

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

---

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PUBLIC HEARING FOR AES EASTERN ENERGY, L.P.

February 1, 2011

Taken at Somerset Town Hall  
8700 Haight Road,  
Barker, New York 14012

---

PRESENT: SUSAN LANGDON,  
Director of Project Development.

CAROLINE CARUSO,  
Project Assistant.

DAWN M. SITERS,  
Court Reporter.

1 MS. LANGDON: Can I have  
2 everybody's attention, please. It's after five, so  
3 we're going to get started now. Would everybody  
4 please sign the attendance sheet, even if you don't  
5 wish to comment.

6 Good afternoon. My name is Susan  
7 Langdon, Director of Project Development for the  
8 Niagara County Industrial Development Agency, and  
9 I'll be serving as hearing officer for this public  
10 hearing. It is now 5:03 P.M.

11 The purpose of this hearing is to  
12 solicit comments, both written and oral, on the  
13 proposed PILOT modification for the AES Eastern  
14 Energy, L.P. project in the Town of Somerset, New  
15 York. For your review, a copy of the project  
16 application, project summary, cost/benefit analysis,  
17 and the public hearing notice have been made  
18 available in the front of the room.

19 Please be advised that this is not  
20 a debate or a question and answer session. We are  
21 here to record your comments, and present a  
22 transcript of these proceedings to the Niagara  
23 County Industrial Development Agency Board of

1 Directors for their consideration in their decision  
2 relative to this project.

3 This project involves modification  
4 of the Payment in Lieu of Tax Agreement as follows.  
5 Year two, PILOT payment fourteen point three million  
6 dollars; year three, PILOT payment of twelve point  
7 eight million dollars; year four, twelve point eight  
8 million dollars; and year five, twelve point eight  
9 million dollars.

10 As part of the proposed  
11 modification, the NCIDA Board is considering the  
12 establishment of a PILOT safety valve, which would  
13 run to the benefit of the county, town and school  
14 district. If the market conditions for the AES  
15 Somerset facility return to the 2009 levels, the  
16 PILOT amounts would also be returned to the original  
17 PILOT payment amounts.

18 Notice of public hearing: Notice  
19 is hereby given that a public hearing pursuant to  
20 Article 18-A of the New York General Municipal Law  
21 will be held by the Niagara County Industrial  
22 Development Agency (the "Agency") on the 1st day of  
23 February, 2011, at 5:00 P.M., local time, the at

1 Somerset Town Hall Boardroom, 8700 Haight Road,  
2 Barker, New York 14102, in connection with the  
3 following matter.

4 AES Eastern Energy, L.P., for  
5 itself, or on behalf of an entity formed, or to be  
6 formed (the "company"), has requested the Agency's  
7 assistance with respect to a certain project (the  
8 "Project") consisting of: (A) the acquisition or  
9 retention by the Agency of fee title to, or a  
10 leasehold interest in, an approximately 1,800-acre  
11 parcel of land located at 7725 Lake Road in the Town  
12 of Somerset, Niagara County, New York (the "Land"),  
13 together with the existing nine buildings thereon  
14 (the "Existing Improvements", and together with the  
15 Land, the "Facility"). The agency has previously  
16 provided financial assistance (the "Financial  
17 Assistance") to the Company to qualifying portions  
18 of the Project, consisting of partial real property  
19 tax abatement in the form of a certain  
20 Payment-in-Lieu-of-Tax Agreement (the "Existing  
21 PILOT.")

22 Pursuant to the Company's request  
23 to modify the terms of the existing PILOT, the

1 Agency will consider acquiring or retaining title  
2 to, or a leasehold interest in, the Facility and  
3 lease the Facility back to the Company. The Company  
4 will operate the Facility during the term of the  
5 lease. At the end of the lease term, the Company  
6 will purchase the Facility from the Agency, or if  
7 the Agency holds a leasehold interest, the leasehold  
8 interest will be terminated. The Agency  
9 contemplates that it will provide financial  
10 assistance (the "Financial Assistance") to the  
11 Company for qualifying portions of the Project,  
12 consisting of a modification of the Existing PILOT  
13 between the Agency and the Company.

14 A representative of the Agency  
15 will be at the above-stated time and place to  
16 present a copy of the Company's amended application,  
17 and to hear and accept all written and oral comments  
18 from all persons with views in favor of, or opposed  
19 to, or otherwise relevant to the proposed changes to  
20 the existing PILOT agreement.

21 This public hearing is being  
22 conducted in accordance with Subdivision 2 of  
23 Section 859-a of the New York State General

1 Municipal Law.

2 Dated January 13, 2001, Niagara  
3 County Industrial Development Agency, Samuel M.  
4 Ferraro, Executive Director.

5 I will open the hearing for  
6 comments. Please remember to give your name,  
7 address and organization you represent. Direct all  
8 comments to the Chair. And your comments should be  
9 made on this project only. And please limit your  
10 comments to three minutes to give everyone a chance  
11 to talk.

12 I have a sign-in sheet. I'm going  
13 to recognize people that signed in that they wish to  
14 talk, and if anybody else, when they're done, wishes  
15 to, please raise your hand.

16 James Hoffman.

17 JAMES HOFFMAN: I guess I pay  
18 a penalty for getting here early. James Hoffman,  
19 8737 Lake Road, Town of Somerset.

20 I am no friend of PILOT, but I do  
21 support the Verizon component of this, because I  
22 think Verizon certainly is a bright star on the  
23 horizon for us.

1                   There is no doubt that in these  
2 financial times -- I have a written record of this,  
3 plus some backup. There's no doubt in these  
4 financial times that we're all suffering, including  
5 even large companies like AES Somerset, LLC. I  
6 would like nothing better than AES to return to  
7 their previously highly-profitable days. All of us  
8 would benefit if that were to occur. I wish AES and  
9 their employees the best in their efforts to make  
10 that happen. Revising the current PILOT will not  
11 help AES, and will further devastate our community,  
12 as the basic financial problems lie outside of  
13 Niagara County.

14                   A Payment-in-Lieu-of-Taxes, a  
15 PILOT, is a shift in taxes from those politically  
16 connected to those less well connected and less able  
17 to pay. Further, it erodes our tax base. The  
18 current proposed revision will shift well over six  
19 million dollars in taxes to Niagara County residents  
20 most -- many of whom are unemployed, underemployed,  
21 retired, or living on fixed incomes. The most  
22 recent unemployment figures place the Niagara Falls  
23 area at eleven percent on unemployment. These are

1 the people who are being required to subsidize AES,  
2 a profitable, multi-national corporation.

3 Further, the current pilot has not  
4 achieved the tax certainty promised because of the  
5 failure of AES to live up to agreements signed by  
6 them. There's no assurance that future agreements  
7 will fare any better. Something else besides a  
8 PILOT should be tried. It is not working. This is  
9 the third attempt, and we have had no tax certainty,  
10 we've had tax uncertainty.

11 There's been spin in news articles  
12 recently. Barker Central School District and Dr.  
13 Roger Klatt have released a statement, and they've  
14 thrown some light on what's going on here. I do not  
15 view that as supportive of this PILOT, but it does  
16 give us some numbers to work with. And some of the  
17 key numbers that are always absent in something like  
18 this is what does it do to my wallet. What does  
19 the -- what would this PILOT do for the average  
20 taxpayer. That number is nowhere to be seen; never  
21 will be.

22 The Supreme Court of the State of  
23 New York, Appellate Division Fourth Judicial



1 Department, ruled against NCIDA and AES in part as  
2 follows, May 10, 2010 -- now, remember, they're  
3 talking about the original PILOT. The record  
4 establishes, however, that AES respondents presented  
5 no financial statements to NCIDA from which NCIDA  
6 could determine whether financial assistance to the  
7 Somerset Generating Station was necessary. In other  
8 words, the financial case was not made in the  
9 original PILOT. And I don't know how you go around  
10 advising something -- and where are the financial  
11 details that would say, hey, those guys are really  
12 in trouble? It's not there. And the Judicial  
13 Appellate Court, four judges, ruled unanimously in  
14 May of 2010, out of Rochester, on this very subject.

15 MS. LANGDON: Mr. Hoffman,  
16 can you sort of wrap it up? We have more speakers.

17 JAMES HOFFMAN: Well, let  
18 me -- a couple more.

19 Tying PILOT payments to the price  
20 of electricity, the Catch 22, with all the natural  
21 gas being discovered, and foreign demand for coal  
22 high, the price of electricity may never, never  
23 recover. That would be good for our economy, since

1 our economy runs on cheap energy, but may not  
2 necessarily be good for AES, unless they adapt to  
3 the use of other fuel, perhaps even natural gas. On  
4 the other hand, the price of electricity goes up, we  
5 all pay more for electricity, but maybe less for the  
6 PILOT. But I don't know where the individual is  
7 benefiting at all on this.

8 I think the public has been kept,  
9 essentially, out of that, and I could identify some  
10 reasons. But I think I'll skip that.

11 But again, the problems AES and  
12 the rest of us face will not be solved locally. The  
13 solutions lie where the policy and the environmental  
14 decisions are made, and that's at the state level,  
15 federal government level, and at the White House.

16 And I'm going to make some  
17 suggestions, so hold your laughter until the end,  
18 okay; freeze the state budget, eliminate unfunded  
19 mandates, set aside the New New York State Renewal  
20 Energy Portfolio, because that's nothing but a  
21 threat to people like AES and discourages them from  
22 investing in conventional energy, lift the ban on  
23 drilling for natural gas and hydrofracking in New

1 York State, this alone will provide twenty thousand  
2 jobs, high-paying jobs, and perhaps it will even  
3 allow AES to have some natural gas, and perhaps put  
4 in another plant that burns cleaner.

5 Thank you for the opportunity to  
6 talk.

7 MS. LANGDON: Thank you.  
8 John Syracuse.

9 JOHN SYRACUSE: My name is  
10 John Syracuse. I live at 6091 Condren Road in  
11 Newfane.

12 Good evening. As many of you  
13 know, I've had the privilege of representing the  
14 Town of Somerset in the Niagara County Legislature.  
15 Tonight, I address you not just as a legislator for  
16 Somerset, but also as a citizen in the northeastern  
17 corner of this county. And as a citizen, and a  
18 father and husband who pays taxes on a home and a  
19 private practice, when I hear that a business that  
20 pays taxes in this county is seeking a reduction  
21 from what many might consider a fair level of  
22 taxation, I am concerned. But I am more concerned  
23 when I hear that that business might have to close

1 up shop and lay off a hundred or more employees  
2 because the cost of doing business has grown too  
3 high, and government is one of those primary  
4 reasons.

5                   Now, I don't believe that either  
6 the taxes paid by AES Somerset to this county, nor  
7 to the Town of Somerset, nor to the Barker Central  
8 School District, are responsible for the company's  
9 plight. Frankly, I'm proud of this legislature's  
10 record cutting government spending and lowering  
11 taxes over the past half decade. And I'm proud,  
12 too, of the PILOT Agreement that we put in place for  
13 AES last year. That PILOT deal showed that this  
14 county government, and our friends in Somerset and  
15 Barker are committed to fostering a climate that's  
16 conducive to business growth.

17                   But for AES, new fees originating  
18 in Albany, something called carbon footprint fees  
19 that was deemed up by Assembly Speaker, Sheldon  
20 Silver and former Governor, David Paterson, raised  
21 their cost of doing business by ten million dollars.  
22 That the Obama Administration and the former Speaker  
23 of the House helped foist such schemes on us, all

1 while increasing taxes and fees, only exacerbated  
2 the problem for AES.

3                   Worse, though, is the global  
4 market for coal. As you all know, AES is a  
5 coal-burning plant. And while coal remains one of  
6 the best and most readily available sources of  
7 energy in the world, the Obama Administration and  
8 former Pelosi Congress were waging war on coal  
9 production in the U.S.

10                   At the same time, strategic  
11 competitors of China and India were competing with  
12 American electricity-generating companies like AES  
13 to buy what coal was on the global market. And we  
14 all remember what happens when supply doesn't go up,  
15 but demand does; the price of coal surged.

16                   AES is, indeed, our biggest  
17 taxpayer in this county. They're also, maybe even  
18 more importantly, a major employer. The new PILOT  
19 deal that has been put forth remembers both facts.  
20 AES will, even with this deal, remain our county's  
21 single largest taxpayer. Something that, frankly,  
22 we wish the other electricity-producing enterprise  
23 here in Niagara could say; but the Power Authority

1 isn't burdened by things like trying to turn a  
2 profit, or at least remain solvent. AES, on the  
3 other hand, is.

4 The current global, regulatory and  
5 economic climate would, frankly, put AES right out  
6 of business, and put their employees on to the  
7 unemployment rolls.

8 Mr. Chairman, I'm standing here  
9 tonight as a supporter of this PILOT, and of AES and  
10 its workers. As we've seen demonstrated again and  
11 again by the actions of the Niagara County  
12 Legislature, by the actions of the Niagara County  
13 Industrial Development Agency, and by important  
14 partners like Senator Maziarz, in our county job  
15 creation is job one. So I think that job two must  
16 necessarily then be job protection. Mr. Chairman,  
17 this new PILOT is the right thing to do to protect  
18 jobs, and an attempt to undo the harm that  
19 Washington and Albany have done to one of our  
20 biggest employers. I urge my colleagues to stand up  
21 for the working men and the working women of AES  
22 Somerset, and to support this PILOT. Thank you.

23 MS. LANGDON: Thank you.

1 Okay. James Giegerich.

2 JAMES GIEGERICH: Hello. My  
3 name is Jim Giegerich. I live at 8825 Bradley Road,  
4 Gasport, New York. I'm a Niagara County resident  
5 and a Barker Central School taxpayer.

6 I strongly disapprove of this AES  
7 application for a new deviated PILOT. And I  
8 respectfully request that this application be denied  
9 by the Niagara County Industrial Development Agency,  
10 the Barker Central School District, and the Niagara  
11 County government; notwithstanding all the fine  
12 remarks that Mr. Syracuse made.

13 I am a free enterprise person, and  
14 I believe in free enterprise. This country was  
15 founded on free enterprise. It was not founded on  
16 government-sponsored free enterprise. This is a  
17 competitive environment, and I think that's what we  
18 really need to aspire -- go for in this country.

19 Here are some points I would like  
20 to make. First of all, after the court ruling that  
21 disallowed the original PILOT for many reasons,  
22 including procedural reasons, a modified PILOT was  
23 agreed to subsequently by AES, IDA, and the

1 concerned government entities. That agreement was  
2 negotiated and executed in good faith. Everybody  
3 came together and said let's make it work, much  
4 along the lines that Mr. Syracuse mentioned.

5 The deviated PILOT is not in  
6 conformance with that second PILOT. If this were to  
7 be considered, it should have been considered at  
8 that time.

9 The fundamental purpose of the  
10 taxpayer subsidy to AES is to create new jobs in  
11 Niagara County and the State of New York. There are  
12 no new jobs proposed by AES to justify the  
13 substantial addition to the enormous tax subsidy  
14 already provided by the taxpayers to AES in the  
15 current PILOT. It's not like we haven't already  
16 done great things for AES. We've done great things  
17 for AES, and they're asking for more. And I suppose  
18 under the procedure that's going on, that a year  
19 from now they'll come back and ask for an additional  
20 modified or deviated PILOT. When is this going to  
21 end?

22 There are no supporting staff  
23 reports that I've been able to obtain, or IDA



1 analyses or AES financial data that has been made  
2 available to the public that demonstrates that  
3 additional extraordinary taxpayer subsidies to a  
4 profitable worldwide corporation is justified as  
5 compared to the benefits in new jobs created. Not  
6 getting a substantial profit, as indicated by the  
7 AES application, is not a reasonable justification  
8 for a private enterprise in the United States of  
9 America.

10 Most importantly for me as a  
11 citizen -- and I've gotten materials through the  
12 mail from Dr. Klatt -- most importantly to me as a  
13 citizen is that there will be a severe adverse  
14 impact on the Barker Central Schools at the very  
15 time when there is a recognized need nationally, and  
16 in the State of New York, for improved educational  
17 programs. And when I see that it will have a  
18 six-plus million dollar impact, in addition to the  
19 other financial impact that the previous PILOT would  
20 have on the Barker Central School System, this is of  
21 great concern to me as a citizen. Education has got  
22 to be one of our highest priorities. We have to put  
23 money into education. If I had a choice between

1 putting money into education and putting money into  
2 subsidizing a profit-making worldwide international  
3 corporation, I would chose education, definitely.

4           The denial of this application is  
5 only fair and responsible, considering the very high  
6 level of trust and responsibility that's been placed  
7 by the County Legislature in the IDA to fulfill its  
8 responsibility to protect the health, the safety,  
9 the welfare, and the interest of the residents and  
10 taxpayers of this county. I know it's a big  
11 balancing act, but in balance, I would prefer  
12 education expenditures of that six million dollars,  
13 and not a tax subsidy to profit-making private  
14 enterprise.

15           So in summary, we have here  
16 tonight a proposal by AES, a very large, a very  
17 profitable international energy corporation that's  
18 making investments all over the world, but not here  
19 in Niagara County, that wants to avoid its corporate  
20 responsibility to pay its fair share of taxes on the  
21 already documented under-assessed value of its  
22 property. State agencies have indicated that their  
23 value is worth a great deal more than they have said

1 its worth. And they're not even paying their fair  
2 share; according to the rate that we are paying,  
3 they're paying a much lesser rate, and then they get  
4 a PILOT, and now they're coming back for another  
5 reduction. So why is that citizen more valuable and  
6 more important than each and every one of the  
7 citizens in this county? I don't understand why  
8 there is not equity.

9                   We want to -- they want to pay a  
10 lower tax than the rest of us property owners and  
11 the citizens of Niagara County to create greater  
12 benefit for their shareholders. They are  
13 shareholders, they have -- a private corporation,  
14 they have shareholders, and this will only mean more  
15 profit for the shareholders. Which is very, very  
16 good, that's what private enterprise is about. But  
17 why does -- why do the citizens of Niagara County  
18 have to support the shareholders getting better  
19 dividends and better returns for their investment?

20                   And finally, in conclusion, with  
21 no corresponding public benefits or jobs identified,  
22 new jobs, in this proposal, approving this  
23 application would be nothing short of the grossest

1 form of unjustified corporate welfare accorded to  
2 AES by Niagara County citizens and taxpayers, even  
3 by reasonable subsidy means testing standards, which  
4 all welfare candidates have to go through. When you  
5 apply for job assistance or social services, you  
6 have to have means testing. The means testing that  
7 was done in this case is not there. There is no  
8 means testing that they've submitted information  
9 for.

10 And therefore, it's my feeling as  
11 a citizen that this application should not be  
12 approved. The previously approved PILOT is  
13 sufficient. And if it's not sufficient, then maybe  
14 they need to get a different business manager to  
15 operate at a higher level of profit than they are  
16 right now. Thank you very much.

17 MS. LANGDON: Thank you.

18 Next, Daniel Engert.

19 DANIEL ENGERT: Good

20 afternoon. Daniel Engert, 1167 Quaker Road, Barker,  
21 New York. And my comments are not written, they're  
22 notes, so I won't be as eloquent as the previous  
23 three, but I'll take a shot.

1 I think I want to start by  
2 addressing, from a Town Board perspective, the  
3 benefits of the PILOT. It's been alluded that  
4 PILOTs are bad in general terms. I would disagree,  
5 and I would just remind those here that there are  
6 significant values to PILOT, particularly in the  
7 commercial realm, and particularly with a six  
8 hundred seventy-five megawatt coal plant. They  
9 present an extreme challenge to the taxing  
10 jurisdiction, particularly the town that is required  
11 to set the assessed value on that. We saw that  
12 difficulty endured for many years as the town  
13 diligently tried to appropriately assess the value  
14 of that plant. During that long term, there was  
15 significant fluctuation. It's hard for an  
16 assessment model to incorporate, and that was  
17 challenging. Countless experts, appraisers,  
18 lawyers, with a lot of real costs attached to them,  
19 tried to set fair values to the plant. In the end,  
20 almost all of the time, there was opening for  
21 challenges, and it just created a never-ending cycle  
22 of litigation and challenges to that attempt.

23 And so in this case, PILOTs

1 represent certainty. They represent anticipated  
2 revenue. And when we talk about certainty, and the  
3 buzz words have been out here a couple of times, I  
4 would remind everyone that -- particularly, the  
5 certainty that we talked about last year with the  
6 original PILOT, was certainty that was brought to  
7 the taxing jurisdictions because of anticipation of  
8 revenue that was coming in. That exists with the  
9 new PILOT proposal.

10 We heard this certainty echoed  
11 from not only the town, we heard this desire for  
12 certainty echoed by the school and the county as  
13 well. It made for preparing an efficient budget  
14 much more easy on the taxing jurisdictions.

15 So I guess my point is that there  
16 are instances where I believe that PILOTs are a very  
17 good thing, and particularly, they are something  
18 that we desire to achieve in Somerset, particularly  
19 from a Board perspective.

20 I think it's also important to  
21 remember that a year ago when we were here talking  
22 about the, I guess it would be the second PILOT,  
23 there was a number of positives that were echoed by

1 the three taxing jurisdictions. And I would submit  
2 that those sentiments exist today. I remember  
3 hearing the cooperative effort that the three taxing  
4 jurisdictions were provided an opportunity to meet  
5 and to drive the process.

6           There was -- that effort was also  
7 afforded to the taxing jurisdictions in this  
8 go-around. We had numerous meetings where we  
9 discussed, not only the basis of the request for  
10 relief, but we also examined the market, we examined  
11 any information that we had at our fingertips to  
12 make an assessment as to what was the appropriate  
13 course of action. The ending of litigation existed  
14 a year ago. That remains to be the case today. I  
15 would even submit that, you know, in this case we  
16 have prevented future litigation by our achieving of  
17 a PILOT.

18           I remember the short-term and the  
19 measured relief that was so important and so vital  
20 when it related to this PILOT, and the taxing  
21 jurisdictions strived to maintain that in this  
22 go-around as well. The initial application called  
23 for an eight-year extension. The taxing

1 jurisdictions said no, it's too long, it's too far  
2 out. We worked hard to keep it short-termed and  
3 measured. We remain consistent today.

4           And I feel as though, you know,  
5 many of those same qualities that existed a year ago  
6 are still in existence today. And I would also add  
7 that while there has been a reduction in revenue,  
8 we've also gained an added component to holding AES  
9 to a standard that when the energy market will come  
10 back, which we are very hopeful -- none of us roots  
11 harder for that plant than the Town of Somerset and  
12 the Barker Central School District -- that they will  
13 be in a position to be able to contribute and  
14 maintain their fair share of taxing payments to the  
15 two jurisdictions.

16           So in the end, you know, while  
17 this -- there's difficult times abound for many in  
18 our community, including residents and businesses,  
19 we felt strongly that our elected representatives,  
20 and again, I'm speaking from the Town perspective,  
21 the people conveyed to us repeatedly their desire  
22 for us to do everything possible to work through  
23 this, to work hard and negotiate, not to litigate,



1 and to protect all of their interests.

2 AES revenue, as I stated earlier,  
3 is a critical, critical component to, not only the  
4 town and the school, but it's also a critical  
5 component to the county's resources. Legislator  
6 Syracuse already commented to the fact that they  
7 are, and remain, the largest taxpayer in our county.  
8 And so their health and their profitability, and  
9 their good fortune, are directly tied to our town,  
10 and so therefore, they are very important to our  
11 residents.

12 I have no crystal ball. But I  
13 know that in support of this PILOT I can look anyone  
14 in the eye and say that we did all that we could do  
15 at this time. And we are hopeful and optimistic for  
16 our future, that includes a viable and profitable  
17 AES Somerset. And for those reasons, I support this  
18 PILOT. I support AES and its employees, many of  
19 which live and work in Somerset and in this county.

20 And in closing, I would like to,  
21 again, express thanks, as I did at the last  
22 go-around, to Chairman Sloma, the Niagara County  
23 Industrial Development Agency, who has allowed for

1 the steering of the taxing jurisdictions in this  
2 regard, Mark Gabriel, who I believe is here, the  
3 attorney who's provided countless pep talks and  
4 phone conversations with me to keep me up to speed  
5 on what particular elements mean and their  
6 ramifications, and I appreciate that, my colleagues  
7 on the Town Board; Councilman Alt, Councilwoman  
8 Jansen, and Wayner, and Supervisor Meyers, Chairman  
9 Ross, Legislator Syracuse of the legislature, Dr.  
10 Klatt and Scott Hoot, the business administrator,  
11 for all their efforts put forth in this very  
12 difficult endeavor.

13 And with that, I will rest.

14 MS. LANGDON: Thank you.

15 Would the rest of the speakers mind please coming to  
16 the front of the room. Next would be Randall  
17 Wayner.

18 RANDALL WAYNER: Thank you. I  
19 would like to start out by saying that I received a  
20 communication from a concerned citizen, and it was a  
21 welcome communication, but the communication said  
22 that so far the presentation, or the rationale had  
23 lacked in specifics, and went on from there. And so

1 I had some specifics prepared for this afternoon's  
2 hearing; a lot of numbers. And so I know that  
3 numbers can get a little bit dry, but I think it's  
4 important, but because after all, when it's all said  
5 and done, that is what we're talking about here are  
6 payments and dollar figures, so if you'll indulge  
7 me.

8 I just also wanted to address the  
9 fact that we've heard a lot about -- through the  
10 history of all of these different PILOT negotiations  
11 and then again, more particularly today, about how  
12 AES is a multi-national global corporation, which  
13 they are. However, I think it's important to note,  
14 very important to note, that AES Eastern Energy is  
15 not that. AES Eastern Energy, or AEE, is comprised  
16 of four locations, all in New York State; Cayuga,  
17 Greenidge, Westover, and of course, Somerset.

18 Greenidge, I'll just say that --  
19 or note that three of the four units that are  
20 currently there have been shut down. And there is  
21 application to PFC right now to shut down unit  
22 number four.

23 Westover; seven of the eight

1 original units are shut down, and in March of this  
2 year, it looks like number eight will be shut down  
3 as well.

4                   So let's take a look at AES AEE  
5 income. In 2005, net income, ninety-one million  
6 dollars; 2006, a hundred and twenty-seven; 2008, one  
7 thirty-one; 2009, thirty-four. And I've got it  
8 broken down by quarters, and I won't read all the  
9 quarterly numbers, but suffice to say that there's a  
10 definite trend going this way. This isn't one, you  
11 know, one of these, it's a definite trend downward.

12                   And so it would be extremely easy  
13 to assume that last year, 2010, was not a very good  
14 year for AEE either. But rather than assume, let's  
15 look at the numbers, and I have the numbers for the  
16 Somerset plant all by itself. 2007, net income,  
17 forty-one point eight million; 2008, thirty-eight  
18 point two; 2009, a five point six million dollar  
19 loss; 2010, H1 of the first six months, one point  
20 0-four million dollar loss; H2 projected, one point  
21 five million dollar loss; and a projected loss in  
22 2011 of four point nine seven million dollars.

23                   We've heard about root causes.

1 The root cause of this negative trend is the high  
2 price of coal and the decreasing revenue from  
3 selling the electricity that they produce.

4 Let's take a look at the coal  
5 prices. And I'm almost done with numbers. But  
6 let's take a look at the coal prices. 2005,  
7 thirty-one dollars twenty-two cents per ton; 2006,  
8 thirty-four twenty six; I'm going to skip a couple  
9 of years, but then it goes to 2009, forty-four  
10 seventy-two; and in July of 2010, sixty-seven  
11 dollars; and now we're in the seventies. That's a  
12 forty-three percent rise from 2005 to 2009; a fifty  
13 percent rise from December of 2009 to July 2010.

14 The other component, of course, is  
15 the price paid for the product they produce,  
16 electricity. 2005, eighty-five to ninety dollars  
17 per megawatt hour; 2009 forty to forty-five. That's  
18 half of what they were getting in 2005. So these  
19 are numbers that are readily available.

20 But what do the experts think? I  
21 mean, what do independent sources think and say, and  
22 what are they looking at regarding AEE? In 2010,  
23 Standard & Poor's downgraded their rating from BB

1 stable to BB negative. August 2010, Moody  
2 downgraded its rating from BA1 to BA2. And then  
3 January 31, 2011, Moody downgrades to B3 from BA2.  
4 And the reason they give, and I'm just going to read  
5 this; the downgrade reflects a dramatic  
6 deterioration in AEE's prospects and performance  
7 that is primarily the result of compressed dark  
8 spreads, that's that margin between the price of  
9 power and the cost of coal, and it's reflected on  
10 the company's severely-strained liquidity position.  
11 And it goes on at some length, which I won't read  
12 three pages of this thing. But in addition, the  
13 cost of coal has risen significantly more. Okay.

14 Also, I found a downgrade from  
15 Fitch. And Fitch downgraded from BB+ to CCC.

16 But I think the reasons why these  
17 downgrades happened are more important. And I've  
18 got four of them here: Lower than expected power  
19 prices and significantly eroded operating margins  
20 expected to persist in the near term for the Western  
21 New York power region where AEE is located; lower  
22 than anticipated capacity factors at AES -- AEE's  
23 five coal-fired plants projected to remain at

1 fifty-five to seventy percent annually for the next  
2 five years. This is not a short-term thing we're  
3 looking at here, this is -- they're talking about  
4 five years.

5 I'll skip a couple for the sake of  
6 brevity. I have this in outline form, which I will  
7 give to you.

8 One very, very important one goes  
9 back to one of the first points I made; no  
10 significant financial support expected from AEE's  
11 alternate sponsor, AES Corporation. Okay.

12 So what does all this say? All of  
13 this, coupled with the face-to-face meetings that  
14 we've had with AES or AEE says that the biggest  
15 taxpayer in Niagara County, and certainly in this  
16 town's history, is experiencing documented financial  
17 stress, that if not lightened, would force one of at  
18 least three negative end results. One, protective  
19 layup, which is another word for shutting a plant  
20 down; two, default on their PILOT payments, which  
21 would place them back on the tax roll at a much  
22 diminished rate than before; or three, the return to  
23 hundreds of thousands of dollars in expense for

1 assessment consultant fees and inevitable cost in  
2 legal battles that would be sure to follow.

3 In conclusion, in light of these  
4 negatives, and after a thorough look at the  
5 financial condition of the town, I am prepared to  
6 stand here today and ask that this amendment be  
7 adopted, that this measured amount of relief be  
8 granted to AES. I would also say that it's  
9 important to note that fund balances will be  
10 affected. And I would respectfully ask the IDA and  
11 AES to say that I'm here, standing here today, at  
12 this point in time for this negotiation. The well  
13 will be drier should this come around again, which I  
14 trust that it won't.

15 So thank you for your time.

16 MS. LANGDON: Thank you. I  
17 have some names here. Would anybody else who wishes  
18 to speak, please raise their hand.

19 JAMES HOFFMAN: Can I jump  
20 in?

21 MS. LANGDON: Just let me  
22 get everybody first.

23 JAMES HOFFMAN: Okay.



1 MS. LANGDON: Anyone else?

2 TOM SZULIST: Tom Szulist,  
3 6730 Lake Road, Appleton.

4 I'm a relatively new resident to  
5 the area. I worked on Wall Street for many years,  
6 and I guess what is most bothersome is that where do  
7 we weigh out the corporate responsibility to  
8 communities versus the greed aspect of just running  
9 a business? And the greed is what really made me  
10 change my career. I'm tired of seeing the greed for  
11 the sake of shareholders.

12 At the same time we're talking  
13 about all these problems, AES announced a five  
14 hundred million dollar stock buyback on December 31  
15 of last year. Here they are, going -- taking their  
16 money, and whether the stock goes up a point or two,  
17 they're buying the stock back and then negotiating  
18 to take away from our community here.

19 But they made a commitment. And  
20 if I make a commitment, I have to stay in my  
21 commitment, no matter how tough it gets. I don't  
22 understand why a corporation -- because they say we  
23 have big, deep pockets, and they throw this fear

1 out, they're going to lay people off.

2 Well, we go through tough times.  
3 And during those tough times, if we make a  
4 commitment -- if I have a tax bill, I don't go to  
5 the IRS and say well, the money's gone, we've got to  
6 renegotiate, I don't have it, tough times. I'm just  
7 tired of the greed.

8 Five hundred million dollar stock  
9 buyback; if this corporation is hurting so much,  
10 then why are they buying back their stock at that  
11 amount of money? Why aren't they investing in other  
12 ways to change the operation over here. There's  
13 plenty of ideas that you could do.

14 I put solar power up on my  
15 property, because I look at that stack, and you're  
16 polluting the air because you can, because  
17 regulations say you can. But this is a planet  
18 that's owned by all of us. We have to breathe that  
19 air. And if the legislation let's you do it, you're  
20 allowed to do it. But why don't we come up with a  
21 creative way?

22 I see that AES is also working  
23 with a commercial-size battery grid storage system,

1 green technology. Bring that here if you have a  
2 site here, and supplement your business if your  
3 business isn't working, diversify. But don't go  
4 taking it from the community. Taking it from the  
5 children, that are the future, that are forced to  
6 breathe this air from the planet, and because you're  
7 a corporate entity you get to say we can do it  
8 because we have regulation in our favor.

9           Enough's enough. Corporate  
10 responsibility for society. Let's start taking care  
11 of our people. It's not just the bottom line; it's  
12 not just the corporate stock options; it's not the  
13 profits; it's not buying back stock; it's greed and  
14 fear. The only reason the stockmarket is here is  
15 because of greed. Everybody wants to make money.  
16 It's the only reason you buy a stock. It's the only  
17 reason you sell it, it's either controlled greed or  
18 fear.

19           And corporate America is great.  
20 They hire a bunch of attorneys to say, okay, it'll  
21 cost us this much if we can deduct and go in and get  
22 six million dollars from this entity, let's do it.  
23 It might only cost us a million dollars, we'll have

1 to put a campaign together, we'll time it right,  
2 we'll do this, we'll do that, you know, they're just  
3 looking at the numbers. It's ridiculous.

4 You made a commitment. If I make  
5 commitments, I've got to stand by them. I can't go  
6 renegotiate my contract that I give. When I give my  
7 word, I do it. How come big corporations come in,  
8 give their word, and say oh, times are tough, we've  
9 got to come back, we've got to change it? A  
10 commitment's a commitment, stick to it.

11 MS. LANGDON: Anyone else  
12 that hasn't spoken yet?

13 Mr. Hoffman, did you have  
14 something else, something new that you haven't  
15 mentioned already?

16 JAMES HOFFMAN: I think so.

17 MS. LANGDON: Okay.

18 JAMES HOFFMAN: It appears  
19 many of us agree on a lot in this situation, and  
20 that is, the environment is bad. And I know this  
21 isn't a question/answer period, so I guess we'll  
22 throw some questions out here and not get any  
23 answers.

1                   But I insist that we cannot solve  
2 AES's problems in Niagara County. That's like  
3 putting a Band-Aid where a tourniquet is required.  
4 But what have our elected and appointed officials  
5 done to change the environment, to change the  
6 environment?

7                   And I heard about a ten -- a ten  
8 million dollar carbon footprint tax. How come we  
9 let that happen? I don't know if anybody's here for  
10 Mr. Maziarz, but he's the third -- the third guy --  
11 third-most important individual in the Senate. And  
12 it would seem to me that if we began working with  
13 him, he could get us some clout where it counted. I  
14 don't think the solution lies in taxing people in  
15 Niagara County. It's much bigger than that.

16                   MS. LANGDON:           Thank you.  
17 Anyone else? Sir?

18                   JAMES GIEGERICH:    One other  
19 point -- Jim Giegerich. The good information that  
20 was presented by Randy Wayner is information that  
21 sounds very reasonable and very good, but that  
22 information was not provided to the community. The  
23 information that we got tonight what was we got.

1 How are we going to read that? It's almost like,  
2 how can we come to a public hearing, be given  
3 something at this point to read, and understand what  
4 this proposal is, and not even have the information  
5 that Randy Wayner did in terms of the background on  
6 this? How are we going to be responsible citizens  
7 if AES and IDA do not give us the information upon  
8 which to make a reasonable basis for our judgment?  
9 We just don't have it. They don't provide it.

10 And at the last public hearing  
11 there were over three hundred citizens that signed a  
12 petition that was notarized, and we gave it to the  
13 IDA the next day. And at the public hearing, at  
14 their particular meeting, that made a decision, they  
15 never even referenced the petition from the  
16 citizens.

17 So I think there's a certain  
18 disdain by the IDA for citizen participation. I'm  
19 thankful that there is a public hearing. By law,  
20 you have to do that. Only ten days; that's not very  
21 much, thirty days would be better. But how can we  
22 be responsible as citizens if we don't get  
23 information from IDA and/or the financial

1 information that was well-presented by Mr. Wayner to  
2 help us make a decision to come to you with any  
3 constructive ideas?

4 I just wanted to make note of  
5 that, and perhaps Mr. Sloma could take that into  
6 consideration when he works with his Board.

7 MS. LANGDON: Thank you,  
8 sir. Anyone else?

9 NORMAN JANSEN: I have no  
10 notes, nothing prepared. Norman Jansen, 1872  
11 Johnson Creek Road, Barker. I listened to this  
12 gentleman, I listened to Randy, Dan, everybody.  
13 Competition is where this country was born. And  
14 corporations do not pay tax, you and me, consumers,  
15 pay tax. That's all.

16 And if you can't sell your  
17 product, no matter what it is, at a competitive  
18 rate, you close the doors and go home. That's all I  
19 have to say.

20 MS. LANGDON: Thank you,  
21 sir. Anyone else?

22 JOHN SYRACUSE: John Syracuse,  
23 6091 Condren Road. Without getting into, or turning

1 this into a debate, but I really feel like there has  
2 to be a correction made with that last statement.  
3 There are corporate taxes being paid; there's  
4 payroll taxes, there's licensure taxes. So I just  
5 don't think that you can make -- respectfully, make  
6 a statement that says corporations don't pay taxes.  
7 They certainly do. They certainly do. They pay it  
8 on their employees. So I just can't let that slide.  
9 Thank you.

10 NORMAN JANSEN: May I rebut?

11 MS. LANGDON: It's not a  
12 debate, sir.

13 NORMAN JANSEN: Okay.

14 ALEXANDER MANSON: I'm on the  
15 list. I'd like to speak.

16 MS. LANGDON: Go ahead.

17 ALEXANDER MANSON: It appears  
18 that -- Manson, Al; Alexander Manson, 111 Grasmere  
19 Road, Lockport.

20 Some of the points that I was  
21 going to make have already been made. This AES is  
22 a worldwide corporation with twenty-seven thousand  
23 employees. And they do have a stock buyback



1 program. And the stock buyback program is, as  
2 somebody noted, five hundred million shares, and the  
3 selling price as of a couple days ago was twelve  
4 dollars thirty-seven cents. That means that it'll  
5 cost AES six billion eighteen million dollars to buy  
6 back the stock. One of the prime reasons they buy  
7 back stock is to enhance the value of the options,  
8 the millions of options, held by upper management.

9           And instead of -- a lot of these  
10 corporations that are headquartered in the United  
11 States, they like to call themselves world  
12 corporations, even though they're protected by  
13 United States Military and they -- only the fact  
14 that they are protected by our whole legal  
15 structure, military structure, are they allowed to  
16 make this money in other countries. They don't want  
17 to pay any taxes. They keep their money overseas,  
18 and then they bring it back to the U.S. after so  
19 many years and ask for tax forgiveness, or to pay a  
20 tiny percentage of a tax, on the grounds that  
21 they're going to bring it back and invest in new  
22 capital formations. They don't do that. They buy  
23 back stock, or they issue dividends. And this is,

1 obviously -- and they have no community feeling for  
2 anybody.

3                   When I got out of the Army -- I  
4 was in the 82nd Airborne Division. I got out of the  
5 Army --

6                   MS. LANGDON:            Sir? Sir?  
7 Could you keep your comments --

8                   ALEXANDER MANSON:    Pardon?

9                   MS. LANGDON:            Could you  
10 please your comments to this project?

11                   ALEXANDER MANSON:    Well, I am.  
12 I'm trying to lay the groundwork, okay?

13                   MS. LANGDON:            Okay.

14                   ALEXANDER MANSON:    It's a  
15 complicated subject.

16                   MS. LANGDON:            It sure is.

17                   ALEXANDER MANSON:    What do you  
18 want, to tell me what to say?

19                   MS. LANGDON:            Certainly not.  
20 Go ahead.

21                   ALEXANDER MANSON:    Okay. So  
22 anyway, EAS wants a second PILOT. And I don't think  
23 that IDA has the legal authority to do this kind of

1 a deal at all. I'm an attorney. I was chief law  
2 assistant to the Appellate Division Fourth  
3 Department for seventeen years, and I don't see any  
4 conceivable justification for the IDA getting  
5 involved in a PILOT where we're not talking about  
6 new construction, or revised -- a substantial amount  
7 of money paid to revise existing facilities in order  
8 to enhance job growth. None of that exists here.

9           They first started to, actually,  
10 it's my understanding, change the assessed value.  
11 It went up to the Appellate Division Fourth  
12 Department, and they said IDA has no authority to  
13 deal with the assessed value of property, their  
14 authority is to deal with payments-in-lieu-of-taxes  
15 and new formation, and dealing with help in the tax  
16 structure. But the assessed value of the property  
17 is solely done by an agency, usually, of the town.  
18 Well, the Appellate Division said they didn't have  
19 that authority.

20           So they came back. And so they  
21 come up with this cockamamie PILOT that I think is  
22 totally unauthorized by the statutory authority  
23 setting up IDA.

1 I did the first IDA project in  
2 Erie County when I represented Pearce & Pearce Co.,  
3 Inc. about forty years ago. And they built a  
4 totally new plant on this industrial property that  
5 Pearce & Pearce had that was -- and they hired new  
6 employees and new construction. But that was the  
7 function of IDA, not this. I don't know what this  
8 is.

9 They have no business, they have  
10 no expertise in dealing with people. And to have a  
11 PILOT where it jumps up or down upon the cost of  
12 electricity is crazy. Now, if the coal prices  
13 suddenly plummet, do we benefit by that? No. No.

14 And there are so many other  
15 factors that go into the net worth of a company and  
16 the operational cash they generate. The IDA has no  
17 experience in this area. And they say that the  
18 taxes are the highest in comparable plants upstate.  
19 Where's the evidence of that? Nothing. They  
20 just -- Sloma just throws that out there and says  
21 this is it.

22 And if electrical rates fall, it's  
23 my understanding, although I've seen no proposal,

1 that then the PILOT goes -- the PILOT reduces the  
2 taxes with the reduction from this point of the  
3 revenue they receive for the sale of electricity.  
4 It's a crazy proposal by a -- entities that don't  
5 know what they're doing. They have no expertise or  
6 experts to handle the credible variables that go  
7 into this project that they're doing.

8 And they make just these wild,  
9 general statements about how they have to keep the  
10 plant. Is that plant going to shut down? I don't  
11 know, I get my electricity from NYSEG, I guess NYSEG  
12 gets it from AES.

13 Now NYSEG itself is owned by a  
14 Spanish corporation, and they're not doing a very  
15 good job either.

16 Thank you.

17 MS. LANGDON: Thank you.

18 Anyone else? Sir?

19 RICHARD MYERS: You see I have  
20 no notes. That's okay, that's the way I work.

21 MS. LANGDON: Mr. Meyers  
22 could you --

23 RICHARD MEYERS: Oh, I'm sorry.

1 Richard Meyers, 8408 Lake Road, Barker, New York.

2 I could respond to the legal,  
3 environmental theories, everything that's been  
4 tossed out here, but what I'd like to respond to is  
5 more of Randy Wayner's and Dan Engert's comments.

6 We, as elected officials,  
7 including Superintendant Klatt, he's not an elected  
8 official, but we, as elected officials and  
9 Superintendant Klatt, have come together to do what  
10 we believe is best for the Town of Somerset, for the  
11 Barker School District, and for the County of  
12 Niagara. And the way we did that was we thoroughly  
13 reviewed, we thoroughly discussed, and we thoroughly  
14 decided on what the best route was for the people of  
15 Somerset.

16 And how did we do that? We did  
17 that by looking at the numbers. We did that by  
18 looking at all the different effects that what can  
19 happen over at that plant will have on the people of  
20 Somerset and the school district of Barker. We saw  
21 everything from very doom and gloom, to okay, we can  
22 ride this out for the next couple of years.

23 But what we had to do was make a

1 decision. So what we ended up doing was taking all  
2 the facts, sitting down together, and coming to a  
3 decision on what we felt was the best thing for the  
4 people of Somerset and for the County of Niagara and  
5 for the Barker School District. We did that  
6 together, and then presented it to the Niagara  
7 County IDA.

8                   The reason why we did that is  
9 because we believe that this plant is beneficial  
10 and crucial for the health and well-being of those  
11 entities.

12                   Now, if we were to go ahead and --  
13 with all due respect to you, sir -- you know, go on  
14 a tangent here, or a tangent there, or a tangent  
15 there, we would have never come to a conclusion, and  
16 that plant would be hurting, and we would be  
17 propagating that hurt. But I think what we needed  
18 to do was make a decision; make a decision that was  
19 in the best interest of everyone involved, and we  
20 ended up doing that.

21                   And I ask the IDA to look at that  
22 proposal, and go ahead and pass it when it comes  
23 before your Board. Because we believe that a

1 healthy AES is going to be beneficial to the Town of  
2 Somerset, to the Barker Central Schools and Niagara  
3 County for many years to come. And if we have to  
4 hurt a little bit in the meantime to gain that  
5 benefit in the long run, then I believe that it is  
6 in the best interest of all the taxing jurisdictions  
7 to do that. Thank you.

8 MS. LANGDON: Thank you.

9 Anyone else wishing to speak? Sir?

10 JOHN HAIGHT: I'm John  
11 Haight, 8453 Haight Road.

12 I appreciate all the Town Board is  
13 doing, and all the work they've done in the past.  
14 Mr. Klatt; all you've done in trying to work things  
15 out. And I'm probably sure that you're doing  
16 everything right, best you can.

17 But I just have a question, and it  
18 looms; why is Verizon interested in building a four  
19 point five billion dollar outfit, they're interested  
20 in coming here, if AES is in such trouble? Maybe  
21 it's not the threat we think it is. I don't know.  
22 But it just makes me wonder. And it's no reflection  
23 on you guys, or not doing your job; I think you are



1 doing good research here. So it's just a question.

2 MS. LANGDON: Anyone else  
3 who's wishing to speak?

4 RANDALL WAYNER: Just  
5 housekeeping. Randall Wayner, and that's why I'm  
6 standing, it's because when I went up originally I  
7 didn't give my address. It's 1434 Quaker Road in  
8 Barker, so with apologies.

9 MS. LANGDON: Thank you.  
10 Okay. There being no further speakers, it is now  
11 6:01 P.M., I'll be closing -- sir?

12 ROGER KLATT: My name is  
13 Roger Klatt, Superintendent, Barker Cental School.  
14 I just want to say, it was difficult -- it is  
15 difficult to support this PILOT. The ramifications  
16 to the school district are six point two million  
17 dollars. We do have reserves; however, they will be  
18 quickly depleted. So we've got our work cut out for  
19 us should this PILOT be approved, to help ensure  
20 that we provide quality programs for our children.  
21 That's our primary responsibility. That's my  
22 primary responsibility. And also that -- and do so  
23 at a rate that our taxpayers can afford.

1                   So while we met on numerous  
2 occasions to try to reach an agreement, it was very  
3 difficult in the end for the school to support that,  
4 based on the following. There was -- around what I  
5 just mentioned, the letter that was referenced by  
6 the speakers that specifies the impact of this  
7 proposed PILOT on the school district is posted on  
8 the Web site. Thank you.

9                   MS. LANGDON:           Thank you.  
10 Dr. Klatt.

11                   PARTICIPANTS:        The school Web  
12 site or the town Web site?

13                   ROGER KLATT:           WWW.barkerccsd.net.

14                   MS. LANGDON:           Anyone else  
15 wishing to speak? Okay.

16                   Now it being 6:03 P.M., I will  
17 close the hearing. Thank you very much for all your  
18 comments.

19  
20                   \*       \*       \*       \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

I certify that the foregoing is a correct.  
transcription of the proceedings recorded by me  
in this matter.

---

DAWN M. SITERS,  
Notary Public.