

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF YATES

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, and SENECA LAKE
GUARDIAN, A WATERKEEPER AFFILIATE by and in
the name of YVONNE TAYLOR, its Vice President,

Petitioners,

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 and LOCKWOOD HILLS, LLC,

Respondents.

**AFFIRMATION OF
YVONNE E. HENNESSEY**

Index No. 2017-0232

BARCLAY DAMON, LLP

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

Yvonne E. Hennessey, Esq. affirms, under the penalties of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules (“CPLR”):

1. I am an attorney at law duly licensed to practice in the courts of the State of New York and a member of the firm of Barclay Damon LLP, attorneys for Greenidge Generation, LLC and Lockwood Hills, LLC (collectively, the “Greenidge Respondents”).

2. I make this Affirmation in opposition to the Sierra Club, Committee to Preserve the Finger Lakes, Coalition to Protect New York and Seneca Lake Guardian’s (collectively, the “Petitioners”) *second* attempt to annul the New York State Department of Environmental Conservation’s (“NYSDEC”) well-reasoned and technically correct determinations associated with the

resumption of operations at the Greenidge Generating Station (“Greenidge Station” or Facility”) located in the Town of Torrey, New York (the “Greenidge Project”).

3. This Affirmation is based upon my review of the Verified Petition and relevant documents, including the NYSDEC’s environmental review and permit approvals for the Greenidge Station, my representation of the Greenidge Respondents in *Sierra Club, et al. v. NYSDEC, et al.* (Yates County Supreme Court, Index No. 2016-1065) and my review of the legislative history concerning the enactment of the Water Resources Protection Act of 2011 (“WRPA”).

4. The Greenidge Station is an electric generating facility located in the Town of Torrey, New York.

5. It currently consists of one 107 megawatt generating unit, known as Unit 4, which historically operated as a coal-fired power plant.

6. The Facility was initially constructed in the 1930s. Unit 4 (the only remaining generating unit at the Greenidge Station) was installed in 1953.

7. In March 2011, the Greenidge Station was put into temporary protective layup by the former owner AES Greenidge LLC.

8. Thereafter, on October 11, 2012, GMMM Greenidge, LLC (now known as Greenidge Generation, LLC) (“Greenidge”) acquired the Facility.

Permit Transfer

9. A true and accurate copy of NYSDEC’s January 2013 approval of an Application for Permit Transfer associated with the Greenidge Facility’s State Pollution Discharge Elimination System (“SPDES”) permit (SPDES # NY-00013235, effective 2/1/08, expiration 1/31/15) is attached hereto as **Exhibit A.**

10. A true and accurate copy of the NYSDEC Permit Transfer Policy is attached hereto as **Exhibit B.**

**New York's Water Resources Protection Act and
Initial Water Withdrawal Permit Application**

11. On or about February 15, 2011, Assembly Bill 5318-A was introduced to amend the New York State Environmental Conservation Law ("ECL"), in relation to regulating the use of the State's water resources, and to repeal Titles 16 and 33 of Article 15 of such law relating to Great Lakes water conservation and management and water withdrawal reporting. A true and accurate copy of the Bill Jacket is attached hereto as **Exhibit C**.

12. The summary of provisions in the Memorandum in Support of Legislation for Bill A5318A states that "Section 1 of the bill would amend Environmental Conservation Law (ECL) § 15-1501 to . . . provide that existing water withdrawals would be *entitled* to an initial permit based on their maximum water withdrawal capacity reported to DEC on or before February 15, 2012 pursuant to existing law . . ." See **Exhibit C** at 7 (emphasis added).

13. On or about August 2, 2011, the NYSDEC sent a memorandum in support of Assembly Bill A5318-A to Mylan L. Denerstein, Esq., Counsel to the Governor. See **Exhibit C** at 14-16.

14. The NYSDEC memorandum confirmed that existing water withdrawals would be "entitled" to an initial permit. See **Exhibit C** at 16.

15. The Legislature passed Assembly Bill 5318-A and it was signed into law by Governor Andrew Cuomo on August 15, 2011. L. 2011, ch. 401.

16. On August 15, 2011, the Act became effective in New York requiring that all water withdrawal systems with the capacity to withdraw 100,000 gallons per day or more of water obtain a permit from the NYSDEC and file water withdrawal reports annually. Previously, the law applied only to public water supply withdrawals and not Greenidge Station's cooling water system.

17. The Act was codified at Section 15-1501 *et seq.* of the ECL.

18. Thereafter, NYSDEC implemented the WRPA by repealing Parts 601 and 675, adding a new Part 601, and amending Section 621.4 of Title 6 of the New York Compilation of Codes, Rules & Regulations (“N.Y.C.R.R.”). The effective date for the new regulations implementing the WRPA was April 1, 2013.

19. In response to the newly enacted WRPA and as the holder of an existing SPDES permit, Greenidge timely applied for an initial water withdrawal permit from NYSDEC on May 28, 2013.

The Greenidge Project

20. Following its acquisition of the Facility, Greenidge sought to resume operations at the Greenidge Station. As part of this, Greenidge proposed the Greenidge Project, which consisted of the following components:

- (a) In-plant construction that will allow the Unit 4 boiler to be operated on 100 percent natural gas (with up to 19 percent biomass co-firing).
- (b) Construction of a 4.6 mile pipeline to bring natural gas from the Empire Connector main natural gas supply line to Greenidge Station. This also includes construction of necessary auxiliary services, including a meter station, a regulation station and interconnection work.

21. The purpose of the Greenidge Project was to allow the Greenidge Station to produce electricity using 100 percent natural gas (with up to 19 percent biomass co-firing), and no longer burn coal as a fuel source.

22. The in-plant construction and the construction of the 4.6 mile pipeline commenced on October 17, 2016 and was completed in March of 2017.

23. As a result, the Facility resumed operations in or around March 2017.

NYSDEC’s Review and Approval of the Greenidge Project

24. In furtherance of the Greenidge Project, Respondent Greenidge Generation, LLC submitted various permit applications to NYSDEC.

25. In 2014, Respondent Greenidge Generation, LLC submitted applications for renewal of the Greenidge Station's existing SPDES permit and Title IV and V air permits.

26. 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 Greenidge Project would not have a significant adverse impact on the environment.

27. NYSDEC published notice of its NOCA and Negative Declaration in the Environmental Notice Bulletin ("ENB") on August 12, 2015.

28. On August 12, 2015, NYSDEC also issued the following draft permits for public notice and comment: Title IV and Title V air permits, a SPDES renewal permit, and an initial water withdrawal permit.

29. On September 11, 2015, Petitioner Committee to Protect the Finger Lakes ("CPFL") submitted SEQRA-related comments, and comments on all of the NYSDEC draft permits noticed in the August 12, 2015 ENB.

30. On September 11, 2015, Sierra Club submitted a comment letter to the NYSDEC only with respect to the draft Title IV and Title V air permits; it did not submit any SEQRA-related comments or comments on the draft SPDES permit or draft initial water withdrawal permit.

31. Petitioners Coalition to Protect New York ("CPNY") and Seneca Lake Guardian did not submit any comments on the draft permits or the Negative Declaration noticed by NYSDEC in the August 12, 2015 ENB notice.

32. 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.

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

34. 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.

35. On June 28, 2016, NYSDEC issued an Amended Negative Declaration, based on revisions to the draft Title V air permit, which concluded once again that the Greenidge Project would not have a significant adverse impact on the environment. A true and accurate copy of NYSDEC's June 28, 2016 Amended Negative Declaration is attached hereto as **Exhibit D**.

36. NYSDEC published notice of this SEQRA determination in the June 29, 2016 ENB. A true and accurate copy of the June 29, 2016 ENB Notice is attached hereto as **Exhibit E**.

37. 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. *See Exhibit E*.

38. On August 5, 2016, Petitioner CPFL filed comments with NYSDEC on the Amended Negative Declaration and the revised, draft Title IV and Title V air permits. Petitioner Seneca Lake Guardian signed onto CPFL's comments.

39. Petitioners Sierra Club and CPNY did not file any comments with NYSDEC on the Amended Negative Declaration or the revised, draft Title IV and Title V air permits.

40. 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 (with up to 19 percent biomass co-firing) and the subsequent operation of the Greenidge Station.

41. NYSDEC issued the final SPDES renewal and initial water withdrawal permits to Greenidge on September 11, 2017, in substantially the same form as the draft permits were issued in July 30, 2015. A true and accurate copy of the final SPDES renewal and initial water withdrawal permits are attached respectively as **Exhibits F and G**.

42. A true and accurate copy of NYSDEC's September 11, 2017 Responsiveness Summary providing NYSDEC's response to public comments on the Greenidge SPDES renewal and initial water withdrawal permits, without the attached public comments, is attached as **Exhibit H**.

Prior Action

43. A true and accurate copy of Petitioners' December 6, 2016 Amended Verified Petition is attached hereto as **Exhibit I**.

44. A true and accurate copy of Petitioners' Memorandum of Law In Opposition To Respondent's Motions To Dismiss And In Reply In Support Of Petitioners' Motion For Temporary Injunctive Relief filed in *Sierra Club v. New York State Department of Environmental Conservation et al* (Yates County, Index No. 2016-0165), which exemplifies that one of the primary concerns raised by Petitioners in the prior action was impacts to water resources allegedly related to the NYSDEC's intention to renew the Greenidge Station's SPDES permit and issue Greenidge an initial water withdrawal permit, is attached as **Exhibit J**. See, e.g., Exh. J at pp. 7-8

45. True and accurate copies of this Court's April 21, 2017 Decision and June 20, 2017 Order are attached hereto respectively as **Exhibits K and L**.

Dated: March 2, 2018
Albany, New York


YVONNE E. HENNESSEY, ESQ. *ern*