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NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
IN THE MATTER OF THE  
AES EASTERN ENERGY, L.P. SOMERSET, NEW YORK  
JANUARY 11, 2010 4:00 p.m.  
SOMERSET TOWN HALL  
-----

APPEARANCES:           LAWRENCE WITUL,  
                            Assistant Director.  
  
                            ANDREA P. EGOLF,  
                            Court Reporter.

1 MR. WITUL: Would everyone please sign the  
2 attendance sheet even if you do not wish  
3 to comment? Good afternoon. My name is  
4 Lawrence Witul. I'm the Assistant  
5 Director of the Niagara County Industrial  
6 Development Agency. I will be serving as  
7 hearing officer for this public hearing.  
8 It is now 4:05 p.m.

9 A copy of the project summary cost  
10 benefit is available for review.

11 The purpose of this hearing is to  
12 solicit comments, both written and oral,  
13 on the AES Eastern Energy, LP, Project  
14 Somerset, New York. Comments can be in  
15 support of or in opposition to the  
16 project or on the nature or location of  
17 the project. All comments are to be  
18 limited to the AES Eastern Energy, LP,  
19 project. This hearing is not for  
20 accepting comments on any environmental  
21 issues nor environmental determination  
22 and this is not a part of the New York  
23 State SEQRA Process.

1           Notice of public hearing. Notice is  
2 hereby given that a public hearing  
3 pursuant to Article 18-A of the New York  
4 General Municipal Law will be held by the  
5 Niagara County Industrial Development  
6 Agency, the agency, on the 11th day of  
7 January 2010 at 4 p.m, local time at the  
8 Somerset Town Hall, 8700 Haight Road,  
9 Barker, New York 14012, in connection  
10 with the following matter.

11           AES Eastern Energy, LP, for itself  
12 or on behalf of an entity formed or to be  
13 formed, the company, has submitted an  
14 application, the application, to the  
15 agency, a copy of which is on file at the  
16 office of the agency requesting that the  
17 agency consider undertaking a project,  
18 the project, for the benefit of the  
19 company consisting of: (A) the  
20 acquisition or retention by the agency of  
21 fee title to or a leasehold interest in  
22 an approximately 1800 acre parcel of land  
23 located at 7725 Lake Road in the Town of

1 Somerset, Niagara County, New York, the  
2 land, together with the existing nine  
3 buildings thereon, the existing  
4 improvements and together with the land,  
5 the facility: (B) The leasing of the  
6 facility to the company: (C) the  
7 granting of certain other financial  
8 assistance, within the meaning of Section  
9 854(14) of the act, with respect to a  
10 payment-in-lieu-of-tax agreement, the  
11 PILOT agreement, and a mortgage with the  
12 company, relating to the PILOT agreement,  
13 the PILOT mortgage.

14 The agency will acquire or retain  
15 title to or leasehold interest in the  
16 facility and lease the facility back to  
17 the company. The company will operate  
18 the facility during the term of the  
19 lease. At the end of the lease term the  
20 company will purchase the facility from  
21 the agency or if the agency holding a  
22 leasehold interest, the leasehold  
23 interest will be terminated. The agency

1           contemplates that it will provide  
2           financial assistance, the financial  
3           assistance, to the company for qualifying  
4           portions of the project, consisting of  
5           partial real property tax abatement in  
6           the form of a certain  
7           payment-in-lieu-of-tax agreement and a  
8           mortgage recording tax exemption with  
9           respect to a certain  
10          payment-in-lieu-of-tax mortgage.

11           A representative of the agency will  
12          be at the above-stated time and place to  
13          present a copy of the company's project  
14          application and hear and accept written  
15          and oral comments from all persons with  
16          views in favor of or opposed to or  
17          otherwise relevant to the proposed  
18          financial assistance.

19           This public hearing is being  
20          conducted in accordance with Subdivision  
21          2 of Section 859-a of the New York  
22          General Municipal Law.

23           Niagara County Industrial

1 Development Agency. Dated December 9th,  
2 2009. By Samuel M. Ferraro, Executive  
3 Director.

4 Everybody should have a copy of  
5 what we referred to earlier as the  
6 project summary cost benefit sheet. I  
7 note that the applicant is AES Energy,  
8 LP, that the project is located in  
9 Barker, New York, that the project was  
10 established in 1998, that the Niagara  
11 County, Barker School District and the  
12 Town of Somerset are seeking the agency  
13 to consider the establishment of a five  
14 year payment-in-lieu-of-tax agreement to  
15 the Somerset facility. The proposed  
16 PILOT agreement for the project facility  
17 will have a limited impact on the current  
18 short-term future property tax base and  
19 tax revenues.

20 Again, the terms and other comments  
21 relevant to the project are included in  
22 that project summary sheet cost benefit.

23 Before I go on, has everyone had a

1 chance to get a copy of that?

2 I will open the hearing for  
3 comments. Once you are recognized, give  
4 your name, address, and the organization  
5 that you might represent. Direct all  
6 comments to the chair. And your comments  
7 should be limited to this project.

8 Due to the number of people, we ask  
9 that at least for the first round of  
10 comments that it be limited to three  
11 minutes.

12 At this time if there is anyone that  
13 would like to comment, please raise your  
14 hand.

15 Yes, sir.

16 JAMES HOFFMAN: Mr. James Hoffman,  
17 resident of the Town of Somerset,  
18 resident of Barker Central School  
19 District and resident of Niagara County.

20 I, along with many others, are  
21 experiencing a triple whammy of the  
22 previous AES PILOT recently nullified by  
23 the Fourth Appellate Court of New York

1 where since 2007 our school taxes were  
2 raised 23 percent, the town has lost  
3 \$300,000 in revenue each year and county  
4 taxes were affected by something like two  
5 percent. So I look forward to tax  
6 certainty for us tax payers just like  
7 AES is looking for tax certainty for  
8 their organization.

9 I'm grateful that the parties, Town  
10 of Somerset, Barker Central School and  
11 Niagara County and the IDA and AES are  
12 now negotiating rather than litigating.  
13 It is heartening to know that the barrage  
14 of AES lawsuits may soon be ending. This  
15 would not be happening without the  
16 litigation that has taken place to date  
17 relating to the now nullified AES PILOT.

18 I extend my thanks to those on the  
19 Somerset Town Board and those at the  
20 Barker Central School District that  
21 supported that effort and brought us to  
22 this point. It was money, effort and  
23 community resources well directed.



1 I believe negotiating a new PILOT  
2 for AES is an inferior approach to  
3 establishing a fair assessed value for  
4 the plant. Negotiation is really taking  
5 place, in my opinion, in the wrong arena.  
6 The item under negotiation should be the  
7 AES assessed value of that facility.  
8 Other properties are taxed on assessed  
9 valuation. Why a large profitable  
10 multinational corporation requires a tax  
11 break which is in reality a tax shift to  
12 those individuals and companies that are  
13 not as politically well connected or well  
14 layered is difficult to understand. By  
15 this action the winners in the Fourth  
16 Appellate Court are turning out to be the  
17 losers and the losers are turning out to  
18 be the winners in this negotiation.

19 If taxes are too oppressive, and  
20 they are in our state and our county,  
21 cuts across the board should be made in  
22 taxes period.

23 And where are the jobs that this

1 PILOT is going to create? I was under  
2 the impression PILOTs were to enhance the  
3 county and I see no jobs being created on  
4 this one like they weren't on the last  
5 PILOT.

6 Now, since I did not have the  
7 opportunity to review any documents  
8 here, I call on my checkered past in  
9 contract management negotiations and spec  
10 writing to make some recommendations for  
11 this PILOT.

12 Renegotiation be required if the  
13 property is sold.

14 All future improvements at the AES  
15 Somerset Facility should not be included  
16 in this PILOT agreement. And I'm  
17 specifically addressing the coal port, a  
18 wind turbine farm, a possible second  
19 power plant and other possible  
20 expansions.

21 All pending litigation relating to  
22 this should be dropped. I think that's a  
23 no-brainer.

1           No taxes other than property taxes  
2           should be included in this agreement,  
3           specifically sales taxes, property  
4           transfer taxes and special district  
5           taxes. Fire, refuse, water, sewer,  
6           should be paid separately outside of this  
7           agreement.

8           Schedule of payments to be jointly  
9           agreed to by the town and the school  
10          district. That's a no-brainer, I think.

11          All parties as to the PILOT  
12          agreement should acknowledge that  
13          according to the New York Public Officers  
14          Law, Article 6, Freedom of Information,  
15          that the public has a right to  
16          information about the PILOT agreement and  
17          associated documentation in accordance  
18          with Article 7 of that same law, all  
19          meetings relating to this matter are open  
20          to the public. I don't think that has  
21          been happening in the past. I don't  
22          think the information has been available  
23          in a timely fashion. As a matter of

1 fact, in consulting with the Freedom of  
2 Information people in Albany, the  
3 information should be available the day  
4 you make the announcement for the public  
5 hearing and that date is December 9th.

6 Now, in conclusion --

7 MR. WITUL: I have to ask you to hold  
8 the rest of your comments for the second  
9 go-round. I want to give everyone an  
10 equal opportunity to talk.

11 MR. HOFFMAN: I just want to say that I  
12 think the public hearing should recess  
13 until the information is available.  
14 Thank you.

15 MR. WITUL: Anyone else wishing to  
16 comment, please raise your hand and give  
17 your name and organization you might  
18 represent.

19 RANDY WAYNER: Randy Wayner. I live at  
20 1434 Quaker Road and I'm a counselor for  
21 the Town of Somerset and lifelong  
22 resident of the town.

23 To me this PILOT achieves at least

1 four major benefits, it provides for tax  
2 certainly for AES --

3 MR. WITUL: Would you please direct  
4 all your comments to the chair?

5 RANDY WAYNER: -- tax certainty for AES  
6 so they can better plan for the future  
7 and run their business even more  
8 effectively. By that exact same coin, it  
9 provides revenue stabilization to the  
10 taxing jurisdiction, the Town of  
11 Somerset, Barker Central District and the  
12 County of Niagara, but it goes way beyond  
13 that. It -- it removes the spectra of  
14 additional litigation from all our  
15 futures. By putting lawsuits behind us,  
16 all four of the involved parties can  
17 reallocate the funds and human resources  
18 which would have been expended in court.  
19 For AES, strengthening their business.  
20 For Barker Central School to provide  
21 students -- better provide to the  
22 students' needs. And for Niagara County,  
23 to mitigate the ever-rising costs of

1           those governments. For those reasons I  
2           urge ratification of this PILOT. Thank  
3           you.

4           MR. WITUL:           Thank you for your  
5           comments. Anyone else wishing to  
6           comment, please raise your hand. Yes,  
7           sir.

8           DANIEL ENGERT:       Daniel Engert, a resident  
9           of Somerset, and a board member. I would  
10          also echo Councilman Wayner's comments  
11          with respect to encouragement of the  
12          ratification of this PILOT. I would also  
13          particularly like to express appreciation  
14          to the Industrial Development Agency for  
15          its approach with this PILOT and allowing  
16          the taxing jurisdiction and the business  
17          ample time and opportunity to work  
18          through the issues that are so important  
19          to all the residents of our community and  
20          to the business. And I think that this  
21          model of passivity on the part of the IDA  
22          board in allowing the taxing jurisdiction  
23          to work through this has been, I think, a

1 good model for future PILOTs in the  
2 county and I just would like to thank the  
3 agency for their -- for their work in  
4 this effort.

5 MR. WITUL: Thank you for your comments.  
6 Anyone else? Yes, sir.

7 ROGER KLAH: Roger Klah, superintendent of  
8 Barker Central Schools. First, we're  
9 pleased that an agreement in principle  
10 has been reached among all parties.  
11 Particularly for the school district,  
12 this restructured PILOT will bring  
13 revenue certainty through 2015. And  
14 having this significant portion of  
15 district revenue predictable at a time  
16 when state aid projections are unclear  
17 will allow us to better prepare and  
18 develop budgets for the next several  
19 years. And lastly, we will no longer  
20 need to devote extensive district  
21 resources to defend and litigate  
22 proceedings

23 MR. WITUL: Thank you. Anyone else

1           wanting to comment?

2       RICHARD MEYERS:     Richard Meyers, Supervisor  
3           Town of Somerset. I wanted to recognize  
4           the fact that this PILOT was a  
5           partnership between the taxing  
6           jurisdictions and AES and negotiations  
7           have been solely on our part and I would  
8           like to point out some of the individuals  
9           who are responsible for the conclusion of  
10          this PILOT, something that has taken a  
11          long time to come about, and it is nice  
12          to see that we are finally at that point  
13          where we can come to an agreement.

14                 Dr. Roger Klah from the Barker --  
15                 superintendent of the Barker School  
16                 District. Gordon Kenney, president of  
17                 the school board. Scott Hoot, business  
18                 administrator. John Syracuse  
19                 representing the Niagara County  
20                 Legislature. Councilman Daniel Engert  
21                 and Randy Wayner who were integral in  
22                 this process of getting these  
23                 negotiations settled and completed. From



1 EAS, John Renman and Peter Bajc and --  
2 and Keven Pease who is, I'm sure, living  
3 it up in the Philippines right now. And  
4 also Karen Pavlock. I'd like to thank  
5 everybody who was involved in this  
6 process. And I'd also like to thank the  
7 IDA for allowing us to negotiate among  
8 ourselves in bringing a package to you to  
9 put together instead of the IDA having to  
10 be in the position where they have to  
11 make the decision. And thank you for  
12 putting it back in the elected official's  
13 position to make these proper decisions  
14 for the people of their respective areas.  
15 I would like to support this  
16 whole-heartedly.

17 MR. WITUL: Thank you for your  
18 comments. Thank you. Yes, sir

19 IAN HOGAN: Ian Hogan, Barker, New  
20 York. I would like to thank the board  
21 and the people involved in this, I think  
22 it is a fantastic thing and should have  
23 been done five years ago, people sitting

1 down and talking. Thank you.

2 MR. WITUL: Thank you. Anyone else,  
3 please feel free to comment. Let me make  
4 sure nobody else wants to comment.

5 JAMES HOFFMAN: I still believe that the  
6 information was not made available in a  
7 timely fashion. And when I haven't heard  
8 from anybody in what the affect on my  
9 taxes will be because after all, isn't  
10 that the bottom line why everybody is  
11 here, what is the affect on my taxes, my  
12 tax bill? I haven't heard anything about  
13 that.

14 MR. WITUL: Would you please give your  
15 name once again for the purpose of the  
16 transcript and the record?

17 JAMES HOFFMAN: James Hoffman. Thank you.  
18 And I have a copy of what I just talked  
19 to you about.

20 MR. WITUL: Great. Thank you. Anyone  
21 else? Okay. This will be your last  
22 opportunity, if anyone would like to  
23 comment on the AES Eastern Energy, LP,

1 Somerset Project, please do so at this  
2 time; if not, I'd like to thank everybody  
3 for coming this evening. I appreciate  
4 your time, your comments and your input.

5 A transcript of this hearing will be  
6 provided to the Industrial Development  
7 Agency board members prior to its board  
8 meeting next week and prior to any action  
9 being taken by the board. It will have  
10 full opportunity to review the transcript  
11 and we also provide them with a brief  
12 overview or oral summary of those in  
13 attendance and the number of comments.  
14 Again, the transcript itself is what the  
15 agency will review as part of its  
16 consideration.

17 Once again, please be careful as you  
18 drive home, we're starting to get snow  
19 out there. And personally I'd like to  
20 thank you for the warm reception we  
21 received this evening. Last time I was  
22 here there was a couple hundred more  
23 people. Again, thank you for your

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participation and really your taking  
personal interest in government and what  
is going on. Thank you again. And thank  
you to the Town of Somerset.

\* \* \* \* \*

1 STATE OF NEW YORK)

2 SS:

3 COUNTY OF NIAGARA)  
4

5 I, ANDREA P. EGOLF, a Notary Public  
6 in and for the State of New York, County of  
7 Niagara, DO HEREBY CERTIFY that the  
8 proceedings were taken down by me in a  
9 verbatim manner by means of Machine  
10 Shorthand. That the deposition was then  
11 reduced in writing under my direction. That  
12 the deposition was taken to be used in the  
13 above-entitled action. That the said  
14 deponent, before examination, was duly sworn  
15 by me to testify to the truth, the whole  
16 truth and nothing but the truth, relative to  
17 said action.

18 I further CERTIFY that the  
19 above-described transcript constitutes a true  
20 and accurate and complete transcript of the  
21 testimony.  
22

23 -----  
ANDREA P. EGOLF,  
Notary Public.