

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

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@hblaw.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, the Company has proposed a PILOT covering the AES Somerset Station.*

- (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? 131

Full Time 131 # Part Time _____

Estimated annual payroll: \$19+ 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
Manufacturing/Processing	98%
Warehousing	
Research & Development	
Commercial	
Retail*	
Office	2%
Other (specify)	

* 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: _____. 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

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

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).

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.

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

6. List current assessed value: \$564,471,931
List current annual property tax payment: \$18,017,028.46

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

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 would take an interest in the existing AES Somerset Station improvements for the purposes of job retention.*

If yes, indicate number and size of new buildings:

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:

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

Electric Generation

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:

5. Project Use

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

Electricity and related products.

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:

- 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:

- 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:	Size:
Electric:	Power:
Water:	Size:
Sewer:	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:

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: _____

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 December 8, 2009 to the Agency

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				131
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				

V. Project Cost Data

A. Give breakdown of project costs:

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

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

B. Summary of Financing

Total Project Costs	\$
Amount of Bond or Leaseback financing	\$
Amount of Conventional financing	\$
Equity	\$

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

Item	\$

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

Program	Amount	Status

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

If yes, please provide detail:

F. List capital expenditures of the company:

	Past 3 years	Next 3 years
Real Property	\$	\$
Buildings	\$	\$
Equipment	\$	\$

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
PILOT (See Schedule A 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: _____

** NCIDA would take an interest in the existing AES Somerset Station improvements for the purposes of job retention.*

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:

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.

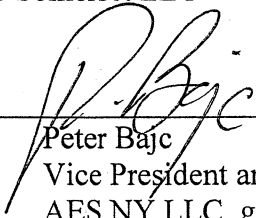
- IV. By executing and submitting this Application, the Applicant covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel, the same to be paid at the times indicated:
 - (a) The sum of **\$1.00** as a non-refundable processing 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.

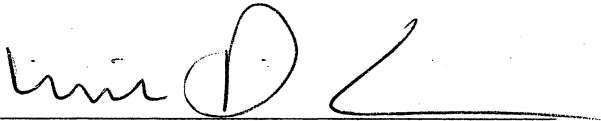
The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations made in this Application and, if applicable, made in Addendum A, when acting hereon and hereby represents that the statements made herein and 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 Bajc
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 12th day of December, 2009



(Signature)

NICHOLAS J. DICESARE
Notary Public State of New York
Qualified in Erie County
My Commission Expires March 19th, 2011