)(1)(iii), no deduction is allowed for a special transfer unless the taxpayer requests a new schedule of ruling amounts in connection with that transfer. However, § 1.468A-3T(f)(1)(v) provides that, if a taxpayer does not request a revised schedule of ruling amounts in connection with the request for a schedule of deduction amounts, the taxpayer's ruling amount is zero dollars for the first year in which the special transfer is allowed and for all subsequent years until a new schedule of ruling amounts is obtained from the Service. Here, Taxpayer has not requested a revised schedule of ruling amounts. Thus, their ruling amount is $0 for and for all subsequent years until a new schedule of ruling amounts is obtained from the Service.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above.

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 Director. Pursuant to § 1.468A-7T(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,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)

cc: