NUCLEAR GENERATING PLANTS AND THE EXEMPTION PROVIDED BY SECTION 485 OF THE REAL PROPERTY TAX LAW

NEW YORK STATE OFFICE OF REAL PROPERTY SERVICES

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NUCLEAR GENERATING PLANTS AND THE EXEMPTION PROVIDED BY SECTION 485 OF THE REAL PROPERTY TAX LAW

I. Background

New York, like many other states, has restructured its electric industry in order to encourage the development of competition in the production and sale of electricity. It is generally believed that competition will provide opportunities for lower energy prices and new, innovative services. In addition, the move to competition is expected to attract new businesses and enhance the state's economic growth. Development of a competitive electricity marketplace involves the removal of the ownership and operation of electric generating facilities from electric utilities. Independent third parties now own and operate nearly all of the generating facilities and sell electricity in a competitive market.

The Public Service Commission began examining competitive electric issues in 1993. In 1996, it issued a policy statement to guide New York's progress toward a competitive marketplace (*Opinion No. 96-12, Opinion and Order Regarding Competitive Opportunities for Electric Service)*. In a series of environmental impact statements prepared in conjunction with consideration of plans to divest generation, it was concluded that, in general, assessments for power plants are likely to change as a result of the sales. In almost all cases, it was found that the assessments are likely to decrease, in some cases significantly.

The Office of Real Property Services (ORPS) also studied the issue and the potential impact of divestiture on the appraisal method used for valuation of plants for assessment purposes, on the assessments, and on equalization rates. The existence of a market for electric generating facilities and the emergence of these facilities as income producing properties were found likely to impact the values of these facilities for real property tax purposes. In recognition of these factors, ORPS is now considering all three approaches to valuation (*e.g.*, cost, market and income), where appropriate data are available, in the appraisals it prepares for market value surveys and advisory appraisal purposes.

Seeking to understand the impact of divestiture on real property values, the State Legislature directed ORPS, in consultation with the Department of Public Service, to study these impacts and prepare a report that "shall review and detail the projected real property tax implications of the divestiture of generating assets by investor-owned utilities and make

recommendations on ways to address any negative fiscal implications of such divestiture on local governments."[1] The resulting report, which also addressed " the effect of such divestiture on the methods of evaluation of such generating facilities and assets for real property tax purposes," was issued in December 1999.[2]

The report found that significant changes in the market values of some plants for tax purposes could occur in the years following restructuring of the industry. The potential volatility would likely create an uncertain fiscal planning environment for local governments -- especially those heavily reliant on property taxes paid by generating plants -- in some areas of the state. Apportionment of property taxes between municipalities in the same school district or county would also likely experience volatility as value changes were incorporated into determination of the state equalization rates used in the apportionment process. The report also recommended establishment of a multi-year payment-in-lieu-of-taxes (PILOT) program for generating plants until such time as market conditions in the industry stabilize. In response to the report's recommendations, a program of this type was created for nuclear plants under Chapter 87 of the Laws of 2001. The legislation in question also requires ORPS to issue a report annually on the factors affecting the market for these facilities and the impact of the PILOT program on local property taxes. The present report is intended to fulfill this obligation for 2004.

[1] Chapter 239 of the Laws of 1999.

[2] *Id.* See also Divestiture of Electricity Generating Plants: Property Tax Implications, NYS State Board of Real Property Services, December 31, 1999.

III. Valuation of Nuclear Plants

The available methods for determining market value for tax purposes are the "comparable sales," "income," and "cost" approaches.[3] Under the first approach, recent sales of similar properties are used to determine the value of the property being assessed. In the past, when generating plants were rarely sold, the standard comparable sales approach had limited relevance. The income approach is based on the idea that the value of the property reflects the net income it can earn in the future. The summation of annual future property income, discounted to its present value, plus any reversion value at the end of the holding period, determines what the property is worth at the present time. The cost approach, which is applicable to improvements only, focuses on the construction cost of the improvement when it was first built (original cost), what it would cost to build it today (reproduction cost), or what it would cost to replace it with the lowest cost structure having the same or better performance characteristics (replacement cost). Under any application of the cost approach, the estimated amount of depreciation must be subtracted from the estimated construction cost in determining value. This depreciation component can be large for some properties and it is often difficult to quantify, as it must include not only physical deterioration but also functional and economic obsolescence. These latter factors are reflective of not only the plant's particular characteristics but also external factors such as technological change and economic conditions in the industry.

The existence of alternative methods to determine value (which, of course, may produce significantly different results), together with the lack of statutory valuation guidelines in New York, has led to litigation. New York's courts have frequently stepped in to specify the right approach in a particular instance. For example, in Brooklyn Union Gas v. State Board of Equalization and Assessment, the tangible component of special franchise property (utility equipment that is placed in the public way) was held to be "specialty property" and thus to be assessed using the reproduction cost method.[4] Prior case law accepting assessment based on the income (net earnings) approach had only applied that approach to the intangible element, i.e., the value of the right of the utility to conduct business by placing its property in the public way. The court cited previous cases involving the valuation of railroad and utility property in reaching this determination,

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[3] Market value, or what a willing buyer would pay a willing seller, is distinct from "book value," an accounting concept.

[4] 65 N.Y.2d 472, 482 N.E.2d 77, 492 N.Y.S.2d 598 (1985), cert. den., 475 U.S. 1082, 106 S.Ct. 1461, 89 L.Ed.2d 718 (1986)

including Tenneco v. Town of Cazenovia.[5] The court in Tenneco had refused to extend the net earnings approach to non-franchise utility property. In Brooklyn Union, the court also approved the state practice of computing the intangible element as a percentage of the value of the tangible. In another relevant case, National Fuel Gas Distribution Co. v. State Board of Equalization and Assessment, the rules of the State Board for implementing the reproduction cost method for the tangible component and allowing complaints against factors used in the computations were held to be neither arbitrary nor capricious.[6] More recently (1994), in Long Island Lighting Company v. Assessor for Town of Brookhaven, the court held that a nuclear power plant was "specialty property," and was therefore to be assessed using the reproduction-cost-new-less depreciation method.[7]

The courts' favoring of the reproduction cost approach in the case of power plants and other utility property is clearly reflective of the fact that there was no market for such property until very recently, and, perhaps, the fact that rates utilities were allowed to charge were, for the most part, a function of costs. However, with the onset of divestiture, sales of power plants, and deregulation of the rate structure, the essential facts have changed for these facilities, and prior case law may no longer be a clear standard for their assessment. While the views of courts in future cases remain to be seen, it may be expected that power plants will come to be viewed as being similar to most other types of property. Appraisal methodology generally favors use of all three approaches to valuation, provided appropriate data are available for each, and it is likely that courts would accept the relevance of this basic standard of professional practice.[8] In valuing nuclear plants in New York in the post-deregulation era, it is thus considered prudent to use all the available valuation approaches and data.

In the past few years, many nuclear plants have been sold pursuant to price deregulation programs in various states (Table 1). As evident from the data, the sales are often quite complex, involving special considerations such as agreements between the seller and buyer for purchase of power at specified prices during a given time period. Some transactions may also include fuel as well as the plant itself, and some may fail to meet the standard criteria for "arm's length" market

[5] 104 A.D. 2d 511, 479 N.Y.S.2d 587 (3d Dept. 1984)

[6] 117 A.D.2d 948, 499 N.Y.S.2d 260 (3d Dept. 1986)

[7] 202 A.D.2d 32, 616 N.Y.S.2d 375 (2d Dept. 1994), leave to appeal denied, 85 N.Y.2d 809, 651 N.E.2d 920, 628 N.Y.S.2d52(1995)

[8] See Standard on the Application of the Three Approaches to Value, International Association of Assessing Officers, Chicago, August 1985 (revised).

transactions due to complicating factors specific to each case. Such complicating factors include the sale of multiple plants in a single transaction, and the matter of decommissioning costs and how such costs will be underwritten. In addition, the purchasers, operating in a competitive wholesale electric market, may consider certain information on the details of the transactions to be sensitive financial data that should be safeguarded from the eyes of potential competitors. Thus, some of the detailed information on a given sale may not be available to assessing officials, and this limits the usefulness of the sale in determining the plant's value.

As indicated by the data in Table 1, the available plant sales average to about $233,000 per megawatt of generating capacity, exclusive of payments for fuel and not considering any additional factors such as electricity purchase agreements. However, there is considerable variation around this average. For example, the sale price cited for one of the Millstone plants in Connecticut was nearly $900,000 per megawatt, but several other plants sold in the $16,000 to $30,000 per megawatt range. Overall, most of the New York plants sold in the $360,000 to $435,000 per megawatt range. Some New York facilities, such as the Indian Point plants, have favorable locations (in this case, proximity to the market in the New York City metropolitan area) relative to other plants that were sold and this can have a large influence on the sale price. The most recent and final New York sale -- the relatively small Ginna plant -- realized a fairly high price at $765,000 per megawatt.

Since implementation of divestiture, income data may also be brought to bear on valuation of New York nuclear plants. The key ingredients in using the income approach are electricity prices and the cost structure faced by generators. U.S. Energy Information Administration projections of electricity prices, shown in Figure 2, call for a steady increase in the average per kilowatt price into the foreseeable future. However, the projected price increases are only expected to match projected inflation. Although inflation-adjusted costs of oil and gas fuels are expected to increase somewhat, nuclear fuel and coal are expected to be flat (Figure 3). Price deregulation is expected to yield efficiencies in terms of controlling management and other overhead costs, thus exerting downward pressure on electricity prices. Also, construction of new generation facilities with the latest technology will similarly push costs down and tend to lower electricity prices.

Table 1. Nuclear Plant Sales (as of March 2004)

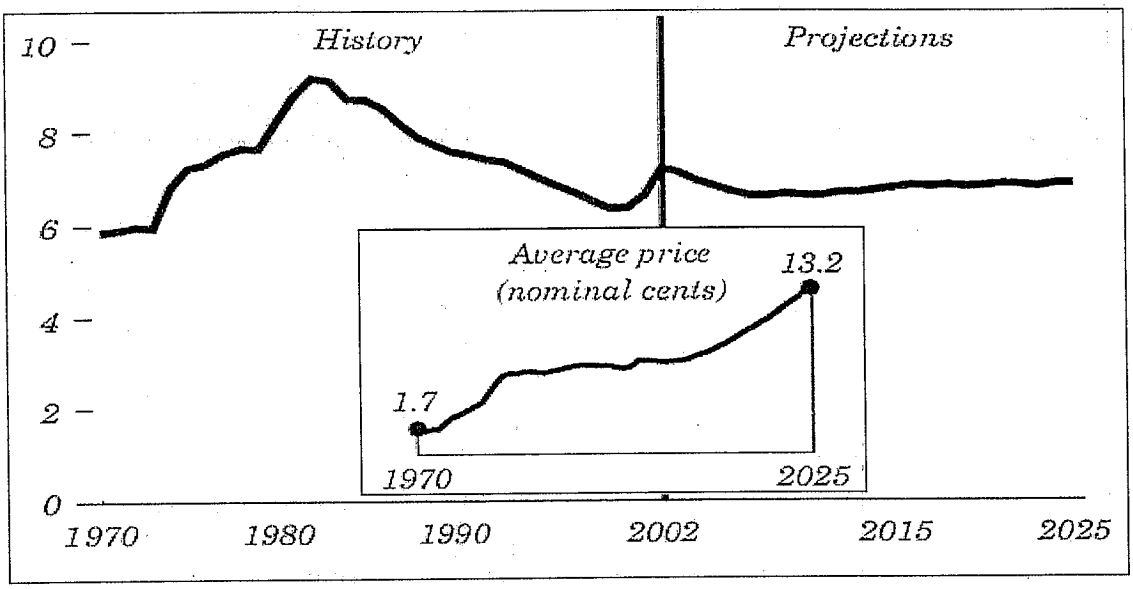
Plant (State)	Total MW (MDC)	% Sold	Type	Seller	Buyer	Sales Price Plant	Sales Price Fuel	Other Adjustments	Power Purchase Agreement	Decommissioning Funding	Sales Date
Pilgrim (MA)	670	100	BWR	Boston Edison	Entergy	$14 million	$67 million	Credits: $10 million inventory $31 million insurance	5-year contract at 3.5 to 4 cents/kWh	Boston Edison topped off the fund and transferred $471 million to Entergy	July 13, 1999
TMI-1 (PA)	786	100	PWR	GPU	AmerGen	$23 million	$77 million	Additional payments possible through financial sharing agreement 2003-2010	3-year fixed price contract	$202 million in fund; $118 million added; $320 million transferred to AmerGen	Dec. 21, 1999
Clinton (IL)	924	100	BWR	Illinois Power	AmerGen	$20 million	No compensation for fuel inventory	Interim agreement: For nine months prior to sale closing, PECO, as plant manager, assumed operating, maintenance and restart costs saving Illinois Power $162 million	5-year contract (75% of output)	Partial Top Off: $121 million transferred to AmerGen ($219 million in fund plus 5 annual payments of $5 million).	Dec. 16, 1999
Oyster Creek (NJ)	619	100	BWR	GPU	AmerGen	$10 million	No compensation for fuel inventory	$84 million to refund Fall 2000 refueling outage	3-year contract at 3.4 cents/kWh	GPU topped off fund and transferred $436.2 million to AmerGen	Aug. 8, 2000
Vermont Yankee (VT)	510	100	BWR	Vermont Yankee (13 owners)	Entergy	$145 million	$35 million		10-year contract (100% output) 4.2 cents/kWh for 4 years, then "low market adjuster"	Owners will transfer $280 million trust fund at closing	Closing Spring 02
Indian Point 3 Fitzpatrick (NY)	965 778	100 100	PWR BWR	NYPA NYPA	Entergy	$636 million for both plants	$171 million for both plants	Entergy will pay $92 million to reduce NYPA's decommissioning costs and $68 million for NYPA's commitment for additional Fitzpatrick power purchases; $100 million over 10 years tied to sale of Indian Point 2 NYPA will pay Entergy $25 million for employee benefits	3.6 cents/kWh-100% of output through 2004 (IP3) 3.2 cents/kWh – beginning at 46% of output and declining to 31% in 2004 (Fitz) 500,000 kW at 2.9 cents/kWh (balance of Fitzpatrick's output)	Funds remain with NYPA until licenses expire (currently $630 million). Entergy is liable for any adverse tax ruling Entergy contracted to decommission at fixed dollar amount	Nov. 21, 2000

Table 1. Nuclear Plant Sales (as of March 2004) (continued)

Plant	Total MW (MDC)	% Sold	Type	Seller	Buyer	Sales Price Plant	Sales Price Fuel	Other Adjustments	Power Purchase Agreement	Decommissioning Funding	Sales Date
Nine Mile Point 1 Nine Mile Point 2 (NY)	613 937	100 82	BWR BWR	NiMo (100) NiMo (41) NYSEG (18) RG&E (14) CHG&E (9)	Constellation Energy Group	$675 million for both plants	$87 million for both plants	$134 million in interest	90% of plant output for 10 years at $34/MWH	Sellers to transfer existing funds of $450 million, net savings of $88 million (no topoff) CEG responsible for decommissioning	Nov. 7, 2001
Peach Bottom 2,3 (closed 1974) (PA); Hope Creek, Salem 1,2 (NJ)	1093 1093 1031 1106 1106	7.5 7.5 5.0 7.4 7.4	BWR BWR BWR PWR PWR	Conectiv	Exelon PSEG PSEG PSEG PSEG	$4.6 million $15.4 million for Conectiv's interests in all three plants	Estimated at $44.4 million	NA	NA	$110milliondecommissioning fund transferred to buyers; no top off of fund	Jan 01 and Oct 01
Millstone 1,2,3 (unit 1 closed) (CT)	660 870 1150	100 100 93.5 (68) NU)	BWR PWR PWR	Northeast Utilities	Dominion Resources	$1.193 billion #1 - $1 million #2 - $401.5 million #3 - $790.5 million	$105 million #2 - $41.9 million #3 - $62.8 million		None	NU will transfer $768 million to Dominion at closing. Proceeds to fully fund three units	Mar. 31, 2001
Indian Point 1, 2 (unit 1 closed) (NY)	975	100	PWR	ConEd	Entergy	$502 million 2 nuclear plants, 3 gas-fired turbines, and other assets	$100 million	$100 million to NYPA over 10 years tied to sales agreement with IP3	ConEd will pay 3.9 cents/kWh through 2004	ConEd will transfer both units' decommissioning trust funds to Entergy	Sep. 6, 2001
Seabrook (NH)	1158	40 17.5 15.03 9.96 3.52 2.17 (88)	PWR	NU United Illum. BayCorp Nat'l Grid NSTAR NH Elec. Coop	FPL Group	$798 million	$61.9 million	$25.6 million for Components from uncompleted Unit 2		FPL responsible for decommissioning; will receive monies from existing fund at close, approx. $232.7 million, including seller's top-off payment	Nov. 1, 2002
Ginna (NY)	495	100	PWR	Rochester Gas & Electric	Constellation Energy Group	$401 million	$22 million		RG&E will purchase 90% of plant output, at an average price of 4.4 cents/kWh through 2004	RG&E to transfer approximately $202 million for decommissioning funding	Summer 2004, contingent on 20-year license extension

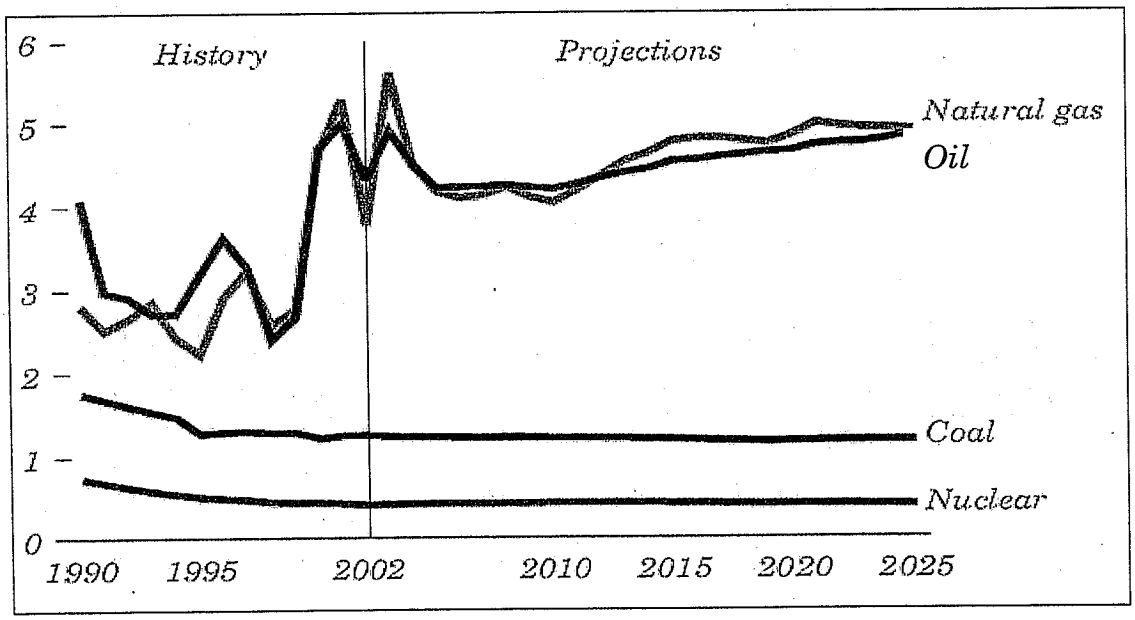
Sources: Nuclear Energy Institute; New York Times; company press releases

Figure 2. Average U.S. Retail Electricity Prices, 1970-2025 (2002 cents per kilowatt hour)



Source: U.S. Department of Energy, Energy Information Administration

Figure 3. Fuel Prices to Electricity Generators, 1990-2025 (2002 dollars per million Btu)



Source: U.S. Department of Energy, Energy Information Administration

Valuations for the New York nuclear plants over the past few years are reported in Table 2. The plants for which values are available include Nine Mile 1, Nine Mile 2, Indian Point 1 and 2 (appraised as a unit) and Ginna. The 1996 values given in the table reflect the pre-divestiture (i.e., rate regulation) situation, and are thus based on reproduction cost less depreciation. The 1999 values were determined after divestiture of plants had begun, but before any nuclear sales had been completed, and the 2001-03 values reflect a time period in which the plants were being sold. No 2002 or 2003 independent market value estimates are available for the plants that had been made tax exempt under RPTL Section 485 as it is no longer necessary for ORPS to appraise these facilities for equalization rate determination.

Table 2

Market Values of Nuclear Generating Plants,
NYS Office of Real Property Services (1996-2003)

Town	Generating Plant	Market Value					Percent Change (most recent annual)
		1996	1999	2001	2002	2003	
Scriba	Nine Mile 1	$ 340,466,146	$ 320,000,000	$ 186,000,000	N/A*	N/A*	-41.9%
Scriba	Nine Mile 2	1,712,015,241	1,375,000,000	623,500,000	N/A*	N/A*	-54.7%
Cortlandt	Indian Point 1 & 2	645,645,391	560,000,000	539,000,000	N/A*	N/A*	-3.8%
Ontario	Ginna	236,940,000	218,149,900	171,908,277	158,908,277	156,404,643	-1.6%

* N/A = Not available.

Note: Value for Indian Point 3 and Fitzpatrick plants not available due to fact that these facilities were exempt property of NYS Power Authority prior to divestiture.

The most recent ORPS appraisals of nuclear plants, based on consideration of all three valuation approaches, indicate that the value of the Nine Mile plants in Oswego County fell by about half over the period in question. However, the combined value of Indian Point 1 and 2 was unchanged from 1999 to 2001, after having fallen by 16.5 percent between 1996 and 1999. This reflects the advantageous location of the Indian Point facility in relation to the New York City metropolitan area and the higher electricity prices that prevail in this area. The value of the Ginna plant in Wayne County, which remains taxable at the present time, fell by one-third over the period

1996 through 2002, but only 1.6 percent in the following year. The figures shown for Ginna in 2001 and 2003 were obtained through an ORPS review of the assessment placed on the plant by the Town of Ontario assessor rather than from the actual state appraisal of the facility. It is noteworthy that the 2004 sales price that has been agreed to significantly exceeds the pre-sale value estimates (2003 and prior), so the value of the Ginna Plant appears to be greater than recent assessments and appraisals indicate.

IV. Fiscal Impact of PILOT Agreements

As indicated earlier in this report, the nuclear plants currently subject to the provisions of RPTL Section 485 are those located in the Town of Scriba, Oswego County and the Town of Cortlandt, Westchester County (see Figures 4 and 5). Agreements that have been negotiated between the owners of these facilities and the county, town, village, and school district governments are currently in place. The agreements include the following schedules of PILOT payments (Tables 3 through 7).

Table 3

PILOT Payment Schedule and Allocation – Nine Mile 1 Plant, Town of Scriba

Fiscal Year	Total Payment	School District Share	County Share	Town Share
2001-02	$5,000,000	$2,890,000	$1,860,000	$250,000
2002-03	4,500,000	2,600,000	1,680,000	220,000
2003-04	4,250,000	2,460,000	1,580,000	210,000
2004-05	4,000,000	2,310,000	1,490,000	200,000
2005-06	4,000,000	2,310,000	1,490,000	200,000
2006-07	4,000,000	2,310,000	1,490,000	200,000
2007-08	4,000,000	2,310,000	1,490,000	200,000
2008-09	4,000,000	2,310,000	1,490,000	200,000
2009-10	4,000,000	2,310,000	1,490,000	200,000

Table 4

PILOT Payment Schedule and Allocation – Nine Mile 2 Plant, Town of Scriba

Fiscal Year	Total Payment	School District Share	County Share	Town Share
2001-02	$31,500,000	$18,210,000	$11,730,000	$1,560,000
2002-03	27,500,000	15,900,000	10,240,000	1,360,000
2003-04	20,250,000	11,710,000	7,540,000	1,000,000
2004-05	17,000,000	9,830,000	6,330,000	840,000
2005-06	16,000,000	9,250,000	5,960,000	790,000
2006-07	16,000,000	9,250,000	5,960,000	790,000
2007-08	16,000,000	9,250,000	5,960,000	790,000
2008-09	16,000,000	9,250,000	5,960,000	790,000
2009-10	16,000,000	9,250,000	5,960,000	790,000
2010-11	16,000,000	9,250,000	5,960,000	790,000

Table 5

PILOT Payment Schedule and Allocation – Fitzpatrick Plant, Town of Scriba

Fiscal Year	Total Payment	School District Share	County Share	Town Share
2000-01	$7,277,000	$3,929,580	$2,910,800	$436,620
2001-02	$7,277,000	$3,929,580	$2,910,800	436,620
2002-03	$7,277,000	$3,929,580	$2,910,800	436,620
2003-04	$7,277,000	$3,929,580	$2,910,800	436,620
2004-05	$7,277,000	$3,929,580	$2,910,800	436,620
2005-06	$7,277,000	$3,929,580	$2,910,800	436,620
2006-07	$7,277,000	$3,929,580	$2,910,800	436,620
2007-08	$7,277,000	$3,929,580	$2,910,800	436,620
2008-09	$7,277,000	$3,929,580	$2,910,800	436,620
2009-10	$7,277,000	$3,929,580	$2,910,800	436,620
Final Partial Tax Year				
2010-11	N/A*	N/A*	1,455,400	218,310

*PILOT payment allocable to second half of 2010-2011 included in installment of PILOT payment due on October 2010.

Table 6

PILOT Payment Schedule and Allocation -- Indian Point 3 Plant, Town of Cortlandt

Town Fiscal Year	School District Fiscal Year	Total Payments	Town Share	Fire District Share	County Share	School District Share
2002	2002-03	$ 9,000,000	$ 378,000	$175,000	$ *	$ 6,484,000
2003	2003-04	9,000,000	378,000	175,000	1,963,000	6,484,000
2004	2004-05	9,000,000	378,000	175,000	1,963,000	6,484,000
2005	2005-06	7,000,000	294,000	136,000	1,527,000	5,043,000
2006	2006-07	7,000,000	294,000	136,000	1,527,000	5,043,000
2007	2007-08	7,000,000	294,000	136,000	1,527,000	5,043,000
2008	2008-09	7,000,000	294,000	136,000	1,527,000	5,043,000
2009	2009-10	7,250,000	305,000	141,000	1,581,000	5,223,000
2010	2010-11	7,250,000	305,000	141,000	1,581,000	5,223,000
2011	2011-12	7,250,000	305,000	141,000	1,581,000	5,223,000
2012	2012-13	7,250,000	305,000	141,000	1,581,000	5,223,000
2013	2013-14	7,500,000	315,000	146,000	1,636,000	5,403,000
2014	2014-15	7,500,000	315,000	146,000	1,636,000	5,403,000

*Payments for the 2002 tax year were made to the county in accordance with the tax warrant passed by the County Board of Legislators on February 4, 2002 for 2002. The parties agree that there will be no adjustments to payments received under the above-referenced tax warrant in 2002.

Table 8
Effects of the Nine Mile #1 and Nine Mile #2 PILOTS on the Oswego City School District Tax Levy

Municipality	Median Residential Taxable Assessed Value		Tax Rate Per $1000 of Assessed Value		Estimated School Tax Bill		Dollar Difference
	FYE 2002	FYE 2004	With Plants Taxable (FYE 2002)	With PILOTs on Plants (FYE 2004)	With Plants Taxable (FYE 2002)	With PILOTs on Plants (FYE 2004)	
Sterling	$97,450	$97,450	$17.84	$20.18	$1,739	$1,330	($409)
Oswego (c)	60,000	60,000	17.67	20.18	1,060	811	($249)
Minetto	82,300	85,500	16.82	20.18	1,384	1,059	($325)
Oswego	93,500	93,900	18.36	20.18	1,717	1,314	($403)
Scriba	3,200	95,250	97.50	20.18	312	870	$558
Volney	59,750	59,000	16.38	20.18	979	749	($230)

A similar pattern can be seen in Table 9 with respect to the tax treatment of the Fitzpatrick plant in the Mexico school district. Were the plant to be taxed at the (now exempt) value listed on the assessment roll, there would be major inter-municipal divergence between the taxes paid on typical homes in the same school district, ranging from $293 in Scriba to $1448 in Hastings. However, with the PILOT program in effect, the inter-municipal differences in school taxes are far more moderate, with typical tax bills ranging from $791 in Parish to $1,083 in Hastings. This change reflects removal of the plant from the school tax apportionment process, and the remaining inter-municipal differences in school taxes are undoubtedly reflective of local differences in property values rather than the plant assessment and value as such.

Table 9
Effects of the Fitzpatrick Plant PILOT on the Mexico School District Tax Levy

Municipality	Median Residential Taxable Assessed Value		Tax Rate Per $1000 of Assessed Value		Estimated School Tax Bill		Dollar Difference
	FYE 2002	FYE 2004	With Plant Taxable (FYE 2002)	With PILOT on Plant (FYE 2004)	With Plant Taxable (FYE 2002)	With PILOT on Plant (FYE 2004)	
Hastings	$69,000	$70,200	$ 20.98	$ 20.28	$1,448	$1,083	($365)
Mexico	6,220	6,380	198.94	195.54	1,237	925	($312)
New Haven	1,800	1,800	750.73	739.03	1,351	1,011	($340)
Palermo	66,450	69,000	18.69	18.25	1,242	929	($313)
Parish	53,150	53,150	19.89	18.25	1,057	791	($266)
Richland	62,200	62,800	19.89	18.25	1,237	926	($311)
Scriba	2,600	78,400	112.59	18.25	293	798	$505
Volney	58,000	56,700	18.92	18.25	1,097	821	($276)

Table 10 portrays the school tax apportionment effects engendered by the Section 485 exemption and PILOT program for the three Indian Point nuclear plants in Westchester County. The effects occurred for the first time in the 2003 fiscal year, and the analysis compares the existing situation in fiscal year 2004 to a simulated scenario under which the Indian Point 1 and 2 plants would be taxable and the Indian Point 3 plant exempt (as it was prior to institution of the PILOT agreement, when it was owned by the New York State Power Authority).

The most notable impact for the Hendrick Hudson School District is that residential taxpayers in the City of Peekskill portion would pay lower taxes. The $389 reduction in Peekskill is about 15 percent of the prior school tax bill on a typical home. In contrast, the $215 tax increase in Cortlandt is only about 6 percent of the prior school tax bill. This differential impact in the two municipalities is attributable to correction of the prior mis-allocation of taxes on residential property caused by over-assessment of the Indian Point 1 and 2 plants. While the plants were taxable, the over-assessment influenced the equalization rate, disproportionately favoring taxpayers in Cortlandt, where the plants are located. In contrast, the current exemption and PILOT program allows exclusion of the plant assessment from the tax apportionment process, correcting the prior mis-allocation.

Table 10
Effects of the Indian Point PILOTs on the
Hendrick Hudson School District Tax Levy, Fiscal Year Ending in 2004

Municipality	Median Residential Taxable Assessed Value		Tax Rate Per $1000 of Assessed Value		Estimated School Tax Bill		Dollar Difference
	FYE 2003	FYE 2004	With Plants Taxable (FYE 2003)	With PILOTs on Plants (FYE 2004)	With Plants Taxable (FYE 2003)	With PILOTs on Plants (FYE 2004)	
Peekskill (c)	$9,000	$9,000	$291.16	$247.94	$2,620	$2,231	($389)
Cortlandt	6,925	6,975	544.43	571.28	3,770	3,985	$215

The exemption and PILOT program allowed under Section 485 will also affect apportionment of county taxes among municipalities assuming that the county in question has opted to participate (as have both Oswego County and Westchester County). Tables 11 and 12 provide a simulation of the effect of the county in question choosing PILOT treatment rather than taxation. Once again, the primary tax distribution impact that can be observed in both regions is that occurring between the towns in which the plants are located (as a group) and all the other municipalities in each of the counties. Were the plants to be taxable, the typical home in the Town of Scriba would pay about $152 in county taxes, while homes in the other Oswego County municipalities would pay from $309 (in Orwell) to $891 (in Oswego). However, under the PILOT program, the disproportionately low tax in Scriba would increase to $927, whereas county taxes in the remaining municipalities would increase by far smaller amounts or decrease. Despite the increase in the Town of Scriba, county taxes there following the PILOT program would still be more comparable than before to those in other municipalities in Oswego County.

The county tax re-allocation effects in Westchester County, shown in Table 12, are less dramatic, as Westchester County has twenty-five cities and towns over which the impact is distributed. Overall, the changes due to the treatment of the nuclear plants are modest. Cortlandt taxpayers do experience an increase of $391, but this and the tax changes in the other municipalities include the influence of external factors such as changing county tax levies and property values (both have been very volatile in the lower Hudson Valley area in recent years). However, the higher increase to Cortlandt reflects the more equitable county tax allocation to residential properties under the PILOT program.

The allocation differences engendered by the PILOT program are not as significant in the case of county taxes as they were for school taxes. There are two main reasons for this. First,

school tax bills are substantially higher than county tax bills. Second, removal of the over-assessed plants from the school tax apportionment process has a disproportionately greater effect that it does for the county apportionment process because the county is larger than the school district and countywide fiscal effects will thus be more diluted. It must also be emphasized that, as the time since divestiture of the nuclear facilities increases, the school and county tax changes due to Section 485 will become increasingly obscured by other local factors such as changes in tax levies, property values, and other exemptions.

Table 11
Effects of the Nine Mile #1, Nine Mile #2 and Fitzpatrick Plant PILOTs on the Oswego County Tax Levy

Municipality	Median Residential Taxable Assessed Value		Tax Rate Per $1000 of Assessed Value		Estimated County Tax Bill		Dollar Difference
	FYE 2002	FYE 2004	With Plants Taxable (FYE 2002)	With PILOTs on Plants (FYE 2004)	With Plants Taxable (FYE 2002)	With PILOTs on Plants (FYE 2004)	
Fulton (c)	$50,000	$50,000	$ 9.72	$ 11.10	$486	$555	$69
Oswego (c)	58,000	57,000	9.92	10.69	575	609	$34
Albion	48,000	50,000	9.51	10.65	456	533	$77
Amboy	47,500	46,000	9.48	10.13	450	466	$16
Boylston	44,313	49,810	9.45	10.30	419	513	$94
Constantia	54,900	55,000	11.02	12.32	605	678	$73
Granby	56,250	58,500	10.69	13.18	601	771	$170
Hannibal	56,000	56,500	9.60	11.09	538	627	$89
Hastings	65,000	66,200	10.04	11.28	653	747	$94
Mexico	5,880	5,970	95.69	113.01	563	675	$112
Minetto	77,125	82,100	9.66	10.79	745	886	$141
New Haven	1,700	1,700	364.68	420.11	620	714	$94
Orwell	45,630	46,425	6.78	7.59	309	352	$43
Oswego	86,500	86,400	10.30	10.28	891	888	($3)
Palermo	63,500	66,000	8.96	10.70	569	706	$137
Parish	52,800	54,700	9.53	10.53	503	576	$73
Redfield	39,000	41,000	9.35	9.78	365	401	$36
Richland	57,035	59,250	9.52	11.10	543	658	$115
Sandy Creek	54,000	54,000	9.51	11.03	514	601	$87
Schroeppel	69,000	70,000	8.91	10.43	615	730	$115
Scriba	3,000	88,900	50.54	10.43	152	927	$775
Volney	61,000	61,500	9.07	10.54	553	648	$95
West Monroe	3,500	3,600	185.37	224.09	649	807	$158
Williamstown	45,500	48,500	10.16	10.43	462	506	$44

Table 12 Effects of Indian Point #1, #2 and #3 Plants PILOTs on the 2004 Westchester County Tax Levy							
	Median Residential Taxable Assessed Value		Tax Rate Per $1000 of Assessed Value		Estimated County Tax Bill		
Municipality	FYE 2002	FYE 2004	With Plants Taxable (FYE 2002)	With PILOTs on Plants (FYE 2004)	With Plants Taxable (FYE 2002)	With PILOTs on Plants (FYE 2004)	Dollar Difference
Mt. Vernon (c)	$ 9,900	$ 10,000	$ 74.43	$ 74.14	$ 737	$ 858	$121
New Rochelle (c)	16,600	16,600	73.57	73.28	1,221	1,560	$339
Peekskill (c)	8,300	8,400	60.45	60.21	502	605	$103
Rye (c)	20,138	20,300	105.22	104.81	2,119	2,712	$593
White Plains (c)	12,725	12,800	62.07	61.83	790	1,015	$225
Yonkers (c)	11,500	11,500	70.27	70.00	808	1,050	$242
Bedford	63,900	64,250	27.93	27.82	1,785	2,028	$243
Cortlandt	6,100	6,125	119.86	140.42	731	1,122	$391
Eastchester	10,350	10,400	142.68	142.12	1,477	1,905	$428
Greenburgh	16,450	16,500	70.74	70.46	1,164	1,396	$232
Harrison	13,200	13,420	172.43	171.76	2,276	2,257	-$19
Lewisboro	57,800	58,100	28.84	28.73	1,667	1,791	$124
Mamaroneck	15,600	15,700	143.96	143.40	2,246	2,594	$348
Mount Pleasant	8,100	8,150	157.50	156.88	1,276	1,546	$270
New Castle	143,450	145,000	14.74	14.69	2,114	2,504	$390
North Castle	17,200	17,500	116.92	116.46	2,011	2,195	$184
North Salem	48,450	48,550	28.21	28.10	1,367	1,640	$273
Ossining	20,700	21,000	45.38	45.20	939	1,036	$97
Pelham	494,800	569,650	3.43	3.42	1,697	2,011	$314
Pound Ridge	130,000	130,000	20.46	20.38	2,660	2,830	$170
Rye	9,000	9,200	127.62	127.12	1,149	1,378	$229
Scarsdale	20,900	21,000	147.59	147.01	3,085	3,602	$517
Somers	43,900	44,025	22.92	22.83	1,006	1,090	$84
Yorktown	9,117	9,117	110.34	109.91	1,006	1,253	$247
Mount Kisco	65,375	66,150	11.43	11.38	747	966	$219

RPTL Section 485 also contains language to the effect that the revenues received by the Oswego, Mexico and Hendrick Hudson school districts will be included in determining the property wealth of these districts for education aid formula purposes. Normally, only the value of taxable property is included in property wealth determination, but the magnitude of the PILOT payments for

large facilities such as generation plants requires that this type of adjustment be made if the intent of the aid formula is to be preserved. However, because there is a multi-year delay in incorporating a given year's assessment roll into the aid formula computations, the effect of this provision will not be felt until future years.

V. Findings and Conclusions

This report has reviewed the current status of nuclear generating plants as related to Section 485 of the Real Property Tax Law. The statute in question gives local governments the option of choosing to exempt the nuclear plants from property taxes for a period that may extend to 2015 roll years, allowing instead a program of payments-in-lieu-of-taxes that may be determined under an agreement between the plant owner and the local government or, alternatively, is based on the amount of taxes paid in the last year of taxable status. To date, the three nuclear plants located in the Town of Scriba, Oswego County, and the three located in the Town of Cortlandt, Westchester County, were found to fall under the provisions of this statute. In both areas, the counties, towns, and school districts have opted to participate in the Section 485 PILOT program under the terms of agreements with plant owners. The remaining nuclear plant -- the Ginna facility in the Town of Ontario, Wayne County -- remained taxable as of the 2002 assessment roll.

The report reviewed available sales of nuclear generating property and the value trends that have occurred, in the years that followed initiation of electric industry restructuring in New York, as well as the local fiscal impacts that can be attributed to the provisions of Section 485. The following are the major findings and conclusions.

1. Based on appraisals completed in recent years by the Office of Real Property Services, the values of the Nine Mile 1 and 2 facilities in Oswego County and the value of the Ginna plant in Wayne County declined substantially in the aftermath of restructuring. This trend was not universal for nuclear stations, however, as the value of Indian Point 1 and 2 properties in Westchester County was relatively unchanged, based on the most recent (2001) appraisal data available. Appraisal and assessment data indicate the value of the Ginna plant has fallen by about one-third since the mid 1990s, but the recent sale agreement that has been concluded indicates that the value is higher than was anticipated.

2. For the Oswego County school districts opting to use the provisions of Section 485, there was a leveling effect on inter-municipal school tax apportionment. Prior to adoption of the PILOT program, there were differences of several hundred percent in the typical school tax paid in municipalities within the same school district as compared to the tax paid in the Town of Scriba, where the plants are located. With adoption of the PILOT program, these differences were dramatically reduced.

3. School taxes fell in the City of Peekskill portion of the Hendrick Hudson school district due to the effect of Section 485. Taxes increased somewhat in the Town of Cortlandt portion due to the fact that overassessment of the Indian Point I and II plants is no longer disproportionately favoring Cortlandt property owners.

4. For both Oswego County and Westchester County (as taxing units), the PILOT program reduced inter-municipal differences in tax apportionment. However, the county tax effects were necessarily less dramatic than the school tax effects because the average county tax per parcel is much lower than the average school tax per parcel and the apportionment changes are diluted over wider geographic areas.

5. With the recent sale agreement for the Ginna Plant in Wayne County, which had not been subject to substantial overassessment in prior years and has not become subject to a PILOT agreement and Section 485 exemption, all nuclear plants in New York will have been divested. Thus, it is recommended that legislation requiring this annual report be repealed.