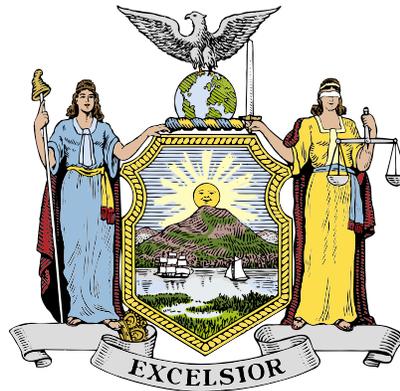


# Electric Generation Facility Cessation Mitigation Program



Empire State  
Development

## Guidelines and Frequently Asked Questions



**State of New York**  
Kathy Hochul, Governor

**Empire State Development**  
Hope Knight, President & CEO

May 2022

# Program Guidelines

## 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 payments to eligible Local Government Entities that demonstrate qualifying reductions in the property taxes and/or payments in lieu of taxes ("PILOT") owed by an electric generation facility ("Facility") that is subject to the taxing authority of such Local Government Entity.

The Program was enacted into law by the state legislature in 2015 (Laws of 2015, Chapter 20, Part C, Subpart H), as amended, and is currently scheduled to expire on July 1, 2025. However, applicants who have not completed the full seven years of assistance prior to such date shall continue to be eligible to receive funding until the seven-year time frame is complete. The Program is funded by a state budget appropriation of \$140 million and the Public Service Commission has directed NYSERDA to provide funding for the Program on an annual basis. *All awards are subject to the availability of Program funding.*

## Eligibility

A Local Government Entity, which includes counties, towns, cities, villages, school districts, and special districts (each, an "Applicant"), may apply to receive a Program payment if it realizes 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 has 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. as measured from the last year of operation, such Cessation has caused a 20% or greater reduction in the property tax and/or PILOT owed by such Facility in the year for which application is being made.

## Confirmation of Cessation

Before submitting an application to ESD, the Applicant must seek written confirmation from DPS that a Cessation has occurred on or after June 25, 2015 with respect to a particular Facility within the Applicant's jurisdiction. Such confirmation must be submitted as part of the application.

DPS will issue a confirmation of Cessation provided that the NYISO confirms to DPS that the Facility:

- is no longer producing electricity, and
- is not eligible to participate, and is not participating, in the markets administered by the NYISO.

Requests for confirmation of a Cessation should be directed to DPS at:

Leka Gjonaj  
Chief, Electric Safety & Reliability  
New York State Department of Public Service  
3 Empire State Plaza  
Albany, NY 12233  
(518) 486-2491 / [leka.gjonaj@dps.ny.gov](mailto:leka.gjonaj@dps.ny.gov)

## Determination of Tax and/or PILOT Loss

The Applicant's tax and/or PILOT loss is determined, exclusive of penalties and interest, based on the difference between:

- the annual real property tax and/or PILOT *owed* by the Facility to the Applicant in the last tax year for which the taxable status, and/or the PILOT owed, reflected an operating facility, and
- the annual real property tax and/or PILOT *owed* in the tax year for which the application is being submitted (the year of the tax and/or PILOT loss).

For the two years described above, a *Year 1 Applicant* must provide documentary evidence of the real property tax and/or PILOT *owed* by the Facility to the Applicant, as well as documentary evidence of the actual real property tax and/or PILOT *paid* by the Facility to the Applicant.

*Applicants for Years 2 – 7* need to provide such documentary evidence only for the tax year for which the application is being made (the year of the Revenue Loss).

Once an application is complete, it will be submitted to the New York State Department of Taxation and Finance and/or the local Industrial Development Agency, as appropriate, for review and confirmation of the tax and/or PILOT loss. Program payments will be made only after confirmation of a 20% or greater tax and/or PILOT loss is received by ESD and all other internal approvals are obtained.

## Payment Amount

An eligible Local Government Entity may apply to seek Program payments on an annual basis for up to seven years provided that the tax and/or PILOT loss in each such year remains at 20% or above (the "Qualified Revenue Loss"). An Applicant may apply for only one payment per year regardless of the number of Facilities and Qualifying Events within its jurisdiction.

Subject to funding availability, the payment for the initial year can be up to 80% of the Qualified Revenue Loss, decreasing by 10% for each subsequent annual payment, as follows:

<b>Award Year</b>	<b>Maximum Potential Award</b>
1	80% of Qualified Revenue Loss
2	70% of Qualified Revenue Loss
3	60% of Qualified Revenue Loss
4	50% of Qualified Revenue Loss
5	40% of Qualified Revenue Loss
6	30% of Qualified Revenue Loss
7	20% of Qualified Revenue Loss

Please note that the Qualified Revenue Loss cannot be documented or confirmed until the occurrence of the property tax and/or PILOT due dates in the tax year for which the application is being made (the year of the Revenue Loss).

## Application Requirements

Program applications will be accepted continuously and will be reviewed on a first-come, first-served basis. An Applicant may, but is not required to, begin the application process once an electric generator has submitted its notice to the NYISO of its intent to retire the Facility or remove it from service. In order to begin the application process, the applicant must complete pages 3 and 4 of the application and email it to [MitigationFund@esd.ny.gov](mailto:MitigationFund@esd.ny.gov) along with a copy of the notice submitted by the generator to the NYISO, which

can be found under Generator Deactivation Notices / Planned Retirement Notices at <https://www.nyiso.com/short-term-reliability-process>. Once these items are received by the Program, a file will be opened for the application.

The Applicant can apply and demonstrate a Qualified Revenue Loss to complete the application once the payment due dates have occurred for the property tax and/or PILOT payments in the tax year for which the application is being submitted (the year of the Revenue Loss). A complete application must include the following:

1. A fully completed application form with signatures of the authorized Local Government Entity official(s) where required;
2. Written confirmation from DPS stating that the Facility is no longer producing electricity or participating in markets administered by the NYISO;
3. For Year 1 Applicants only, documentary evidence of real property taxes and/or PILOTs *owed* by the Facility to the Applicant in the last tax year for which the tax roll status, and/or PILOTs owed, reflected an operating facility (*e.g.*, tax bills for the parcel(s) and/or invoices for the PILOTs from the Applicant's tax collection office);
4. Documentary evidence of real property taxes and/or PILOTs *owed* by the Facility to the Applicant in the tax year for which the application is being submitted (the year of the Revenue Loss);
5. For Year 1 Applicants only, documentary evidence of real property taxes and/or PILOTs *paid* by the Facility to the Applicant in the last tax year for which the tax roll status, and/or PILOTs owed, reflected an operating facility (*e.g.*, payment receipts from Applicant's tax collection office);\*
6. Documentary evidence of real property taxes and/or PILOTs *paid* by the Facility to the Applicant in the tax year for which the application is being submitted (the year of the Revenue Loss);\*
7. A copy of the PILOT agreement, if applicable, with any and all amendments; and
8. For Year 1 Applicants only, a completed IRS Form W-9 (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>).

ESD may require the submission of additional information by the Applicant before reaching a final decision on the application. ESD may also consult with state and other agencies and entities to confirm information presented in the application.

#### Payment Recapture

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

- 1) if its application, including any information provided therewith or thereafter, contains any material misrepresentations or is incomplete;
- 2) if the Program payment was made in error and the Applicant is not entitled to assistance; or
- 3) if supporting documentation for the tax and/or PILOT loss is not true and complete.

In the event the Applicant receives insurance payments, financial assistance from sources other than the Program, or other property tax receipts for the Facility (as a result of tax certiorari proceedings or otherwise) that reduce the amount of the Qualified Revenue Loss already compensated for with Program funds, the Applicant shall immediately remit to ESD the amount corresponding to any overpayment(s) made by ESD.

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

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\* In the event the Applicant has received no tax and/or PILOT payment by the due date, Applicant should so indicate.

In the event the Facility owner resumes commercial operations as an electric generating facility participating in the markets administered by the NYISO, the Applicant will no longer be eligible for Program assistance.

### 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 Program 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 Local Government Entity must agree to allow:

- any federal, state, or local governmental agency or authority that has or is providing funding to compensate for a Qualified Revenue 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
- ESD and its agents to access any and all books and records that 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 assistance payments to Applicants under the Program is explicitly subject to all necessary approvals and the availability of funding to ESD for Program assistance payments.

### Amendments to Guidelines

ESD may amend these Guidelines from time to time.

### Additional Information

The Applicant can access the application form, including these Guidelines, FAQs, a Program payment calculator, and additional information about the Program at the Program website at <https://esd.ny.gov/electric-generation-facility-cessation-mitigation-program>.

# Frequently Asked Questions

## 1. What is the purpose of this Program?

The Program provides financial assistance to eligible Local Government Entities (counties, towns, cities, villages, school districts and special districts) that demonstrate a qualifying reduction in the real property tax liability and/or payments in lieu of taxes ("PILOT") *owed* (collectively, a "Revenue Loss") by an electric generation facility ("Facility") subject to the taxing authority of such Local Government Entity. In general, the goal of the Program is to mitigate the economic disruption caused from the cessation of a local power plant by offering a declining series of payments that phase in the financial losses.

## 2. When would a Local Government Entity applicant ("Applicant") be eligible to receive financial assistance under this Program?

An Applicant may be eligible to receive financial assistance under this Program if it realizes 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 has 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) as measured from the last year of operation, such Cessation has caused 20% or greater reduction in real property tax liability and/or PILOT owed by such Facility ("Qualified Revenue Loss").

## 3. How much Program assistance is an Applicant eligible for, and how is Revenue Loss calculated?

Program assistance may be awarded annually for up to seven years, provided that the application and supporting documentation confirms that the Revenue Loss in each such year remains above 20%. Maximum potential Program financial assistance in each year is as follows:

- Year 1 assistance payment = up to 80% of Qualified Revenue Loss
- Year 2 assistance payment = up to 70% of Qualified Revenue Loss
- Year 3 assistance payment = up to 60% of Qualified Revenue Loss
- Year 4 assistance payment = up to 50% of Qualified Revenue Loss
- Year 5 assistance payment = up to 40% of Qualified Revenue Loss
- Year 6 assistance payment = up to 30% of Qualified Revenue Loss
- Year 7 assistance payment = up to 20% of Qualified Revenue Loss

## 4. When should an Applicant apply and what is required?

An Applicant may, but is not required to, begin the application process once an electric generator has submitted its notice to the NYISO of its intent to retire the Facility or remove it from service. In order to begin the application process, the applicant must complete pages 3 and 4 of the application and email it to [MitigationFund@esd.ny.gov](mailto:MitigationFund@esd.ny.gov) along with a copy of the notice submitted by the generator to the NYISO, which can be found under Generator Deactivation Notices / Planned Retirement Notices at <https://www.nyiso.com/short-term-reliability-process>. Once these items are received by the Program, a file will be opened for the application.

The Applicant can apply and demonstrate a Qualified Revenue Loss to complete the application once the payment due dates have occurred for the property tax and/or PILOT payments in the tax year for which the

application is being submitted (the year of the Revenue Loss). A complete list of the information required for the Application is contained in the Program Guidelines, above.

**5. How does ESD determine first-come, first-served?**

An application's order of priority will be determined by the date on which each annual application is deemed complete, provided that the Revenue Loss amount submitted by the Applicant is subsequently confirmed by the Department of Tax & Finance and/or the local Industrial Development Agency, as applicable. In the event that the amount of the Revenue Loss ultimately confirmed differs from the amount submitted by the Applicant, the application's order of priority will be determined by the date of such confirmation.

**6. How and when will disbursements be made?**

This is determined based on each Applicant's property tax and/or PILOT payment schedule. Once ESD receives a complete application, ESD will: 1) confirm the property tax and/or PILOT loss with New York State Department of Tax and Finance and/or the local Industrial Development Agency, as appropriate; 2) obtain internal ESD approval; and 3) disburse the funds to you. Disbursement of funds can take place in as little as 90 days after receipt of a complete application.