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BY EMAIL

Town of Torrey Planning Board
C/o Betty Daggett
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The Committee to Preserve the Finger Lakes submits the following comments in response to the Conditioned Negative Declaration adopted by the Town of Torrey Planning Board and published in the Environmental Notice Bulletin on October 7, 2020.

For the reasons detailed below, the Committee to Preserve the Finger Lakes requests that the Planning Board, as required in the SEQRA regulations, rescind the “conditioned negative declaration,” issue a positive declaration, require an environmental impact statement (EIS) and conduct a coordinated review with the State Department of Environmental Conservation (DEC) that has the expertise to evaluate the cumulative impacts of this project.

6 NYCRR 617.7 Determining significance.

(d) Conditioned negative declarations:

*(2) A lead agency **must rescind the CND and issue a positive declaration** requiring the preparation of a draft EIS if it receives substantive comments that identify:*

*(i) **potentially significant adverse environmental impacts that were not previously identified and assessed or were inadequately assessed in the review; or***

(ii) a substantial deficiency in the proposed mitigation measures.

The Planning Board did not conduct the required review consistent with the State Environmental Quality Review Law (SEQRA) or the Town of Torrey Zoning Law, nor did it reach out to the DEC as an “involved agency” to review the environmental impacts.

About the Project:

Greenidge ceased operations in 2011, was put into bankruptcy and was sold for “scrap.” The current owner purchased the plant and announced its intent to restart the plant, first using coal, and then switching to natural gas. In 2015, Greenidge applied for permits from the State Department of Environmental Conservation (DEC), saying that the “Plant resuming operation

requiring resumption of cooling water withdrawals and installation of intake structure screens to reduce fish mortality.”

With little or no scrutiny, the DEC simply grandfathered the old discharge permit limits and allowed extensive time for studies to design and implement the necessary actions to reduce fish kills, including thermal studies and screens to protect fish from the intakes, and to set pollution discharge limits. The DEC issued a water withdrawal permit for the plant’s maximum withdrawal capacity. The DEC permits allow the plant to:

- withdraw 139 million gallons per day from Seneca Lake to cool the gas-fired turbine with once-through cooling technology,
- operate without any screens or other protective measures to prevent fish, eggs and larvae from being vacuumed from the lake and cooked while cooling the turbine; and
- discharge hot water at up to 108 degrees F. into the Keuka Outlet, a trout stream, even though current regulations limit such discharges to 70 degrees F.

In 2019, Greenidge applied to the Town Planning Board to create a “data center.” The new energy demand would be 677,000 megawatt-hour (MWh) of electricity or enough to power more than 60,000 homes for a year. The environmental impacts included additional air emissions from the natural gas, water withdrawal, discharge of pollutants and thermal discharge into the Keuka Outlet, above the amounts estimated for power plant operation. Apparently, without consulting the DEC or conducting any review of the impacts, the Planning Board issued a “negative declaration” and bitcoin mining was announced in March 2020. The project also got sales tax exemptions from the Yates County IDA.

In June 2020, Greenidge applied to the Planning Board for an “Onsite Data Center,” really an expansion of the 2019 bitcoin/data center, that would use the entire capacity of the power plant, except when needed by the grid, historically about 6% of the time.

The expansion proposal includes the addition of 4 buildings, each 42 x 120 feet, to house computer servers and cooling fans, on 1.3 acres of the total 139 acres of the power plant property. The energy demand noted on the application for the expansion is 300,000 MWhs per year, the equivalent electricity used by 30,000 homes.

State Environmental Quality Review Act (SEQRA)

The Town of Torrey Planning Board (PB), on September 21, 2020, adopted a “Conditioned Negative Declaration” on the expansion of the data center/bitcoin mine at the Greenidge Power Plant Greenidge in Dresden, NY. The Law requires that the PB accept public comments on the Conditioned Negative Declaration until November 7, 2020.

The EAF Part 1, submitted by the applicant, described:

- the project site as the whole Greenidge Generating facility, approximately 139 acres;

- the total acreage to be physically disturbed as 1.3 acres;
- that the project will increase the demand for energy by 300,000 MWh per year; and
- the construction and operation of the project will create noise.

In conducting its review and the completion of EAF Part 2, the PB segmented this project, and only considered the 1.3 acres, without considering the obvious environmental impacts of producing an additional 300,000 MWh year. This is enough electricity to power 30,000 homes. Because this project is “behind the meter,” it may have no impact on the grid, however it certainly impacts the environment.

In the EAF Part 3, the PB determined that:

“the project will have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following requirements imposed by the Lead Agency” (in this case, the Planning Board):

1. *All power will be generated on site with no impact to the grid.*
2. *Noise Leveling testing will verify compliance to the Town of Torrey Zoning Code.*
3. *Applicant will fulfill all New York State Department of Environmental Conservation (NYS DEC) requirements relative to the Greenidge Generation operations.*

On the issue of environmental impact, the Planning Board decided there was a “significant adverse impact,” but that was the DEC’s job to mitigate and not the Planning Board’s responsibility.

However, at the September 21 meeting, the PB was presented with evidence that:

- the thermal discharge for the CURRENT operation exceeded the legal limits for discharge to a trout stream and that the thermal study would not be completed until at least 2022;
- the required screens on the intakes from Seneca Lake to protect the fish are not installed, nor will they be for several years; and
- that the project will require a significant amount of additional electricity which will significantly increase the use of natural gas, air emissions, water withdrawal, and discharge of more heated water into the Keuka Outlet.

The fact that the DEC is allowing extensive time for correction of these impacts, should not make these impacts acceptable to the Town of Torrey.

Segmentation

The PB was advised by counsel that it “can only consider comments related to the proposed

addition – not to the entire operation” and that its “decision can not be based on strong public opposition.” However, most guidance documents say a “**Lead Agency must consider whole action – proposals or parts of proposals that are related to each other closely enough to be a single course of action should be evaluated as one whole action.**”

<https://www.bsk.com/uploads/SEQRA-Handout.pdf>

Clearly, segmenting the environmental impacts of the production of energy from the use is prohibited by the intent of the SEQRA.

Classification of Project

The PB determined that “the project will have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following requirements imposed,” yet classified the project as an “Unlisted Action.”

SEQRA identifies several actions as Type I if they meet or exceed any of the following thresholds:

- **use ground or surface water in excess of 2,000,000 gallons per day (GPD);**

Clearly an increase in energy production of 1/3 of rated capacity, sufficient to power 30,000 homes, is a major change in the quantity of energy. It should not matter to the Planning Board if the water withdrawal, air emissions, thermal and chemical discharge are within the DEC permit limits. In 2019, before the data center started operations, Greenidge used about 6% of its electrical generating capacity and 24 million GPD of its 139 million GPD. Moving to 100% capacity will surely require more than 2,000,000 GPD.

- **adverse impact on resident fish in the Keuka Outlet;**

The DEC permit allows discharge at temperatures up to 108 degrees F. while the thermal study is underway and final limits are established. That is a temperature “grandfathered” from the prior operation of the power plant. Since that was established, changes to the Clean Water Act and DEC regulations now limit discharges to trout streams, like the Keuka Outlet, to 70 degrees F. to prevent fish mortality.

- **a major change in the use of either the quantity or type of energy,**

The EAF Part 1 states that the project will increase electricity use by 300,000 MWh per year.

- **reasonably related long-term, short-term, direct, indirect and cumulative impacts.**

Because the various studies (cooling water intake systems, dilution studies for toxic discharges and thermal discharge) and corrective actions required by the DEC are years from completion, are years from completion, the answer to this criteria must be yes.

We believe that the project is misclassified as Unlisted. It is clearly a Type 1 project and is not eligible for a conditioned negative declaration (CND) and it must be rescinded as required and a

positive declaration issued as required in 6 NYCRR 617.7.

Conditioned Negative Declaration

Finally, according to the SEQR Handbook, Conditioned Negative Declarations (CNDs), Page 94 https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf, this CND is improper.

The Planning Board, as lead agency, included “as a condition in support of a CND, the requirement that the approval of another agency be obtained,” specifically, that “Applicant will fulfill all New York State Department of Environmental Conservation (NYS DEC) requirements relative to the Greenidge Generation operations.” The Handbook also states that “**Requiring that the applicant obtain the approval of another agency, when that approval is already legally required, is not a mitigation measure.**”

The Handbook requires “If information or comments are received which indicate that there may be significant adverse environmental impacts that were not mitigated by the conditions of the CND, **the lead agency must rescind the CND and instead issue a positive declaration. Thereafter, the lead agency must follow all the procedures for preparation and acceptance of an EIS.**”

Community Character – Compliance with Town of Torrey Zoning Law

The Torrey Zoning Law (https://www.townoftorrey.org/laws/pdf_45.pdf),

§ 98.105 Review Criteria requires that:

- “The proposed use will not adversely impact adjacent properties, existing infrastructure or environmentally sensitive features on or near the site such as steep slopes, Seneca Lake or other bodies of water, water courses, the Outlet Trail, mature woodlands, or wetlands;”
- The proposed use will not adversely impact adjacent properties with regard to excessive or unreasonable disturbance such as noise, light, glare, vibration, shadow, vapors, smoke, fumes, dust, particulate emissions or odors. “

The Planning Board never asked or answered either of these questions in its review of the project.

The Town of Torrey Zoning Law was clearly enacted to protect the environment and the character of the community which recognizes the value and importance of Seneca Lake, the Keuka Outlet, natural surroundings and a neighborly focused respect for existing properties and their owners as well. The Planning Board determined there would be significant adverse impacts, but did nothing to mitigate them. Further, they have chosen not to call in the State DEC, which actually could mitigate the impacts.

The Town of Torrey Zoning Law also requires that adjacent properties be protected from excessive or continuous noise, among other things. The impact should be assessed on residences, not at Greenidge's fence. Additionally, the presence of Seneca Lake as the East boundary, requires an analysis of noise over water. This decision proves that the current Zoning Law is unclear and the intent needs to be clarified by the Town Board. The Town should conduct its own noise study.

The Planning Board did not conduct the review consistent with the Town Zoning Law or take the required "hard look" at the environmental impacts.

Until the thermal study and dilution studies to set discharge limits and wedgewire screens can be assessed and implemented, any further expansion of energy production, at the very least, should be put on hold by the Planning Board to assure the protection of Seneca Lake and the Keuka Outlet.

In conclusion, the Committee to Preserve the Finger Lakes requests that the Planning Board, as required in the SEQRA regulations, rescind the "conditioned negative declaration," issue a positive declaration, require an environmental impact statement (EIS) and conduct a coordinated review with the State Department of Environmental Conservation (DEC) that has the expertise to evaluate the cumulative impacts of this project.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mary Anne Kowalski". The signature is fluid and cursive, with a large initial "M" and "A".

Mary Anne Kowalski, President

Committee to Preserve the Finger Lakes

"We just hope there are fish left in Seneca Lake by the time the DEC studies of Greenidge Generation LLC, including cooling water intakes, thermal study, dilution study, are completed and corrective action implemented."