

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FOURTH DEPARTMENT

In the Matter of

SIERRA CLUB, COMMITTEE TO PRESERVE THE
FINDER LAKES by and in the name of PETER
GAMBA, its President; and COALITION TO PROTECT
NEW YORK by and in the name of KATHRYN
BARTHOLOMEW, its Treasurer

Petitioners-Appellants,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules

-against-

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, BASIL
SEGGOS, COMMISSIONER, GREENIDGE
GENERATION, LLC, GREENIDGE PIPELINE, LLC,
GREENIDGE PIPELINE PROPERTIES
CORPORATION and LOCKWOOD HILLS, LLC,

Respondents-Respondents.

**AFFIRMATION IN
SUPPORT OF GREENIDGE
RESPONDENTS' MOTION
TO DISMISS APPEAL**

Docket No. CA 18-00648

Yates County Supreme Court
Index No. 2016-0165

CLAIBORNE E. WALTHALL, an attorney licensed to practice in New York, affirms
the following subject to the penalties of perjury:

1. I am an Assistant Attorney General in the office of Barbara D. Underwood, Attorney General of the State of New York, and have been assigned to represent respondents-respondents New York State Department of Environmental Conservation and Basil Seggos, Commissioner of the New York State Department of Environmental Conservation (together, State respondents or Department) in this proceeding.
2. I submit this affirmation in support of the June 22, 2018 motion of respondents-respondents Greenidge Generation, LLC; Greenidge Pipeline, LLC; Greenidge Pipeline

Properties Corporation and Lockwood Hills, LLC (together, Greenidge) to dismiss the above-captioned appeal as moot.

3. I submit this affirmation on the basis of my review of pertinent documents, including the record on appeal¹ filed by petitioners on April 17, 2018, the papers supporting Greenidge's June 22, 2018 motion to dismiss the appeal, and other papers previously filed in this proceeding.

4. I am fully familiar with the facts and circumstances herein.

5. The appeal is taken from the June 13, 2017 Order and Judgment of Supreme Court, Yates County (Hon. William F. Kocher, J.) (R 7-9), incorporating Supreme Court's April 21, 2018 Decision (R 14-20) that upheld several determinations of the Department relating to the Greenidge Generating Station (Greenidge Station or facility) in Dresden, Town of Torrey, New York by Greenidge, including the Department's issuance of Title IV and V air emission permits for the facility. The Order and Judgment upheld these permits, granted the respective motions to dismiss of Greenidge and the State respondents, denied petitioners-appellants' motion for a preliminary injunction and dismissed the amended verified petition.

6. On June 20, 2017, the Yates County Clerk entered the Order and Judgment.

7. The Department served notice of entry on June 27, 2017 (the Order and Judgment, Decision and notice of entry are attached as Ex. A), and Greenidge also served notice of entry on June 27, 2017.

8. Petitioners-appellants filed a notice of appeal on July 19, 2017 and served it on the Department via e-mail and first class mail on July 19, 2017 (attached as Ex. B).

¹ The record on appeal is cited herein as (R __).

9. Petitioners-appellants served their brief and the record on appeal by overnight delivery on April 17, 2018.

10. On April 18, 2018, this Court issued a scheduling order directing that responding briefs be filed on or before May 22, 2018 (attached as Ex. C).

11. On May 3, 2018, State respondents moved unopposed to extend their time to file a respondents' brief. On May 9, 2018, Greenidge cross-moved unopposed for the same relief.

12. On May 14, 2018, the Court issued an order granting the requested extensions of time (attached as Ex. D). Respondents' briefs are due July 6, 2018 and reply briefs, if any, are due July 23, 2018 (*id.*).

13. On June 13, 2018, the Court issued an order scheduling oral argument on the appeal for Monday, October 15, 2018 (attached as Ex. E).

The Underlying Article 78 Proceeding

14. Petitioners-appellants commenced this proceeding by order to show cause dated October 31, 2016 (R 48-49), and verified petition, dated October 28, 2016 (R 21-46), to prevent Greenidge from taking steps to repower the formerly coal-fired Greenidge Station with natural gas (co-firing up to 19 percent bio-mass), including construction of a natural gas pipeline to serve the facility.

15. The verified petition, among other things, sought to annul air permits issued September 8, 2016 by the Department for the Greenidge Station and the negative declaration issued on June 28, 2016 by the Department as lead agency under the State Environmental Quality Review Act, ECL Art. 8 and 6 NYCRR Part 617 (SEQRA) on various procedural and substantive grounds.

16. The order to show cause set a return date of November 17, 2018. Petitioners agreed, at the State respondents' request, to extend respondents' time to answer or move until January 6, 2018. State respondents do not seek to hold this time against petitioners.

17. On December 6, 2016, petitioners-appellants filed an amended petition, adding Sierra Club as a petitioner (R 54-80).

18. On December 23, 2016, petitioners-appellants filed a motion for a preliminary injunction (R 82-111).

19. In response to the amended petition, the Department and Greenidge each filed a motion to dismiss on January 6, 2017 (R 112-118, 213-237). Greenidge also opposed the motion for a preliminary injunction (R 119-212).

20. Supreme Court held a hearing on the motion for a preliminary injunction and the motions to dismiss on January 24, 2017 before issuing a written Decision on April 21, 2017 denying the motion for a preliminary injunction and dismissing the amended petition (R 14-20). This Decision was subsequently included as Exhibit A to Supreme Court's June 13, 2017 Order and Judgment (*see Ex. A*).

21. Petitioners have also challenged the Department's SEQRA review and issuance of an ECL Article 15 water withdrawal permit and modified state pollution discharge elimination system (SPDES) permit for the Greenidge Station in a separate Article 78 proceeding filed November 8, 2017, which remains pending. *Matter of Sierra Club, et al. v. New York State Dept. of Environmental Conservation*, Yates County Index No. 2017-0232.

The Appeal Is Moot

22. As State respondents argued in Supreme Court and Greenidge demonstrated in its June 22, 2018 motion papers, this proceeding is moot.

23. Because mootness deprives the court of subject matter jurisdiction, it is an issue that can be raised at any time, and the court may consider materials *de hors* the record to determine whether an appeal is moot. *Gabriel v. Prime*, 30 A.D.3d 955, 956 (3d Dep't 2006); *Matter of Galvin & Morgan v. McCall*, 251 A.D.2d 869, 870 n.1 (3d Dep't 1998); *Weeks Woodlands Assn., Inc. v. Dormitory Auth. of State of New York*, 95 A.D.3d 747, 753 (1st Dep't) *aff'd*, 20 N.Y.3d 919 (2012) (dismissing appeals as moot where challenged construction was complete and holding that the fact “[t]hat the current stage of the construction is not reflected in the record is irrelevant”).

24. Consistent with counsel's “obligation to inform the court of changed circumstances which render a matter moot,” *Matter of Cerniglia v. Ambach*, 145 A.D.2d 893, 894 (3d Dep't 1988), *lv. denied*, 74 N.Y.2d 603 (1989), Greenidge apprised Supreme Court in a March 31, 2017 letter (R 393-394) that the pipeline and all in-plant construction to repower the plant had been completed and that Greenidge Station had resumed operations.

25. Similarly, Greenidge's present motion is consistent with its obligation to inform the Court of the current state of the Greenidge Station's completed construction and ongoing operations.

26. Petitioners' motion for a preliminary injunction sought to enjoin Greenidge from “taking steps to repower the Greenidge Generating Station or construct a gas pipeline to the station . . .” (R 82).

27. Between the time the Department issued the challenged air permits in September 2016 and petitioners commenced this proceeding and served respondents in early November 2016, however, Greenidge had made substantial construction progress towards repowering the Greenidge Station, including significant investments in materials and work progress on in-plant

improvements and construction of the natural gas pipeline (*see* Affidavit of Dale Irwin, sworn to June 21, 2018 [Irwin Aff.], ¶¶ 31-38 & Ex. B).

28. As Greenidge’s motion papers demonstrate, when petitioners moved for a preliminary injunction on December 23, 2016, the steps necessary to repower the Greenidge Station were substantially complete, with approximately \$7,688,467 invested—60 percent of the total project costs. (Irwin Aff. ¶¶ 39-41 & Ex. B).

29. Likewise, as Greenidge’s motion papers demonstrate, by March 2017, in-plant and pipeline construction was completed (Irwin Aff. ¶ 42), and following shakedown and testing, Greenidge re-commenced operations providing power to the electric grid in May 2017 (Irwin Aff. ¶¶43-45 & Ex. B).

30. The Greenidge Station has been operating under the air permits challenged in the underlying Article 78 petition and providing electricity on a regular basis for over a year since May 2017 (Irwin Aff. ¶¶ 44-45 & Ex. C).

31. Indeed, it appears that discontinuing operations at this point would be extremely difficult and subject to the New York State Independent System Operator’s (NYISO) jurisdiction. (Irwin Aff. ¶ 44 n. 1).

32. Between the time the Greenidge Station re-commenced operations in March 2017 and petitioners perfected their appeal over a year later in April 2018, Greenidge expended approximately \$1,500,000 in additional capital funds to repower the Greenidge Station (Irwin Aff. ¶¶ 46-47), and paid approximately \$2,308,817 in wages and benefits to plant personnel, whose jobs depend on continued operation of the Greenidge Station (Irwin Aff. ¶¶ 48-51).

33. It is undisputed that petitioners never sought to enjoin construction or operation of the Greenidge Station during the pendency of this appeal and therefore failed to preserve the status quo.

34. Based on Greenidge's motion papers, there are no further steps to repowering the Greenidge Station that now could be enjoined, as all are completed. Enjoining the Greenidge Station's operations—relief petitioners have not expressly sought, even if that is their apparent goal—at this point would cause undue hardship to Greenidge's owners and employees and potentially the general public.

35. Therefore, for the reasons stated above and by Greenidge in their June 22, 2018 motion papers, State respondents support Greenidge's motion to dismiss the appeal with prejudice as moot.

Dated: Albany, New York
June 27, 2018


Claiborne E. Walthall

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF YATES

YATES COUNTY CLERK

In the Matter of the Application of

2017 JUL -3 A 11: 22

SIERRA CLUB, COMMITTEE TO PRESERVE THE FINGER
LAKES by and in the name of PETER GAMBA, its President,
and COALITION TO PROTECT NEW YORK by and in the
name of KATHRYN BARTHOLOMEW, its Treasurer,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules,

NOTICE OF ENTRY

-against-

Index No. 2016-0165

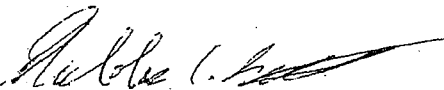
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, BASIL SEGGOS, COMMISSIONER,
GREENIDGE GENERATION, LLC, GREENIDGE PIPELINE,
LLC, GREENIDGE PIPELINE PROPERTIES CORPORATION
and LOCKWOOD HILLS, LLC,

Respondents.

PLEASE TAKE NOTICE that an Order and Judgment, a true copy of which is attached,
was signed on June 13, 2017 by the Honorable William F. Kocher, Acting Supreme Court
Justice, and filed and entered in the office of the Yates County Clerk on June 20, 2017.

Dated: June 27, 2017
Albany, New York

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Defendants-Respondents



Nicholas C. Buttino, AAG
New York State Department of Law
Environmental Protection Bureau
The Capitol
Albany, New York 12224
(518)776-2406

NYS OFFICE OF THE ATTORNEY GENERAL
RECEIVED

JUL 07 2017

ENVIRONMENTAL PROTECTION BUREAU
ALBANY

To:

Rachel Treichler, Esq.
Law Office of Rachel Treichler
7988 Van Amburg Road
Hammondsport, NY 14840

Richard J. Lippes, Esq.
Lippes & Lippes
1109 Delaware Avenue
Buffalo, NY 14209-1601

Yvonne E. Hennessey, Esq.
Barclay Damon
80 State Street
Albany, NY 12207

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF YATES

YATES COUNTY CLERK

2017 JUL -3 A 11:22

In the Matter of the Application of

COMMITTEE TO PRESERVE THE FINGER LAKES by and in
the name of PETER GAMBA, its President, and COALITION
TO PROTECT NEW YORK by and in the name of KATHRYN
BARTHOLOMEW, its Treasurer,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules,

**AFFIDAVIT OF
SERVICE**

Index No. 2016-0165

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, BASIL SEGGOS, COMMISSIONER,
GREENIDGE GENERATION, LLC, GREENIDGE PIPELINE,
LLC, GREENIDGE PIPELINE PROPERTIES CORPORATION
and LOCKWOOD HILLS, LLC,

Respondents.

NYS OFFICE OF THE ATTORNEY GENERAL
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JUL 07 2017

ENVIRONMENTAL PROTECTION BUREAU
ALBANY

STATE OF NEW YORK)
: ss.:
COUNTY OF ALBANY)

ITASHA V. HILTON, being duly sworn, deposes and says:

I am over eighteen years of age and an employee in the office of Eric T. Schneiderman,
Attorney General of the State of New York, attorney for the State respondents herein.

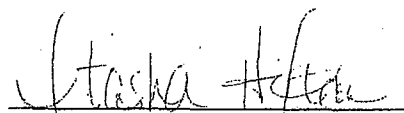
On June 27, 2017, I served the Notice of Entry with a certified copy of the Order and
Judgment (including attached Decision), signed by the Hon. William Kocher, dated June 13,
2017, upon the attorneys named below by depositing a true copy thereof, properly enclosed in a
sealed, postpaid wrapper, in the letter box outside 150 State Street in the City of Albany, New

York, a depository under the exclusive care and custody of the United States Postal Service:

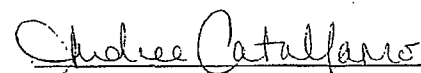
Rachel Treichler, Esq.
Law Office of Rachel Treichler
7988 Van Amburg Road
Hammondsport, NY 14840

Richard J. Lippes, Esq.
Lippes & Lippes
1109 Delaware Avenue
Buffalo, NY 14209-1601

Yvonne E. Hennessey, Esq.
Barclay Damon
80 State Street
Albany, NY 12207


ITASHA V. HILTON

Sworn to before me this
27th day of June, 2017.


Notary Public

Andrea L. Catalfano
Notary Public, State of New York
Reg. No. 01CA6228819
Qualified in Fulton County
Commission Expires October 25, 2018

NYS OFFICE OF THE ATTORNEY GENERAL
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JUN 26 2017

ENVIRONMENTAL PROTECTION BUREAU
ALBANY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF YATES

In the Matter of

SIERRA CLUB, COMMITTEE TO PRESERVE THE
FINGER LAKES by and in the name of PETER GAMBA,
its President, AND COALITION TO PROTECT NEW
YORK by and in the name of KATHRYN
BARTHOLOMEW its Treasurer,

Petitioners,

-against-

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, BASIL
SEGGOS, COMMISSIONER, GREENIDGE
GENERATION, LLC, GREENIDGE PIPELINE, LLC,
GREENIDGE PIPELINE PROPERTIES CORPORATION,
and LOCKWOOD HILLS, LLC,

Respondents.

ORDER AND JUDGMENT

Index No. 2016-0165

NYS OFFICE OF THE ATTORNEY GENERAL
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JUL 07 2017

ENVIRONMENTAL PROTECTION BUREAU
ALBANY

WHEREAS, Petitioners Committee to Preserve the Finger Lakes and Coalition to Protect New York brought this Article 78 proceeding against the New York State Department of Environmental Conservation, Basil Seggos, Commissioner ("Respondent DEC") and Greenidge Generation LLC, Greenidge Pipeline, LLC, Greenidge Pipeline Properties Corporation, and Lockwood Hills, LLC (collectively, the "Greenidge Respondents") by Order to Show Cause, dated October 31, 2016, and Verified Petition dated October 28, 2016;

WHEREAS, on December 6, 2016, Petitioners filed an Amended Verified Petition ("Amended Petition"), adding, among other things, Petitioner Sierra Club as a party and, thereafter, served a Notice of Amended Petition on December 13, 2016;

WHEREAS, on December 23, 2016, Petitioners filed a Motion for Temporary Injunctive Relief seeking to enjoin the Greenidge Respondents from taking steps to repower the Greenidge Station or construct a gas pipeline to the generating station pending the resolution of this proceeding or further order of the Court;

WHEREAS, in response to the Amended Petition, on January 6, 2017, Respondent DEC filed a motion pursuant to CPLR 3211 seeking dismissal of the Amended Petition ("DEC Motion");

WHEREAS, also on January 6, 2017, the Greenidge Respondents filed a motion pursuant to CPLR 404, 406, 7804(f) and 3211(a) seeking dismissal of the Amended Petition ("Greenidge Motion") (the DEC Motion and the Greenidge Motion collectively referred to as the "Dismissal Motions");

NOW, upon reading and filing the parties' submissions, including: the Verified Petition; the Order to Show Cause, dated October 28, 2016; the Affirmation of Rachel Treichler In Support of Order to Show Cause, dated October 28, 2016; the Petitioners' Amended Verified Petition, dated December 6, 2016; Petitioners' Notice of Motion, dated December 23, 2016; the Affirmation of Rachel Treichler, dated December 23, 2016, in support of Petitioners' Motion for Temporary Injunctive Relief, with exhibits; Petitioners' Memorandum of Law in support of its Motion for Temporary Injunctive Relief, dated December 23, 2016; Greenidge Respondents' Notice of Motion, dated January 6, 2017; the Affirmation of Yvonne E. Hennessey, dated January 6, 2017, in support of the Greenidge Motion, with exhibits; Greenidge's Memorandum of Law in support of the Greenidge Motion, dated January 6, 2016; Respondent DEC's Notice of Motion, dated January 5, 2017; the Affirmation of Nicholas Buttino, dated January 5, 2017, in support of the DEC Motion, with exhibits; Respondent DEC's Memorandum of Law in support of the DEC Motion, dated January 5, 2017; Petitioner's Memorandum of Law in opposition to

Respondents' Dismissal motions and in Reply in Support of Petitioners' Motion for Temporary Injunctive Relief, dated January 16, 2017; Greenidge Respondents' Reply Memorandum of Law in Further Support of the Greenidge Motion, dated January 18, 2017; and Respondent DEC's Reply Memorandum of Law in Support of the DEC Motion, dated January 19, 2017; Letter from Yvonne E. Hennessey on behalf of the Greenidge Respondents, dated March 31, 2017; Letter from Rachel Treichler on behalf of Petitioners, dated April 3, 2017; Letter from Nicholas Buttino on behalf of Respondent DEC, dated April 4, 2017; and upon all the papers, pleadings, and materials submitted by the parties, as well as all oral arguments presented at the hearing on the Motions on January 24, 2017,

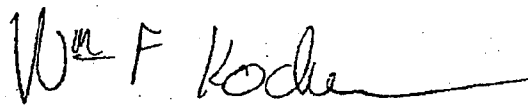
AND after the Preliminary Injunction Motion and Dismissal Motions were heard at the Yates County Courthouse, 415 Liberty St, Penn Yan, New York 14527 on January 24, 2017;

AND after due deliberation having been had, and for the reasons set forth in the written decision of the Court dated April 21, 2017 (a copy of which is attached hereto as Exhibit "A"), it is:

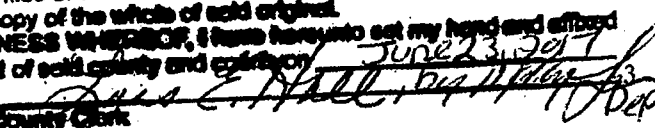
ORDERED and ADJUDGED that Petitioners' Motion for Temporary Injunctive Relief is denied and Respondents' Dismissal Motions are granted, and the petition is dismissed on the merits according to the decision dated April 21, 2017.


This constitutes the Order and Judgment of the Court.

DATED: 6/13/17



HON. WILLIAM F. KOCHER
Acting Supreme Court Justice

STATE OF NEW YORK, COUNTY OF YATES, SS:
I, LOIS E. HALL, Clerk of the County of Yates
and clerk of the Supreme and County Courts of the County of Yates,
both being Courts of Record having a common seal,
DO HEREBY CERTIFY that I have compared the copy with the
original filed or recorded in this office and that the same is
a true copy of the whole of said original.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed
the seal of said county and office on June 23, 2017

Lois E. Hall, Clerk
Yates County Clerk

FILED & ENTERED
6-20-17 3:40 PM

YATES COUNTY CLERK

STATE OF NEW YORK
SUPREME COURT

COUNTY OF YATES

SIERRA CLUB, COMMITTEE TO PRESERVE
FINGER LAKES by and in the name of PETER GAMBA,
its President, and COALITION TO PROTECT NEW YORK
by and in the name of KATHRYN BARTHOLOMEW,
its Treasurer,

Plaintiffs,

DECISION
Index No. 2016-0165

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, BASIL SECCOS, COMMISSIONER,
GREENIDGE GENERATION, LLC, GREENIDGE PIPELINE,
LLC, GREENIDGE PIPELINE PROPERTIES CORPORATION,
and LOCKWOOD HILLS, LLC,

Defendants.

Petitioners brought this application by way of an Order to Show Cause and Amended Petition alleging the New York State Department of Environmental Conservation ("DEC") failed to conduct an adequate environmental review under the State Environmental Quality Review Act ("SEQRA") of the impacts of the project of Respondents Greenidge Generation Corporation ("GPPC") to repower the Greenidge Generating Station in Dresden, New York including construction of a 4.6 mile gas pipeline to the station (the "Greenidge Repowering Project") before issuing air permits to GGLLC for the plant on September 8, 2016. The amended verified petition seeks annulment of air permits issued to GGLLC and the negative declaration issued by DEC as lead agency on the ground that they violate the requirements of SEQRA.

Respondents made motions to dismiss. In their applications Respondents raised the issue that Petitioners lacked standing. This Court previously ruled that Petitioners do have standing and any application to dismiss the petition on the bases of standing is denied.

FINDINGS OF FACT

The Greenidge Station is an electric generating facility located in the Town of Torrey, New York. It currently consists of one 107 megawatt generating unit, known as Unit 4, which historically operated as a coal-fired power plant. The Facility was initially constructed in the 1930s. Unit 4 (the only remaining generating unit at Greenidge Station) was installed in 1953. In 2011, the Greenidge Station went into temporary protective layup status. In 2014, Respondent Greenidge Generation, LLC, purchased the Greenidge Station and sought to resume Facility operations.

The Greenidge Project will allow the Greenidge Station to produce electricity using natural gas and biomass, and no longer burn coal as a fuel source. The Greenidge Project consists of two main components, namely: (1) in-plant construction to modify the Greenidge Station to run on natural gas and biomass; and (2) construction of a natural gas pipeline and auxiliary services to fuel the facility. In furtherance of the Greenidge Project, in 2014, Respondent Greenidge Generation, LLC submitted applications to NYSDEC for Title IV and Title V air permits, a renewal of its State Pollutant Discharge Elimination System ("SPDES") permit and initial water withdrawal permit for Greenidge Station.

NYSDEC initially issued a Notice of Complete Application ("NOCA") and Negative Declaration on July 30, 2015, which provided the basis for NYSDEC's State Environmental Quality Review Act ("SEQRA") determination that the resumption of operations at the Greenidge Station would not have a significant adverse impact on the environment.

NYSDEC published notice of its NOCA and Negative Declaration in the Environmental Notice Bulletin ("ENB") on August 12, 2015. On August 12, 2015, NYSDEC also issued the following draft permits for public notice and comment: Title V and Title V air permits, a SPDES renewal permit and an initial water withdrawal permit.

On September 11, 2015, Petitioner CPFL submitted comments to NYSDEC on the draft permits and the SEQRA Negative Declaration. Also on September 11, 2015, Petitioner Sierra Club submitted comments to NYSDEC on the draft air permits only, it did not submit any SEQRA related comments.

Petitioner Coalition to Protect New York ("CPNY") did not submit any comments to NYSDEC on either the Negative Declaration or draft permits.

On October 26, 2015, NYSDEC submitted the proposed Title V air permit and a public comment responsiveness summary ("Responsiveness summary") to the United States Environmental Protection Agency ("USEPA") for review, as required by Section 505(a) of the Clean Air Act. NYSDEC also provided a copy of the Responsiveness Summary and the proposed Title V permit to Petitioners CPFL and Sierra Club.

On December 7, 2015, USEPA issued a letter to NYSDEC that requested revisions to the draft Greenidge Station Title V air permit.

From January 2016 through June 2016, Respondent Greenidge Generation, LLC worked with NYSDEC and USEPA to modify the draft Title V air permit as requested by the USEPA.

On June 28, 2016, NYSDEC issued an Amended Negative Declaration based on revisions made to the draft Title V air permit, which concluded once again that the resumption of operations at the Greenidge State would not have a significant adverse impact on the environment.

NYSDEC published notice of its Amended Negative Declaration in the June 29, 2016 ENB. Also on June 29, 2016, NYSDEC published notice in the ENB of the availability of revised draft Title IV and Title V air permits for the Greenidge Station for public review and comment.

On August 5, 2016, Petitioner CPFL submitted comments on the draft Title IV and Title V permits and the Amended Negative Declaration. Petitioners Sierra Club and CPNY did not submit any comments to NYSDEC.

On September 8, 2016, NYSDEC issued the final Title IV and Title V air permits which authorized the in-plant construction work necessary to convert the Greenidge Station to natural gas and the subsequent operation of the Greenidge Station.

Regarding the Greenidge pipeline, on October 2, 2015, Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation (the "Pipeline Entities") submitted an application to the NYSPSC seeking issuance pursuant to Article VII of the Public Service Law of a Certificate of Environmental Compatibility and Public Need for construction of a 4.6 mile natural gas pipeline to supply natural gas to the Greenidge Station (the "Greenidge Pipeline"), which application was docketed by the Commission as Case 15-T-0586 (the "Article VII Proceeding").

Petitioner CPFL submitted comments to NYSPSC on November 9, 2015 and November 23, 2015 and requested that the NYSPSC grant it party status in, among other things, the Article VII proceeding.

On December 28, 2015, ALJ Phillips issued a Ruling Concerning Process and Party Status in the Article VII Proceeding, wherein she ruled that Petitioner CPFL failed to identify any specific, disputed factual issues that would necessitate evidentiary hearings in order to develop an adequate record with respect to the Pipeline Entities' request for an Article VII certificate and also concluded that in the absence of any such contested issues of material fact, there was no need to rule on CPFL's request for party status at that time.

Petitioner CPFL did not appeal ALJ Phillips ruling denying it party status in the Article VII Proceeding, nor did it renew its requests for party status in that proceeding.

On September 16, 2016, NYSPSC issued among other things, the Article VII Certificate for the Greenidge Pipeline. In the Certificate Order, the NYSPSC found that the Greenidge Pipeline was needed and that the adverse environmental impacts would be largely temporary in nature due to

construction and would be minimized by the requirements of the Article VII certificate approved by the NYSPSC.

The Certificate Order further provided that construction of the Greenidge Pipeline could not commence until a Notice to Proceed with Construction was issued by the NYSPSC for the Greenidge Pipeline and related facilities.

On October 17, 2016, the NYSPSC issued the requisite Notice to Proceed with Construction.

As provided by NYSPSC in the Certificate Order, it was the intention of the Pipeline Entities to commence construction soon after the NYSPSC approval and permissions were obtained.

None of the Petitioners sought rehearing by NYSPSC of the Certificate Order.

On October 17, 2016, the last day a rehearing could be requested from the NYSPSC based on Section 22 of the New York Public Service Law, Petitioner CPFL filed a petition for rehearing with NYSPSC only with respect to the NYSPSC's separate Order in Cases 15-E-0516 and 15-G-0571, issued on September 16, 2016 wherein the NYSPSC authorized Greenidge Generation to operate the Greenidge Station, authorized the Pipeline Entities to exercise the rights granted to them under certain municipal road crossing agreements, and granted lightened and/or incidental regulations under Part IV of the Public Service Law to Greenidge Generation and the Pipeline Entities.

On December 15, 2016, the NYSPSC denied CPFL's rehearing request in cases 15-E-0516 and 15-G-057, finding that CPFL failed to state an error of law or fact or new circumstance warranting a different determination than that already made by NYSPSC.

In-plant construction work on the Greenidge Station and construction on the Greenidge Pipeline commenced on October 17, 2016. As of November 3, 2016, when the Greenidge Respondents were served in the underlying action, the following construction activities had already been completed; all materials for the in-plant work had been purchased; over 30 percent of the in-plant construction work

had been completed; all necessary materials for the construction of the Greenidge Project had been purchased; 50 percent of site clearing activities (including tree removal) had been completed, and 20% of the Greenidge Pipeline construction had been completed (trenched, welded, piping laid into the trench, and soil backfilled over the piping). The cost associated with the work that had been completed by November 3, 2016 was \$3,020,866. As of December 23, 2016, when Petitioners filed their motion, approximately 80% of the Greenidge Project had been completed at a cost of \$7,688,467. On January 6, 2017, 94% of the Greenidge Project construction had been completed at a cost of \$11,418,24.

DECISION

During the course of this proceeding the Petitioners filed with this Court a series of affidavits by various individuals that were sworn to between January 13, 2017 and January 16, 2017. Those affidavits established that the Petitioners do have standing to commence this proceeding. However, this Court will not consider the technical aspects of those affidavit including but not limited to the affidavit of Gregory Boyer. Those affidavits were never previously submitted to DEC nor were they included in either the petition or the amended petition. Those affidavits contain additional evidence which as submitted violate 22 NYCRR 202.8(c) and 202.9.

As for Petitioners' request for a preliminary injunction to establish a preliminary injunction, a party must show (1) a likelihood of success on the merits; (2) irreparable injury in the absence of injunctive relief or (3) a balance of equities in their favor. This is a drastic remedy that is not routinely granted and should be awarded sparingly. In the present case, based upon the facts presented, this Court finds that petitioners have failed to meet their burden on any of these three conditions and accordingly, the request for a preliminary injunction is denied.

Regarding Petitioners' request to annul the Title IV and Title V air permits which were issued on September 8, 2016 to Respondent GGLLC by Respondent DEC, upon a review of the papers submitted

and the findings of facts contained herein, this Court finds that Respondent DEC did not in any way act in a manner that was a violation of any law, arbitrary or capricious or an abuse of discretion.

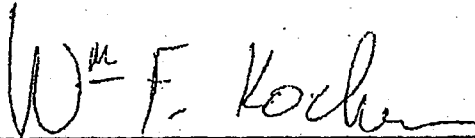
Petitioners' request is denied.

Petitioners' request to annul Respondent DEC's SEQRA finding and June 28, 2016 negative declaration is also denied. A review of the findings contained in this decision finds that Respondent DEC followed the law and its decision was not arbitrary, capricious or an abuse of discretion.

Any further application by Petitioners is likewise denied.

Therefore, Petitioners amended petition is dismissed. This shall constitute the Decision of the Court.

Dated: 4/21/17
Canandaigua, New York.



Hon. William F. Kocher
Acting Supreme Court Justice

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF YATES

NYS OFFICE OF THE ATTORNEY GENERAL
RECEIVED

JUL 21 2017

In the Matter of the Application of

SIERRA CLUB; COMMITTEE TO PRESERVE THE FINGER
LAKES by and in the name of PETER GAMBA, its President;
and COALITION TO PROTECT NEW YORK by and in the
name of KATHRYN BARTHOLOMEW, its Treasurer,

ENVIRONMENTAL PROTECTION BUREAU
ALBANY

Petitioners,

NOTICE OF APPEAL

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

Index No. 2016-0165

—against—


NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, BASIL SEGGOS, COMMISSIONER,
GREENIDGE GENERATION, LLC, GREENIDGE PIPELINE,
LLC, GREENIDGE PIPELINE PROPERTIES CORPORATION
and LOCKWOOD HILLS, LLC,

Respondents.

PLEASE TAKE NOTICE that the Petitioners, Sierra Club, Committee to Preserve the Finger Lakes and Coalition to Protect New York hereby appeal to the Appellate Division of the Supreme Court, Fourth Judicial Department, from the Decision and Order of the Supreme Court, Yates County, Hon. William J. Kocher, Supreme Court Justice Presiding, dated April 10, 2017, entered in the Yates County Clerk's Office on June 20, 2017, with Notice of Entry served by mail upon Petitioners' counsel on June 23, 2017. A copy of the Decision and Order is attached hereto as Exhibit A. Petitioners hereby appeal from each and every part of the Decision and Order, except that part of the Decision and Order which found that Petitioners have standing to bring this proceeding.

DATED: Hammondsport, New York
July 19, 2017

Respectfully submitted,



RICHARD J. LIPPES, ESQ.
Lippes & Lippes
1109 Delaware Avenue
Buffalo, NY 14209-1601
Telephone: (716) 884-4800
Email: rlippes@lippeslaw.com

RACHEL TREICHLER, ESQ.
7988 Van Amburg Road
Hammondsport, New York 14840
Telephone: (607) 569-2114
Email: treichlerlaw@frontiernet.net

Attorneys for Petitioners

To:

SUSAN L. TAYLOR, ESQ.
Office of the Attorney General
Environmental Protection Bureau
Section Chief, General Litigation
The Capitol
Albany, New York 12224-0341
Telephone: (518) 776-2403
Email: susan.taylor@ag.ny.gov
*Attorney for Respondent NYS Department of
Environmental Conservation, Basil Seggos,
Commissioner*

YVONNE E. HENNESSEY, ESQ.
Barclay Damon, LLP
80 State Street
Albany, New York 12207
Telephone: (518) 429-4293
Email: yhennessy@barclaydamon.com
*Attorney for Respondents Greenidge
Generation, LLC, Greenidge Pipeline, LLC,
Greenidge Pipeline Properties Corporation
and Lockwood Hills, LLC*

NYS OFFICE OF THE ATTORNEY GENERAL
RECEIVED

JUN 26 2017

ENVIRONMENTAL PROTECTION BUREAU
ALBANY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF YATES

In the Matter of

SIERRA CLUB, COMMITTEE TO PRESERVE THE
FINGER LAKES by and in the name of PETER GAMBA,
its President, AND COALITION TO PROTECT NEW
YORK by and in the name of KATHRYN
BARTHOLOMEW its Treasurer,

Petitioners,

ORDER AND JUDGMENT

Index No. 2016-0165

-against-

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, BASIL
SEGGOS, COMMISSIONER, GREENIDGE
GENERATION, LLC, GREENIDGE PIPELINE, LLC,
GREENIDGE PIPELINE PROPERTIES CORPORATION,
and LOCK WOOD HILLS, LLC,

Respondents.

WHEREAS, Petitioners Committee to Preserve the Finger Lakes and Coalition to Protect New York brought this Article 78 proceeding against the New York State Department of Environmental Conservation, Basil Seggos, Commissioner ("Respondent DEC") and Greenidge Generation LLC, Greenidge Pipeline, LLC, Greenidge Pipeline Properties Corporation, and Lockwood Hills, LLC (collectively, the "Greenidge Respondents") by Order to Show Cause, dated October 31, 2016, and Verified Petition dated October 28, 2016;

WHEREAS, on December 6, 2016, Petitioners filed an Amended Verified Petition ("Amended Petition"), adding, among other things, Petitioner Sierra Club as a party and, thereafter, served a Notice of Amended Petition on December 13, 2016;

WHEREAS, on December 23, 2016, Petitioners filed a Motion for Temporary Injunctive Relief seeking to enjoin the Greenidge Respondents from taking steps to repower the Greenidge Station or construct a gas pipeline to the generating station pending the resolution of this proceeding or further order of the Court;

WHEREAS, in response to the Amended Petition, on January 6, 2017, Respondent DEC filed a motion pursuant to CPLR 3211 seeking dismissal of the Amended Petition (“DEC Motion”);

WHEREAS, also on January 6, 2017, the Greenidge Respondents filed a motion pursuant to CPLR 404, 406, 7804(f) and 3211(a) seeking dismissal of the Amended Petition (“Greenidge Motion”) (the DEC Motion and the Greenidge Motion collectively referred to as the “Dismissal Motions”);

NOW, upon reading and filing the parties’ submissions, including: the Verified Petition; the Order to Show Cause, dated October 28, 2016; the Affirmation of Rachel Treichler In Support of Order to Show Cause, dated October 28, 2016; the Petitioners’ Amended Verified Petition, dated December 6, 2016; Petitioners’ Notice of Motion, dated December 23, 2016; the Affirmation of Rachel Treichler, dated December 23, 2016, in support of Petitioners’ Motion for Temporary Injunctive Relief, with exhibits; Petitioners’ Memorandum of Law in support of its Motion for Temporary Injunctive Relief, dated December 23, 2016; Greenidge Respondents’ Notice of Motion, dated January 6, 2017; the Affirmation of Yvonne E. Hennessey, dated January 6, 2017, in support of the Greenidge Motion, with exhibits; Greenidge’s Memorandum of Law in support of the Greenidge Motion, dated January 6, 2016; Respondent DEC’s Notice of Motion, dated January 5, 2017; the Affirmation of Nicholas Buttino, dated January 5, 2017, in support of the DEC Motion, with exhibits; Respondent DEC’s Memorandum of Law in support of the DEC Motion, dated January 5, 2017; Petitioner’s Memorandum of Law in opposition to

Respondents' Dismissal motions and in Reply in Support of Petitioners' Motion for Temporary Injunctive Relief, dated January 16, 2017; Greenidge Respondents' Reply Memorandum of Law in Further Support of the Greenidge Motion, dated January 18, 2017; and Respondent DEC's Reply Memorandum of Law in Support of the DEC Motion, dated January 19, 2017; Letter from Yvonne E. Hennessey on behalf of the Greenidge Respondents, dated March 31, 2017; Letter from Rachel Treichler on behalf of Petitioners, dated April 3, 2017; Letter from Nicholas Buttino on behalf of Respondent DEC, dated April 4, 2017; and upon all the papers, pleadings, and materials submitted by the parties, as well as all oral arguments presented at the hearing on the Motions on January 24, 2017,

AND after the Preliminary Injunction Motion and Dismissal Motions were heard at the Yates County Courthouse, 415 Liberty St, Penn Yan, New York 14527 on January 24, 2017;

AND after due deliberation having been had, and for the reasons set forth in the written decision of the Court dated April 21, 2017 (a copy of which is attached hereto as Exhibit "A"), it is:

ORDERED and ADJUDGED that Petitioners' Motion for Temporary Injunctive Relief is denied and Respondents' Dismissal Motions are granted, and the petition is dismissed on the merits according to the decision dated April 21, 2017.

This constitutes the Order and Judgment of the Court.

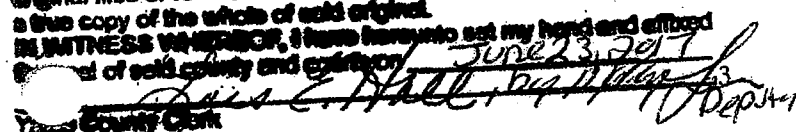
DATED: 6/13/17

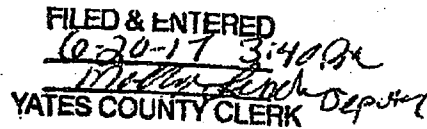


HON. WILLIAM F. KOCHER
Acting Supreme Court Justice

STATE OF NEW YORK, COUNTY OF YATES, SS:

I, LOIS E. HALL, Clerk of the County of Yates and clerk of the Supreme and County Courts of the County of Yates, both being Courts of Record having a common seal, DO HEREBY CERTIFY that I have compared the copy with the original filed or recorded in this office and that the same is a true copy of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of said county and office on June 23, 2017

Lois E. Hall, Clerk
Yates County Clerk

FILED & ENTERED
06-20-17 3:40 PM

YATES COUNTY CLERK

STATE OF NEW YORK
SUPREME COURT COUNTY OF YATES

SIERRA CLUB, COMMITTEE TO PRESERVE
FINGER LAKES by and in the name of PETER GAMBA,
its President, and COALITION TO PROTECT NEW YORK
by and in the name of KATHRYN BARTHOLOMEW,
its Treasurer,

Plaintiffs,

DECISION
Index No. 2016-0165

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, BASIL SECCOS, COMMISSIONER,
GREENIDGE GENERATION, LLC, GREENIDGE PIPELINE,
LLC, GREENIDGE PIPELINE PROPERTIES CORPORATION,
and LOCKWOOD HILLS, LLC,

Defendants.

Petitioners brought this application by way of an Order to Show Cause and Amended Petition alleging the New York State Department of Environmental Conservation ("DEC") failed to conduct an adequate environmental review under the State Environmental Quality Review Act ("SEQRA") of the impacts of the project of Respondents Greenidge Generation Corporation ("GPPC") to repower the Greenidge Generating Station in Dresden, New York including construction of a 4.6 mile gas pipeline to the station (the "Greenidge Repowering Project") before issuing air permits to GGLLC for the plant on September 8, 2016. The amended verified petition seeks annulment of air permits issued to GGLLC and the negative declaration issued by DEC as lead agency on the ground that they violate the requirements of SEQRA.

Respondents made motions to dismiss. In their applications Respondents raised the issue that Petitioners lacked standing. This Court previously ruled that Petitioners do have standing and any application to dismiss the petition on the bases of standing is denied.

FINDINGS OF FACT

The Greenidge Station is an electric generating facility located in the Town of Torrey, New York. It currently consists of one 107 megawatt generating unit, known as Unit 4, which historically operated as a coal-fired power plant. The Facility was initially constructed in the 1930s. Unit 4 (the only remaining generating unit at Greenidge Station) was installed in 1953. In 2011, the Greenidge Station went into temporary protective layup status. In 2014, Respondent Greenidge Generation, LLC, purchased the Greenidge Station and sought to resume Facility operations.

The Greenidge Project will allow the Greenidge Station to produce electricity using natural gas and biomass, and no longer burn coal as a fuel source. The Greenidge Project consists of two main components, namely: (1) in-plant construction to modify the Greenidge Station to run on natural gas and biomass; and (2) construction of a natural gas pipeline and auxiliary services to fuel the facility. In furtherance of the Greenidge Project, in 2014, Respondent Greenidge Generation, LLC submitted applications to NYSDEC for Title IV and Title V air permits, a renewal of its State Pollutant Discharge Elimination System ("SPDES") permit and initial water withdrawal permit for Greenidge Station.

NYSDEC initially issued a Notice of Complete Application ("NOCA") and Negative Declaration on July 30, 2015, which provided the basis for NYSDEC's State Environmental Quality Review Act ("SEQRA") determination that the resumption of operations at the Greenidge Station would not have a significant adverse impact on the environment.

NYSDEC published notice of its NOCA and Negative Declaration in the Environmental Notice Bulletin ("ENB") on August 12, 2015. On August 12, 2015, NYSDEC also issued the following draft permits for public notice and comment: Title V and Title V air permits, a SPDES renewal permit and an initial water withdrawal permit.

On September 11, 2015, Petitioner CPFL submitted comments to NYSDEC on the draft permits and the SEQRA Negative Declaration. Also on September 11, 2015, Petitioner Sierra Club submitted comments to NYSDEC on the draft air permits only, it did not submit any SEQRA related comments.

Petitioner Coalition to Protect New York ("CPNY") did not submit any comments to NYSDEC on either the Negative Declaration or draft permits.

On October 26, 2015, NYSDEC submitted the proposed Title V air permit and a public comment responsiveness summary ("Responsiveness summary") to the United States Environmental Protection Agency ("USEPA") for review, as required by Section 505(a) of the Clean Air Act. NYSDEC also provided a copy of the Responsiveness Summary and the proposed Title V permit to Petitioners CPFL and Sierra Club.

On December 7, 2015, USEPA issued a letter to NYSDEC that requested revisions to the draft Greenidge Station Title V air permit.

From January 2016 through June 2016, Repondent Greenidge Generation, LLC worked with NYSDEC and USEPA to modify the draft Title V air permit as requested by the USEPA.

On June 28, 2016, NYSDEC issued an Amended Negative Declaration based on revisions made to the draft Title V air permit, which concluded once again that the resumption of operations at the Greenidge State would not have a significant adverse impact on the environment.

NYSDEC published notice of its Amended Negative Declaration in the June 29, 2016 ENB. Also on June 29, 2016, NYSDEC published notice in the ENB of the availability of revised draft Title IV and Title V air permits for the Greenidge Station for public review and comment.

On August 5, 2016, Petitioner CPFL submitted comments on the draft Title IV and Title V permits and the Amended Negative Declaration. Petitioners Sierra Club and CPNY did not submit any comments to NYSDEC.

On September 8, 2016, NYSDEC issued the final Title IV and Title V air permits which authorized the in-plant construction work necessary to convert the Greenidge Station to natural gas and the subsequent operation of the Greenidge Station.

Regarding the Greenidge pipeline, on October 2, 2015, Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation (the "Pipeline Entities") submitted an application to the NYSPSC seeking issuance pursuant to Article VII of the Public Service Law of a Certificate of Environmental Compatibility and Public Need for construction of a 4.6 mile natural gas pipeline to supply natural gas to the Greenidge Station (the "Greenidge Pipeline"), which application was docketed by the Commission as Case 15-T-0586 (the "Article VII Proceeding").

Petitioner CPFL submitted comments to NYSPSC on November 9, 2015 and November 23, 2015 and requested that the NYSPSC grant it party status in, among other things, the Article VII proceeding.

On December 28, 2015, ALJ Phillips issued a Ruling Concerning Process and Party Status in the Article VII Proceeding, wherein she ruled that Petitioner CPFL failed to identify any specific, disputed factual issues that would necessitate evidentiary hearings in order to develop an adequate record with respect to the Pipeline Entities' request for an Article VII certificate and also concluded that in the absence of any such contested issues of material fact, there was no need to rule on CPFL's request for party status at that time.

Petitioner CPFL did not appeal ALJ Phillips ruling denying it party status in the Article VII Proceeding, nor did it renew its requests for party status in that proceeding.

On September 16, 2016, NYSPSC issued among other things, the Article VII Certificate for the Greenidge Pipeline. In the Certificate Order, the NYSPSC found that the Greenidge Pipeline was needed and that the adverse environmental impacts would be largely temporary in nature due to

construction and would be minimized by the requirements of the Article VII certificate approved by the NYSPSC.

The Certificate Order further provided that construction of the Greenidge Pipeline could not commence until a Notice to Proceed with Construction was issued by the NYSPSC for the Greenidge Pipeline and related facilities.

On October 17, 2016, the NYSPSC issued the requisite Notice to Proceed with Construction.

As provided by NYSPSC in the Certificate Order, it was the intention of the Pipeline Entities to commence construction soon after the NYSPSC approval and permissions were obtained.

None of the Petitioners sought rehearing by NYSPSC of the Certificate Order.

On October 17, 2016, the last day a rehearing could be requested from the NYSPSC based on Section 22 of the New York Public Service Law, Petitioner CPFL filed a petition for rehearing with NYSPSC only with respect to the NYSPSC's separate Order in Cases 15-E-0516 and 15-G-0571, issued on September 16, 2016 wherein the NYSPSC authorized Greenidge Generation to operate the Greenidge Station, authorized the Pipeline Entities to exercise the rights granted to them under certain municipal road crossing agreements, and granted lightened and/or incidental regulations under Part IV of the Public Service Law to Greenidge Generation and the Pipeline Entities.

On December 15, 2016, the NYSPSC denied CPFL's rehearing request in cases 15-E-0516 and 15-G-057, finding that CPFL failed to state an error of law or fact or new circumstance warranting a different determination than that already made by NYSPSC.

In-plant construction work on the Greenidge Station and construction on the Greenidge Pipeline commenced on October 17, 2016. As of November 3, 2016, when the Greenidge Respondents were served in the underlying action, the following construction activities had already been completed; all materials for the in-plant work had been purchased; over 30 percent of the in-plant construction work

had been completed; all necessary materials for the construction of the Greenidge Project had been purchased; 50 percent of site clearing activities (including tree removal) had been completed, and 20% of the Greenidge Pipeline construction had been completed (trenched, welded, piping laid into the trench, and soil backfilled over the piping). The cost associated with the work that had been completed by November 3, 2016 was \$3,020,866. As of December 23, 2016, when Petitioners filed their motion, approximately 80% of the Greenidge Project had been completed at a cost of \$7,688,467. On January 6, 2017, 94% of the Greenidge Project construction had been completed at a cost of \$11,418,24.

DECISION

During the course of this proceeding the Petitioners filed with this Court a series of affidavits by various individuals that were sworn to between January 13, 2017 and January 16, 2017. Those affidavits established that the Petitioners do have standing to commence this proceeding. However, this Court will not consider the technical aspects of those affidavit including but not limited to the affidavit of Gregory Boyer. Those affidavits were never previously submitted to DEC nor were they included in either the petition or the amended petition. Those affidavits contain additional evidence which as submitted violate 22 NYCRR 202.8(c) and 202.9.

As for Petitioners' request for a preliminary injunction to establish a preliminary injunction, a party must show (1) a likelihood of success on the merits; (2) irreparable injury in the absence of injunctive relief or (3) a balance of equities in their favor. This is a drastic remedy that is not routinely granted and should be awarded sparingly. In the present case, based upon the facts presented, this Court finds that petitioners have failed to meet their burden on any of these three conditions and accordingly, the request for a preliminary injunction is denied.

Regarding Petitioners' request to annul the Title IV and Title V air permits which were issued on September 8, 2016 to Respondent GGLLC by Respondent DEC, upon a review of the papers submitted

and the findings of facts contained herein, this Court finds that Respondent DEC did not in any way act in a manner that was a violation of any law, arbitrary or capricious or an abuse of discretion.

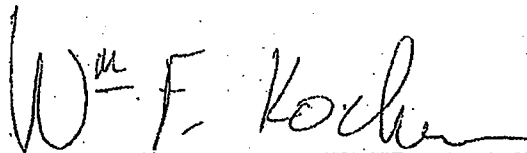
Petitioners' request is denied.

Petitioners' request to annul Respondent DEC's SEQRA finding and June 28, 2016 negative declaration is also denied. A review of the findings contained in this decision finds that Respondent DEC followed the law and its decision was not arbitrary, capricious or an abuse of discretion.

Any further application by Petitioners is likewise denied.

Therefore, Petitioners amended petition is dismissed. This shall constitute the Decision of the Court.

Dated: 4/21/17
Canandaigua, New York.



Hon. William F. Kocher
Acting Supreme Court Justice

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

(APPEAL)

DOCKET NUMBER CA 18-00648

SIERRA CLUB, COMMITTEE TO PRESERVE THE FINGER LAKES BY AND
IN THE NAME OF PETER GAMBA, ITS PRESIDENT, AND COALITION TO
PROTECT NEW YORK, BY AND IN THE NAME OF KATHRYN
BARTHOLOMEW, ITS TREASURER, PETITIONERS-APPELLANTS,

V

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
BASIL SEGGOS, COMMISSIONER, GREENIDGE GENERATION, LLC,
GREENIDGE PIPELINE, LLC, GREENIDGE PIPELINE PROPERTIES
CORPORATION AND LOCKWOOD HILLS, LLC,
RESPONDENTS-RESPONDENTS.

INDEX NO.: 2016-0165

The above-referenced appeal has been perfected and has been scheduled for the **OCTOBER** term of Court, which commences on **MONDAY, OCTOBER 15, 2018** and will be approximately 10 days in length. Counsel, or the parties, if not represented by counsel, will receive a notice to appear for oral argument not less than 20 days prior to the term, pursuant to section 1000.10 (e) of the Court's Rules.

Pursuant to sections 1000.2 (d) and 1000.3 (e) of the Court's Rules, ten (10) copies of respondent's brief must be filed with proof of service of 2 copies of the brief on or before **MAY 22, 2018**. The time requested for oral argument, if any, must be noted on the upper right-hand corner of the brief. If no time is requested, the matter will be deemed submitted (*see*, 22 NYCRR 1000.11 [b] and [d]). If no respondent's brief will be filed, counsel or respondent, if not represented by counsel, shall notify this office in writing within thirty (30) days of service of appellant's brief (*see*, 22 NYCRR 1000.2 [d]). If the deadline set by this scheduling order cannot be met, a motion for an extension of time must be filed and served within (30) days of service of appellant's brief (*see*, 22 NYCRR 1000.13 [h]).

Counsel or the parties, if not represented by counsel, must notify this office in writing within fifteen (15) days of the date that this scheduling order was mailed of unavailability for oral argument on a specific day or dates during the term (*see*, 22 NYCRR 1000.10 [c]).

All papers filed and served in this matter shall bear the above-referenced Appellate Division docket number (*see*, 22 NYCRR 1000.4 [a] [3]; [f] [4]; 1000.13 [a] [5] [ii]).

Please note that failure to comply with any provision of the Court's Rules, including the failure to comply with applicable deadlines, may result in the imposition of sanctions pursuant to section 1000.16 of the Court's Rules.

This scheduling order constitutes the order of the Court.

RECEIVED
NYS OFFICE OF THE ATTORNEY GENERAL

16-214239
APR 23 2018

Entered: April 18, 2018

OFFICE OF LEGAL RECORDS
ALBANY, NEW YORK 12224

MARK W. BENNETT, Clerk

M. Butteno

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y.



I, MARK W. BENNETT, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this

APR 19 2018

Clerk

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

DOCKET NO. CA 18-00648

PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND CARNI, JJ.

SIERRA CLUB, COMMITTEE TO PRESERVE THE FINGER LAKES BY AND
IN THE NAME OF PETER GAMBA, ITS PRESIDENT, AND COALITION TO
PROTECT NEW YORK, BY AND IN THE NAME OF KATHRYN
BARTHOLOMEW, ITS TREASURER, PETITIONERS-APPELLANTS,

V

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
BASIL SEGGOS, COMMISSIONER, GREENIDGE GENERATION, LLC,
GREENIDGE PIPELINE, LLC, GREENIDGE PIPELINE PROPERTIES
CORPORATION AND LOCKWOOD HILLS, LLC,
RESPONDENTS-RESPONDENTS.

Respondents having moved and cross-moved for extensions of time to file and serve a
briefs on the appeal taken herein from an order and judgment of the Supreme Court entered in the
Office of the Clerk of the County of Yates on June 20, 2017,

Now, upon reading and filing the affirmation of Claiborne E. Walthall, Esq., dated May
3, 2018, the affirmation of Yvonne E. Hennessey, Esq., dated May 10, 2018, and the notices of
motion and cross motion with proof of service thereof, and due deliberation having been had
thereon,

It is hereby ORDERED that the motions are granted on the condition that the briefs are
filed and served on or before July 6, 2018, and the Clerk is directed to accept the briefs for filing,
and

It is further ORDERED that reply briefs, if any, shall be filed and served on or before
July 23, 2018.

NYS OFFICE OF THE ATTORNEY GENERAL
RECEIVED

MAY 16 2018

ENVIRONMENTAL PROTECTION BUREAU
ALBANY

Entered: May 14, 2018

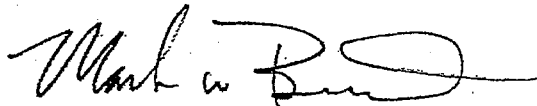
MARK W. BENNETT, Clerk

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y. }

I, MARK W. BENNETT, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this **MAY 14 2018**


Clerk

RECORDED
INDEXED
MAY 14 2018
CLERK'S OFFICE
ROCHESTER, N.Y.

EXHIBIT E



MARK W. BENNETT
CLERK OF THE COURT

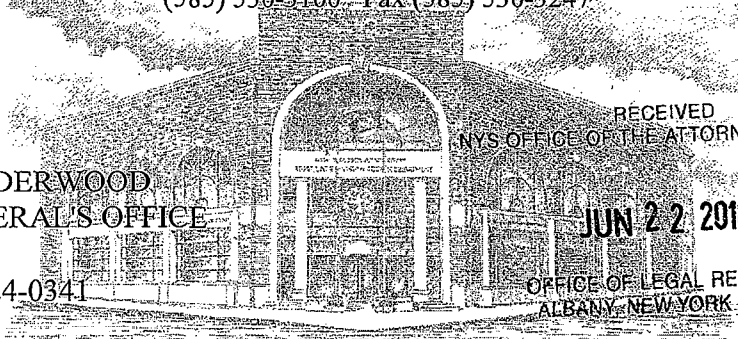
NEW YORK STATE SUPREME COURT
APPELLATE DIVISION, FOURTH DEPARTMENT
M. DOLORES DENMAN COURTHOUSE
50 EAST AVENUE, SUITE 200
ROCHESTER, NEW YORK 14604
(585) 530-3100... Fax (585) 530-3247



ALAN L. ROSS
DEPUTY CLERK OF THE COURT

June 13, 2018

BARBARA D. UNDERWOOD
ATTORNEY GENERAL'S OFFICE
THE CAPITOL
ALBANY NY 12224-0341



The following appeal(s) are on the Day Calendar at 10:00 a.m. on

MONDAY, OCTOBER 15, 2018, HON. SAMUEL L. GREEN COURTROOM

Under Rule 1000.11, the case must be argued or submitted on that day. No further notice will be sent.

CA 18-00648
SIERRA CLUB V NEW YORK STATE DEPARTMENT OF ENVIRO

PLEASE NOTE: THE COURT WILL BEGIN CALLING CASES FOR ORAL ARGUMENT AT 10:00 A.M. IF YOU ARE NOT IN THE COURTROOM WHEN YOUR CASE IS CALLED, IT WILL BE DEEMED SUBMITTED. THE CLERK'S OFFICE IS NOT PERMITTED TO ESTIMATE THE TIME WHEN YOUR CASE WILL BE CALLED.

PLEASE FURTHER NOTE: IF THE APPEAL OR PROCEEDING HAS BEEN SETTLED OR WITHDRAWN, PLEASE NOTIFY SHEILA SCHWALLIE-SPOTH, PRINCIPAL APPELLATE COURT ATTORNEY, DECISION DEPARTMENT, IN WRITING AS SOON AS POSSIBLE.