

NCIDA

APPLICATION FOR ASSISTANCE

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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

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

I. APPLICANT DATA

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

ADDRESS 7725 Lake Road

CITY/STATE/ZIP Barker, New York 14012

B. **APPLICANT'S OFFICER RESPONSIBLE FOR COMPLETING THIS APPLICATION**

NAME William B. Rady

TITLE Director, AES Somerset

MAILING ADDRESS 7725 Lake Road

CITY/STATE/ZIP Barker, New York 14012

TELEPHONE _____

FAX _____

E-MAIL bill.rady@aes.com

APPLICANT'S TAX ID NUMBER 54-2013850

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

- C. **BUSINESS TYPE**
- Sole Proprietorship
 - Partnership
 - Privately-held Corporation
 - Public Corporation
 - Not-for-Profit Corporation
 - LLC
 - Other Designee Business Type TBD

D. **STATE OF INCORPORATION:**

AES: Delaware and Designee: TBD

E. **IS APPLICANT AUTHORIZED TO DO BUSINESS IN NEW YORK STATE?**

Yes No

F. **PRINCIPAL STOCKHOLDERS (Owners of 20% or more of Stock Outstanding)**

<u>Name</u>	<u>%</u>	<u>Corporate Title</u>
<u>Kintigh Facility Trust A-1; Kintigh Facility Trust A-2</u>	<u>37.5</u>	<u>These ownership percentages are prior to the application of the Order of the Bankruptcy Court for the District of Delaware, which Order is dated April 11, 2012 and for the purpose of transferring the assets, vests title in the Applicant. A copy of the Order is submitted with this Application</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>	_____

G. **Has the Applicant (or any related entity) received previous NCIDA assistance?**

Yes No.

If yes, please give year(s) and project location

Applicant currently has a PILOT agreement with the NCIDA for the Project location that has been in place for several years.

H. **APPLICANT'S LEGAL COUNSEL**

FIRM NAME Hiscock & Barclay LLP

ADDRESS 1100 M&T Center, 3 Fountain Plaza

CITY/STATE/ZIP Buffalo, New York 14203

TELEPHONE

716.566.1536

ATTORNEY'S NAME

Mark R. McNamara, Esq.

E-MAIL

mmcnamara@hblaw.com

II. PROJECT & OCCUPANCY DATA

A. LOCATION OF PROPOSED PROJECT FACILITY

ADDRESS 7725 Lake Road, Barker, New York 14012

PRINCIPAL USE Power Generation

SBL # 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

ZONING Industrial

B. INDICATE MUNICIPAL JURISDICTION

TOWN Somerset

VILLAGE _____

CITY _____

SCHOOL DISTRICT Barker Central School District

C. CURRENT OWNERSHIP OF PROPERTY

CURRENT OWNER AES Eastern Energy, L.P.

CURRENT ASSESSMENT 689,233,664 (including all pollution control equipment)

CURRENT TAXES (ANNUAL) 14,300,000

D. Who are the principal user(s) of the facility (the "Company")? If there are multiple users, please indicate on attached sheet. If same as Applicant indicate the "same" below.

COMPANY NAME Applicant's designee, AES Somerset, LLC

ADDRESS 7725 Lake Road

CITY/STATE/ZIP Barker, New York 14012

CONTACT Jack White

TELEPHONE 716.795.9501 x5050

TAX ID NO. _____

% OF FACILITY TO BE _____

OCCUPIED BY COMPANY 100

E. Are other facilities or related companies located within New York State:

Yes No

LOCATION 228 Cayuga Drive, Lansing, New York

If there are other company facilities within the State, will any of these close or be subject to reduced activity?

Yes No

F. Has the company actively sought sites and/or facilities in another country or state?

Yes No

If yes, please describe on separate sheet.

G. Description of project (check one or more)

- New Construction Sq. Footage _____
 Addition to existing facility Sq. Footage _____
 Renovation and modernization of existing facility
 Acquisition and modernization of existing facility
 New machinery and equipment Production Non-Production
 Other (specify) PILOT Modification and Mortgage Tax Relief

H. Provide a general narrative description of the project, including history and background on user(s) of the facility. Provide information on (Appendix A) for user(s) of the facility. Describe reasons why this project is necessary and its effect it will have on Applicant. Include site plans, renderings, photos, etc.

See correspondence from AES accompanying this application.

III. COMPANY EMPLOYMENT INFORMATION

A. **Total current employment within Niagara County is**

115 Full-Time _____ Part-Time

**Current Annual Payroll
Including benefits** \$+15.4 million

B. **Projected Employment:** 115

Applicant or principal user(s) must complete Appendix A.

IV. EMPLOYMENT IMPACT

Every project seeking NCIDA assistance must use best efforts to use Niagara County labor for the construction of new, expanded or renovated facilities. This requirement includes all project employees of the General Contractor, Subcontractor or sub to a Subcontractor, working on the project. Applicant agrees and understands the obligations herein, and agrees to transmit and convey in a timely fashion this requirement to all applicable contractors, subcontractors, suppliers and materialmen.

A. **Will Niagara County contractors and/or subcontractors be utilized for the construction project?**

Yes No

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

Niagara County: 0 Erie County: 0 Other Areas 0

V. APPLICANT PROJECT COSTS AND FINANCING

A. Estimate the costs necessary for the construction, acquisition, rehabilitation, improvement and/or equipping of the project by the applicant.

Estimated Costs Eligible for Sales Tax Exemption Benefit

a.	Building Construction or Renovation Costs	a.	\$ _____
b.	Sitework	b.	\$ _____
c.	Non-manufacturing Equipment	c.	\$ _____
d.	Furniture, Fixtures	d.	\$ _____
e.	Other (specify)	e.	\$ _____
f.	Subtotal	f.	\$ _____

Estimated Costs Not Subject to Sales Tax

g.	Land and/or Building Purchase	g.	\$ _____
h.	Manufacturing Equipment	h.	\$ _____
i.	Soft Costs (Legal, Architect, Engineering)	i.	\$ _____
j.	Other (specify)	j.	\$ _____
k.	Subtotal	k.	\$ _____

Total Project Costs f + k \$ _____

B. Indicate how the project will be financed

a.	Tax-Exempt IRB	a.	\$ _____
b.	Tax-Exempt Bond	b.	\$ _____
c.	Taxable Industrial Revenue Bond	c.	\$ _____
d.	Bank Financing	d.	\$ <u>70,000,000</u>
e.	Public Financing	e.	\$ _____
f.	Equity	f.	\$ _____

TOTAL SOURCES \$ _____

Estimated Amount of Mortgage \$ 70,000,000

C. **If applicant expects the Tax-Exempt IRB to exceed \$1,000,000, what is the dollar value of “capital expenditures” that the applicant and company, or any related company or person, has expended within the last three years in the municipality in which the proposed project is to be located and expects to expend in that municipality three years after the bond issue?**

D. **Has the applicant made any arrangements for the financing of the project?**

Yes No

If so, please specify bank, underwriter, etc.

TBD

VI. PROJECT CONSTRUCTION INFORMATION

A. **What is the proposed commencement date of construction or acquisition of the project?**

N/A

B. **Outline the timetable for the project, indicating when project will be in full use.**

Project is currently operating

VII. REPRESENTATIONS BY THE APPLICANT

The Applicant understands and agrees with the Agency as follows:

- A. 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: _____.
- F. Local Labor: The Applicant understands that the residents of Niagara County will be providing assistance to the project. The Applicant further understands that every project seeking NCIDA assistance must use best efforts to use Niagara County labor for the construction of new, expanded or renovated facilities. This requirement includes all project employees of the General Contractor, Subcontractor or sub to a Subcontractor, working on the project. Applicant agrees and understands the obligations herein, and agrees to transmit and convey in a timely fashion this requirement to all applicable contractors, subcontractors, suppliers and materialmen.

VIII. ENVIRONMENTAL ASSESSMENT

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

Name of Applicant's Officer Responsible for Completing Application:

(Please Print)

William B. Rady, Director, AES Somerset

Signature

W.B. Rady

Date of Application

4.13.12

CERTIFICATION

William B. Rady

Name of chief executive of the company submitting application

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

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

William B. Rady
Print Name of Chief Executive

William B. Rady
Signature

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PROJECTED EMPLOYMENT*

	Full-Time	Part-Time	Total	Total Payroll*
Total number of employees within Niagara County at the date of application	<u>115</u>	+ _____	= <u>115</u>	<u>\$15,400,000.00</u>
Total number of employees to be directly <u>IMPACTED</u> by the project:	<u>115</u>	+ <u>115</u>	= _____	<u>\$15,400,000.00</u>
ADD: Number of new jobs to be created During the first year after completion:	_____	+ _____	= _____	_____
Total end of first year:	_____	+ _____	= _____	_____
ADD: Number of new jobs to be created During the second year after completion:	_____	+ _____	= _____	_____
Total end of second year:	_____	+ _____	= _____	_____
ADD: Number of new jobs to be created During the third year after completion:	_____	+ _____	= _____	_____
Total end of third year:	_____	+ _____	= _____	_____
Estimated average annual salary of <u>new</u> jobs to be created:	_____			
Expected high salary of <u>new</u> jobs to be created:	_____			
Expected low salary of <u>new</u> jobs to be created:	_____			

List types of jobs (i.e. production, managerial, clinical, engineering, etc.) to be created.

*Applicant or principal user(s) as noted in Section III B of application (includes benefits)

William B. Rady

Print Name

William B. Rady

Signature

X Will B. Rady

Date

EXHIBIT 1

Summary of Modern Power Plant Pilots and The Programs																																																																																																			
State	Agency	Agency (State)	Agency (City)	Agency (County)	Agency (City/County)	Agency (City/County)	Agency (City/County)	Agency (City/County)	Agency (City/County)	Agency (City/County)	Agency (City/County)	Agency (City/County)	Agency (City/County)	Agency (City/County)																																																																																					
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1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

EXHIBIT B

SCHEDULE A

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

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

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

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

EXHIBIT C

SCHEDULE "D"

Security-Payment Schedule

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