# U.S. DEPARTMENT OF ENERGY
## Washington, D.C.

**ORDER**

**DOE O 143.1**

Approved: 5-8-03
Certified: 1-31-07

This directive was reviewed and certified as current and necessary by James T. Campbell, Acting Director, Office of Management, Budget and Evaluation/Acting Chief Financial Officer, 5-08-03.

SUBJECT: PAYMENTS IN LIEU OF TAXES

1. PURPOSE. To establish general Department of Energy (DOE) procedures and responsibilities with regard to processing applications for 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). The policies and defined terms related to these payments are contained in Attachment 1, "Payments In Lieu of Taxes Under the Atomic Energy Act of 1954; Guidelines," Fed. Reg. 28822 (2003).

2. CANCELLATION. DOE 2100.12A, PAYMENTS FOR SPECIAL BURDENS AND IN LIEU OF TAXES, of 6-9-92.

3. EXCLUSIONS. This Order does not apply to sites where payments are made to State and local governments under the Atomic Energy Community Act of 1955, as amended; the Uranium Mill Tailings Radiation Control Act of 1978, as amended; or the Nuclear Waste Policy Act of 1982, or to payments made by DOE under those laws.

4. APPLICABILITY. To ensure overall consistency in exercising the statutory authorities that are vested in the Secretary as head of DOE, the Departmental guidance established in this Order is applicable to all Departmental elements, including the National Nuclear Security Administration (NNSA).

5. REFERENCES.

   a. Section 168 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2208), which provides for PILT payments to State and local governments.

   b. Fed. Reg. 28822 (2003), 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.

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All Departmental Elements

**INITIATED BY:**
Office of Management, Budget and Evaluation/Chief Financial Officer

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. Public Law No.103-382, 20 U.S.C. 7702, which provides for payments to Federally impacted school districts.

g. Office of Management and Budget (OMB) Circular A-11, "Preparation, Submission, and Execution of the Budget," which contains instructions relating to apportionments and reports on budget execution.

6. BACKGROUND. The Atomic Energy Act of 1954 gives the Secretary of Energy broad authority in making PILT payments. The amounts, the timing, and the terms of the payments are at the discretion of the Secretary.

7. RESPONSIBILITIES.

a. Director, Office of Management, Budget and Evaluation/Chief Financial Officer shall:

(1) Approve, for the Secretary, applications for new PILT payments or Revised PILT Payments after obtaining the concurrence of the Office of General Counsel. For PILT applications or payments relating to real property controlled or under the direct jurisdiction of NNSA, if the Director, Office of Management, Budget and Evaluation/Chief Financial Officer, and the 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) Review and determine appropriate action on recommendations from Heads of Program Offices regarding new PILT applications or Revised PILT applications;

(3) Ensure that funding for approved PILT payments, as requested by Heads of Program Offices, is included in DOE's budget submission to OMB and to Congress;

(4) Ensure that appropriated and apportioned funds for PILT payments are properly allotted; and

(5) Maintain an inventory database of DOE real property that is subject to the provisions of section 168 of the Atomic Energy Act of 1954.

b. General Counsel shall:

(1) Review and concur or nonconcur in recommendations for action regarding applications for new PILT payments or Revised PILT Payments. General Counsel's review shall include consideration of the information provided by Field Counsel pursuant to subparagraph 7c(1) of this Order;

(2) Review and concur or nonconcur on the eligibility of the applicant requesting PILT payments to receive such payments;

(3) Review and concur or nonconcur on intergovernmental agreements between DOE and each Taxing Authority requesting PILT payments; and

(4) Provide legal advice on other matters relating to PILT applications and payments.

c. Field Counsel shall:

(1) Review applications for new 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. Field Counsel's opinion shall also report on the tasks assigned in subparagraphs 7c(2) and 7c(3);

(2) Review and concur or nonconcur on the eligibility of the applicant requesting PILT payments to receive such payments;

(3) Review and concur or nonconcur on intergovernmental agreements between DOE and each Taxing Authority requesting PILT payments; and

(4) Provide legal advice on other matters relating to PILT applications and payments.

d. Heads of Field Elements shall:

(1) Manage the administration of PILT payments;

(2) Analyze requests for new PILT payments or Revised PILT Payments to ensure that approval of the application will be consistent with DOE's PILT policy guidelines;

(3) Prepare recommendations on applications for new PILT payments or Revised PILT Payments and submit the recommendations to the Head of Program Office who is responsible for budgeting for PILT payments;

(4) Ensure that PILT payments are made in accordance with duly executed intergovernmental agreements;

(5) Ensure that legal documentation for DOE's real property for which the Field Element has cognizance is maintained as complete and current; and

(6) Monitor DOE's real property inventory database for property (all real property, not just section 168 property) for which the Field Element has cognizance to ensure that the database is complete and accurate.

e. Heads of Program Offices shall:

(1) Review and forward a positive or negative recommendation regarding applications for new PILT payments and Revised PILT Payments to the Director, Office of Management, Budget and Evaluation/Chief Financial Officer; and

(2) Ensure that funding is available when approval is recommended for applications for new PILT payments or Revised PILT Payments, and ensure that amounts for future PILT payments are included in Program Office budget requests.

f. Procurement Officers shall:

(1) Execute separate intergovernmental agreements consistent with DOE's PILT policy guidelines with each Taxing Authority that has been approved to receive PILT payments. The agreement will set forth the terms and procedures for billing, making payments, and revisions.

(2) Submit intergovernmental agreements to Field Counsel and General Counsel for concurrence prior to execution.

8. PROCEDURES.

a. A recommendation from the Head of Field Element concerning an application for new PILT payments or Revised PILT Payments must contain an evaluation of the application, including the following:

(1) A determination 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) An assessment of the information provided by the applicant relative to other Federal payments received or expected which may be for the same identifiable, discrete purpose as PILT payments proposed to be made under 42 U.S.C. 2208;

(3) An examination of the tax rates and assessments applied to similar properties elsewhere in the same Taxing Authority's jurisdiction to assure that PILT payment requests are fair and consistent; and

(4) The work papers and other information sufficient to support the recommendation concerning the application. If approval is recommended, the information will include:

(a) The amount to be paid;

(b) The date first payment is to be made; and

(c) Field Counsel's written legal opinion described in subparagraph 7c(1) of this Order.

b. A recommendation from the Head of Program Office concerning an application for new PILT payments or Revised PILT Payments must contain:

(1) An evaluation of the facts warranting approval or nonapproval of the application, as appropriate;

(2) A statement that funding is available when approval of an application is recommended; and

(3) A statement that amounts for future PILT payments to the applicant(s) will be included in Program Office budget requests.

c. Once authorized, payments may continue subject to the availability of funds or modifications by intergovernmental agreement.

d. The intergovernmental agreement serves as the obligating document.

9. FUNDS FOR PAYMENTS. Funds must be available for payments recommended for approval. Funds budgeted for future payments must be specifically identified in the documentation supporting budget requests. In accordance with OMB Circular A-11, Part 4, "Instructions on Budget Execution," PILT payments are recorded as obligations in the period in which they are authorized to be paid and due.

10. CONTACT. Contact the Office of Financial Policy at (202) 586-4860 for additional information and guidance regarding this Order.

SPENCER ABRAHAM
Secretary of Energy

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.*

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.*

[FR Doc. 03–13166 Filed 5–23–03; 8:45 am]

BILLING CODE 6450–01–P

## 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.*

**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.

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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