

Empire State Development

Electric Generation Facility Cessation Mitigation Program

Program Guidelines

(Adopted June 2016)

Program

The Electric Generation Facility Cessation Mitigation Program ("Program") is being administered by the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") in consultation with the New York State Energy Research and Development Authority ("NYSERDA") and the Department of Public Service ("DPS"). The Program provides grants to eligible local government entities that demonstrate qualifying reductions in the tax liability and/or payments in lieu of taxes ("PILOT") owed by an electric generation facility ("Facility") subject to their taxing authority. Funding for the Program is being made available from \$69 million as provided by Chapter 58, Part BB of the Laws of 2017. The Program will end on July 1, 2025, or such earlier date as funding is expended.

Eligibility

Local government entities including counties, towns, cities, villages, school districts, and special districts (each, an "Applicant"), may apply to receive a Program grant if they realize a "Qualifying Event." A Qualifying Event occurs if (1) on or after June 25, 2015 a Facility within the Applicant's jurisdiction has ceased operations and become ineligible to participate in the markets administered by the New York Independent System Operator, Inc. ("NYISO"; such events being deemed a "Cessation"), and (2) such Cessation has caused a 20 percent or greater reduction in real property tax collections and/or Payments in Lieu of Taxes ("PILOTs") owed by a Facility ("Tax Loss").

The Applicant's Tax Loss is determined based on the differential between the annual real property taxes and/or PILOTs paid by the Facility to the Applicant in the year prior to the Tax Loss and the real property taxes and/or PILOTs paid by the Facility to the Applicant in the year of the Tax Loss, exclusive of penalties and interest, and must be supported by documentary evidence of the actual real property tax and/or PILOTs paid by the Facility to the Applicant in the year prior to the Tax Loss and the real property taxes and/or PILOTs paid by the Facility to the Applicant in the year of the Tax Loss. ESD shall refer applications to the Department of Taxation & Finance or to the appropriate Local Industrial Development Agency for review to confirm the Tax Loss claimed by the Applicant.

Documentation of a Cessation must be supported by written confirmation from DPS. DPS will issue such confirmation provided that: (i) the Facility has submitted to the NYISO and/or DPS a notice of the Facility's intent to stop generating electricity at the Facility or to voluntarily remove the Facility from service (subject to any return-to-service provisions of any tariff and that the Facility is also ineligible to participate in markets administered by the NYISO); and (ii) the NYISO confirms to DPS that the Facility is no longer producing electricity or participating in markets administered by the NYISO.

Grant Amount

Eligible local government entities may apply to receive Program grants on an annual basis for up to 7 years provided that the application and supporting documentation confirms that the Tax Loss in each such year remains above 20 percent. An Applicant may apply for only one grant each year regardless of the number of Facilities and Qualifying Events within its jurisdiction. Selected Applicants may receive an initial award up to, but not in excess of, 80 percent of the demonstrated Tax Loss associated with the Cessation. Thereafter, ESD expects to reduce subsequent maximum potential Program grant awards as follows:

<u>Award Year</u>	<u>Maximum Potential Grant Award</u>
1	up to 80 percent of Tax Loss
2	up to 70 percent of Tax Loss
3	up to 60 percent of Tax Loss
4	up to 50 percent of Tax Loss
5	up to 40 percent of Tax Loss
6	up to 30 percent of Tax Loss
7	up to 20 percent of Tax Loss

Grant awards will be determined by ESD in its discretion, based on review of the application materials, supporting documentation, and the demand for and availability of Program funds. In making grant awards, ESD may take into consideration the relative economic impact of the Cessation on the Applicant’s jurisdiction and such other facts and circumstances that ESD, in its sole discretion, deems relevant to the application. Grantees may not receive Program funds for a cumulative period that exceeds seven years.

Application Requirements

Program applications will be accepted continuously and will be reviewed on a first come, first served basis. An application will be considered complete and put on a reserve list for funding upon receipt of all items listed below except for # 7. Upon receipt of #7, ESD will refer the application to the Department of Taxation and Finance or to the industrial development authority for review and confirmation of Tax Loss. Grant payments will be made only after confirmation of Tax Loss from these entities and all necessary approvals. Incomplete applications will be returned to the local government entity with the reasons for incompleteness outlined.

Complete applications must include the following:

- 1) Original signature of eligible local government entity official;
- 2) Written confirmation from DPS stating that the Facility is no longer producing electricity or participating in markets administered by the NYISO
- 3) Name of Facility as it appears on the tax roll;
- 4) Facility owner’s name;

- 5) Parcel Identification Numbers (i.e., tax map section, block and lot numbers) for every parcel comprising the Facility, segregated by assessing unit if the Facility is located in more than one assessing unit;
- 6) Documentary evidence of real property taxes or PILOTs paid by the Facility to the Applicant in the year prior to the Tax Loss (e.g. payment receipts from Applicant's tax collection office);
- 7) Documentary evidence of real property taxes or PILOTs paid by the Facility to the Applicant in the year of the Tax Loss (e.g., payment receipts from Applicant's tax collection office);
- 8) A copy of the PILOT agreement, if applicable;
- 9) Certificate of Other Compensation (page 8 of application) and documentation of other compensation applied for, received and/or to be received from insurance payments, grants or other property tax receipts that offset the tax loss for the facility, if applicable;
- 10) Completed Wire Transfer Information form (page 9 of application);
- 11) Completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>); and
- 12) Copy of the Applicant's Non-discrimination policy statement.

ESD may require the submission of additional information by the Applicant before reaching a final decision on its application. ESD may also consult with other agencies and entities including, but not limited to, DPS, NYSEDA, the NYISO, and the Department of Taxation & Finance to confirm information presented in the application.

Grant Assistance Recapture

ESD may require the Applicant to repay any grant assistance received under this program in the following events:

- (i) if its application, including any information provided therewith or thereafter, contains any material misrepresentations or is incomplete;
- (ii) if the grant was awarded or disbursed in error and the Applicant is not entitled to assistance under these Guidelines, or;
- (iii) if supporting documentation for the actual Tax Loss is not true and complete.

In the event the Applicant receives insurance payments, additional grants or other property tax receipts for the facility that reduce the amount of a the Tax Loss already compensated with Program funds, the Applicant shall immediately repay to ESD the grant proceeds corresponding to such payment(s).

In the event of any fraudulent misrepresentations by the Applicant, in addition to the recapture of grant assistance, ESD may pursue other legal remedies and refer the matter to the appropriate governmental authorities for investigation and prosecution.

In the event the Facility owner resumes commercial operations, the Applicant will not be eligible for grants in subsequent years.

Audit and Control

ESD may audit applications on a random or specified basis for a period extending to six years after the final disbursement of the grant assistance to the Applicant. ESD reserves the right to contact other federal, state and local governmental agencies, insurance companies and other third parties to confirm information included, or that should have been included, in the applications.

Disclosure of Information

Each Eligible Entity must agree to allow:

- (a) any federal, state, local governmental agency or authority that has or is providing funding for such Tax Loss to share its information with ESD relevant to such funding. However, ESD will endeavor to maintain the confidentiality of information shared as a result of this agreement, and such information shall not be available for disclosure or inspection to the extent permissible under the state freedom of information law; and
- (b) ESD and its agents access to any and all books and records ESD may require to monitor compliance.

Except as required by applicable law, regulations, or judicial process, ESD will endeavor to maintain the confidentiality of information submitted as part of the application. Notwithstanding the foregoing, such information may be made available to ESD staff and designated individuals that are processing the application and to federal, State, or local officials and to auditors evaluating the Program and others as ESD may deem to be required in accordance with applicable law and regulations, including judicial orders and subpoenas.

Availability of Funds

The disbursement of grant assistance is explicitly subject to all necessary approvals and the receipt of funding by ESD.

Non-Discrimination

ESD's non-discrimination policy will apply. Applicants shall not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status.

Amendments to Guidelines

ESD may amend these guidelines from time to time.

Additional Information

The Applicant can access the application form and instructions, these Guidelines, any amendments to these Guidelines, and additional information about the Program at the ESD web site at www.esd.ny.gov.