STATE OF NEW YORK

7849

IN SENATE

February 26, 2020

Introduced by Sens. GOUNARDES, LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Cities

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:

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

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

17. "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 this chapter that is used in the ordinary 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 this chapter that is owned by any entity that uses in the ordinary course of business property and equipment as described in paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred two of this chapter, without regard to the classification of such property 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.

LBD08403-01-9

eighteen hundred two of this chapter, 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 title to the contrary, peaking units shall not be considered utility property. For purposes of this title, "peaking unit" shall mean a generating unit that: (a) is determined by the New York independent system operator or a federal or New York state energy regulatory commission to constitute a peaking unit as set forth in section 5.14.1.2 of the New York independent system operator's market administration and control area services tariff, as such term existed as of April first, two thousand eleven; or (b) has an annual average operation, during the calendar year preceding the taxable status date, of less than eighteen hours following each start of the unit; for purposes of calculating the annual average, operations during any period covered by any major emergency declaration issued by the New York independent system operator, northeast power coordinating council, or other similar entity shall be excluded**; or (c) notwithstanding the requirements and provisions of this title, any peaking unit that was planned, approved and under construction between the effective date of this title and the effective date of chapter twenty-eight of the laws of two thousand eleven, and upon going into service exclusively provides electricity to Zone J, shall be deemed eligible for the benefits of this title; provided, however, that the benefit period for a peaking unit shall be as set forth in paragraph (b-1) of subdivision three of section four hundred eighty-nine-bbbbbb of this title; and provided, further, that such benefits shall commence upon the effective date of this paragraph**. A "peaking unit" under this title shall include all real property used in connection with the generation of electricity, and any facilities used to interconnect the peaking unit with the electric transmission or distribution system, but shall not include any facilities that are part of the electric transmission or distribution system; it may be comprised of a single turbine and generator or multiple turbines and generators located at the same site. Notwithstanding any provision of this title to the contrary, a peaking unit shall be considered industrial property, provided however that the benefit period for a peaking unit shall be as set forth in paragraph (b-1) of subdivision three of section four hundred eighty-nine-bbbbbb of this title.

§ 3. Subdivision q of section 11-268 of the administrative code of the 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 ordinary 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 paragraphs (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

independent system operator or a federal or New York state energy regulatory commission to constitute a peaking unit as set forth in section 5.14.1.2 of the New York independent system operator's market administration and control area services tariff, as such term existed as of April first, two thousand eleven; or (b) has an annual average operation, during the calendar year preceding the taxable status date, of less than eighteen hours following each start of the unit; for purposes of calculating the annual average, operations during any period covered by any major emergency declaration issued by the New York independent system operator, northeast power coordinating council, or other similar entity shall be excluded**; or (c) notwithstanding the requirements and provisions of this part, any peaking unit that was planned, approved and under construction between the effective date of title two-F of article four of the real property tax law and the effective date of chapter twenty-eight of the laws of two thousand eleven, and upon going into service exclusively provides electricity to Zone J, shall be deemed eligible for the benefits of this part; provided, however, that the benefit period for a peaking unit shall be as set forth in paragraph two-a of subdivision c of section 11-269 of this part; and provided, further, that such benefits shall commence upon the effective date of this paragraph**. A "peaking unit" under this part shall include all real property used in connection with the generation of electricity, and any facilities used to interconnect the peaking unit with the electric transmission or distribution system, but shall not include any facilities that are part of the electric transmission or distribution system; it may be comprised of a single turbine and generator or multiple turbines and generators located at the same site. Notwithstanding any provision of this part to the contrary, a peaking unit shall be considered industrial property, provided however that the benefit period for a peaking unit shall be as set forth in paragraph two-a of subdivision c of section 11-269 of this part.

§ 4. This act shall take effect immediately.