

**Niagara County Industrial Development Agency**  
Project Summary / Cost Benefit  
AES Eastern Energy, L.P.  
Project No. 10-13

December 2010

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**Applicant:** AES Eastern Energy, L.P.

**Project Location:** 7725 Lake Road  
Barker, NY

**Assistance:** AES Eastern Energy, L.P has two (2) requests:

1. Authorize the release of approximately 180 acres of land just west of the power plant on Route 18 for sale to Verizon and a new data complex.
2. Request for a New Deviated PILOT

**Description:** AES Eastern Energy, L.P. was established on November 18, 1998 in the State of Delaware for the purpose of acquiring the former NYSE&G Kintigh power plant. This 650 megawatt coal fired electric power generating station facility occupies 1800 acres in the Town of Somerset and employs approximately 135 people.

AES Eastern Energy, L.P., is asking the NCIDA to amend the January 2010 PILOT Agreement between AES Eastern Energy, Niagara County, Barker School District and the Town of Somerset. The current five (5) year Payment In Lieu of Tax (PILOT) Agreement for the Somerset facility calls for an annual PILOT payment of \$15,800,000 starting in 2011. Due to current economic conditions AES has stated that the Somerset plant needs to reduce costs everywhere possible.

**9/24/10 Request:** AES Eastern Energy, L.P., requested that the existing payment schedule be reduced by \$1 million dollars every year for the next 8 eight years to an annual payment of approximately \$7.8 million.

9/24/10 PILOT Request:	2011	\$14,800,000
	2012	\$13,800,000
	2013	\$12,800,000
	2014	\$11,800,000
	2015	\$10,800,000
	2016	\$ 9,800,000
	2017	\$ 8,800,000
	2018	\$ 7,800,000

**Niagara County Industrial Development Agency**

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**10/29/10 Request:** AES Eastern Energy, L.P. submitted a new letter requesting a modification to the NCIDA Application for Assistance. This request calls for modification to the 2010 PILOT Agreement with the Agency and would cover the years 2012 to 2015. The reduction of payments would be from \$15,800,000 in 2012 to 9,800,000 in 2015.

10/29/10 PILOT Request:	2012	\$12,800,000
	2013	\$ 9,800,000
	2014	\$ 9,800,000
	2015	\$ 9,800,000

**Economic Impacts:** Under the terms of the 2010 PILOT Agreement the project facility pays an annual PILOT of \$15,800,000, distributed by a non-standard PILOT Agreement among the Taxing Jurisdictions for a term of 5 years.

The request of AES (9/24/10 and 10/29/10) would represent a reduction in PILOT payment compared to its current PILOT payment. Both the amount and terms of the agreement request would represent reductions in revenue to the taxing jurisdictions.

October 29, 2010



Mr. Henry M. Sloma  
Chairman  
Niagara County Industrial Development Agency  
6311 Inducon Corporate Drive  
Sanborn, New York 14132

**AES Somerset, L.L.C.**  
7725 Lake Road  
Barker, New York 14012  
tel 716 795 9501  
fax 716 795 3654

Re: AES Eastern Energy, L.P./AES Somerset, LLC  
Project Proposal

Dear Mr. Sloma:

As you know, by letter and Application of Assistance dated September 24, 2010 ("Application"), AES Eastern Energy, L.P. and its affiliate AES Somerset, LLC, as operator, under an Operation and Maintenance Agreement dated as of May 1, 1999 ("Company"), have proposed a transaction with the Niagara County Industrial Development Agency ("NCIDA") by which we would amend the existing Payment in Lieu of Tax Agreement between the NCIDA and the Company dated February 1, 2010 ("AES PILOT"), the February 1, 2010 Lease ("Lease") and February 1, 2010 Leaseback Agreement ("Leaseback") for the land and existing improvements described therein (collectively the "Project"). As we have informed you verbally, the proposed payment schedule attached as Exhibit 1 to the Application has been modified. Market conditions continue to deteriorate. Energy demand and energy clearing prices in the New York Independent System Operator (NYISO) Zone A have further decreased since our original Modification Application. The Market Energy Pricing is influenced by:

- o Reduced natural gas pricing,
- o Low energy demand and economic recession,
- o State-driven energy efficiency and demand-side management programs.

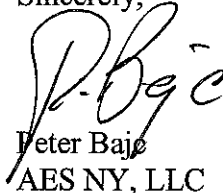
In addition, during this same period, coal and transportation costs continue to remain high and capacity values for Rest of State continue to plummet. This has put increased financial stress on the business in the near term. As a result, AES Somerset needs immediate relief in order to be a sustainable business long term. In the enclosed revised payment schedule, AES Somerset is proposing a change in the term and payment schedule from the original application. The revised payment schedule is accelerated to offset the immediate financial pressures of the AES Somerset business in the short term. In return for the quicker relief, AES is willing to accept a shorter term and a payment higher than the \$7.8 million originally proposed. Enclosed is the revised payment schedule which should be substituted for the original Exhibit 1. In addition, please note that the revised schedule contained in the substituted Exhibit 1 no longer seeks an extension of that term and any references to the contrary should be disregarded. Finally, this letter should be included and considered as part of our Application.

Thank you again for your consideration of this Project.

Mr. Henry M. Sloma  
October 29, 2010

Please call if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Bajic". The signature is written in a cursive style with a large initial "P" and a distinct "Bajic" following.

Peter Bajic  
AES NY, LLC  
Vice President and Director,  
(General Partner of AES Eastern Energy, L.P.)  
and  
President  
AES Somerset, LLC

**Exhibit 1**

**Proposed Amended PILOT Payment Schedule**

<u>PILOT Year</u>	<u>Town / County Tax Year</u>	<u>School District Tax Year</u>	<u>Total Preliminary PILOT Payment</u>
1	2012	2011-2012	\$ 12,800,000
2	2013	2012-2013	\$ 9,800,000
3	2014	2013-2014	\$ 9,800,000
4	2015	2014-2015	\$ 9,800,000
Total:			\$ 42,200,000



September 24, 2010

**AES Somerset, L.L.C.**  
7725 Lake Road  
Barker, New York 14012  
tel 716 795 9501  
fax 716 795 3654

Mr. Henry M. Sloma  
Chairman  
Niagara County Industrial Development Agency  
6311 Inducon Corporate Drive  
Sanborn, New York 14132

Re: AES Eastern Energy, L.P./AES Somerset, LLC  
Project Proposal

Dear Mr. Sloma:

AES Eastern Energy, L.P. and its affiliate AES Somerset, LLC, as operator, under an Operation and Maintenance Agreement dated as of May 1, 1999 ("Company"), propose a transaction with the Niagara County Industrial Development Agency ("NCIDA") by which we would amend the existing Payment in Lieu of Tax Agreement between the NCIDA and the Company dated February 1, 2010 ("AES PILOT"), the February 1, 2010 Lease ("Lease") and February 1, 2010 Leaseback Agreement ("Leaseback") for the land and existing improvements described therein and in the various attachments to this letter (collectively the "Project").

### **The Project**

The amendment of the AES PILOT would consist of an extension of the term and reduction of the AES PILOT payments and releasing certain vacant lands to the west of the facility (178+/- acres) from the AES PILOT, Lease and Leaseback. (The NCIDA "Application for Assistance" form is attached hereto as Exhibit A ["Application"] and the AES PILOT, Lease and Leaseback are attached as Exhibit B. This letter should be considered as part of the Application). As described below, the Project provides needed stability and cost containment for the Company's business and the community in the face of the serious economic challenges threatening the AES Somerset Electric Generating Station (the "Somerset Station") as well as the potential for further economic development. This financial assistance in the form of an amended AES PILOT reducing the AES PILOT payments and extending the current schedule through the period 2011-2018 will greatly assist in retaining jobs at the Somerset Station. The proposed amended AES PILOT Payment Schedule is set forth in Exhibit 1 to the Application. The description of the vacant lands to be released from the AES PILOT, Lease and Leaseback is contained in Exhibit 2 to the Application.

The Application requests financial assistance in the form of an amendment to the AES PILOT for the existing improvements at the Company's approximately 1,800 acre Somerset Station property located in the Town of Somerset, Niagara County (the "Site"). We request that

Mr. Henry M. Sloma  
September 24, 2010

you present the Project to the NCIDA Board for the approval at its October 13, 2010 meeting such that the public hearing and all necessary reviews and resolutions relative to the Project can be completed and authorized to permit the proposed amended AES PILOT to take effect prior to March 1, 2011.

By way of background, the Somerset Station (formerly known as the Kintigh Generating Station) is a 675 megawatt ("MW") net coal-fired electrical generating station that began commercial operations in 1984 and was acquired from NYSEG in May 1999. The Somerset Station is operated by AES Somerset, LLC under a lease from the V-Kintigh Facility Trust, which are both affiliated with the AES Corporation. We currently employ 122 individuals in full time positions at the Somerset Station and have an annual payroll and benefits of over \$15.4 million. The Somerset Station also regularly engages facility support subcontractor services, with estimated employment through our subcontractors of an additional 250-300 individuals, under contracts totaling over \$8 million annually.

As we have previously detailed to the NCIDA, our industry is market-driven and the sale of our product is very competitive. The long term viability of the Somerset Station and the jobs created and preserved there is a function of maintaining cost control and cost certainty at a reasonable and competitive level.

Since we entered into the AES PILOT, the business environment in which we operate has continued to deteriorate. Energy demand and energy clearing prices in the New York Independent System Operator (NYISO) Zone A have been reduced as a result of low natural gas pricing, economic recession, state-driven energy efficiency and demand-side management programs and transmission constraints due to a lack of investment from transmission owners. Prices for energy in our zone, and capacity payments have dropped sharply resulting in substantially reduced revenues. Meanwhile, natural gas prices have dropped significantly due to reduced natural gas demand and excess supply due to shale productivity including the Marcellus Shale. Coal and transportation costs have increased dramatically to the competitive detriment of the Somerset Station. Specifically, in the past 12 months coal prices have risen from approximately \$45 to almost \$70 per ton as a result of international demand, particularly from China. During the same period, natural gas prices have dropped 30% further contributing to lower energy pricing. AES Somerset pays more than \$27 million annually in property taxes, carbon taxes, emission fees, and other mandates which have increased significantly as a result of recently imposed environmental regulations and evolving enforcement policies. These regulations and those proposed for air, cooling water and coal combustion by products which we expect to be phased in over the next several years will continue to drive up the facility's environmentally related operational costs and drive substantial generator retirements. These increased operational costs, particularly with the increased pressure from generators which use natural gas as a fuel, make the Somerset Station much less competitive in the energy market.

In addition, the recession and market uncertainties have limited the pool of available counterparties with whom the Company can enter into more stable, longer term energy contracts. The uncertainty of the enactment, enforcement and costs of added environmental regulation has resulted in much shorter term transactions due to the greater risk uncertainty. The overall effect

on the Somerset Station is that it operates less often, the Company receives less income when it does operate and the facility for the foreseeable future will be unable to generate enough cash to cover its budgeted fixed expenses, debt service and capital expenditures based on current industry wide forward projections. The same holds true for the Company's other New York facilities known as AES Greenidge, AES Cayuga and AES Westover. As earnings decrease and credit ratings are inevitably downgraded, credit becomes more constrained which hurts the Company's ability to sell energy on a forward basis and increases our earnings volatility making the business less attractive for investors.

The gravity of the situation is underlined by the September 17, 2010 written notices issued by AES regarding AES Greenidge and AES Westover in accordance with regulatory requirements issued by the New York Public Service Commission. The written notice stated that, in light of the market conditions and other circumstances as they are known as of this time, it intended to put its AES Greenidge Unit 4 and AES Westover Unit 8 facilities in protective lay-up.

The Greenidge Unit 4 facility, located in the town of Torrey in Yates County, New York, is a 108 megawatt (MW) net, coal & biomass-fired generating facility that provides energy, capacity and ancillary services in Central New York. The Greenidge Unit 3 located on the same site was permanently retired on December 31, 2009. Since the Company purchased the Greenidge Unit 4 facility, more than \$40 million has been invested in environmental retrofits, including an SCR, a Dry Scrubber, and a Baghouse, to limit its emissions. In addition, \$9 million was invested to provide for biomass co-firing of up to 10% at the facility to lower its overall carbon levels. The site employs 40 direct employees, and is one of the largest taxpayers in Yates County paying millions of dollars in property and other taxes annually. In addition, it provides a significant economic benefit and indirect employment benefits to the Yates County area.

The Westover Unit 8 facility, located in the town of Union in Broome County, New York, is an 80 MW, coal-fired generating facility that has provided energy, capacity and ancillary services in Central New York. The Westover Unit 7 facility operated by AES Westover located on the same site was permanently retired on December 31, 2009. AES has invested \$60 million in environmental retrofits including an SCR, a Dry Scrubber, and a Baghouse to limit the emissions of this facility. The site employs 37 direct employees, and is one of the largest taxpayers in Broome County paying millions of dollars in property and other taxes annually and provides significant economic benefits and indirect employment benefits to the Broome County area.

Based on the current and forecasted wholesale electric prices in Central New York and current and pending environmental regulations, the Greenidge Unit 4 and Westover 8 facilities are, and will continue to be, operating at a net loss. Given that the units are not economic at this time, the Company intends to put the facilities in protective lay-up to limit the costs that are incurred.



Mr. Henry M. Sloma  
September 24, 2010

In order to be competitive, AES Somerset needs to reduce the AES PILOT payment obligations through the establishment of a payment structure consistent with its competitors. Failure to achieve this objective places the Somerset Station at a significant competitive disadvantage due to higher fixed costs due to property tax payments. Even though the AES PILOT payments were less than the property taxes paid on the Somerset Station as assessed by the Town, they are still well above those which our competitors pay and outside industry norms as is evident from the comparison attached to our Application. In short, the AES PILOT payments on a per megawatt basis put the Somerset Station at a competitive disadvantage exacerbated by the economic challenges described above. (See Exhibit 3 to the Application describing the competitive tax treatment between New York generating plants). This is an untenable situation in light of the harsh economic realities facing fossil-fuel power plants in New York, in general, and the Somerset Station, in particular.

Even in the difficult market and economic environment in which we have operated this past year, the Somerset Station continues to be a major employer and economic engine in Niagara County. Amending the AES PILOT payment schedule is one, among various, critical steps the Company is taking to maintain the long term economic viability and competitive position of the Somerset Station. These other steps include reducing our variable costs in terms of coal, transportation, ash, lime, ammonia, etc.; further reducing fixed and other miscellaneous expenses by reducing contractors, deferring major maintenance, performing only work necessary for safety and reliability concerns in accordance with industry prudent practices; deferring planned capital expenditures and restructuring our debt requirements.

Niagara County is best served by working in a coordinated manner with the private sector to realize the greatest economic benefit from its available industrial businesses. Economic benefit is defined holistically as not only tax revenues from one source but lower energy costs, new employment, increased tax base, and the opportunity to attract second and third tier business opportunities as a result of the initial business development. We believe releasing the 178 acres to the west of the facility will create the potential for additional development without compromising the amended PILOT, Lease and Leaseback.

With this in mind, we ask that you accept the enclosed application for NCIDA financial assistance, including mortgage recording tax exemption in relation to the Somerset Station, and an exemption from real property taxes as detailed in our Project proposal.

Finally, to help you gauge the reasonableness of our proposal; the last two major fossil-fuel electric generating plants constructed in New York namely, the Athens Generating Facility and the Bethlehem Energy Center, were supported by PILOT agreements having average annual payments per megawatt of \$3,700 and \$6,000, respectively. We have proposed average annual payments for the Somerset Station of \$16,740 per MW.

The NCIDA is in a unique position to assist the Company in protecting the long term economic viability of the Somerset Station and protect jobs at the facility that are critical to the Company and Niagara County. We look forward to working with you through the process of the NCIDA's consideration of this Project.

Mr. Henry M. Sloma  
September 24, 2010

Please call if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Bajc". The signature is stylized with a large, sweeping initial "P" and a cursive "Bajc".

Peter Bajc  
AES NY, LLC  
Vice President and Director,  
(General Partner of AES Eastern Energy, L.P.)  
and  
President  
AES Somerset, LLC

**Niagara County Industrial Development Agency**  
6311 Inducon Corporate Drive, Suite One. - Sanborn, New York 14132  
(716) 278-8760 Fax (716) 278-8769

**Application for Assistance**  
**Amendment of Existing AES PILOT Agreement, Lease and Leaseback Agreement**

Please answer all questions on the **Niagara County Industrial Development Agency Application and Environmental Assessment Form**. Information submitted as part of this application will not be made public prior to the passage of an Official Action Resolution by the Agency. After such action, this information may be subject to disclosure under the New York State Freedom of Information Act.

Prior to application submission, this project was reviewed with \_\_\_\_\_ of the Niagara County Industrial Development Agency and assigned Project Number \_\_\_\_\_.

**I. Company Data**

A. Company Name: AES Eastern Energy, L.P. and its affiliate AES Somerset, LLC, as operator under an Operation and Maintenance Agreement dated as of May 1, 1999 (the "Company")

Address: 7725 Lake Road  
Barker, New York 14012-9600

Telephone: (716) 795-9501 Fax: (716) 795-3654  
Email: peter.bajc@aes.com Website: www.aes.com  
IRS Identification No.: 54-2013850

Company official completing this application and authorized to respond on behalf of the company:

Name: Peter Bajc Title: President and Plant Manager

B. Company Owners, Officers, Directors and Partners: List name and home address, title and other principal business affiliations.

Peter Bajc – President and Plant Manager

C. Legal Counsel: Hiscock & Barclay, LLP (Mark R. McNamara, Esq.)  
Address: 1100 M&T Center; 3 Fountain Plaza; Buffalo, New York 14203  
Telephone: (716) 566-1536 Fax: (716) 846-1210  
Email: mmcnamara@hbllaw.com

D. Accountant (Firm): Ernst and Young  
Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

E. Principal Bank of Account: HSBC Bank – Barker Branch

F. Type of Business  Corporation  Sub Chapter S  Partnership  
 Sole Proprietorship  Other – Limited Partnership,  
Limited Liability Co.

G. Is Company authorized to do business in New York State? Yes  No

H. Principal Stockholders with 5% or more of stock outstanding in the company:

<u>Name</u>	<u>Address</u>	<u>% of Holding</u>
<u>Kintigh Facility Trust A-1; Kintigh Facility Trust A-2</u>		<u>37.5</u>
<u>Kintigh Facility Trust B-1; Kintigh Facility Trust B-2</u>		<u>25.0</u>
<u>Kintigh Facility Trust C-1; Kintigh Facility Trust C-2</u>		<u>37.5</u>

I. List subsidiary, associate, and/or affiliated companies of applicant.

AES Corporation (Parent of Kintigh Facility Trusts and AES Eastern Energy, L.P.);  
AES Somerset, LLC is the operating company.

J. Is the Company or management of the Company now a defendant in any criminal litigation? Yes  No

Has any person listed above ever been convicted of a criminal offense (other than a minor traffic violation)? Yes  No

Has any person listed above or any concern with whom such person has been connected ever been in receivership or been adjudicated a bankrupt? Yes  No

*If the answer to any of the above questions is yes, please, furnish details in a separate attachment.*

K. Identify the assistance being requested of the Agency:

(1)  Bond financing for new project; estimated amount \$ \_\_\_\_\_

- (2)  Bond/project refinancing; estimated amount \$ \_\_\_\_\_
- (3)  Lease/sale back
- (4)  Assignment of lease
- (5)  Exemption from Sales Tax; estimated benefit \$ \_\_\_\_\_
- (6)  Exemption from Mortgage Tax; estimated benefit \$ \_\_\_\_\_
- (7)  Exemption from Real Property Tax; estimated benefit \$ \_\_\_\_\_

If you have selected (5),(6) or (7), indicate whether you are seeking a deviation from the Agency's uniform tax exemption policy: Yes ; No . If the answer is yes, please furnish details in a separate attachment.

*\* By letter covering submission of this Application (which letter is made a part of the Application), the Company has proposed to amend its existing Payment in Lieu of Tax Agreement dated February 1, 2010 between the Agency and the Company covering the AES Somerset Station ("AES PILOT") by releasing certain lands out of those covered by the AES PILOT, Lease and Leaseback Agreement and extending the time period and reducing the annual payments of the AES PILOT payment schedule . The proposed amended AES PILOT Payment Schedule is attached as Exhibit 1 hereto. The land to be released is identified in the attached Exhibit 2.*

- (8)  Other (please furnish details in a separate attachment)

## II. Business Data

### A. Company Background

1. Describe when and where was the company established?  
The Company was established on November 18, 1998 by the filing of a Certificate of formation with the Delaware Secretary of State
2. Describe the type of business  
The Company is an independent power producer.
3. Description of Present Facilities:

Lot size: 1,800 +/- acres      Number of buildings: 9

Square footage of facilities: \_\_\_\_\_

Owns    **OR**     Rents present facilities (\* *The facility is financed through a leveraged lease*)

4.    What is the present employment of the company?    122

# Full Time    122                      # Part Time    \_\_\_\_\_

Estimated annual payroll:    \$15.4+ million

5.    Approximate annual sales:    \$ \_\_\_\_\_

6.    Describe primary markets.  
Western New York Region of the New York Independent System Operator.

7.    Provide a brief description of the company and its history.  
The Company, through its corporate parent, AES Corporation, acquired the former Kintigh Station from NYSEG in 1999.

B.    Provide types of business activity and approximate square feet of each for company's present facility:

	Square Feet
<b>Manufacturing/Processing</b>	98%
<b>Warehousing</b>	
<b>Research &amp; Development</b>	
<b>Commercial</b>	
<b>Retail*</b>	
<b>Office</b>	2%
<b>Other (specify)</b>	

\*    A retail business activity shall mean (i) sales by a registered vendor under article twenty-eight of the New York tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers.

- C. **Describe principal goods, products and/or services of the company:**  
The Company generates and sells electricity to the New York Independent System Operator primarily in daily power auctions.

### III. Project Data

#### A. Location of Proposed Project:

1. Physical Address of proposed Project Site:

Address: 7725 Lake Road, Barker, New York  
City, Town, Village: Town of Somerset; Barker Central School District  
County: Niagara

2. New York State Empire Zone Tax Incentives.

In addition to financial incentives that the Niagara County Industrial Development Agency can provide with respect to the proposed Project, the Project may also be eligible for New York State tax benefits (sales tax, income tax, and real property tax benefits and credits) under the New York State Empire Zone Program. Empire Zone tax benefits can be utilized concurrently with Niagara County Industrial Development Agency benefits and incentives.

**Is the proposed Project Site located in an Empire Zone?**

Yes       No       Unsure

3. **New York State Brownfield Cleanup Program Tax Incentives**

New York State provides for significant refundable New York State tax credits with respect to cleanup and construction (buildings and equipment) costs, real property tax expenses, and insurance costs related to remediating and developing a Brownfield/contaminated property. In addition, New York State provides for a release of liability with respect to such contamination located in, on or emanating from the Brownfield Site. New York State Brownfield Cleanup Program tax credits can be utilized concurrently with Niagara County Industrial Development Agency benefits and incentives.

Under the New York Brownfield Cleanup Program, a Brownfield or a Brownfield Site is any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous waste, petroleum, pollutant, or contaminant (collectively, "contaminants").



Is the proposed Project Site located on a site where the known or potential presence of a contaminant(s) is complicating the development/use of the property?

Yes     No     Unsure

Has a Phase I Environmental Assessment been prepared or will one be prepared with respect to the proposed Project Site?

Yes     No     Unsure

Have any other studies or assessments been undertaken with respect to the proposed Project Site that indicate the known or suspected presence of contamination that would complicate the site's development?

Yes     No     Unsure

**B. Existing Project Facilities:**

1. Parcel Size:                                  Acres    **OR**                                  ft. x                                  ft.

*Approximately 1,800 acres.*

2. Are there existing buildings on the Project site? Yes ; No .

a. If yes, indicate the number of buildings on the site:   9  . Also, please briefly identify each existing building and indicate the approximate size (in square feet) of each such existing building:

Building Description	Size
<i>Power generation and related buildings</i>	

b. Are the existing buildings in operation? Yes ; No . If yes, describe present use of present buildings:

Building	Use
<i>Power block</i>	<i>Power generation</i>
<i>Admin</i>	<i>Office</i>
<i>FGD, SSS, LWTS</i>	<i>Ancillary services</i>
<i>Training, Contractor</i>	<i>Offices/meeting space</i>

c. Are the existing buildings abandoned? Yes ; No . About to be abandoned? Yes ; No . If yes, describe:

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d. Attach photograph of present buildings.

3. Identify present landowner. The Company is the beneficial owner of the land (land owned by Kintigh Facility Trusts under leveraged lease financing).\*

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4. Present zoning of site: Industrial

Are there any variances or special permits affecting the Project site?  
Yes  No .

If yes, list below and attach copies of all such variances or special permits.

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5. Provide Tax Map (section/block/lot) number(s):  
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;  
8.00-1-1./B

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6. List current assessed value: \$480,814,939 (including all pollution control equipment)  
List current annual property tax payment: \$15,800,000 (existing AES PILOT)

7. Identify school district pertaining to Proposed Project location:  
Barker Central School District

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### C. Proposed Project Facility and Equipment

1. Does part of the Project consist of the acquisition or construction of a new building or buildings? Yes ; No .

*\* NCIDA has taken an interest in the existing AES Somerset Station improvements for the purposes of job retention.*

If yes, indicate number and size of new buildings:

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2. Does part of the Project consist of additions and/or renovations to existing buildings located on the Project site? Yes ; No .

If yes, indicate the buildings to be expanded or renovated, the size of any expansions and the nature of expansion and/or renovation:

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3. Describe the principal uses to be made by the Company of the building or buildings to be acquired, constructed or expanded:

Electric Generation

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4. Will machinery and equipment be acquired and installed?

New:  No  Yes Type \_\_\_\_\_

Used:  No  Yes Type \_\_\_\_\_

Describe the principal uses to be made by the Company of the Equipment to be acquired or installed:

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5. Project Use

- a. What are the principal products to be produced at the Project?  
Electricity and related products.

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6. Project Use

- a. What are the principal activities to be conducted at the Project?

	%		%
Warehousing		Manufacturing	100
Processing		Pollution control	
Office		Research & Development	
Retail*		Commercial	
Recreational		Other:	

\* A retail business activity shall mean (i) sales by a registered vendor under article twenty-eight of the New York tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers.

- b. Does the Project include facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities? Yes ; No .

**If yes, please see Addendum A attached hereto.**

- c. Will the completion of the Project result in the removal of a plant or facility of the Company or another proposed occupant of the Project (a "Project Occupant") from one area of the State of New York to another area of the State of New York? Yes  No  If yes, please explain:

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- d. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Company located in the State of New York? Yes  No

If yes, please provide detail:

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- e. If the answer to either question (d) or question (e) is yes, indicate whether any of the following apply to the Project:

- (1) Is the Project reasonably necessary to preserve the competitive position of the Company or such Project Occupant in its industry? Yes  No

If yes, please provide detail:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (2) Is the Project reasonably necessary to discourage the Company or such Project Occupant from removing such other plant or facility to a location outside the State of New York? Yes  No

If yes, please provide detail:

\_\_\_\_\_  
\_\_\_\_\_

7. Is this a single phase or multi-phase project?  Single  Multi

Phase I Activities: \_\_\_\_\_

Phase II Activities: \_\_\_\_\_

Phase III Activities: \_\_\_\_\_

- D. Utilities and services presently serving site. Provide name of utility provider.

Gas:	<i>N/A</i>	Size:
Electric:	<i>onsite generation/National Grid</i>	Power: 675 MW
Water:	<i>N/A</i>	Size:
Sewer:	<i>Somerset POTW</i>	Size:
Other (specify):		

- E. What is your project timetable? (Provide dates) *N/A*

1. Start date: acquisition or construction of facilities: \_\_\_\_\_
2. Completion of project facilities: \_\_\_\_\_
3. Project occupancy – starting date of operations: \_\_\_\_\_

- F. Have any contracts or purchases been made, committed and/or executed toward the project?  No  Yes,

If yes, please provide detail:

\_\_\_\_\_

G. Has any work toward the completion of the project been initiated?  No  Yes,

If yes, please provide detail:

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H. Will the project require any government actions, permits or clearances (other than IDA requirements)? If yes, please provide the following details:

Action	Issuing Agency	Date of Issuance

I. Include any site plans, drawings or blueprints that have been developed.

J. Does the Company intend to lease or sublease more than 10% (by area or fair market value) of the Project? Yes ; No . If yes, please complete the following for each existing or proposed tenant or subtenant:

Sublessee name: \_\_\_\_\_  
Present Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer's ID No.: \_\_\_\_\_

Sublessee is:  Corporation       Partnership       Sole Proprietorship  
Relationship to Company: \_\_\_\_\_

Percentage of Project to be leased or subleased: \_\_\_\_\_ %

Use of Project intended by Sublessee:

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Date of lease or sublease to Sublessee: \_\_\_\_\_

Term of lease or sublease to Sublessee: \_\_\_\_\_

Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project?

Yes  No .

If yes, please provide on a separate attachment: (a) details, and (b) the answers to questions III(D)(6)(c) through (f) with respect to each such sublessee.

K. Describe the reasons why this project is necessary and what effect it will have on your company:

See accompanying letter from Peter Bajc dated September 24, 2010 to the Agency and Exhibit 3 attached hereto.

#### IV. Employment Impact

A) Will Niagara County contractors and / or sub contractors be utilized for the construction project? Yes  No .

B) What is the estimated number of construction jobs to be created at the project site from:

Niagara County: , Erie County , Other Areas ,

C) Indicate below the number of people presently employed at the Project site and the number that will be employed at the Project site at end of the first and second years after the Project has been completed (Do not include construction workers). Also indicate below the number of workers employed at the Project site representing newly created positions as opposed to positions relocated from other project sites of the applicant.

TYPE OF EMPLOYMENT				
	PROFESSIONAL OR MANAGERIAL	SKILLED OR SEMI- SKILLED	UNSKILLED	TOTALS
Present Full Time				122*
Present Part Time				
Present Seasonal				
First Year Full Time				
First Year Part Time				
First Year Seasonal				
Second Year Full Time				
Second Year Part Time				
Second Year Seasonal				

\*This level of employment is at risk of decreasing significantly if the Company is not able to successfully renegotiate the AES PILOT.

**V. Project Cost Data**

A. Give breakdown of project costs:

<b>Land</b>	\$
<b>Buildings: Acquisition</b>	\$
<b>Renovation</b>	\$
<b>New Construction</b>	\$
<b>Demolition</b>	\$
<b>Utilities and Road</b>	\$
<b>Site work and preparation</b>	\$
<b>Acquisition of machinery &amp; equipment</b>	\$
<b>Installation</b>	\$
<b>Architectural and engineering fees</b>	\$
<b>Legal fees</b>	\$
<b>Interest during construction</b>	\$
<b>Other</b>	\$
<b>TOTAL</b>	\$

Have any of these expenditures been incurred to date?  No  Yes If yes, identify:

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B. Summary of Financing

<b>Total Project Costs</b>	\$
<b>Amount of Bond or Leaseback financing</b>	\$
<b>Amount of Conventional financing</b>	\$
<b>Equity</b>	\$

C. Will any part of the project be financed with funds of the company?  No  Yes, If yes, please provide detail:

<b>Item</b>	<b>\$</b>

D. Will other forms of government financing be used to undertake the project:  No  Yes If yes, please provide detail:

<b>Program</b>	<b>Amount</b>	<b>Status</b>



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E. Have financial institutions or potential bond purchasers been approached?  No  Yes

If yes, please provide detail:

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F. List capital expenditures of the company:

	Past 3 years	Next 3 years
<b>Real Property</b>	\$	\$
<b>Buildings</b>	\$	\$
<b>Equipment</b>	\$	\$

**VI. Financial Assistance Expected From the Agency**

A. Tax Benefits.

1. Is the applicant requesting any real property tax exemption in connection with the Project that would not be available to a project that did not involve the Agency?  
 Yes  No

If yes, is the real property tax exemption being sought consistent with the Agency's Uniform Tax Exemption Policy? Yes  No

2. Is the applicant expecting that the financing of the Project will be secured by one or more mortgages? Yes  No

If yes, what is the approximate amount of financing to be secured by mortgages?  
 \$ \_\_\_\_\_

3. Is the applicant expecting to be appointed agent of the Agency for purposes of avoiding payment of N.Y.S. Sales Tax or Compensating Use Tax? Yes  No .

If yes, what is the approximate amount of purchases which the applicant expects to be exempt from the N.Y.S. Sales and Compensating Use Taxes? \$ \_\_\_\_\_

4. What is the estimated value of each type of tax-exemption being sought in connection with the Project? Please detail the type of tax-exemption and value of each exemption.

- a. N.Y.S. Sales and Compensating Use Taxes: \$ \_\_\_\_\_
- b. Mortgage Recording Taxes: \$ \_\_\_\_\_
- c. Real Property Tax Exemptions: \$Job Retention  
See Amended AES PILOT  
payment schedule (Exhibit 1 attached hereto)
- d. Other (please specify):  
\_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

5. Are any of the tax-exemptions being sought in connection with the Project inconsistent with the Agency's Uniform Tax-exemption Policy?  
Yes  No .

If yes, please explain how the request of the applicant differs from the Agency's Uniform Tax-Exemption Policy: \_\_\_\_\_

## VII. Representations by The Applicant

The applicant understands and agrees with the Agency as follows:

- A. Job Listings. 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. First Consideration for Employment: 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. Annual Employment Reports: 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. Absence of Conflicts of Interest: 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:

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## CERTIFICATION

(to be executed by the principal of the applicant and acknowledged by a notary public)

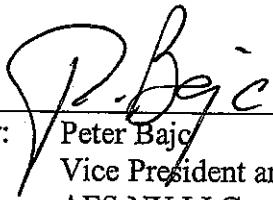
- I. PETER BAJC deposes and says that he is the VICE PRESIDENT AND DIRECTOR of AES NY LLC, the general partner of AES Eastern Energy, L.P. and PRESIDENT AND PLANT MANAGER of AES SOMERSET LLC named in the attached Application (the "Applicant"); that he/she has read the foregoing Application and knows the contents thereof, and that the same is true to his knowledge.
  
- II. The grounds for deponent's belief relative to all matters in the Application which are not stated upon his own personal knowledge, are investigations which deponent has caused to be made concerning the subject matter of the Application, as well as information acquired by deponent in the course of his duties as an officer of and from the books and papers of said corporation or other entity.
  
- III. As an officer of the Applicant deponent acknowledges and agrees that the Applicant shall be and is responsible for all costs incurred by the Agency and all legal counsel for the Agency, including its general counsel and/or bond/transaction counsel, whether or not the Application, the proposed project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (A) the Agency's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed project described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the proposed project described herein and (C) any further action taken by the Agency with respect to the proposed project; including without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing.
  
- IV. By executing and submitting this Application, the Applicant covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel, the same to be paid at the times indicated:
  - (a) The sum of **\$1000.00** as a non-refundable processing fee; and
  - (b) All fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel and/or the Agency's bond/transaction counsel, thus note that the Applicant is entitled to receive upon request a written estimate of fees and costs of the Agency's general counsel and

the Agency's bond/transaction counsel; and (2) other consultants retained by the Agency in connection with the proposed project; with all such charges to be paid by the applicant at the closing.

- V. By executing and submitting this Application, and in the event the closing does not occur, the Applicant further covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel:
- (a) If the Applicant fails to conclude or consummate the necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable proper or requested action, or withdraws, abandons, cancels, or neglects the Application, the Applicant shall pay to the Agency, its agents, or assigns, ~~upon presentation of an invoice, a sum of one and one quarter percent (1.25%) of (i) the amount of bond financing requested; or (ii) the amount on which the financial assistance for the proposed project was determined,~~ and upon presentation of an invoice, all actual costs involved with respect to the Application, including but not necessarily limited to fees of the Agency's general counsel and/or the Agency's bond/transaction counsel; or
  - (b) If the Applicant is unable to find buyers willing to purchase the bond issue requested, or if the Applicant is unable to facilitate the sale/leaseback transaction, then upon presentation of an invoice, all actual costs involved with respect to the Application, up to that date and time, incurred by the Agency including but not necessarily limited to fees of the Agency's general counsel and/or the Agency's bond/transaction counsel.
- VI. The Applicant acknowledges and agrees that all payment liabilities to the Agency and the Agency's general counsel and/or the Agency's bond and/or transaction counsel as expressed in Sections IV and V are obligations that are not dependent on final documentation of the transaction contemplated by this Application.
- VI. The cost incurred by the Agency and paid by the Applicant, including bond/transaction counsel fees and the Agency's general counsel's fees and the processing fees, may be considered as a costs of the project and included in the financing of costs of the proposed project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.
- VI. The Applicant is aware and acknowledges that according to the New York Public Officer's Law, Article 6, Freedom of Information, the public has the right to request information about the project and the Applicant, and that in accordance with Public Officer's Law Article 7, all meetings of the Agency are open to the public.

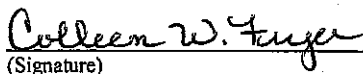
The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations made in this Application and, if applicable, made in Addendum A, when acting hereon and hereby represents that the statements made herein and therein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein or therein not misleading.

AES Eastern energy, L.P.  
AES Somerset LLC

  
By: Peter Bajic  
Vice President and Director of  
AES NY LLC, general partner of  
AES Eastern Energy, L.P.  
and  
President and Plant Manager –  
AES Somerset LLC

NOTARY

Sworn to before me this 24<sup>th</sup> day of September 20 10

  
(Signature)

**COLLEEN W. FRYER**  
Notary Public, State of New York  
No. 01FR6165445  
Qualified in Niagara County  
Commission Expires 05/07/20 11

**Exhibit 1**

**Proposed Amended PILOT Payment Schedule**

<u>PILOT Year</u>	<u>Town/ County Tax Year</u>	<u>School District Tax Year</u>	<u>Total Preliminary PILOT Payment</u>
1	2012	2011-2012	\$ 14,800,000
2	2013	2012-2013	\$ 13,800,000
3	2014	2013-2014	\$ 12,800,000
4	2015	2014-2015	\$ 11,800,000
5	2016	2015-2016	\$ 10,800,000
6	2017	2016-2017	\$ 9,800,000
7	2018	2017-2018	\$ 8,800,000
8	2019	2018-2019	\$ 7,800,000
Total:			\$ 90,400,000

## **Exhibit 2**

### **Lands to be Released from AES PILOT, Lease and Leaseback Agreement**

That portion of those lands contained in the parcel designated S.B.L. No. 7.00-3-28 located north of Lake Road in the Town of Somerset, Niagara County, New York. The subject portion to be released comprises approximately 178 acres of vacant land.