INTERNAL REVENUE SERVICE

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July 3, 2001

In re: Revised Schedule of Ruling Amounts

Taxpayer:

Parent:

Plant:

Location:

Commission A:

Commission B:

Order A1:

Order A2:

Order A3:

Order A4:

Order A5:

Order A6:

Staff:

State:

Director:

Dear

This letter responds to the request, dated March 9, 2000, submitted on behalf of Taxpayer by its authorized representative, 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 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 a revised schedule 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 the generation, purchase, transmission, distribution, and sale of electricity and steam within State. Taxpayer is a wholly-owned subsidiary of Parent, and is the parent company of an affiliated group of corporations that files a consolidated federal income tax return on a calendar year basis. Taxpayer is subject to the audit jurisdiction of the Director.

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 in .

The rates for electric energy generated by the Plant are established or approved by Commissions A and B. The portion of Taxpayer's sales within the jurisdiction of Commission A and Commission B is percent and percent, respectively.

Taxpayer's request initially resulted from the determinations made by Commission A in Order A1, which removed the Plant from Taxpayer's rate base as of . Commission A subsequently issued Order A6, which changes the date that the Plant will no longer be in Taxpayer's rate base to . Commission B no longer authorizes Taxpayer to include an amount in cost of service for nuclear decommissioning costs.

As approved by Commission A in Order A2, the total estimated cost of decommissioning the Plant is $. Using an assumed inflation rate of percent for , the total estimated cost of decommissioning the Plant is $ dollars. The annual amount of decommissioning costs to be included in Taxpayer's cost of service is $, calculated by using an assumed rate of return of percent.

In Order A2, Commission A adopted the Staff's proposal to include Taxpayer's disposal costs for low-level radioactive waste in the estimated cost of decommissioning the Plant. This proposal was adopted because it is unlikely that a disposal site for the waste will be available to Taxpayer before the Plant ceases operations, and the disposal of the waste is required before the site of the Plant may be released for unrestricted use.

The amounts collected by Taxpayer from its customers for disposal costs for low-level radioactive waste will be used to physically dispose of the waste when a permanent disposal site becomes available, rather than to decommission the on-site storage facility for the waste. Taxpayer believes that the on-site storage facility will be decommissioned with the rest of the Plant. The operating license for the Plant authorizes Taxpayer to store the waste and, consequently, Taxpayer does not need a separate Nuclear Regulatory Commission license for the on-site facility.

In the Order A2, Commission A determined that the total estimated cost to dispose of the low-level radioactive waste is $. Of the total estimated cost of $ for decommissioning the Plant, $ is attributable to the disposal costs for the low-level radioactive waste. Of the annual amount of $ for decommissioning costs to be included in Taxpayer's cost of service for , $ is attributable to the disposal costs for the low-level radioactive waste. Taxpayer has represented that the disposal costs of low-level radioactive waste were excluded from decommissioning costs when calculating the proposed revised schedule of ruling amounts.

Although Order A3 provides for open access to alternative electricity providers for customers in Taxpayer's service area, Orders A4 and A5 require that both customers purchasing electricity directly from Taxpayer and customers choosing open access are subject to a nuclear decommissioning charge, to be collected on a cents per kilowatt hour basis. Taxpayer represents that this surcharge is calculated based upon an average of current decommissioning amounts included in cost of service for Taxpayer's retail customers prior to open access, and is intended to allow Taxpayer to collect approximately the same amount of money for decommissioning after deregulation that it collected prior to deregulation.

The funding period extends from . However, because the date 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 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 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.

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.

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:

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. Commission A has 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. The disposal costs of low-level radioactive waste are not decommissioning costs. Under section 1.468A-1(b)(5) of the regulations, decommissioning costs generally include expenses to be incurred in connection with the removal of structures, systems, and components of a nuclear power plant. The disposal of low-level radioactive waste is not the removal of a structure, system, or component of the Plant.

4. 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. Total decommissioning costs of $ (excluding the disposal costs of low-level radioactive waste) multiplied by Commission A's jurisdictional factor of percent is $.

5. Taxpayer has calculated its qualifying percentage under section 1.468A-3(d)(4) of the regulations to be percent. Therefore, the decommissioning costs allocable to the Fund under section 1.468A-3(d)(1) is equal to the jurisdictional amounts above.

6. 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.

7. 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.

8. 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.

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

Year	Commission A	Commission B	Total

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 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 6ll0(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 representative. 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
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)