

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF YATES

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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; COALITION TO PROTECT NEW YORK by and in the name of KATHRYN BARTHOLOMEW, its Treasurer; and SENECA LAKE GUARDIAN, A WATERKEEPER AFFILIATE by and in the name of YVONNE TAYLOR, its Vice President,

**VERIFIED ANSWER  
AND OBJECTIONS IN  
POINT OF LAW**

*Petitioners,*

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

Index No. 2017-0232

*-against-*

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

*Respondents.*

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Respondents Greenidge Generation, LLC and Lockwood Hills, LLC (collectively, the Greenidge Respondents”), by and through their attorneys, Barclay Damon LLP, as and for their Verified Answer with Objections in Point of Law to Petitioners’ (“Petitioners”) Verified Petition hereby:

**PRELIMINARY STATEMENT**

1. State that no response is required for the allegations contained in Paragraph 1 and refer the Court to the Verified Petition as best evidence of the claims brought in this action by Petitioners.

2. Admit the allegations contained in Paragraph 2.
3. Deny the allegations contained in Paragraph 3.
4. Deny the allegations contained in Paragraph 4.
5. State that no response is required for the allegations contained in Paragraph 5, refer the Court to the Verified Petition as best evidence of the relief sought in this action and deny that such relief is warranted.

### PARTIES

6. Deny that Petitioner Sierra Club and/or its members suffer any injury from operations of the Greenidge Generating Station or Lockwood Ash Disposal Site (“Lockwood”) or as a result of the permitting and environmental review conducted by the New York State Department of Environmental Conservation (“NYSDEC”) relative to the resumption of operations at the Greenidge Generating Station (the “Greenidge Project”), deny that Petitioner Sierra Club filed comment letters with NYSDEC regarding the proposed SPDES and water withdrawal permits or Amended Negative Declaration and otherwise deny knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 6.

7. Deny that Petitioner Committee to Preserve the Finger Lakes (“CPFL”) and/or its members suffer any injury from operations of the Greenidge Generating Station or Lockwood or as a result of the permitting and environmental review conducted by NYSDEC for the Greenidge Project, admit that Petitioner CPFL participated in the regulatory review of the Greenidge Project and filed comment letters with NYSDEC and otherwise deny knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 7.

8. Deny that Petitioner Coalition to Protect New York (“CPNY”) and/or its members suffer any injury from operations of the Greenidge Generating Station or Lockwood or as a result of

the permitting and environmental review conducted by NYSDEC for the Greenidge Project, admit that Petitioner CPFL filed comment letters with NYSDEC and otherwise deny knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 8.

9. Deny that Petitioner Seneca Lake Guardian, a Waterkeeper Affiliate ("Guardian") and/or its members suffer any injury from operations of the Greenidge Generating Station or Lockwood or as a result of the permitting and environmental review conducted by NYSDEC for the Greenidge Project, and otherwise deny knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 9.

10. Admit the allegations contained in Paragraph 10.

11. Deny that Greenidge Generation LLC is a limited liability company formed under the laws of Delaware and admit the remaining allegations contained in Paragraph 11.

12. Admit the allegations contained in Paragraph 12.

### **FACTUAL BACKGROUND**

13. Admit the allegations contained in Paragraph 13.

14. Admit the allegations contained in Paragraph 14.

15. Admit that Keuka Outlet is the largest tributary to Seneca Lake and otherwise deny knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 15.

16. Deny knowledge or information sufficient to form a belief as to the allegations in Paragraph 16.

17. With respect to the allegations contained in Paragraph 17, admit that Seneca Lake is used for recreational boating, fishing and swimming and deny knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 17.

18. Admit the allegations contained in Paragraph 18.
19. Admit the allegations contained in Paragraph 19.
20. Admit the allegations contained in Paragraph 20.
21. Admit the allegations contained in Paragraph 21.
22. State that no response is required for the allegations contained in Paragraph 22 and refer all legal questions regarding the United States Environmental Protection Agency's promulgation of rules under the Clean Water Act to the Court.
23. With respect to the allegations contained in Paragraph 23, admit that, on March 29, 2005, AES Eastern and various subsidiaries, the State of New York, NYSDEC, and NYSEG entered into a Clean Air Act consent decree in the United States District Court, Western District of New York (the "Consent Decree") and refer the Court to the Consent Decree as best evidence of its terms.
24. State that no response is required for the allegations contained in Paragraph 24 and refer all legal questions regarding the St. Lawrence River Basin Water Resources Compact to the Court.
25. State that no response is required for the allegations contained in Paragraph 25 and refer all legal questions regarding New York State's implementation of the St. Lawrence River Basin Water Resources Compact to the Court.
26. Admit the allegations contained in Paragraph 26.
27. With respect to the allegations contained in Paragraph 27, admit that NYSDEC issued a SPDES renewal permit for the Greenidge Generating Station on January 29, 2010 and refer the Court to the SPDES renewal permit #NY-0001325 as best evidence of its terms.

28. With respect to the allegations contained in Paragraph 28, admit that AES Greenidge LLC filed its Impingement and Entrainment Characterization Study on April 29, 2010, deny that the Unit 4 configuration results in destruction of all fish or that the term “entrained” means destroyed, and refer the Court to AES Greenidge LLC’s Impingement and Entrainment Characterization Study as best evidence of its terms.

29. With respect to the allegations contained in Paragraph 29, refer the Court to AES Greenidge LLC’s Impingement and Entrainment Characterization Study as best evidence of its terms and affirmatively state that impingement sampling was not conducted at Unit 4 because the configuration of the Greenidge condenser cooling water system does not allow for sampling upstream of the Unit 4 circulating water pumps. Instead, impingement sampling was conducted at Unit 3, and the data was used to characterize the potential impingement at Unit 4 using its flow, which characterization is included in AES Greenidge LLC’s Impingement and Entrainment Characterization Study.

30. With respect to the allegations contained in Paragraph 30, refer the Court to the Lockwood SPDES permit as best evidence of its terms and affirmatively state that Lockwood’s SPDES permit is irrelevant to Petitioners’ claims in this action..

31. With respect to the allegations contained in Paragraph 31, refer the Court to the Lockwood SPDES permit as best evidence of its terms and affirmatively state that Lockwood’s SPDES permit is irrelevant to Petitioners’ claims in this action.

32. Admit the allegations contained in Paragraph 32 but affirmatively state that the notification letter was dated September 17, 2010 and the date indicated for protective lay-up status was March 18, 2011

33. Admit the allegations contained in Paragraph 33.

34. With respect to the allegations contained in Paragraph 34, admit that, on August 15, 2011, Governor Andrew Cuomo signed into law new water withdrawal permitting legislation and refer the Court to the new law, Chapters 400-402, Laws of 2011, as best evidence of its terms and requirements.

35. With respect to the allegations contained in Paragraph 35, refer the Court to the Governor's press release as best evidence of its statements.

36. With respect to the allegations contained in Paragraph 36, refer the Court to Chapters 400-402, Laws of 2011, as best evidence of the law's terms and requirements.

37. Admit the allegations contained in Paragraph 37.

38. With respect to the allegations contained in Paragraph 38, admit that, on September 18, 2012, AES AEE2, LLC filed a notice with the Bankruptcy Court and refer the Court to the notice as best evidence of its terms.

39. With respect to the allegations contained in Paragraph 39, admit that, on September 18, 2012, AES AEE2, LLC filed a notice with the New York State Public Service Commission ("PSC") and refer the Court to the notice as best evidence of its terms.

40. With respect to the allegations contained in Paragraph 40, admit that, on September 19, 2012, AES AEE2, LLC filed a motion with the Bankruptcy Court and refer the Court to the motion as best evidence of its terms.

41. Admit the allegations contained in Paragraph 41.

42. Admit the allegations contained in Paragraph 42.

43. Admit the allegations contained in Paragraph 43.

44. Admit the allegations contained in Paragraph 44.

45. Admit the allegations contained in Paragraph 45.

46. Admit the allegations contained in Paragraph 46.

47. Admit the allegations contained in Paragraph 47 and affirmatively state that the permit application was for an initial water withdrawal permit for the Greenidge Generating Station.

48. Admit the allegations contained in Paragraph 48.

49. Admit the allegations contained in Paragraph 49.

50. Admit the allegations contained in Paragraph 50.

51. Admit the allegations contained in Paragraph 51.

52. With respect to the allegations contained in Paragraph 52, admit that, on February 18, 2015, NYSDEC entered into a Consent Order with Lockwood Hills LLC, refer the Court to the Consent Order as best evidence of its terms and affirmatively state that Lockwood and the February 18, 2015 Consent Order are irrelevant to Petitioners' claims in this action.

53. With respect to the allegations contained in Paragraph 53, admit that, on May 26, 2015, Lockwood Hills LLC submitted its SPDES permit renewal application certification to the NYSDEC, refer the Court to the renewal application for best evidence of its contents and affirmatively state that Lockwood's SPDES permit is irrelevant to Petitioners' claims in this action.

54. Admit the allegations contained in Paragraph 54.

55. Admit the allegations contained in Paragraph 55 and affirmatively state that, despite the Type II designation for the water withdrawal permit application, NYSDEC indicated that "because the initial water withdrawal permit is proposed to be issued along with permits that are subject to SEQR - the impact or impact of any change in withdrawal has been considered alongside the impacts of the air and SPDES permits."

56. Admit the allegations contained in Paragraph 56.

57. Admit the allegations contained in Paragraph 57.

58. With respect to the allegations contained in Paragraph 58, admit that, on September 11, 2015, CPFL and a group of local environmental organizations filed comments with DEC opposing, although not specifically raised by each Petitioner, issuance of the proposed water withdrawal permit, SPDES permit and air permits for the Greenidge Generating Station and refer the Court to the comments as best evidence of their contents as well as the Fifth Affirmative Defense set forth herein.

59. Admit the allegations contained in Paragraph 59.

60. With respect to the allegations contained in Paragraph 60, admit that on October 2, 2015, GPLLC and GPPC filed an application with the PSC for a certificate of environmental compatibility and public need for construction of a 4.6 mile pipeline (“Certificate”), deny that the proposed route of the 4.6 mile pipeline ran along the top edge of the ravine on the south side of Keuka Outlet or ran across a portion of Lockwood and affirmatively state that the PSC issued the requested Certificate and that construction of the 4.6 mile pipeline was completed in March 2017.

61. With respect to the allegations contained in Paragraph 61, admit that, on October 19, 2015, the United States Environmental Protection Agency’s (“EPA”) final rule on the disposal of coal combustion residuals from electric utilities under subtitle D of the Resource Conservation and Recovery Act, 42 USC 6901 *et seq.* (1976), went into effect and refer the Court to the EPA’s rule as best evidence of its terms and requirements.

62. Admit the allegations contained in Paragraph 62.

63. Admit the allegations contained in Paragraph 63.

64. Admit the allegations contained in Paragraph 64.

65. Admit the allegations contained in Paragraph 65.



66. With respect to the allegations contained in Paragraph 66, admit that, on November 30, 2015, NYSDEC sent a letter to Greenidge Generation, LLC regarding the Engineering Report for Leachate/Stormwater Segregation at the Lockwood, refer the Court to the NYSDEC letter as best evidence of its terms and affirmatively state that Lockwood is irrelevant to Petitioners' claims in this action.

67. With respect to the allegations contained in Paragraph 67, admit that, on December 7, 2015, EPA's Region 2 Office sent a letter to NYSDEC disapproving NYSDEC's draft Title V air permit for the Greenidge Generating Station, refer the Court to the EPA's letter as best evidence of its terms and affirmatively state that, following the required revisions, a Title V air permit was issued for the Greenidge Generating Station with no objection by EPA.

68. Admit the allegations contained in Paragraph 68.

69. With respect to the allegations contained in Paragraph 69, refer the Court to the comment letter as best evidence of its terms and affirmatively state that Lockwood is irrelevant to Petitioners' claims in this action.

70. With respect to the allegations contained in Paragraph 70, admit that, on June 29, 2016, NYSDEC issued an Amended Negative Declaration in the Environmental Notice Bulletin ("ENB") due to the revisions to the proposed air permits and affirmatively state that the Amended Negative Declaration as it concerned NYSDEC's environmental review and proposed issuance of the renewal SPDES and initial water withdrawal permits was exactly the same as the original Negative Declaration issued on August 12, 2015.

71. Admit the allegations contained in Paragraph 71.

72. With respect to the allegations contained in Paragraph 72, admit that, on August 5, 2016, CPFL and other local environmental groups filed comments on the revised proposed air permits and the Amended Negative Declaration, although not specifically raised by each Petitioner,

and refer the Court to the comments as best evidence of their contents as well as the Fifth Affirmative Defense set forth herein.

73. Admit the allegations contained in Paragraph 73.

74. Admit the allegations contained in Paragraph 74.

75. With respect to the allegations contained in Paragraph 75, admit that, on October 17, 2016, the PSC issued a Notice to Proceed with Construction authorizing GPLLC and GPPC to begin activities required for the construction of the 4.6 miles of the natural gas pipeline to Greenidge Generating Station and deny that the pipeline as approved or constructed is located on the edge of the ravine.

76. Admit the allegations contained in Paragraph 76.

77. Admit the allegations contained in Paragraph 77.

78. Admit the allegations contained in Paragraph 78.

79. With respect to the allegations contained in Paragraph 79, refer the Court to the 2016 Petition as best evidence of its terms and affirmatively state that Petitioners cannot unilaterally extend or toll an applicable statute of limitations.

80. Deny the allegations contained in Paragraph 80 and affirmatively state that construction on the new natural gas pipeline to the Greenidge Generating Station began on October 17, 2016.

81. Admit the allegations contained in Paragraph 81.

82. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 82.

83. Admit the allegations contained in Paragraph 83 and affirmatively state that the Court's order also determined that NYSDEC's environmental review of the Greenidge Project under SEQRA was lawful and not arbitrary, capricious or an abuse of discretion.

84. Admit the allegations contained in Paragraph 84 and affirmatively state that the Greenidge Respondents also served notice of entry of the judgment on June 23, 2017.

85. With respect to the allegations contained in Paragraph 85, admit that, on July 19, 2017, Sierra Club, CPFL and CPNY filed a notice of appeal to the Appellate Division Fourth Department but deny knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 85.

86. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 86.

87. Admit the allegations contained in Paragraph 87.

88. Deny knowledge or information to form a belief as to the allegations contained in Paragraph 88.

89. With respect to the allegations contained in Paragraph 89, refer the Court to the issued SPDES Permit as best evidence of its terms.

90. With respect to the allegations contained in Paragraph 90, refer the Court to the issued SPDES Permit as best evidence of its terms.

91. Deny knowledge or information to form a belief as to the allegations contained in Paragraph 91.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF THE WATER WITHDRAWAL PERMITTING LAW**  
**IN ISSUING THE GLLC WITHDRAWAL PERMIT**

92. Repeat and reallege their respective responses to Paragraphs 1 through 91 of the Verified Petition as if set forth in full in response to Paragraph 92 of the Verified Petition.

93. Deny the allegations contained in Paragraph 93.

94. Deny the allegations contained in Paragraph 94.

95. Deny the allegations contained in Paragraph 95.

**SECOND CAUSE OF ACTION**  
**VIOLATION OF SEQRA IN ISSUING THE**  
**GLLC WITHDRAWAL PERMIT**

96. Repeat and reallege their respective responses to Paragraphs 1 through 95 of the Verified Petition as if set forth in full in response to Paragraph 96 of the Verified Petition.

97. Deny the allegations contained in Paragraph 97 and affirmatively state that, despite the Type II designation for the water withdrawal permit application, NYSDEC indicated in its Negative Declaration, dated July 30, 2015 and its Amended Negative Declaration, dated June 29, 2017, that “because the initial water withdrawal permit is proposed to be issued along with permits that are subject to SEQR - the impact or impact of any change in withdrawal has been considered alongside the impacts of the air and SPDES permits.”

98. Deny the allegations contained in Paragraph 98.

99. Deny the allegations contained in Paragraph 99.

100. Deny the allegations contained in Paragraph 100.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF THE WATER POLLUTION CONTROL**  
**LAW IN ISSUING THE GLLC SPDES PERMIT**

101. Repeat and reallege their respective responses to Paragraphs 1 through 100 of the Verified Petition as if set forth in full in response to Paragraph 100 of the Verified Petition.

102. Deny the allegations contained in Paragraph 102.

103. Deny the allegations contained in Paragraph 103.

104. With respect to the allegations contained in Paragraph 104, refer the Court to the cited provision of the ECL as best evidence of its terms and refer all legal questions to the Court.

105. Deny the allegations contained in Paragraph 105.

106. With respect to the allegations contained in Paragraph 106, deny that Greenidge Generating Station's application for a renewal SPDES permit should have been treated as a new application and refer all legal questions to the Court.

107. Deny the allegations contained in Paragraph 107.

**FOURTH CAUSE OF ACTION**  
**VIOLATION OF SEQRA IN ISSUING THE GGLLC SPDES PERMIT**

108. Repeat and reallege their respective responses to Paragraphs 1 through 107 of the Verified Petition as if set forth in full in response to Paragraph 108 of the Verified Petition.

109. Deny the allegations contained in Paragraph 109.

110. Deny the allegations contained in Paragraph 110.

111. Deny the allegations contained in Paragraph 111.

112. Deny the allegations contained in Paragraph 112.

**RELIEF REQUESTED**

113. States that no response is required for Petitioners' prayer for relief in the Verified Petition. To the extent a response is required, the Greenidge Respondents deny that Petitioners are entitled to the relief requested.

114. The Greenidge Respondents deny every allegation in the Verified Petition not otherwise addressed herein.

**FIRST AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

115. Petitioners' challenge is untimely and barred by the applicable statute of limitations. The SPDES permit was transferred on January 15, 2013, more than four years ago and well beyond the applicable statute of limitations. In addition, NYSDEC issued the Amended

Negative Declaration being challenged in this action on June 28, 2016, well beyond the applicable statute of limitations.

**SECOND AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

116. Petitioners lack standing to bring their claims. Not one Petitioner has provided any evidence that one of its members has standing and Petitioners' attempt at claiming "informational injury" has no basis in law, is contrary to established SEQRA standing principles, and is not supported by the facts alleged by Petitioners in this action.

**THIRD AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

117. Petitioners are precluded from bringing their Second and Fourth causes of action, related to SEQRA, since this Court dismissed identical SEQRA claims already brought by Petitioners in *Sierra Club v. New York State Department of Environmental Conservation* (Yates County, Index No. 2016-0165). To the extent that Petitioners disagree with this Court's Decision, they should direct their arguments to the Appellate Division.

**FOURTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

118. As established in the prior action brought by Petitioners challenging the Greenidge Project, Petitioners claims are moot given that construction of the Greenidge Project was completed, and operations began in March 2017, both substantially prior to Petitioners' filing of this action.

**FIFTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

119. Petitioners failed to administratively exhaust their claims. Petitioners did not provide comments to NYSDEC regarding their claim in paragraph 110 of the Verified Petition that the NYSDEC's Amended Negative Declaration is a "conditioned negative declaration." In addition, Petitioners Sierra Club and CPNY failed to provide any comments to NYSDEC on the SEQRA analysis, the Amended Negative Declaration challenged in this action, the draft SPDES renewal permit or the draft initial water withdrawal permit. Petitioner Seneca Lake Guardian did not provide comments on the draft SPDES renewal permit or the draft initial water withdrawal permit.

**SIXTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

120. The review conducted by the NYSDEC as summarized within its Amended Negative Declaration demonstrates that the NYSDEC conducted a careful, thorough, and complete review of the relevant areas of environmental concern, took the required "hard look" at all relevant areas, and provided a written, reasoned elaboration for its determination.

**SEVENTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

121. The record of proceedings before the NYSDEC, submitted as the Administrative Return and incorporated by reference herein, establishes that the NYSDEC's findings and determinations were supported by substantial evidence in the record, were not affected by any error of law, were not arbitrary and capricious, and do not constitute an abuse of discretion.

**EIGHTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

122. Because the NYSDEC's thorough and well-reasoned SEQRA findings supported issuance of the Amended Negative Declaration, Petitioners' argument that an environmental impact statement was required is erroneous and should be rejected.

**NINTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

123. NYSDEC's interpretation of the relevant provisions of the Environmental Conservation Law as they relate to SEQRA and the renewal SPDES and initial water withdrawal permits issued for the Greenidge Generating Station, is lawful and entitled to judicial deference as NYSDEC is the administrative agency charged with administration and implementation of the Environmental Conservation Law and also vested with the appropriate technical expertise.

**TENTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

124. NYSDEC did not issue a Conditioned Negative Declaration and did not segment its environmental review. The new impingement and entrainment reduction requirements included in the SPDES renewal permit by NYSDEC do not turn the Amended Negative Declaration into a Conditioned Negative Declaration, since, among other reasons, NYSDEC was the SEQRA lead agency and is the agency with sole authority to issue SPDES permits. The clear language of the Amended Negative Declaration shows that the environmental impacts of the solid waste generated by the Greenidge Generating Station were indeed considered by NYSDEC as the Amended Negative Declaration states that "No impacts related to solid waste management are expected to result from the re-activation of Greenidge Generating Station. By



eliminating the use of coal as a fuel source, the generation of solid waste from the facility will be significantly reduced compared to prior operations.”

**ELEVENTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

125. Because NYSDEC lacked discretion and Greenidge Generating Station was entitled to an initial water withdrawal permit under the 2011 WRPA and implementing regulations, NYSDEC’s action was ministerial and its Type II designation was lawful. Regardless, despite its Type II designation for the water withdrawal permit application, NYSDEC indicated that “because the initial water withdrawal permit is proposed to be issued along with permits that are subject to SEQR - the impact or impact of any change in withdrawal has been considered alongside the impacts of the air and SPDES permits.”

**TWELFTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

126. Neither Section 704.5 of 6 NYCRR or Section 316(b) of the federal Clean Water Act require the installation of closed-cycle cooling on an existing cooling water intake structure. As such, NYSDEC’s July 10, 2011 *Commissioner’s Policy – 52 Best Technology Available (BTA) For Cooling Water Intake Structures* (“CP-52”), identifies closed-cycle cooling or the “equivalent” as the performance goal for BTA to minimize adverse environmental impacts pursuant to Section 704.5 of 6 NYCRR and Section 316(b) of the federal Clean Water Act in a State Pollutant Discharge Elimination System (SPDES) permit for an existing cooling water intake structure. CP-52 defines “equivalent” as the reductions, obtainable by a suite of technologies that are not closed-cycle cooling, in impingement mortality and entrainment that are 90 percent or greater of that which would be achieved by a wet closed-cycle cooling system.

**THIRTEENTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

127. Petitioners claims as they relate to Lockwood Hills, LLC fail to state a claim upon which relief can be granted. NYSDEC did not issue Lockwood Hills LLC any approvals and it is not the applicant for any of the environmental permits challenged in the Verified Petition. Furthermore, Lockwood Hills, LLC is not involved in the operation of the Greenidge Generating Station.

**FOURTEENTH AFFIRMATIVE DEFENSE  
AND OBJECTION IN POINT OF LAW**

128. The Verified Petition was improperly verified by their counsel, particularly with respect to Paragraphs 6 through 9 concerning Petitioners' alleged interests and injury.

129. The Greenidge Respondents reserve the right to assert additional affirmative defenses in the event discovery indicates such defenses may be appropriate.

**WHEREFORE**, the Greenidge Respondents respectfully request that this Court:

- (a) dismiss the Verified Petition in its entirety with prejudice;
- (b) deny the Petitioners all relief they seek; and
- (c) for such other and further relief as may be just, equitable and proper.

Dated: March 2, 2018

**BARCLAY DAMON LLP**

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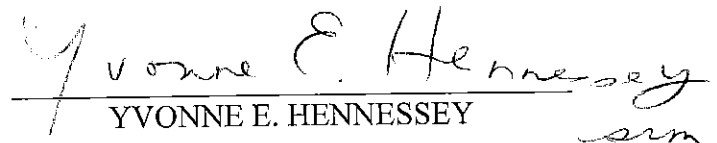
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**ATTORNEY AFFIRMATION/VERIFICATION**

The undersigned, an attorney admitted to practice in the courts of the State of New York, hereby affirms under the penalties of perjury that deponent is a partner with the firm of Barclay Damon LLP, attorneys for Respondents Greenidge Generation, LLC and Lockwood Hills, LLC, that deponent has read the foregoing Verified Answer and Objections in Point of Law and knows the contents thereof, that the same is true upon information and belief, and that deponent believes it to be true. Deponent further states that the reason that this affirmation is made by deponent and not by Respondents is because Respondents do not have an office in the County of Albany where the undersigned has an office.

The grounds of deponent's belief as to all matters stated herein include deponent's representation of Respondents in the prior litigation referenced in the Verified Petition, communications with officers, employees, and agents of Respondents, business records of Respondents and relevant administrative documents and permits.

**DATED:** March 2, 2018

  
YVONNE E. HENNESSEY  
*sm*