INTERNAL REVENUE SERVICE

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May 17, 2000

Re: Revised Schedule of Ruling Amounts

Taxpayer =

Plant =
Location =
Commission A =
Commission B =
Commission C =
Agency =
City =
Municipalities =
Corporation A =
Corporation B =
District =
Fund =

Dear

This letter responds to the request of the Taxpayer, dated December 21, 1999. The Taxpayer is requesting a revised schedule of ruling amounts pursuant to section 1.468A-3(i)(2) of the Income Tax Regulations as the prior schedule of ruling amounts continued only through calendar year The Taxpayer was previously granted a revised schedule of ruling amounts on August 10, 1994. Information was submitted pursuant to section 1.468A-3(h)(2).

The Taxpayer has represented the facts to be as follows:

The Taxpayer owns a undivided interest in the Plant, which is situated in Location. The Plant began commercial operation in The Taxpayer's nuclear decommissioning costs are included in its cost of service for ratemaking purposes and are subject to the jurisdiction of Commission A, ; Commission B,

; Commission C, and Agency for a total of These figures may vary from year to year. Commission C's jurisdictional percentage consists of Corporation B, City and Municipalities, ; and Corporation A, The Taxpayer has a contractual agreement to sell electric energy to the Agency. Commission C approved this agreement prior to

its consummation. As in the previous ruling, the Agency is treated as if it is another jurisdiction. Decommissioning costs included in the cost of service for sales to the Agency are based upon the estimate used by Commission C in establishing decommissioning costs included in cost of service for purposes of Commission C's ratemaking. The operating license for the Plant is scheduled to expire on

Commission A, in included for decommissioning costs in the Taxpayer's cost of service for ratemaking purposes. In determining the decommissioning costs for the Plant, Commission A used an estimated cost of as a base cost. This estimated base cost escalated at annually to the year in which decommissioning costs will be incurred results in an estimated future decommissioning cost of This estimated future cost of decommissioning the Plant discounted at annually from results in an estimated future decommissioning cost of The estimated cost of decommissioning the Plant is based on the entombment with delayed dismantling method.

The estimated cost of decommissioning the Plant, as approved by Commission B in is based on the equivalent testimony and identical site-specific decommissioning study that was used by Commission A in its ratemaking proceedings. Pursuant to Commission B included decommissioning costs of in Taxpayer's cost of service for ratemaking purposes.

In , Commission C included decommissioning costs of in Taxpayer's cost of service for ratemaking purposes for Corporation A.

In Commission C approved an agreement between Taxpayer and The Agency that provides for decommissioning costs for Taxpayer's interest in the Plant included in Taxpayer's cost of service for ratemaking purposes based on the same assumptions as those used by Commission C in Thus, the estimated cost of decommissioning the Plant for the Agency is based on the identical NRC minimum financial amounts used by Commission C. The amount of decommissioning cost to be included in Taxpayer's cost of service for ratemaking purposes is

In regarding the City and Municipalities, Commission C included in Taxpayer's cost of service the total amount of The decommissioning costs are based upon the minimum financial assurance amounts as prescribed by the Nuclear Regulatory Commission (NRC) guidelines in 10 C.F.R. §50.33. As of the minimum financial assurance amount was computed to be Pursuant to NRC guidelines, this amount was increased to Due to its generic nature, this base cost for decommissioning the Plant was not premised on any particular method of decommissioning. The current base cost for decommissioning the Plant, was escalated at annually to the estimated year in which decommissioning costs will be incurred

Under the Entombment with delayed dismantling method, the decommissioning costs will earn interest for over before actual dismantling occurs. Therefore, the estimated future dismantling cost was discounted by annually from resulting in an estimated future decommissioning cost of

In Commission C approved an agreement between Taxpayer and Corporation B that provides for decommissioning costs in the amount of to be included in Taxpayer's cost of service for ratemaking purposes upon the same assumptions as those used by Commission C in

The estimated date on which the Plant will no longer be included in Taxpayer's rate base for ratemaking purposes, as determined under the ratemaking assumptions that were used to determine the latest rates approved by the Commissions is However, the date was in the first ratemaking proceedings before the Commissions in which the Plant was included in Taxpayer's rate base. The estimated useful life of the Plant was not adjusted by the Commissions before July 18, 1984.

For all the Commissions, the funding period and level funding limitation period for the Plant extends from Pursuant to Taxpayer's previous election under the special transition rules of section 1.468A-8(b)(7)(i) and (ii) of the regulations, the estimated useful life of the Plant for the Commissions is The Plant began sustained and substantial generation of electricity for sale to its customers in which was the date the Plant was included in Taxpayer's rate base. The estimated period for which the Fund will be in effect for the Commissions is Therefore, Taxpayer has calculated its qualifying percentage for each of the Commissions to be The assumed after-tax rate of return to be earned by the assets of the Fund is

Neither Commissions A, B, C, or the Agency have taken into account the provisions of the Energy Policy Act of 1992.

Taxpayer has filed an with Commission A on which will decrease the amount of decommissioning costs that are proposed to be included in Taxpayer's cost of service. Taxpayer filed an with Commission B in which would decrease the amount of decommissioning costs that are proposed to be included in Taxpayer's cost of service. To date, neither Commission A or Commission B has issued a response to the Applications filed by Taxpayer. Taxpayer has no proceedings pending before Commission C that may result in an increase or decrease in the amount of decommissioning costs for the Plant to be included in Taxpayer's cost of service for ratemaking purposes.

Section 468A of the Code provides that a taxpayer may elect to deduct the amount of payments made to a qualified nuclear decommissioning fund. However, section 468A(b) limits the amount paid into the fund for any taxable year to the lesser of the amount of nuclear decommissioning costs allocable to the fund that is included in the

taxpayer’s cost of service for ratemaking purposes for the taxable year or the ruling amount applicable to that year.

Section 468A(d)(1) of the Code 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 taxable year is defined under section 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 nuclear power plant as the period for which the 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) of the Code provides that a taxpayer shall be deemed to have made a payment to the nuclear decommissioning fund on the last day of the taxable year if the payment is made on account of the taxable year within 2 1/2 months after the close of the taxable year.

Section 1.468A-1(a) of the regulations provides, in part, that an eligible taxpayer may elect to deduct nuclear decommissioning costs under section 468A of the Code. An "eligible taxpayer," as defined under section 1.468A-1(b)(1), is a taxpayer that has a qualifying interest in a nuclear power plant. As defined under section 1.468A-1(b)(2), a "qualifying interest" is, among other things, a direct ownership interest, including an interest held as a tenant in common or joint tenant.

Section 1.468A-2(b)(1) of the regulations provides, in part, that the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year shall not exceed the lesser of (i) the cost of service amount applicable to the nuclear decommissioning fund for such taxable year; (ii) or the ruling amount applicable to the nuclear decommissioning fund for such taxable year.

Section 1.468A-3(a)(1) of the regulations generally provides, in part, that a schedule of ruling amounts for a nuclear decommissioning fund is a ruling specifying annual payments that, over the taxable 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) 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(s) in establishing or approving the amount of decommissioning costs to be included in the cost of service for ratemaking purposes, taking into account amounts that are otherwise required to be included in the 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 the nuclear decommissioning fund for a taxable year.

Under section 1.468A-3(a)(3) of the regulations, the Internal Revenue Service shall provide a schedule of ruling amounts that is identical to the schedule proposed by the taxpayer, but no such schedule shall be provided unless the 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 such schedule for any earlier taxable year. Under section 1.468A-3(b)(2)(i) and (ii), the level funding limitation period begins on the first day of the first taxable 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 estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes.

Section 1.468A-3(c)(1)(i) and (ii) of the regulations provides that the funding period for a nuclear decommissioning fund is the period that begins on the first day of the first taxable year for which a deductible payment is made (or deemed to be made) to such nuclear decommissioning fund and ends the later of the last day of the taxable year that includes the estimated date on which decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's cost of service for ratemaking purposes; or the last day of the taxable year that includes the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes.

Section 1.468A-3(d)(1) of the regulations 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 multiplied by the qualifying percentage.

Section 1.468A-3(d)(2)(i) of the regulations provides, in part, that 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) of the regulations provides that a 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 the taxpayer's qualifying interest in the plant.

Section 1.468A-3(d)(4)(i) of the regulations provides that the qualifying percentage for any nuclear decommissioning fund is equal to the fraction, the numerator of which is the number of taxable 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 taxable years in the estimated useful life of the applicable nuclear power plant.

Under the special elective transition rule of section 1.468A-8(b)(7)(i) of the regulations, for purposes of section 1.468A-3(d)(4)(ii), the estimated period for which a nuclear decommissioning fund is to be in effect begins on the later of the first day of the taxable year that includes the date that the nuclear power plant began commercial operations; or the first day of the taxable year that includes July 18, 1984. Under the special elective transition rule of section 1.468A-8(b)(7)(ii), for purposes of section 1.468A-3(d)(4)(ii) and (iii), the estimated period for which the nuclear decommissioning fund is to be in effect and the estimated useful life of the nuclear plant both end on the earlier of the last day of the taxable year in which it is estimated that decommissioning will begin; or the last day of the taxable year that includes the expiration date of the Nuclear Regulatory Commission operating license as in effect on July 18, 1984, without regard to any extensions or amendments thereto.

Section 1.468A-3(e)(3) of the regulations provides that, for purposes of section 1.468A-3(d)(4)(ii) and (iii), the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates 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(f)(1) of the regulations provides that if two or more public utility commissions establish or approve rates for electric energy generated by a single nuclear power plant, then the schedule of ruling amounts shall be separately determined pursuant to the rules of sections 1.468A-3(a) through (e) for each public utility commission that has determined the amount of decommissioning costs to be included in the cost of service for ratemaking purposes for this plant. Under section 1.468A-3(f)(2), this separate determination shall be based on the reasonable assumptions and determinations used by the relevant public utility commission and shall take into account only that portion of the total estimated cost of decommissioning that is properly allocable to the ratepayer whose rates are established or approved by the public utility commission. According to section 1.468A-3(f)(3), the ruling amounts for any taxable year is the sum of the ruling amounts for such taxable year determined under the separate schedules of ruling amounts.

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 the rates for electric energy generated by the plant to which the nuclear decommissioning fund relates has (1) determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes; and (2) 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) of the regulations enumerates the information required to be

submitted by a taxpayer in order to receive a ruling amount for any taxable year.

Section 1.468A-3(i)(1)(iii) of the regulations provides that a taxpayer is required 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 a nuclear power plant to which the nuclear decommissioning fund relates (1) increases the proposed period over which decommissioning costs of the nuclear power plant 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 the taxpayer's rate base for ratemaking purposes; or (3) reduces the amount of decommissioning costs to be included in cost of service for any taxable year; and (B) the 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.

Section 1.468A-3(i)(2) of the regulations provides that any taxpayer that has obtained a schedule of ruling amounts pursuant to section 1.468A-3(h) can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of section 1.468A-3(h); thus, the Service shall not provide a revised 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 deadline date for such taxable year.

Section 1.468A-7(a) of the regulations provides, in general, that an eligible taxpayer is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer elects the application of section 468A. A separate election is required for each nuclear decommissioning fund and for each taxable year with respect to 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 such 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 the 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 with respect to which payments are to be deducted under section 468A.

Section 1917(a) and (c)(1) of the Energy Policy Act of 1992 eliminated, for taxable years beginning after December 31, 1992, the investment restrictions contained in section 468A(e)(4)(C) of the Code. Section 1917(b) and (c)(2) of the Energy Act revised section 468A(e)(2) by lowering the tax rate applicable to a nuclear decommissioning fund for taxable years beginning after December 31, 1993.

We have examined the representations and information submitted by the Taxpayer

in relation to the requirements set forth in the section 468A of the Code and the regulations thereunder. Based solely on these representations, we reach the following conclusions:

1. The Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under section 1.468A-1(b)(1) and (2) of the regulations.

2. The Commissions have authorized decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes as required by section 1.468A-3(g) of the regulations.

3. The Taxpayer was eligible for, and previously elected, the special transition rule of section 1.468A-8(b)(7)(i) and (ii) of the regulations. Thus, the Taxpayer has determined that the qualifying percentages under section 1.468A-3(d)(4) for each of the Commissions and the Agency is

4. 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 cost applicable to the Fund or the ruling amount applicable to the Fund, as set forth under section 1.468A-2(b)(1) of the regulations.

5. As required under section 1.468A-3(f)(3) of the regulations, the Taxpayer is proposing a total ruling amount for each taxable year that is the sum of the separate amounts for the Commissions and the Agency.

6. The Taxpayer has proposed a schedule of ruling amounts which meets the requirements of sections 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 the Commissions and the Agency 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.

Based on the above determinations, we conclude that the Taxpayer's proposed schedule of ruling amounts satisfies the requirements of section 468A of the Code. The following schedule of ruling amounts is specifically approved for the Commissions.

APPROVED REVISED SCHEDULE OF RULING AMOUNTS
FOR COMMISSIONS A, B, C, AND AGENCY
TAXABLE YEARS

YEAR	A	B	C	AGENCY	TOTAL

With agreement of the Taxpayer, this revised schedule of ruling amounts is limited to a 5-year period because of the statutory changes made by the Energy Policy Act of 1992 (Act). The elimination of the investment restrictions and the reduction of the tax rate applicable to income earned by the Fund may result in a greater after-tax of return than was estimated, prior to the enactment of the Act, by the Commissions. This increased after-tax rate of return could, over the life of the Fund, result in a balance in the Fund on the last day of the funding period that could exceed the amount of decommissioning costs allocable to the Fund.

Thus, in order to prevent the excess accumulation in the Fund, this schedule of ruling amounts is being limited to a 5-year period. Approval of a revised schedule of ruling amounts may be granted after a determination by the Commissions of an after-tax rate of return that accounts for the reduced tax rate and unrestricted investments.

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 this 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. Under section 1.468A-3(i)(1)(iv), 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.

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. As stated above, payments made to the Fund can qualify only to the extent that they do not exceed the lesser of the decommissioning costs applicable to the Fund or the ruling amounts applicable to the Fund in the taxable year.

Except as specifically set forth above, no opinion is expressed concerning the federal income tax consequences of the above described facts under any other provision of the Code or regulations. This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

In accordance with the power of attorney on file, a copy of this letter is being sent to your authorized legal representatives. 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 taxable year in which the Taxpayer claims a deduction for payments made to the Fund.

Sincerely yours,
PETER C. FRIEDMAN
Assistant to the Chief, Branch 6
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)