

REGULAR MEETING
APRIL 16, 2012

The Regular Meeting of the Town Board of the Town of Somerset, County of Niagara and the State of New York was held at the Town Hall, 8700 Haight Road, Barker, New York on the 16th day of April 2012.

Present:	Daniel M. Engert -----	Supervisor
	Randall J. Wayner -----	Councilman
	Gary R. Alt -----	Councilman
	Robin R. Jansen -----	Councilman
	Jeffrey M. Dewart -----	Councilman
	Rebecca A. Connolly ----	Clerk
	Mindy Austin -----	Confidential Asst. to the Supervisor
	Morgan Jones Jr. -----	Counsel

Attended by: 5 residents and Dr. Roger Klatt from Barker Central School along with several School Board members

Notice of said meeting sent to the Lockport Union-Sun & Journal on April 11, 2012 with same notice being posted at the Town Hall on the same day along with posting of the meeting on the town website.

Supervisor Engert called the meeting to order at 6:00PM with the Pledge to the Flag and a prayer for guidance.

RESOLUTION 60-2012

POWER PLANT PILOT AGREEMENT

Supervisor Engert said the Board is addressing a significant issue with the bankruptcy filing of AES and it is up to the taxing jurisdictions to see what we can do to help the bondholders. He said this resolution will ask the Niagara County Industrial Development Agency to reopen the current PILOT (Payment In Lieu of Taxes) agreement for renegotiation to meet the bankruptcy court requirements.

Supervisor Engert gave an overview of the changes in the amounts. He said there will be no impact to the county or town for the 2012 year. He said there will be a 40% to 60% decrease in the town revenue in 2013, 2014 and 2015. He said the reduction is in line with the reduced value that has been set by NYS Office of Real Property Services at \$280 million, a significant decrease from the original \$667 million. He stated the trigger mechanism to recoup revenue is still in place.

Attorney Jones said the trigger mechanism is called 'the dark spread' calculation and explained the mechanism in depth. He said the court has approved the sale of the plant to the bondholder's contingent upon the modified PILOT and cut in employee costs. He said it is up to the bondholders to decide if enough concessions have been made.

Supervisor Engert stated the management of the plant is currently in labor negotiations. Extensive discussion ensued regarding rescheduling the PILOT and the pressures of the court.

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On a motion of Councilman Wayner, seconded by Councilman Jansen the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved the PILOT (Payment in Lieu of Taxes) agreement should be rescheduled as follows:

WHEREAS, the Niagara County Industrial Development Agency ("NCIDA") by resolution dated January 13, 2010 issued following a public hearing and resolutions of support by the Town of Somerset (Town"), County of Niagara ("County") and Barker Central School District ("School District") entered into Payment in Lieu of Tax ("Original PILOT") and Lease/Leaseback Agreements all dated February 1, 2010 with AES Eastern Energy, L.P. and its affiliate, AES Somerset LLC (the "Company") with respect to the Somerset Generating Station real property located at 7725 Lake Road in Somerset, New York and identified by the tax map numbers on the cover page of the Original PILOT ("Premises") and the improvements located on the Premises (referred to herein as the "Facility Improvements" and the Premises and the Facility Improvements, collectively, referred to herein as the "Facility"). The Original PILOT and Lease / Leaseback Agreements are collectively referred to herein as the "2010 Agency Agreements," and

WHEREAS, the NCIDA by resolution dated February 9, 2011 and after discussions with and the support of the Town, County and School District adopted the February 1, 2011 First Amendment to the Original PILOT which modified the Original PILOT payment schedule ("First Amendment"), and WHEREAS, at the time of the execution of the 2010 Agency Agreements the following trusts held certain interests in the Facility: Kintigh Facility Trust A-1, Kintigh Facility Trust A-2, Kintigh Facility Trust B-1, Kintigh Facility Trust B-2, Kintigh Facility Trust C-1, Kintigh Facility Trust C-2, and are collectively hereinafter referred to as the "Kintigh Trusts". Each of the Kintigh Trusts has a trustee responsible for the execution of its obligations created in the trust indentures (the "Trustees"). The beneficial owners of the Kintigh Trusts are the institutional investors who hold pass-through certificates issued by each of the Kintigh Trusts (the "Certificate Holders"), and

WHEREAS, on December 30, 2011, the Company and certain affiliate entities filed voluntary bankruptcy petitions in the United State Bankruptcy Court for the District of Delaware (the "Court") seeking a court order approving a compromise and settlement between the Company and the other debtors, the Certificate Holders and the Trustees of the Kintigh Trusts, and

WHEREAS, Pursuant to a Settlement Agreement the terms of which the Company and the Kintigh Trusts expect to be incorporated into an order of the Court, and an Asset Purchase Agreement, the following events and modifications to the ownership structure of the Premises and the Facility Improvements will occur:

- The trustees of the Kintigh Trusts will be deemed to have secured first priority interests in the Premises and the Facility Improvements, and the fee title to the Premises and the Facility Improvements will be deemed vested in the Company for the purpose of transferring the Premises and Facility Improvements to an entity approved by the Court.
- The Trustees submitted credit bids as stalking horse bidders (the "Trustees' Bid") meaning that the Certificate Holders' nominee would acquire title to the Premises and the Facility Improvements from the Company in return for a forgiveness of a portion of the secured indebtedness.
- An auction of the Assets was scheduled to be conducted by the Court to consider any unrelated party's bid in comparison to the Trustees' Bid. Bidding terms were established and published by the Court, however, no bids which complied with the auction terms were submitted and, accordingly, the Court accepted the Trustees' Bid.
- Pursuant to the order of the Court, the Company shall transfer all of its right title and interest, in and to the Premises and the Facility Improvements to the Certificate Holders' nominee, the Certificate Holders have created or will create a new entity to take title to the Assets which will be transferred by various instruments from the Company to the new entity.

and,

WHEREAS, in light of the Company's bankruptcy and the continuing unprecedented negative economic circumstances and competitive difficulties which confront the Somerset Generating Station, and that the Company and the Certificate Holders which intend to take title to and responsibility for the Facility have requested that the NCIDA further modify the Original PILOT payment schedule as amended by the First Amendment to incorporate the terms set forth in Exhibit "A" attached hereto, and

WHEREAS, because of the critical importance of sustaining the viability of the Somerset Generating Station as a major employer and the largest property taxpayer in the Niagara region, in general, and the Town, County and School District, in particular, now, therefore, be it

RESOLVED, that the TOWN BOARD OF THE TOWN OF SOMERSET does hereby support the request to the NCIDA by the Company and the Certificate Holders to further modify the Original PILOT payment schedule as amended by the First Amendment to incorporate the terms set forth in Exhibit "A" attached hereto.

It is further RESOLVED, that the TOWN BOARD OF THE TOWN OF SOMERSET does hereby consent to the distribution percentages set forth in Exhibit "A" attached, and hereby encourages the NCIDA to enter into a second amendment to the PILOT Agreement incorporating the terms as set forth in Exhibit "A".

EXHIBIT "A"

Payments will be the same as on existing Schedule A, except that for the County and Town for 2013 and the School 2013-2014, there is a 40% reduction and for the remaining payments, a 60% reduction, so that each taxing jurisdiction shall receive the following amounts in the year indicated:

School:

2012-2013 School year	\$	7,584,000.00
2013-2014 School year		4,550,400.00
2014-2015 School year		3,033,600.00

County:

2013	\$	2,522,688.00
2014		1,664,544.00
2015		1,612,800.00

Town:

2013	\$	741,312.00
2014		489,056.00
2015		473,600.00

Distribution percentages remained UNCHANGED at:

School: 59.25%; County 31.50%; Town 9.25%.

PRIVILEGE OF THE FLOOR

Doug Lewis stated he appreciates that the Board did not go into executive session to discuss this matter. He asked Attorney Jones about 'dark spread' and if they take into consideration the amount that is being paid for electricity.

Attorney Jones said they do and explained the process.

Chris Czelusta stated he applauds the Board for their action. He said it sounds like the plant has too many people.

Supervisor Engert said they have significantly cut their workforce over the last 3 years from approximately 223 to 117 now. He said everyone has to share in these cuts.

James Hoffman addressed the Board regarding the following:

1. Said the only one person pays and that is the taxpayer.
2. He asked what the reductions are going to be and how will they be handled.
3. He wants to know how we are going to get back to where we use to be and at what point will that be.

Supervisor Engert said the current PILOT agreement contains the clause if the plant becomes profitable.

Attorney Jones said a timeline cannot be predicted and that nothing has changed in the agreement. He said if the dark spread gets back to the 2008 figure of \$31.83 then revenues will be increased. He gave an extensive overview of the dark spread calculation.

Extensive discussion ensued regarding the value of the plant, the mechanism of the dark spread and when the town will be made whole if and when the plant reaches profitability.

On a motion of Councilman Jansen, seconded by Councilman Dewart, the meeting adjourned at 7:05 PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk