

STATE OF NEW YORK

9827

IN ASSEMBLY

February 14, 2018

Introduced by M. of A. CUSICK, WALKER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the real property tax law and the administrative code of the city of New York, in relation to applications by certain electric generating facilities for tax abatements for industrial and commercial construction work on properties in a city of one million or more persons

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings. The legislature hereby finds that the
2 2011 amendment to the industrial and commercial abatement program was
3 succesful in preventing a large increase in capacity rates for electric-
4 ity that would have cost ratepayers in the city of New York hundreds of
5 millions of dollars had the law not been changed. However, in the haste
6 to adopt that law, a new peaking power plant fell through the cracks and
7 has been paying property taxes since it began operations in 2012, even
8 though the 2011 statute clearly intended that industrial and commercial
9 abatement program benefits be provided to peaking power plants as a
10 right. This act would correct that defect in the statute and enable the
11 facility to receive industrial and commercial abatement program benefits
12 prospectively.

13 § 2. Subdivision 17 of section 489-aaaaaa of the real property tax
14 law, as amended by chapter 28 of the laws of 2011, is amended to read as
15 follows:

16 17. "Utility property" means property and equipment as described in
17 paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section
18 one hundred two of this chapter that is used in the ordinary course of
19 business by its owner or any other entity or property as described in
20 paragraphs (a) and (b) of subdivision twelve of section one hundred two
21 of this chapter that is owned by any entity that uses in the ordinary
22 course of business property and equipment as described in paragraphs
23 (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred
24 two of this chapter, without regard to the classification of such prop-
25 erty and equipment for real property tax purposes pursuant to section

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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18 eighteen hundred two of this chapter, except that any such property and
19 equipment used solely to serve the building to which they are attached
20 shall not be deemed utility property. Notwithstanding any provision of
21 this title to the contrary, peaking units shall not be considered utility
22 property. For purposes of this title, "peaking unit" shall mean a
23 generating unit that: (a) is determined by the New York independent
24 system operator or a federal or New York state energy regulatory commis-
25 sion to constitute a peaking unit as set forth in section 5.14.1.2 of
26 the New York independent system operator's market administration and
27 control area services tariff, as such term existed as of April first,
28 two thousand eleven; or (b) has an annual average operation, during the
29 calendar year preceding the taxable status date, of less than eighteen
30 hours following each start of the unit; for purposes of calculating the
31 annual average, operations during any period covered by any major emer-
32 gency declaration issued by the New York independent system operator,
33 northeast power coordinating council, or other similar entity shall be
34 excluded; or (c) notwithstanding the requirements and provisions of this
35 title, any peaking unit that was planned, approved and under
36 construction between the effective date of this title and the effective
37 date of chapter twenty-eight of the laws of two thousand eleven, and
38 upon going into service exclusively provides electricity to Zone J,
39 shall be deemed eligible for the benefits of this title; provided,
40 however, that the benefit period for a peaking unit shall be as set
41 forth in paragraph (b-1) of subdivision three of section four hundred
42 eighty-nine-bbbbbb of this title; and provided, further, that such bene-
43 fits shall commence upon the effective date of this paragraph. A "peak-
44 ing unit" under this title shall include all real property used in
45 connection with the generation of electricity, and any facilities used
46 to interconnect the peaking unit with the electric transmission or
47 distribution system, but shall not include any facilities that are part
48 of the electric transmission or distribution system; it may be comprised
49 of a single turbine and generator or multiple turbines and generators
50 located at the same site. Notwithstanding any provision of this title to
51 the contrary, a peaking unit shall be considered industrial property,
52 provided however that the benefit period for a peaking unit shall be as
53 set forth in paragraph (b-1) of subdivision three of section four
54 hundred eighty-nine-bbbbbb of this title.

55 § 3. Subdivision q of section 11-268 of the administrative code of the
56 city of New York, as amended by chapter 28 of the laws of 2011, is
amended to read as follows:

q. "Utility property" means property and equipment as described in
paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section
one hundred two of the real property tax law that is used in the ordi-
nary course of business by its owner or any other entity or property as
described in paragraphs (a) and (b) of subdivision twelve of section one
hundred two of such law that is owned by any entity that uses in the
ordinary course of business property and equipment as described in para-
graphs (c), (d), (e), (f) and (i) of subdivision twelve of section one
hundred two of such law, without regard to the classification of such
property and equipment for real property tax purposes pursuant to
section eighteen hundred two of such law, except that any such property
and equipment used solely to serve the building to which they are
attached shall not be deemed utility property. Notwithstanding any
provision of this part to the contrary, peaking units shall not be
considered utility property. For purposes of this part, "peaking unit"
shall mean a generating unit that: (a) is determined by the New York

1 independent system operator or a federal or New York state energy regu-
2 latory commission to constitute a peaking unit as set forth in section
3 5.14.1.2 of the New York independent system operator's market adminis-
4 tration and control area services tariff, as such term existed as of
5 April first, two thousand eleven; or (b) has an annual average opera-
6 tion, during the calendar year preceding the taxable status date, of
7 less than eighteen hours following each start of the unit; for purposes
8 of calculating the annual average, operations during any period covered
9 by any major emergency declaration issued by the New York independent
10 system operator, northeast power coordinating council, or other similar
11 entity shall be excluded; or (c) notwithstanding the requirements and
12 provisions of this part, any peaking unit that was planned, approved and
13 under construction between the effective date of title two-F of article
14 four of the real property tax law and the effective date of chapter
15 twenty-eight of the laws of two thousand eleven, and upon going into
16 service exclusively provides electricity to Zone J, shall be deemed
17 eligible for the benefits of this part; provided, however, that the
18 benefit period for a peaking unit shall be as set forth in subparagraph
19 (a) of paragraph two of subdivision c of section 11-269 of this part;
20 and provided, further, that such benefits shall commence upon the effec-
21 tive date of this paragraph. A "peaking unit" under this part shall
22 include all real property used in connection with the generation of
23 electricity, and any facilities used to interconnect the peaking unit
24 with the electric transmission or distribution system, but shall not
25 include any facilities that are part of the electric transmission or
26 distribution system; it may be comprised of a single turbine and genera-
27 tor or multiple turbines and generators located at the same site.
28 Notwithstanding any provision of this part to the contrary, a peaking
29 unit shall be considered industrial property, provided however that the
30 benefit period for a peaking unit shall be as set forth in paragraph
31 two-a of subdivision c of section 11-269 of this part.

32 § 4. This act shall take effect immediately.