

Approved: 6-7-2023

**SUBJECT: PAYMENTS IN LIEU OF TAXES**

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1. PURPOSE. To establish general Department of Energy (DOE) procedures and responsibilities with regard to payments in lieu of taxes (PILT) to certain State and local governments under the authority of section 168 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2208). Public disclosure of DOE processes for handling PILT applications is contained in Attachment 1, "Payments In Lieu of Taxes Under the Atomic Energy Act of 1954; Guidelines," 68 Federal Register (FR) 28822.
2. CANCELLATION. DOE O 143.1, *Payments in Lieu of Taxes*, dated 5-8-2003. Cancellation of a directive does not, by itself, modify or otherwise affect any contractual or regulatory obligation to comply with the directive. Changes in Federal law and regulation supersede this document.
3. APPLICABILITY.
  - a. Departmental Applicability. To ensure overall consistency in exercising the statutory authorities that are vested in the Secretary as head of DOE, this order is applicable to all Departmental elements, including the National Nuclear Security Administration (NNSA), that manage property eligible for PILT payments, as specified in this Order.
    - (1) The Administrator of NNSA will assure that NNSA employees and contractors comply with their respective responsibilities under this directive. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.
    - (2) In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.
  - b. Exclusions. This Order does not apply to payments made under authorities other than section 168 of the Atomic Energy Act of 1954, including payments or collections made under the authority of the Atomic Energy Community Act of 1955, as amended; the Uranium Mill Tailings Radiation Control Act of 1978, as amended; and the Nuclear Waste Policy Act of 1982.

4. REQUIREMENTS.a. Information Required for PILT Applications.

- (1) Departmental Elements shall ensure that the application for an initial or revised PILT payment contains the information prescribed in 68 FR 28822 (Appendix A) prior to processing the application.
- (2) As necessary, the Departmental Element shall request additional information from the taxing authority to enable a full review of the application.

b. Review of PILT Applications by Departmental Elements and Field or Site Counsel (when applicable).

- (1) Determine whether or not the subject real property meets the eligibility criteria for PILT payments established by the Atomic Energy Act of 1954, as amended.
- (2) Request information provided by the applicant regarding other Federal payments received or expected which may be for the same identifiable, discrete purpose as requested PILT payment (e.g., support payments from the Department of Education).
- (3) Examine the tax rates and assessments applied to properties elsewhere in the same taxing authority's jurisdiction with a similar purpose and use.
- (4) Assess whether the proposed PILT payments are fair and consistent with other similar properties elsewhere in the same taxing authority's jurisdiction.
- (5) Review other information sufficient to support the recommendation concerning the application. If approval is recommended, the information must include:
  - (a) The amount to be paid, and
  - (b) The date first payment is to be made.

c. Recommendations for Acceptance. A recommendation from the Head of the Departmental Element to the Chief Financial Officer concerning an application for initial PILT payments or revised PILT payments must contain:

- (1) An evaluation of the facts warranting approval of the application, as appropriate, including the assessment provided by the Head of the Field Element.
- (2) DOE General Counsel and NNSA General Counsel (when applicable) concurrence with the application.

- (3) A statement that funding is available for the initial recommended PILT payment.
- (4) A statement that amounts for future PILT payments to the applicant(s) will be included in future program budget requests.

d. Payments of Approved PILT Agreements.

- (1) Payments shall not be made without an approved intergovernmental agreement that specifies the key determinants of approved PILT payments.
- (2) PILT payments are recorded as obligations in the period in which they are authorized to be paid and due. The PILT intergovernmental agreement serves as the obligating document.
- (3) Once authorized, payments may continue subject to the availability of funds or modifications by the PILT intergovernmental agreement and review of PILT payment requests by the Departmental Element Offices Administering PILT Agreements, consistent with the responsibilities specified in section 5.e. of this Order.
- (4) Invoices provided by the taxing authority must be assessed for consistency with the approved intergovernmental agreement prior to payment.
- (5) Payments must be made from the Program, Project, or Activity identified in the legally incorporated chart (as applicable) accompanying the relevant Appropriations Act.

- e. Budget Requests. Funds budgeted for future PILT payments must be specifically identified in the documentation supporting budget requests in accordance with OMB Circular A-11, Part 4, "Instructions on Budget Execution."

5. RESPONSIBILITIES.

a. The Chief Financial Officer

- (1) Approves, or disapproves, for the Secretary, applications for initial PILT payments or revised PILT payments provided by the Head of the Departmental Element after obtaining the concurrence of the Office of General Counsel and NNSA General Counsel (when applicable). For PILT applications or payments relating to real property controlled or under the direct jurisdiction of NNSA, if the Chief Financial Officer, and Administrator, NNSA, disagree on whether a PILT application should be approved or PILT payment made, the decision on whether to approve the application or make the payment will be made by the Deputy Secretary.
- (2) Includes funding for approved PILT payments, as requested by Heads of Departmental Elements, in DOE's budget submission to OMB.

- (3) Ensures that appropriated and apportioned funds for PILT payments are allotted.
  - (4) Maintains records and documentation provided by the Head of the Departmental Element to support approved PILT payments, including current PILT intergovernmental agreements.
  - (5) Maintains record of annual PILT payments made by Departmental Elements.
- b. The Senior Real Property Officer:
- (1) Maintains records of DOE real property that is subject to the provisions of section 168 of the Atomic Energy Act of 1954.
  - (2) Notifies the Office of the CFO when the ownership of land subject to existing PILT intergovernmental agreements is transferred from the Department of Energy, or when land is acquired that is subject to the provisions of section 168 of the Atomic Energy Act of 1954.
- c. General Counsel and NNSA General Counsel (when applicable):
- (1) Reviews a taxing authority's application for initial PILT payments or revised PILT payments and provide a written opinion verifying that the information presented by the applicant is consistent with DOE PILT policy guidelines and legal requirements.
  - (2) Reviews and concur or non-concur in recommendations for action regarding applications for initial PILT payments or revised PILT payments.
  - (3) Reviews and concurs or non-concurs on the eligibility of the applicant requesting PILT payments to receive such payments.
  - (4) Reviews and concurs or non-concurs on PILT intergovernmental agreements between DOE and each taxing authority requesting PILT payments.
  - (5) Provides legal advice on other matters relating to PILT applications and payments as necessary.
- d. Field or Site Counsel (when applicable):
- (1) Reviews a Taxing Authority's applications for initial PILT payments or Revised PILT payments and provide a preliminary legal analysis in writing of whether the information presented by the applicant is consistent with statutory requirements and DOE PILT policy and guidelines.

- (2) Reviews and concurs or non-concurs on the eligibility of an applicant requesting PILT payments to receive such payments.
- (3) Reviews and recommends to the General Counsel and NNSA General Counsel (when applicable) concurrence or non-concurrence on proposed PILT intergovernmental agreements.
- (4) Provides legal advice on other matters relating to PILT applications, payments, and administration as needed.

e. Heads of Departmental Elements:

- (1) Provides applications for initial PILT payments and revised PILT payments to the Chief Financial Officer when recommending that the application be approved.
- (2) Verifies that funding is available when recommending approval of new or revised PILT applications.
- (3) Includes amounts for planned future PILT payments in budget requests.
- (4) Ensures appropriate review of invoices prior to payment, including an assessment of consistency between the invoice and the approved PILT intergovernmental agreement.
- (5) Establishes responsibilities within the Departmental Element for the administration of PILT agreements, payments, and applications for each taxing jurisdiction (Departmental Element Office Administering PILT Agreements).

f. Departmental Element Offices Administering PILT Agreements:

- (1) Manages the administration of PILT payments.
- (2) Analyzes requests for initial PILT payments or revised PILT payments for consistency with DOE's PILT policy guidelines.
- (3) Consults with General Counsel or NNSA General Counsel (when applicable) regarding applications for initial or revised PILT payments.
- (4) Prepares recommendations on applications for initial PILT payments or revised PILT payments and submit the recommendations to the Head of the Departmental Element, which is responsible for budgeting for PILT payments.
- (5) Ensures that PILT payments are made in accordance with duly executed PILT intergovernmental agreements.

- (6) Ensures that legal documentation for DOE's real property for which the office has cognizance is maintained as complete and current.
- (7) Monitors DOE's real property inventory database for property (all real property, not just section 168 property) for which the office has cognizance to ensure that the database is complete and accurate and notify the Senior Real Property Officer of required changes.
- (8) Notifies the Senior Real Property Officer when the ownership of land subject to existing PILT intergovernmental agreements is proposed to be transferred from the DOE, or when land is proposed to be acquired that is subject to the provisions of section 168 of the Atomic Energy Act of 1954.
- (9) Maintains documentation to support PILT payments and invoices as agreed to in the PILT intergovernmental agreement.
- (10) Requests additional information, as needed, to support basis of payment, invoices, audits, or change requests to PILT payments and ensure PILT invoices are compliant with this policy.
- (11) Reviews PILT invoices when received and paid for consistency with agreed upon basis of payment, and amount, specified in the PILT intergovernmental agreement.
- (12) Initiates action to revise PILT intergovernmental agreements as appropriate and reduce PILT payments when the ownership of land subject to existing PILT intergovernmental agreements is transferred from the Department of Energy.
- (13) Provides the Office of the CFO information on PILT payments annually, or when requested by CFO.

g. Contracting Officers:

- (1) Executes PILT intergovernmental agreements consistent with DOE's PILT policy guidelines with the appropriate taxing authority or authorities for jurisdictions that are approved to receive PILT payments. The PILT intergovernmental agreement will set forth the terms and procedures for billing, payments, and revisions.
- (2) Submits PILT intergovernmental agreements to General Counsel and NNSA General Counsel (when applicable) for concurrence prior to execution.
- (3) Ensures that PILT intergovernmental agreements are consistent with approved PILT applications.

- h. The Office of Congressional and Intergovernmental Affairs coordinates with the Departmental Element offices administering PILT Agreements as appropriate to promote consistency on DOE relationships with state and local governments.
- 6. INVOKED STANDARDS. This Order does not invoke any DOE technical standards or industry standards as required methods. Note: DOE O 251.1, current version, provides a definition for “Invoked Technical Standard.”
- 7. REFERENCES.
  - a. Section 168 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2208), which provides authority for PILT payments to State and local governments.
  - b. 68 FR 28822, which publishes, without significant change, policy guidelines DOE uses to guide decisions with regard to applications by State or local governments for discretionary PILT payments with regard to real property that is not subject to State or local taxation because it is owned by the United States; was taken off the tax rolls upon acquisition by the United States; and is used to carry out activities authorized by the Atomic Energy Act of 1954.
  - c. Atomic Energy Community Act of 1955, 42 U.S.C. 2301, et seq., which provides for termination of Government ownership and management of communities owned by the Atomic Energy Commission.
  - d. Nuclear Waste Policy Act of 1982, 42 U.S.C. 10101, et seq., which provides for payments equal to taxes to jurisdictions affected by proposed or selected nuclear waste sites.
  - e. Uranium Mill Tailings Radiation Control Act of 1978, as amended, 42 U.S.C. 7901, et seq., which authorizes a program of assessment and remedial action at inactive uranium mill tailings sites.
  - f. Improving America’s Schools Act of 1994, Public Law No.103-382, 20 U.S.C. 7702, which provides for payments to Federally impacted school districts.
  - g. OMB Circular A-11, “Preparation, Submission, and Execution of the Budget,” which contains instructions relating to apportionments and reports on budget execution.
- 8. CONTACT. Address questions regarding this Order to the CFO Office of Financial Policy and Audit Resolution.

BY ORDER OF THE SECRETARY OF ENERGY:



DAVID M. TURK  
Deputy Secretary

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Federal Register / Vol. 68, No. 101 / Tuesday, May 27, 2003 / Notices

for the Revised Draft Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington, the U.S. Department of Energy has extended the public comment period by 15 days. The comment period began April 11, 2003, and will now run until June 11, 2003 instead of May 27, 2003.

The Revised Draft EIS evaluates the potential environmental impacts associated with ongoing activities of the Hanford Site Solid Waste Program, disposal of immobilized low-activity wastes from Hanford tank waste processing, and reasonably foreseeable treatment, storage and disposal facilities and activities.

**FOR FURTHER INFORMATION CONTACT:** To request information about the revised draft EIS or to be placed on the EIS distribution list, contact: Mr. Michael S. Collins, HSW EIS Document Manager, Richland Operations Office, U.S. Department of Energy, A6-38, Post Office Box 550, Richland, Washington, 99352-0550. Telephone and voice mail: (800) 426-4914. Fax: (509) 372-1926. Electronic mail: [hsweis@rl.gov](mailto:hsweis@rl.gov).

For general information about the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0119. Fax: (202) 586-7031. Telephone: (202) 586-4600. Voice mail: (800) 472-2756.

Issued in Richland, Washington, on this 19th day of May 2003.

**Keith A. Klein,**

*Manager, Richland Operations Office.*

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## DEPARTMENT OF ENERGY

### Payments in Lieu of Taxes Under the Atomic Energy Act of 1954; Guidelines

**AGENCY:** Office of Management, Budget and Evaluation/Chief Financial Officer, Department of Energy (DOE).

**ACTION:** Notice.

**SUMMARY:** DOE publishes policy guidelines it uses to guide decisions with regard to applications by State or local jurisdictions for discretionary payments in lieu of taxes with regard to eligible real property that is not subject to State and local taxation because it is owned by the United States, is under the custody and control of DOE, and is used to carry out activities authorized by the Atomic Energy Act of 1954, as amended.

**EFFECTIVE DATE:** The guidelines in this Notice are effective May 27, 2003.

**FOR FURTHER INFORMATION:** You may contact Mary L. Rosicky, ME-11, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586-9354, e-mail, [marylou.rosicky@hq.doe.gov](mailto:marylou.rosicky@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to the Atomic Energy Act of 1954 (AEA), DOE carries out a variety of national defense and energy research and development activities at sites that are located in various States and are owned by the United States Government. Section 168 of the AEA (42 U.S.C. 2208) authorizes DOE to provide discretionary payments to State or local government authorities where AEA sites are located. These payments are in lieu of real property taxes that State and local jurisdictions may not collect because they are precluded by the United States Constitution from taxing real property owned by the Federal Government. These discretionary financial assistance payments in lieu of taxes, which are subject to the availability of funds, are commonly referred to as "PILT payments".

In the past, DOE has decided, on a case-by-case basis, whether an application for PILT assistance should be approved and, if so, how much the annual PILT payments should be. In making such decisions, DOE has employed a policy consisting largely of internal procedures, application content criteria, evaluation criteria, and standard provisions for assistance agreements. The application content and evaluation criteria have either implemented requirements of section 168 or have been the result of case-by-case decisions.

The purpose of this notice is to state publicly, and without significant change, the policies regarding PILT payments that DOE has been applying to PILT applicants and recipients, and intends to continue to apply, on a case-by-case basis.

The Secretary of Energy has approved issuance of this notice.

Issued in Washington, DC on May 8, 2003.

**James T. Campbell,**

*Acting Director, Office of Management, Budget and Evaluation/Acting Chief Financial Officer.*

### Guidelines for Payments in Lieu of Taxes Under the Atomic Energy Act of 1954

#### I. Purpose and Scope

These guidelines set forth policies that DOE intends to apply when making

case-by-case determinations on applications for payments in lieu of taxes (PILT) under section 168 of the Atomic Energy Act of 1954 (42 U.S.C. 2208). PILT is discretionary financial assistance that DOE may provide subject to the availability of funds. PILT is not an entitlement.

#### II. Authority

These guidelines are authorized by sections 161 and 168 of the Atomic Energy Act of 1954 (42 U.S.C. 2201, 2208).

#### III. Applicability

A. These guidelines apply to any DOE facility (including facilities of the National Nuclear Security Administration) located on real property owned by the United States, under the custody and control of DOE, and at which activities authorized or required under the Atomic Energy Act of 1954 are carried on, if the real property was subject to State and local taxation immediately prior to acquisition by the United States.

B. These guidelines do not affect existing agreements between DOE and State or local governments that preclude PILT on all or part of real property under custody and control of DOE.

C. These guidelines apply to an initial application for PILT that is submitted to DOE, and to an application or request to change the basis for or amount of a PILT payment under an existing agreement between DOE and a State or local government. DOE will treat any application or request to change the basis for or amount of a PILT payment under an existing agreement as an initial application under these guidelines.

#### IV. Definitions

As used in these guidelines:

A. "Condition In Which It Was Acquired" means the physical description, definition, and real property classification used to determine the assessed valuation of the real property in the last year that such property was on the State or local tax rolls prior to acquisition by the Federal Government.

B. "Revised PILT Payment" means a change in PILT payment that is based on a reclassification of the property to a new tax classification or category, an increase or decrease in the amount of land used to calculate the PILT payment, or other significant change in the method of calculating the PILT payment. "Revised PILT Payment" does not mean a PILT payment that is changed solely because of Taxing Authority jurisdiction-wide adjustments to tax assessments or to tax rates.

C. "Taxing Authority" means an entity empowered under State law to render a separate tax bill based on the value of real property.

*V. Application Content Criteria*

In an application for PILT, DOE expects to see the following information:

A. Basis for calculating the PILT amount being sought;

B. Description of the real property, including non-Federal Government improvements existing at the time the Federal Government acquired the property and which still exist;

C. Date that the Federal Government acquired the real property and the date the real property was removed from the tax rolls because of its acquisition by the Federal Government;

D. Classification of real property by the Taxing Authority (if applicable) and zoning of such property in the last year it was on the tax rolls;

E. Tax rate, assessment, and total PILT payment proposed, net of applicable exclusions or offsets under these guidelines;

F. Current tax rate and assessment placed on real property with the same zoning and/or use classification, as reported by the Taxing Authority under paragraph V.D. of these guidelines;

G. Other Federal Government payments received or expected to be received by the applicant Taxing Authority which may duplicate payments made under these guidelines for the same identifiable, discrete purpose and use by the Taxing Authority; and

H. A statement that the Taxing Authority agrees to execute and deliver to DOE a valid and binding release or settlement of claims for payments related to DOE's land or property.

*VI. Evaluation Criteria*

On a case-by-case basis, DOE plans to evaluate applications for PILT, and to calculate PILT payments, using the following guidelines:

A. The real property for which a PILT payment is sought currently must be used for activities authorized by the Atomic Energy Act of 1954;

B. The real property must have been on the tax rolls of the applicant Taxing Authority immediately prior to acquisition of the real property by the Federal Government;

C. DOE will not make PILT payments for any tax year prior to the tax year during which a complete application for PILT is filed with DOE;

D. Approval of applications for PILT, as well as payments pursuant to an approved application, are subject to the

availability of funds, and amounts available for PILT are subject to the same reductions or other budgetary restrictions that may be applied to other DOE programs;

E. DOE will not make PILT payments that exceed the tax payment to which the Taxing Authority would be entitled if the real property had remained on the tax rolls in the Condition in Which It Was Acquired;

F. Property value for real property addressed in an initial application or an application for a Revised PILT Payment will be determined on the basis of the highest and best use of the real property in the same zoning classification and Taxing Authority-assigned-use classification at the time the real property was acquired by the Federal Government. The property value will exclude the value of improvements made after the Federal Government acquired the real property. The current tax rate and assessment values will be the same as those applied to comparable properties with the same use and/or tax classification in the jurisdiction of the Taxing Authority;

G. In calculating PILT payments, DOE will deduct from a PILT payment otherwise calculated by the applicant Taxing Authority an amount equal to any payment(s) by the Federal Government that will be used by the State or local jurisdiction for the same identifiable, discrete purpose; and

H. Such other relevant criteria as DOE deems appropriate in light of the information provided in the application for PILT. In order for DOE to approve or pay a Revised PILT Payment, a Taxing Authority must submit a complete application as if the Taxing Authority were a new applicant for PILT assistance, and all aspects of the application will be evaluated as if the Taxing Authority were a new applicant for such assistance.

*VII. Intergovernmental Assistance Agreement*

A. Before a Taxing Authority may receive PILT payments from DOE, the Taxing Authority's application for PILT under these guidelines must be approved in writing by the DOE Chief Financial Officer who may not delegate this authority.

B. Upon approval of an application for PILT by the DOE Chief Financial Officer and satisfaction of any conditions attached to such approval, and prior to making any PILT payments to the relevant Taxing Authority applicant, DOE will enter into an intergovernmental assistance agreement with the applicant Taxing Authority

that is satisfactory to DOE under these guidelines.

C. The standard terms of such an agreement should include, but are not limited to, provisions stating:

1. That the agreement does not apply to any tax year prior to the tax year in which a complete application for PILT was filed with DOE;

2. The date that the first payment is due;

3. That PILT payments are subject to the availability of funds;

4. That PILT payments are subject to legislative or administrative reductions in funding levels;

5. That PILT payments are subject to suspension during the pendency of any lawsuit filed by the Taxing Authority which seeks from the Federal Government any real property taxes or their equivalent; and

6. That PILT is not an entitlement, and, accordingly, nothing in the agreement and no conduct of DOE under or relating to the agreement shall be interpreted to preclude or place any limitations or conditions on the Secretary of Energy's exercise of his discretion under section 168 of the Atomic Energy Act of 1954, including his discretion to unilaterally terminate the agreement with reasonable notice.

[FR Doc. 03-13141 Filed 5-23-03; 8:45 am]

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**DEPARTMENT OF ENERGY**

[Docket No. EC03-89-000, et al.]

**Federal Energy Regulatory Commission FPL Energy New York, LLC, et al.; Electric Rate and Corporate Filings**

May 19, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. FPL Energy New York, LLC, Energy Rockaway Peaking Facilities, LLC**

[Docket No. EC03-89-000FPL]

Take notice that on May 13, 2003, pursuant to Section 203 of the Federal Power Act, FPL Energy New York, LLC (FPLE New York) and FPL Energy Rockaway Peaking Facilities, LLC (FPLE Rockaway) (Jointly, the Applicants) filed a joint application for approval of a corporate reorganization. Applicants state that the proposed reorganization will not change the ultimate ownership of the facilities.

The Applicants state that a copy of the application has been served on the New York Public Service Commission, 3