

ANDREWS, PUSATERI, BRANDT, SHOEMAKER & ROBERSON, P.C.

Attorneys at Law

J. Wesley Andrews (Dec.)
Anthony L. Pusateri (Ret.)
Albert R. Brandt, Jr.
Edwin J. Shoemaker
Robert S. Roberson

929 Lincoln Avenue
Lockport, New York 14094
Tel: (716) 433-5941
Fax: (716) 434-3362
edshoe929@yahoo.com

Thomas H. Brandt

October 17, 2006

Niagara County Legislature
All Niagara County Town Supervisors
Claude A. Joerg, Niagara County Attorney
Niagara County IDA Board Members
Mark Gabriele, Niagara County IDA Attorney
Town of Somerset Town Board Members
Rebecca A. Connolly, MMC, Town Clerk, Town of Somerset
Steven LaRock, Superintendent, Barker Central School District
Robert M. Pusateri, Attorney, Barker Central School District
Hon. George D. Maziarz, New York State Senator
Hon. Stephen Hawley, 139th Assembly District, New York State Assembly

**RE: AES Somerset, LLC
PILOT Agreement**

The Town of Somerset and the Barker School District have been officially notified that the Niagara County Industrial Development Agency (IDA) will hold a public hearing on October 24, 2006 to consider an inducement and certain tax exemptions for the AES Somerset, LLC coal fired generating plant. This correspondence has been prepared to raise issues and concerns of the Town and School relating to this proposed tax exemption.

I am enclosing a copy of a press release which will be given out concerning AES Somerset, LLC, and its proposed tax exemptions in Niagara County.

Despite its extraordinary profitability, AES Somerset sued the Town of Somerset over its assessment and has applied to the IDA for a payment in lieu of taxes (PILOT) agreement. The IDA has refused to provide the Town or the School District with a copy of the financial details of any proposed PILOT agreement. According to newspaper reports, AES Somerset apparently seeks to reduce its property taxes by \$4 million. Such a PILOT would result in (1) the County losing \$635,000 a year in taxes; (2) the Town losing \$165,000 a year in taxes; and (3) the School

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District losing \$3,200,000 a year in taxes. The loss to the School District is so significant that the present tax rate of \$16.00 per thousand would be increased to at least \$32.00 per thousand, a 100% increase and one of the highest rates in the County.

Based on the New York State Office of Real Property Services (ORPS) analysis, AES Somerset is one of the, if not the most, profitable taxpayers in the County of Niagara. According to a Freedom of Information Law (FOIL) response from the IDA, AES Somerset has not supplied any financial data that disputes the ORPS analysis. If AES Somerset needs a \$100 million tax break over 25 years to remain "stable," as the IDA Chairman has suggested to the press, then it would follow that all the employers that are larger than AES Somerset but not nearly as profitable must also need a tax break! That is absurd. To state the AES proposition correctly, AES Somerset is asking for a \$100 million tax break over 25 years to stabilize an existing 120 jobs, at a cost to the Town, School District, and County of \$800,000 per job.

Both the IDA and AES Somerset say that the present agreement is needed to insure the construction of a second plant in Somerset. Yet they also demand that AES receive the tax reduction even if it doesn't build a second power plant. Why? Why is a \$156 million a year net income at one plant not enough money? The \$156 million a year net income is what makes the AES Somerset power plant, according to NY State ORPS, worth more than \$1 billion. No one is going to close a highly profitable \$1 billion plant and walk away! They might sell it for that amount certainly, but not close it.

AES Somerset, unlike other manufacturers, cannot threaten to move the existing plant. It has a Public Service Commission (PSC) permit to operate there, the railroad is there to bring it coal, and the transmission lines are there to move the power into the grid.

In addition, the PILOT proposal would exempt all future construction by AES in Somerset from any County tax, School tax, real property tax, as well as mortgage or sales tax. Again, the Town of Somerset and Barker Central School District residents get to suffer all of the negative impacts without receiving any compensating benefits.

For your information, and to correct misstatements I understand have been made concerning the Town of Somerset position on the PILOT agreement, the Town has told IDA Attorney Mark Gabriele and other IDA and County Officials that any agreement reached between the IDA and the Barker School District would be acceptable to the Town. The Town Board's interest is to protect the same taxpayers that pay School, County, and Town taxes in

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Somerset. The Town has agreed to defer any opposition to a PILOT agreement acceptable to the Barker School District.

By law, New York State ORPS must provide assessing jurisdictions with advisory appraisals for large electrical producing facilities in the State. By law, ORPS must set equalization rates for each assessing jurisdiction that equalize the assessed values up to fair market values. ORPS has a department that is devoted to analyzing utilities throughout the State and generating advisory assessments for those utilities. If an assessing jurisdiction fails to follow the advisory appraisals for a large electrical producing facility such as AES, ORPS will take that into account when it sets its equalization rate for the assessing jurisdiction.

In the year 2006, ORPS provided the Town of Somerset with an advisory appraisal on the AES Somerset plant on one billion, one hundred forty-nine-million dollars (\$1,149,000,000). From that amount, certain exemptions for pollution control devices were made leaving a taxable value, according to ORPS, of \$792 million. However, the Town only assessed the Somerset plant at \$667 million, which caused ORPS to impose an equalization rate on the Town of approximately 86%. According to ORPS, the Somerset plant was expected to generate **net** cash in the year 2006 in the amount of \$156 million. This net figure takes into account the current payment of approximately \$17,400,000 of real property taxes. In its lawsuits against the Town's assessment, AES claims that its plant's total valuation is worth only \$100 million (less than its annual net income). Given the figures from ORPS, it should be clear why the Town has consistently defended its assessor against the AES lawsuits.

A second plant, with an additional 120 jobs, is an entirely different proposition. Such a project may deserve a generous PILOT agreement. However, even though the IDA and AES Somerset say that they need a PILOT for the first plant in order to facilitate the construction of a second plant, they both refuse to have a global PILOT encompassing both plants. There has not even been any public discussion about what would happen to the PILOT on the first plant if, in fact, the second plant is never built! The publicly available paperwork from AES indicates that, if there is no new plant, the initial PILOT on the existing plant would remain in effect.

In addition to the empty argument that AES Somerset needs a \$100 million tax break to stabilize its existing 120 jobs, the IDA has suggested a second reason for a PILOT agreement: saving the Town and County taxpayers from paying attorneys' and experts' fees in the ongoing assessment litigation. This is completely without merit. Litigation costs and expert fees are a pittance compared to the amount of tax revenues to be lost by the proposed PILOT. AES Somerset has sued the Town over its assessment for the years 2004, 2005 and 2006, alleging that

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its plant is worth \$100 million or less. However, if a second plant is built, AES Somerset estimates it will cost more than \$1.1 billion. This is stunning and clear proof that its existing plant, which has the same megawatt capacity as the second plant, is worth \$1.15 billion, as ORPS has advised the Town. No one spends \$1.1 billion to build a plant that is only worth, fair market value, \$100 million. Additionally, although it has been expensive for the Town of Somerset to defend itself against AES Somerset's three (3) years of lawsuits, those costs in the last three years **are less than** the \$1.15 million "fee" that the IDA is requiring AES Somerset to pay to the IDA for a PILOT on both plants!

The Town of Somerset as well as the Barker School District are sending out this information to insure that Public Officials responsible for the proposed tax exemption on AES Somerset have facts to make an informed judgment.

If there is anything further you desire, please call me or any Town or School Official. We will be glad to cooperate in any way possible.

Very truly yours,

ANDREWS, PUSATERI, BRANDT,
SHOEMAKER & ROBERSON, P. C.

By 
Edwin J. Shoemaker

EJS/hbs
Encs.