NCIDA

APPLICATION FOR ASSISTANCE

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Each applicant seeking assistance must complete the accompanying application material which includes the Application for Assistance and Environmental Assessment form. A non-refundable application fee of \$1,000.00 must be included with this application, payable to the Niagara County Industrial Development Agency. Every project seeking NCIDA assistance must use best efforts to use local labor for the construction of new, expanded or renovated facilities.

Please answer all questions. Use "none" or "not applicable" where necessary. Information in this application may be subject to public review under New York State Law, except for information that is considered deniable by the Freedom of Information Law. This form is available online at our web page at www.nccedev.com.

I. APPLICANT DATA

A. APPLICANT NAME AES Eastern Energy, L.P. & Somerset Cayuga Holding Co., Inc.'s designee

ADDRESS 7725 Lake Road

CITY/STATE/ZIP Barker, New York 14012

B. APPLICANT'S OFFICER RESPONSIBLE FOR COMPLETING THIS APPLICATION

William B. Rady

7725 Lake Road

TITLE Director, AES Somerset

CITY/STATE/ZIP Barker, New York 14012

TELEPHONE _____

FAX ____

E-MAIL <u>bill.rady@aes.com</u>

APPLICANT'S TAX

MAILING ADDRESS

NAME

ID NUMBER <u>54-2013850</u>

6311 Inducon Corporate Drive, Sulte One, Sanborn, New York 14132 (716) 278-8760 Fax (716) 278-8769

| C. | BUSINESS TYPE | Sole Proprietors Partnership Privately-held C Public Corporati Not-for-Profit Co LLC Other Designe | Corporation ion | • <u>TBD</u> |
|----|--|--|-----------------------|---|
| D. | STATE OF INCORPORATION: | | | |
| | AES: Delaware and Designee: | TBD | | |
| E. | IS APPLICANT AUTHORIZED | TO DO BUSINES | SS IN NEW YOR | K STATE? |
| | ⊠ Yes □ | No | | |
| F. | PRINCIPAL STOCKHOLDERS | (Owners of 20% | or more of Stock | Outstanding) |
| | Kintigh Facility Trust A-1; Kintig Trust A-2 | h Facility | <u>37.5</u> | These ownership percentages are prior to the application of the Order of the Bankruptcy Court for the District of Delaware, which Order is dated April 11, 2012 and for the purpose of transfering the assets, vests title in the Applicant. A copy of the Order is submitted with this Application |
| | Kintigh Facility Trust B-1: Kintig | h Facility | <u>25.0</u> | |
| | Trust B-2 Kintigh Facility Trust C-1; Kintig Trust C-2 | <u>h Facility</u> | <u>37.5</u> | |
| G. | Has the Applicant (or any rela | ited entity) recei | ived previous N | CIDA assistance? |
| | ⊠ Yes | | No. | |
| | If yes, please give year(s) and p | project location | | |
| | Applicant currently has a PILOT several years. | agreement with | the NCIDA for th | e Project location that has been in place for |
| Н. | APPLICANT'S LEGAL COUNS | SEL | | |
| | FIRM NAME | Hiscock & Baro | clay LLP | |
| | ADDRESS | 1100 M&T Cer | nter, 3 Fountain F | <u>laza</u> |
| | CITY/STATE/ZIP | Buffalo, New Y | <u>ork 14203</u> 3 | |

TELEPHONE

716,566.1536

ATTORNEY'S NAME

Mark R. McNamara, Esq.

E-MAIL

mmcnamara@hblaw.com

II. PROJECT & OCCUPANCY DATA

| A. | LOCATION OF PROPOSED PR | ROJECT FACILITY |
|----------------|---|--|
| | ADDRESS | 7725 Lake Road, Barker, New York 14012 |
| | PRINCIPAL USE | Power Generation |
| <u>8.00-1-</u> | SBL# 1 <u>./B</u> | 8.00-1-1./C; 7.00-3-28; 8.00-1-1.2; 8.00-1-1.11; 8.00-1-1.12; 8.00-1-1./A; |
| | ZONING | <u>Industriai</u> |
| В. | INDICATE MUNICIPAL JURISE | DICTION |
| | TOWN | Somerset |
| | VILLAGE | |
| | CITY | |
| | SCHOOL DISTRICT | Barker Central School District |
| C. | CURRENT OWNERSHIP OF P | ROPERTY |
| | CURRENT OWNER | AES Eastern Energy, L.P. |
| | CURRENT ASSESSMENT | 689,233,664 (including all pollution control equipment |
| | CURRENT TAXES (ANNUAL) | |
| D. | Who are the principal user(s) on attached sheet. If same as | of the facility (the "Company")? If there are multiple users, please indicates Applicant indicate the "same" below. |
| | COMPANY NAME | Applicant's designee, AES Somerset, LLC |
| | ADDRESS | 7725 Lake Road |
| | CITY/STATE/ZIP | Barker, New York 14012 |
| | CONTACT | Jack White |
| | TELEPHONE | 716.795.9501 x5050 |
| | TAX ID NO. | |
| | | |

% OF FACILITY TO BE

| | OCCL | IPIED BY COMPANY | <u>100</u> | • |
|----|-------------|-----------------------------|---|---|
| E. | Are of | ther facilities or related | compa | nies located within New York State: |
| | \boxtimes | Yes | | No |
| | LOCA | TION | 228 C | Cayuga Drive, Lansing, New York |
| | | | | _ · |
| | If ther | | cilities | within the State, will any of these close or be subject to reduced |
| | | Yes | \boxtimes | No |
| | | | | |
| F. | Has t | ne company actively so | ught si | tes and/or facilities in another country or state? |
| | | Yes | \boxtimes | No |
| | If yes, | please describe on sepa | arate sho | eet. |
| | | | | |
| G. | Desci | iption of project (checl | one or | r more) |
| - | | Acquisition and New machine | isting far nd mode d mode rv and e | Sq. Footage cility Sq. Footage emization of existing facility rnization of existing facility equipment Production Non-Production T Modification and Mortgage Tax Relief |
| H. | E1124 | Develda information | on /An | tion of the project, including history and background on user(s) of the spendix A) for user(s) of the facility. Describe reasons why this project we on Applicant. Include site plans, renderings, photos, etc. |
| | See c | orrespondence from AE | S accom | panying this application. |

III. COMPANY EMPLOYMENT INFORMATION

| A. | Total current employment within Niagara County is |
|----|---|
| | 115 Full-Time Part-Time |
| | Current Annual Payroll Including benefits \$+15.4 million |
| В. | Projected Employment: <u>115</u> |
| | Applicant or principal user(s) must complete Appendix A. |
| | IV. EMPLOYMENT IMPACT |
| | Every project seeking NCIDA assistance must use best efforts to use Niagara County labor for the construction of new, expanded or renovated facilities. This requirement includes all project employees of the General Contractor Subcontractor or sub to a Subcontractor, working on the project. Applicant agrees and understands the obligation herein, and agrees to transmit and convey in a timely fashion this requirement to all applicable contractors, subcontractors, suppliers and materialmen. |
| A. | Will Niagara County contractors and/or subcontractors be utilized for the construction project? |
| | ☐ Yes ⊠ No |
| В. | What is the estimated number of construction jobs to be created at the project site from |
| | Niagara County: 0 Erie County: 0 Other Areas 0 |

V. APPLICANT PROJECT COSTS AND FINANCING

| Α. | Estimate the costs necessary for the construction, acquisition, rehabilitation, improvement and/or |
|-------|--|
| • • • | equipping of the project by the applicant. |

| Estima | ited Costs Eligible for Sales Tax Exemption Benefit | | |
|----------------------------------|---|----------------------------------|--|
| a. b. c. d. e. f. | Building Construction or Renovation Costs Sitework Non-manufacturing Equipment Furniture, Fixtures Other (specify) Subtotal | a. b. c. d. e. f. | \$ \$ \$ 5 \$ 5 \$ 5 \$ 5 |
| Estima | ited Costs Not Subject to Sales Tax | | |
| g. h. i. j. k. | Land and/or Building Purchase Manufacturing Equipment Soft Costs (Legal, Architect, Engineering) Other (specify) Subtotal Project Costs | g. h. i. j. k. | \$ \$ \$ \$ |
| Indica | te how the project will be financed | | |
| a. b. c. d. e. f. | Tax-Exempt IRB Tax-Exempt Bond Taxable Industrial Revenue Bond Bank Financing Public Financing Equity | a. b. c. d. e. f. | \$ \$ \$ <u>70,000,000</u> \$ \$ |
| | TOTAL SOURCES | | \$ |
| Fetim | ated Amount of Mortgage | | \$ <u>70,000,000</u> |

В.

Estimated Amount of Mortgage

| C. | If applicant expects the Tax-Exempt IRB to exceed \$1,000,000, what is the dollar value of "capital expenditures" that the applicant and company, or any related company or person, has expended within the last three years in the municipality in which the proposed project is to be located and expects to expend in that municipality three years after the bond issue? |
|----|--|
| D. | Has the applicant made any arrangements for the financing of the project? |
| | ☐ Yes ☒ No |
| | If so, please specify bank, underwriter, etc. |
| | <u>TBD</u> |
| Α. | VI. PROJECT CONSTRUCTION INFORMATION What is the proposed commencement date of construction or acquisition of the project? N/A |
| B. | Outline the timetable for the project, indicating when project will be in full use. Project is currently operating |

VII. REPRESENTATIONS BY THE APPLICANT

The Applicant understands and agrees with the Agency as follows:

- A. <u>Job Listings</u>. In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the Project is located.
- B. <u>First Consideration for Employment</u>: In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the Applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.
- C. Annual Sales Tax Filings: in accordance with Section 874(8) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the Applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the Applicant and all consultants or subcontractors retained by the Applicant.
- D. <u>Annual Employment Reports</u>: The Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the project site.
- E. <u>Absence of Conflicts of Interest</u>: The Applicant has received from the Agency a list of the members, officers and employees of the Agency. No member, officer or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described:
- F. Local Labor: The Applicant understands that the residents of Niagara County will be providing assistance to the project. The Applicant further understands that every project seeking NCIDA assistance must use best efforts to use Niagara County labor for the construction of new, expanded or renovated facilities. This requirement includes all project employees of the General Contractor, Subcontractor or sub to a Subcontractor, working on the project. Applicant agrees and understands the obligations herein, and agrees to transmit and convey in a timely fashion this requirement to all applicable contractors, subcontractors, suppliers and materialmen.

VIII. ENVIRONMENTAL ASSESSMENT

New York State law requires that an Environmental Assessment Form (EAF) must be completed and submitted along with this application. Attach the EAF which was submitted to the municipality.

| Name of Applicant's (| Officer Responsible for Completing Application: |
|-----------------------|---|
| (Please Print) | William B. Rady, Director, AES Somerset |
| Signature | WUL B. M, |
| Date of Application | 4.13.12 |

CERTIFICATION

William B. Rady Name of chief executive of the company submitting application

Deposes and says that he/she is the <u>Director</u> of <u>AES Somerset</u>, the corporation named in the attached application; that he/she has read the foregoing application and knows the contents thereof; that the same is true to his/her knowledge. Deponent further says the reason this verification is made by the deponent and not by <u>AES Somerset</u>, (company name) is because the said company is a corporation. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his/her own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this application as well as information acquired by deponent in the course of his/her duties as an officer of and from the books and papers of said corporation.

As officer of said corporation (hereinafter referred to as the "applicant") deponent acknowledges and agrees that applicant shall be and is responsible for all costs incurred by the nonprofit Niagara County industrial Development Agency (hereinafter referred to as the "Agency") acting on behalf of the attached application whether or not the application, the project it describes, the attendant negotiations and ultimately the necessary Issue of bonds and/or completion of the lease/leaseback transaction are ever carried to successful conclusion. If, for any reason whatsoever, the applicant fails to act within a reasonable or specified period of time to take reasonable, proper, or requested actions or withdraws, abandons, cancels, or neglects the application or if the Agency or applicant are unable to identify buyers willing to purchase the total bond issue required or facilitate the lease/leaseback transaction, then upon presentation of invoice, applicant shall pay to the Agency, its agents, or assigns all actual costs involved in conduct of the application, up to that date and time, including but not necessarily limited to fees of bond counsel for the Agency and fees of general counsel for the Agency. Upon successful conclusion and sale of the required bond issue or completion of the lease/leaseback transaction, the applicant, including bond counsel and the Agency's general counsel's fees and the administrative fee, may be considered as a cost of the project and included as part of the resultant bond issue or lease/leaseback transaction.

Willam B. Rady Print Name of Chief Executive

WILL B. R.

Signature

NCIDA

APPENDIX A

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PROJECTED EMPLOYMENT*

| | | Full-Time | | Part-Time | | Total | Total Payre | oli* |
|---------------------|---|---------------------------------|------|-----------------|-------|---|-------------|--------------|
| Total ni Niagera | umber of employees within a County at the date of application | <u>115</u> | + | | = | <u>115</u> | \$15,400,00 | 00,00 |
| Total no | umber of employees to be directly TED by the project: | <u>115</u> | + | <u>115</u> | = | Marie Control of the | \$15,400,00 | <u>00.00</u> |
| ADD: | Number of new Jobs to be created During the first year after completion: | | + | | = | , | _ | |
| Total e | nd of first year: | | + | | = | | _ | |
| ADD: | Number of new jobs to be created During the second year after completion: | | + | | = | ****** | | , |
| Total e | nd of second year; | | + | | = | | | |
| ADD: | Number of new jobs to be created During the third year after completion: | ···· | + | | = | | - | |
| Total e | nd of third year: | yp ag y tir tir didd | + | | = | | <u></u> | |
| Estima | ted average annual salary of new jobs to | be created: | | | | | | |
| Expect | ed high salary of <u>new</u> jobs to be created: | | | | | | | |
| Expect | ad low salary of new jobs to be created: | | | | | | | |
| List typ | es of jobs (i.e. production, managerial, cli | nical, engine | erin | ng, etc.) to be | e cre | ated. | | |
| *Applic | ant or principal user(s) as noted in Sectio | n III B of app | lice | ition (include | s be | nefita) | | |
| | , | 17 | 4 | Sel | /. | 310, | | |
| Willian | William B. RADY | X | | | | | - | |
| Orint N | | Signature | | | | | Date | |

EXHIBIT 1

| | | | | | | Summer | vol Maden | POWER PLE | Summary of Modern Power Plant FILOTs and Tax Payments | and Tax Pev | ments | | | | | | | | |
|--|--|---|-------------------------------|--|--|--|--|--|---|-------------------------|---------------------------|------------------------|--|------------------|--|-----------------------|--|--------------|--------------|
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| × 5 | - THUNK | 1000 | | | | 3 1,247,035 \$ 8,365,381 \$ | \$ 25,000,000 | \$ 270,000 | \$ 9302 Oct | | \$ 20,000,000 | 2007227 | 276,656 \$ 5,962,648 S 550,000 S 7,777,000 S 5,000,000 S | 3 7,998,000 | 1 7,100,215 | 8 6,088,750 IS | S 8,513,158 S | | 21,001,258 |
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| Passessons Based Palotts. Preparent assumes and estimated based to projected to rate. Additionally, Cayuga has exercised an option to stayed the PlaCV to | epinent emmints air- | estimated based to | n projected tax rates. | Actilizacijy, G. | syuge the even | fact an option to | File PLA | H B | | | | | | | | | | | |
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| No | case and emission | Tax rather. | | | | | | | | | | | | | | | | | |

EXHIBIT B

SCHEDULE A

The PILOT Payment with respect to the Premises shall be in the amounts set forth below, less total special district taxes for each respective tax year as applied herein. This schedule shall not take effect until the 2013 County and 2013 Town tax year. The 2012-2013 School District tax year payment shall not be effected by this Amendment.

| PILOT Year | Town/ County Tax Year | School District Tax Year | Total Special Districts/PILOT Agreement Payment |
|---------------|-----------------------------|--------------------------|---|
| 1 | 2011 | 2010-2011 | \$15,800,000 |
| 2 | 2012 | 2011-2012 | \$14,300,000 |
| 3 | 2013 | 2012-2013 | \$ 10,848,000 |
| 4 | 2014 | 2013-2014 | \$ 6,704,000 |
| 5 | 2015 | 2014-2015 | \$ 5,120,000 |
| | | | |

The Affected Tax Jurisdictions will divide the PILOT payments as set forth below. The School District, Town and County have agreed as required under General Municipal Law §858(15) by which these PILOT payments will be allocated:

- i. The School District will receive as a set amount each year from the PILOT payments the sum which represents 59.25% of the total annual PILOT payment.
- ii. The Town will receive as a set amount each year from the PILOT payments the sum which represents 9.25% of the total annual PILOT payment. Included in this amount is any and all Town based special district charges and assessments, including fire protection, which the Town shall be required to forward to the appropriate special district in a timely manner.
- iii. The County will receive as a set amount each year from the PILOT payments the sum which represents 31.50% of the total annual PILOT payment. Included in this amount is any and all County special district charges and assessments, which the County shall be required to forward to the appropriate special district in a timely manner.
- iv. As Security, in lieu of a letter of credit, the Company shall pay said amounts in advance of the respective due dates on an installment basis, as shown attached hereto as Schedule "D". While Security is provided in this form, the Events of Default shall include failure to pay a scheduled payment after five (5) business day's written notice from the Agency or the Affected Tax Jurisdiction that an amount is due and has not been paid. No cure period shall apply to a default hereunder.

EXHIBIT C

SCHEDULE "D"

Security-Payment Schedule

| | | | Ì | | | | | |
|--------------------------|--------------|---------------------------|--------------|-------------------------------|--------------|--------------|----------------|--------------|
| Calendar 15- Jan Year | | 1-Feb | 15- JUN | 15 JUL | į | 15 SEP | 1-0CT | 15-DEC |
| 2011 | \$0 | \$6,438,500.00 \$706,062. | \$706,062.50 | \$706,062.50 | \$706,062.50 | \$706,062.50 | \$5,648,500.00 | \$0 |
| 2012 | \$375,375.00 | \$5,451,875.00 | 632,000 | .00 \$632,000.00 \$632,000.00 | \$632,000.00 | \$632,000.00 | \$5,056,000.00 | \$336,000.00 |
| 2013 | \$201,600.00 | \$2,726,400.00 | 379,200 | \$379,200.00 | \$379,200.00 | \$379,200.00 | \$3,033,600.00 | \$201,600.00 |
| 2014 | \$134,400.00 | \$1,817,600.00 | 252,800 | \$252,800.00 | \$252,800.00 | \$252,800.00 | \$2,022,400.00 | \$134,400.00 |
| 2015 | \$134,400.00 | \$1,817,600.00 | | | | | | |