

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,

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, GREENIDGE PIPELINE, LLC,
GREENIDGE PIPELINE PROPERTIES
CORPORATION and LOCKWOOD HILLS, LLC,

Respondents.

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RECEIPT # 117189
Lois E. Hall
Yates County Clerk

**NOTICE OF
MOTION TO DISMISS**

Index No. 2016-0165

Hon. William F. Kocher

PAID
01/06/17

BARCLAY DAMON, LLP

PLEASE TAKE NOTICE:

Motion By: Respondents Greenidge Generation, LLC, Greenidge
Pipeline, LLC, Greenidge Pipeline Properties Corporation
and Lockwood Hills, LLC

Date, Time, and Place of Motion: Yates County Supreme Court
Yates County Courthouse
415 Liberty Street
Penn Yan, New York 14527

January 24, 2017 at 2:00 p.m.

Supporting Papers: Affidavit of Dale Irwin, with exhibits thereto, Affirmation
of Yvonne E. Hennessey, Esq., with exhibits thereto; and
accompanying Memorandum of Law

Relief Sought:

(1) Dismissal of the Verified Petition, pursuant to CLPR §§ 404, 406, 7804(f) and 3211(a).

(2) Any further relief that the court deems just.

In the event the court denies the Respondents' motion to dismiss in whole or in part, the Respondents request thirty days after service of notice of entry of the order denying this Motion to answer the Amended Verified Petition.

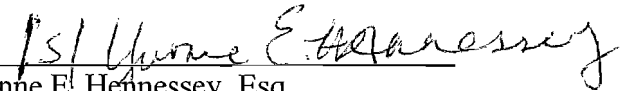
Date of Notice of Motion:

January 6, 2017

Notice of Motion Served By:

BARCLAY DAMON, LLP

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By: 
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SUPREME COURT OF THE STATE OF NEW YORK
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Index No. 2016-0165
Hon. William F. Kocher

YATES COUNTY CLERK
2017 JAN - 6 P 1:31

**MEMORANDUM OF LAW IN SUPPORT OF THE
GREENIDGE RESPONDENTS' MOTION TO
DISMISS**

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Danielle E. Mettler-LaFeir, Esq.
Laura L. Mona, Esq.
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PRELIMINARY STATEMENT

Greenidge Generation, LLC, Greenidge Pipeline, LLC, Greenidge Pipeline Properties Corporation and Lockwood Hills, LLC (collectively, the “Greenidge Respondents”) respectfully submit this Memorandum of Law and accompanying papers in support of its Motion to Dismiss the Amended Verified Petition (“Amended Petition”). All the claims in the Amended Petition are subject to dismissal on multiple, independent grounds.¹

Sierra Club, the Committee to Preserve the Finger Lakes (“CPFL”) and the Coalition to Protect New York (“CPNY”) (collectively, the “Petitioners”) challenge the New York State Department of Environmental Conservation’s (“NYSDEC”) issuance of the June 28, 2016 Amended Negative Declaration that supported conversion and operation of the Greenidge Station, the issuance or anticipated issuance of environmental permits by the NYSDEC, and seek to halt not only the in-plant construction of the Greenidge Generating Station located in the Town of Torrey, New York (“Greenidge Station” or “Facility”), but also the construction of the 4.6 mile natural gas pipeline to the Greenidge Station (“Greenidge Pipeline”) (collectively, the “Greenidge Project”). Amended Petition, ¶¶ 3, V(D).

At the outset, this Court lacks jurisdiction to review Petitioners’ challenge to the Greenidge Pipeline, which was approved by the New York State Public Service Commission (the “NYSPSC”) pursuant to Article VII of the Public Service Law (“PSL”). Moreover, while Petitioners attempt to stop construction of the Greenidge Pipeline based on alleged deficiencies in the State Environmental Quality Review Act (“SEQRA”) process, SEQRA is not applicable

¹ Although Petitioners named Lockwood Hills, LLC as a respondent in this action, the Verified Petition lacks any basis for doing so. NYSDEC did not issue Lockwood Hills LLC any approvals and it is not the applicant for any of the environmental permits challenged in the Amended Petition. Furthermore, Lockwood Hills, LLC is not involved in the in-plant construction or operation of the Greenidge Station, nor is it involved in the construction or operation of the Greenidge Pipeline.

to the Greenidge Pipeline. Petitioners' argument in this regard, therefore, is wholly misplaced and their Amended Petition must be dismissed as it relates to, and seeks relief concerning, the Greenidge Pipeline.

Furthermore, Petitioners lack standing to challenge both the Amended Negative Declaration issued by the NYSDEC and NYSDEC's issuance of related environmental permits. Petitioners have woefully failed to establish that at least one member of each organization has standing to sue. Moreover, Petitioners have not met their burden of establishing a concrete injury or environmental harm different from the public at large to demonstrate they have standing, a strict requirement for standing in SEQRA cases. Petitioners' attempt to establish standing based on "informational injury as a result of the lack of a full environmental impact statement" is wholly without basis in law or fact.

Even assuming that Petitioners could establish the standing of an individual member of each organization, the in-plant upgrades and construction of the Greenidge Pipeline are substantially complete such that a challenge to the Negative Declaration and related environmental permits is moot. Indeed, in their recently filed Motion for Temporary Injunctive Relief, Petitioners effectively concede as much.

Accordingly, the Amended Petition must be dismissed in its entirety with prejudice.

STATEMENT OF RELEVANT FACTS

The Greenidge Station is an electric generating facility located in the Town of Torrey, New York. *See* Affidavit of Dale Irwin, dated January 5, 2017 (“Irwin Aff.”), ¶ 10. It currently consists of one 107 megawatt generating unit, known as Unit 4, which historically operated as a coal-fired power plant. *Id.* ¶¶ 10, 11. The Facility was initially constructed in the 1930s with Unit 4 (the only remaining generating unit at the Greenidge Station) installed in 1953. *Id.* ¶ 11. In 2011, the Greenidge Station went into temporary protective layup status. *Id.* ¶ 12. In 2014, Respondent Greenidge Generation, LLC, purchased the Greenidge Station and sought to resume Facility operations. *Id.* ¶ 13.

The purpose of the Greenidge Project is to allow the Greenidge Station to produce electricity using 100% natural gas (with up to 19 percent biomass co-firing), and no longer burn coal as a fuel source. *Id.* ¶ 14. It consists of two main components, namely: (1) in-plant construction to allow Unit 4 to operate on 100 percent natural gas (with up to 19 percent biomass co-firing), and no longer burn coal; and (2) construction of a 4.6 mile pipeline to fuel the Facility, and auxiliary services including a regulation station, a metering station and interconnection. *Id.* ¶ 15.

The Greenidge Station

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 an initial water withdrawal permit. *See* Affirmation of Yvonne E. Hennessey, dated January 5, 2017

(“Hennessey Aff.”), ¶¶ 5-6. Respondent Greenidge Generation, LLC’s amended its air permit application in early-2016. *Id.* ¶ 15.

On June 28, 2016, NYSDEC issued a SEQRA Amended Negative Declaration,² finding that the conversion of Unit 4 to operate on natural gas (with up to 19 percent biomass co-firing) would not have a significant adverse impact on human health or the environment.³ *Id.* ¶ 16. NYSDEC thereafter issued the final Title IV and Title V air permits to Greenidge Generation LLC on September 8, 2016. *Id.* ¶ 21. NYSDEC has yet to issue the SPDES renewal permit or initial water withdrawal permits, which are not necessary for construction or operation. *See infra*, fn. 7.

The Greenidge Pipeline

In 2015, Greenidge Pipeline, LLC and Greenidge Pipeline Properties Corporation (collectively, the “Pipeline Entities”) submitted applications to NYSPSC for construction and operation of the Greenidge Pipeline. *Id.* ¶ 22.

On September 16, 2016, the NYSPSC issued an Order Granting Certificate of Environmental Compatibility and Public Need (“Certificate Order”), approving the

² NYSDEC initially issued a Negative Declaration and issued draft Title IV and Title V air permits on July 30, 2015. Based on comments of the United States Environmental Protection Agency (“USEPA”) on the draft Title V air permit, Greenidge submitted a supplemental Title V air permit application to the NYSDEC and NYSDEC thereafter issued a revised Title V air permit, which includes additional requirements requested by USEPA. Hennessey Aff. ¶¶ 14-15 .

³ While Petitioner CPFL timely filed comments with NYSDEC on the draft Title IV and Title V air permits and the Amended Negative Declaration issued for public comment, Petitioner CPNY failed to file any comments with NYSDEC on the Title IV and Title V air permits or on the Amended Negative Declaration and Petitioner Sierra Club only filed comments on the draft Title V and Title IV permits noticed by NYSDEC in 2015. Such failures to exhaust administrative remedies is fatal to Petitioners CNY and Sierra Club claims in this action. *Walton v. N.Y. State Dept. of Corr. Servs.*, 8 N.Y.3d 186, 195 (2007) (“[t]hose who wish to challenge agency determinations under article 78 may not do so until they have exhausted their administrative remedies”).

construction and operation of the natural gas pipeline pursuant to Article VII of the PSL.⁴ *Id.* ¶ 30. Petitioner CPFL provided comments throughout the NYSPSC’s Article VII proceeding,⁵ but was denied party status by an Administrative Law Judge (“ALJ”). *Id.* ¶ 28. It thereafter failed to appeal the ALJ’s ruling, renew its request for party status, or seek rehearing of the Certificate Order approving the Greenidge Pipeline. *Id.* ¶ 29. On October 17, 2016, NYSPSC issued the Greenidge Pipeline Entities a Notice to Proceed with Construction of the Greenidge Pipeline. *Id.* ¶ 33.

Construction Timing and Costs

Because the winter weather conditions in Yates County make excavation and construction of a pipeline extremely difficult, and to start recouping a return on the significant investments that had already been made in the Greenidge Project, in-plant construction work and construction on the pipeline commenced on October 17, 2016. *See* Irwin Aff. ¶¶ 19-20, 23. Due to the concerns over inclement weather and business factors, construction work on the Greenidge Pipeline was scheduled to be completed in January 2017. *Id.* ¶ 21; *see also* Certificate Order at 5 (Hennessey Aff., Exhibit C) (“It is the Pipeline Companies’ intent to commence construction soon after the Certificate is granted and all the appropriate permits and permission have been obtained.”).

On October 17, 2016, Greenidge Generation, LLC began the necessary construction work for the in-plant construction activities, which had been authorized by the NYSDEC-issued Title IV and V air permits. Irwin Aff. ¶ 22. The next day, on October 18, 2016, a

⁴ A separate order was issued by the NYSPSC on September 16, 2016 which provided approval to resume operation of the existing Greenidge Station and exercise a road use agreement. NYSPSC Cases 15-E-0516 and 15-G-0571, *Order Granting Certificates of Public Convenience and Necessity and Providing for Lightened and Incidental Regulation* (Sept. 16, 2016).

⁵ Petitioners Sierra Club and CPNY did not seek party status in the Article VII proceeding.

publicly announced groundbreaking ceremony was held. *Id.* ¶ 23 and Exhibit A; *see also* Amended Petition ¶ 84.

As of November 3, 2016, the date that the Greenidge Respondents were served in this action, all materials had been purchased and over 30 percent of the in-plant construction work had been completed. *Id.* ¶ 24. The cost of the materials purchased and in-plant construction work completed between the time the NYSDEC issued the Title IV and V air permits on September 8, 2016 and the Greenidge Respondents were served with the Verified Petition in this action on November 3, 2016 is approximately \$838,153. *Id.* ¶ 25 and Exhibit B. This represents more than one-half of the entire anticipated cost of the in-plant construction, and does not include the costs of additional materials purchased prior to September 8, 2016, but after NYSDEC's issuance of the Amended Negative Declaration challenged in this action by Petitioners. *Id.* ¶ 26.

On October 17, 2016, construction on the Greenidge Pipeline commenced pursuant to the Certificate Order and Notice to Proceed. *Id.* ¶ 27. As of November 3, 2016, all the necessary materials had been purchased and the following construction work on the pipeline and related facilities had been completed: 50 percent of site clearing activities (including tree removal); 20 percent of pipeline construction completed (trenched, welded, piping laid into the trench, and soil backfilled over the piping) at a cost of \$705,561; 15 percent of the regulation station work completed at a cost of \$79,304; 30 percent of the meter station work completed at a cost of \$846,222; and 50 percent of the interconnection work completed at a cost of \$551,646. *Id.* ¶ 28.

The cost of all materials purchased and construction work for the Greenidge Pipeline and related facilities completed between the Certificate Order issued on September 16, 2016

and November 3, 2016 is approximately \$2,182,733. *Id.* ¶ 29 and Exhibit B. This represents more than 20 percent of the entire anticipated cost of the pipeline and related facilities' construction costs, and does not include the costs of additional materials purchased prior to September 16, 2016, but after NYSDEC's issuance of the Amended Negative Declaration challenged in this action by Petitioners. *Id.* ¶ 30.

The total cost of all materials purchased and construction work completed between September 8, 2016 and November 3, 2016 for the entire Greenidge Project is approximately \$3,020,886. *Id.* ¶ 31. In terms of construction progress, approximately 25 percent of the Greenidge Project construction was completed as of November 3, 2016. *Id.* ¶¶ 30-31 and Exhibit B.

Further, as of the time of this Motion, the total cost of all materials purchased and construction work completed since September 8 2016 is approximately \$11,418,624, or 94 percent of the entire anticipated cost of the Greenidge Project. *Id.* ¶¶ 35-37 and Exhibit B. This represents the purchase of all necessary materials as well as over 98 percent of the in-plant construction work at a cost of \$1,724,053 and over 90 percent of pipeline and related construction completed at a cost of \$9,694,570. *Id.* ¶ 36 and Exhibit B.

ARGUMENT

POINT I

THIS COURT LACKS JURISDICTION TO HEAR PETITIONERS' CHALLENGE TO THE GREENIDGE PIPELINE AND, IN ANY EVENT, THE GREENIDGE PIPELINE WAS EXEMPT FROM THE SEQRA REVIEW CHALLENGED BY PETITIONERS IN THIS ACTION

Petitioners challenge and seek to enjoin construction of the Greenidge Pipeline, a pipeline that was approved by NYSPSC pursuant to Article VII of the PSL (Case 15-T-0586), based on their allegations that NYSDEC's SEQRA review was flawed. Amended Petition ¶ 3. As a threshold matter, this Court lacks jurisdiction to review NYSPSC's Article VII approval of the Greenidge Pipeline. Even assuming jurisdiction, Petitioners' claims vis-à-vis the Greenidge Pipeline fail as the Greenidge Pipeline is exempt under SEQRA. As such, Petitioners' claims and requests for relief with respect to the Greenidge Pipeline fail.

This Court lacks jurisdiction over review of an Article VII approval of NYSPSC. Pursuant to Section 128 of the PSL, any party aggrieved by an order approving a pipeline under Article VII of the PSL must bring a proceeding in the Appellate Division of the Supreme Court of New York. PSL § 128. Section 129 further provides:

[N]o court of this state shall have jurisdiction to hear or determine any matter, case or controversy concerning any matter which was or could have been determined in a proceeding under [Article VII] or to stop or delay the construction or operation of a major facility except to enforce compliance with [Article VII] or the terms and conditions of a certificate issued hereunder.

PUB. SERV. LAW § 129; *see also E. Williston v. Pub. Serv. Com.*, 153 A.D.2d 943, 945-46 (2d Dep’t 1989). This Court, therefore, lacks jurisdiction to hear any issues regarding the Greenidge Pipeline and lacks authority to stop or delay construction.⁶

In addition, because Article VII approvals require a full environmental review pursuant to Article VII of the PSL, they are specifically excluded from SEQRA. SEQRA states in relevant part:

The requirements of this article shall not apply to.... [a]ctions subject to the provisions requiring a certificate of environmental compatibility and public need in articles seven, ten and the former article eight of the public service law.

ENVTL. CONSERV. LAW (“ECL”) § 8-0111(5)(b); *see also* 6 N.Y.C.R.R. § 617.5(c)(35) (exempting from SEQRA review “actions requiring a certificate of environmental compatibility and public need under article VII, VIII or X of the Public Service Law and the consideration of, granting or denial of any such certificate.”); *see also* June 29, 2016 ENB Notice (Hennessey Aff., Exhibit B) (noting that “[a] new natural gas pipeline would be constructed to service the site, which would be reviewed under the Article VII process governed by the [NYSPSC] separate from this SEQR action.”); Certificate Order at 20 (Hennessey Aff., Exhibit C) (noting that because of the Article VII environmental review of the Greenidge Pipeline, it was a Type II action exempt from SEQRA review).

Accordingly, Petitioners’ attempt to challenge the Greenidge Pipeline and have this court halt construction based on alleged SEQRA infirmities is improper and should be rejected. Petitioners’ claims as they related to, or seek relief with respect to, the Greenidge Pipeline must be dismissed.

⁶ Regardless, Petitioners would lack standing under PSL § 129(1) as they were not a party to the Article VII proceeding and the thirty day time period for challenging the Certificate Order has expired. *See E. Williston*, 153 A.D.2d at 46 (finding no standing for a petitioner that was not a party in the NYSPSC Article VII proceeding; also finding action untimely).

POINT II

PETITIONERS LACK STANDING

Standing requirements are an indispensable part of any challenge to a governmental action, and each element of standing must be proved in order for the challenge to survive. *State Ass'n of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211 (2004). As Petitioners have not alleged sufficient facts to satisfy even the most basic elements of individual or organizational standing, the entire Amended Petition must be dismissed.

“[T]here is a limit on those who may raise environmental challenges to governmental actions.” *Turner v. Cty. of Erie*, 136 A.D.3d 1297, 1297-98 (4th Dep’t 2016) *lv. denied*, 27 N.Y.3d 906 (2016). An organization or association that challenges a SEQRA determination must show that (1) at least one of its members would have standing to sue individually; (2) the interests in the matter are germane to its purpose to show that it is the appropriate representative of those interests; and (3) neither the asserted claim nor the relief requires the participation of its individual members. *Soc’y of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 774 (1991); *Niagara Preserv. Coal., Inc. v. N.Y. Power Auth.*, 121 A.D.3d 1507, 1509-10 (4th Dep’t 2014); *see also Dental Soc. of State v. Carey*, 61 N.Y.2d 330, 333 (1984) (stating that “[t]he standing of an organization such as respondent to maintain an action on behalf of its members requires that some or all of the members themselves have standing to sue, for standing which does not otherwise exist cannot be supplied by the mere multiplication of potential plaintiffs”). “These requirements ensure that the requisite injury is established and that the organization is the proper party to seek redress.” *Niagara Preserv. Coal.*, 121 A.D.3d at 1510 (quoting *Soc’y of Plastics Indus.*, 77 N.Y.2d at 775 (internal quotes omitted)).

Petitioners bear the burden to establish that at least one individual member from each organization has suffered an “injury-in-fact” that is separate from the public at large, and that

the injury of that member is within the “zone of interests” covered by SEQRA, otherwise no standing exists. *Turner*, 136 A.D.3d at 1297-98; *Niagara Preserv. Coal.*, 121 A.D.3d at 1509-10; see also *Save the Pine Bush, Inc. v. City of Albany*, 13 N.Y.3d 297, 306 (2009) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)); see also *Soc’y of Plastics Indus.*, 77 N.Y.2d at 769.

Here, the Petitioners have failed to meet their burden. First, for an individual member of an organization to show standing, Petitioners must prove an environmental “injury-in-fact” that is different than the public at large in degree and kind. *Lujan*, 504 U.S. at 560; *New York State Ass’n of Nurse Anesthetists*, 2 N.Y.3d at 211; *Niagara Preserv. Coal.*, 121 A.D.3d at 1509. To prove injury-in-fact, the individual must show there has been an invasion of a legally protected interest that is (i) concrete and particularized; and (ii) actual or imminent, not conjectural or hypothetical. *Lujan*, 504 U.S. at 560. “A general – or even special – interest in the subject matter is insufficient to confer standing” as “interest and injury are not synonymous.” *Niagara Preserv. Coal.*, 121 A.D.3d at 1510 (citing *Citizens Emergency Comm. to Preserv. v Tierney*, 70 A.D.3d 576, 576 (1st Dep’t 2010), *lv. denied*, 15 N.Y.3d 710 (2010)). It is not enough that the concern or injury is of wide public concern. *Brown v. Cty. of Erie*, 60 A.D.3d 1442, 1444 (4th Dep’t 2009).

This injury-in-fact requirement cannot be met by conclusory allegations of harm or speculation of potential harm from future events. *New York State Ass’n of Nurse Anesthetists*, 2 N.Y.3d at 214 (noting that “tenuous and ephemeral harm is insufficient to trigger judicial intervention.”); *Kindred v. Monroe Cty.*, 119 A.D.3d 1347, 1348 (4th Dep’t 2014) (concluding that the alleged environmentally-related injuries were too speculative and conjectural to prove an actual and specific injury-in-fact.). Petitioners must offer probative evidence, as allegations without evidentiary support are patently insufficient. *Soc’y of Plastics Indus.*, 77 N.Y.2d at 778.

Second, the alleged injury must fall within the “zone of interests protected by the statute invoked,” thus tying the injury-in-fact to the governmental act that is being challenged. *Soc’y of Plastics*, 77 N.Y.2d at 773. This requires Petitioners to show that the alleged injury is the kind and type of concern sought to be promoted or protected by SEQRA. *Kindred*, 119 A.D.3d at 1348 (quoting *Soc’y of Plastics*, 77 N.Y.2d at 773); see also *Colella v. Bd. of Assessors*, 95 N.Y.2d 401, 409-10 (2000).

Here, the Amended Petition does not present sufficient facts to establish a single element of standing to challenge NYSDEC’s SEQRA determination. See *Niagara Preserv. Coal.*, 121 A.D.3d at 1509. Indeed, there is not even a single affidavit attempting to establish Petitioners’ standing. Instead, general unparticularized statements are offered in the Amended Petition alleging that Petitioners will be injured, but not how, by the construction of the pipeline, increased waste deposits, and climate change impacts. Petitioners further allege that their members have suffered “informational injury as a result of the lack of a full environmental impact statement covering the permits at issue in this matter.” Amended Petition, ¶ 4. Even if “informational injury” was an injury that could support standing, no facts or supporting evidence were alleged by Petitioners to support any of these conclusory claims of injury and no basis for organizational standing has been declared.

In addition to proving that at least one member of an organization has standing to sue, the organization must join those member(s) that it claims would be harmed by the respondent’s actions as petitioners to the proceeding. *Citizens Organized to Protect the Environment v. Planning Bd. of Town of Irondequoit*, 50 A.D.3d 1460, 1461 (4th Dep’t 2008).

For example, in *Citizens Organized to Protect the Environment*, the Fourth Department found that non-participation by the individual members was fatal and that, for the organization to have standing, it should have joined as petitioners those member(s) that it claimed would be

harmful by the respondent's actions. *Id.*; see also *Wind Power Ethics Group v. Planning Bd. of Town of Cape Vincent*, No. 2010-2882, Slip Op. at 5 (Sup. Ct., Jefferson Co., Jan. 26, 2011) (dismissing Article 78 petition on grounds that petitioner failed to establish organizational standing due to its failure to name or join individual members in petition).

Here, none of the Petitioners have asserted that a single member has standing to sue. Sierra Club fails to join or even name any member of its organization. And, although the CPFL president, Peter Gamba, and the CPNY's treasurer, Kathryn Bartholomew, are named, not a single fact is alleged of how Mr. Gamba or Ms. Bartholomew have suffered any injury, let alone an environmental injury. Amended Petition, ¶¶ 5, 6. Further, Petitioners have not asserted or even inferred a direct injury, only that "most of the CPFL's members live in the Seneca Lake watershed." *Id.* ¶ 5. However, that unspecified members live in the overall region of a project is patently insufficient to establish standing. *Sun-Brite Car Wash, Inc. v. Bd. of Zoning & Appeals*, 69 N.Y.2d 406, 414 (1987) (noting that a petitioner can be so far from the subject property that the effect of the proposed change is no different from that on the public generally, and that even status as a neighbor does not provide automatic entitlement to standing).

CPFL states that its general purpose is to "preserve the natural beauty and the purity of the water in the Finger Lakes region" while CPNY asserts that it "promote[s] the health and vibrancy of [] land and resources." Amended Petition ¶¶ 5, 6. These general interests in the beauty and health of the environment do not establish an injury that is based on NYSDEC's issuance of the Amended Negative Declaration, or the subsequent issuance of the Title IV and Title V air permits on September 8, 2016. Thus, Petitioners have not established that they are the appropriate representatives to challenge NYSDEC's action. CPNY also states as a purpose that it "oppose[s] the harms that are caused by the gas drilling, gas drilling wastes and fossil fuel infrastructure." *Id.* ¶ 6. This general opposition to gas drilling is wholly irrelevant to the action,

and unparticularized opposition to fossil fuel infrastructure does not establish an interest or injury that is different from the public at large. See *Niagara Preserv. Coal.*, 121 A.D.3d at 1510; *Brown*, 60 A.D.3d at 1444.

Petitioners' claim that they have suffered an "informational injury" as a result of the lack of a full environmental impact statement ("EIS") finds no basis in law or fact. First, Petitioners have not provided, and the Greenidge Respondents have been unable to find, a single case in New York addressing the issue of "informational injury." The legal viability of informational injury in New York is therefore, questionable at best. *Atl. States Legal Found. v. Babbit*, 140 F. Supp. 2d 185, 192-93 (N.D.N.Y. 2001). Second, Petitioners do not provide any claim of informational injury to an individual member. Petitioners provide only generalized and conclusory statements in the Amended Petition that the "members further suffer informational injury." Third, standing based solely on informational injury would allow organizational plaintiffs to undermine established principles of standing, which requires the establishment of concrete particularized harm, by simply requesting that an agency prepare an EIS. *Atl. States Legal Found.*, 140 F. Supp. 2d at 194. Since neither Sierra Club, CPFL or CPNY based its "informational injury" claim on an individual member, even if "informational injury" were sufficient to establish standing, which it is not, Petitioners have not established the "informational injury" of an individual member that is necessary to establish the standing of an organization.

In sum, Petitioners have failed to meet their irrefutable burden of establishing standing to challenge NYSDEC's Amended Negative Declaration. Their claims, therefore, fail and must be dismissed.

POINT III

PETITIONERS' DELAY ALLOWED SUBSTANTIAL CONSTRUCTION TO OCCUR RENDERING PETITIONERS' CLAIMS MOOT

By the time the Greenidge Respondents were served with the original Verified Petition in this action on November 3, 2016 and thereafter on December 6, 2016 when Petitioners' served their Amended Petition, construction of the Greenidge Station in-plant work and the Greenidge Pipeline were substantially complete. And, without any request for a preliminary injunction or other action seeking to preserve the status quo or prevent construction from commencing or continuing by Petitioners prior to December 23, 2016, construction continued in good faith and under authority of law, cannot be readily undone without undue hardship, and is almost complete. Petitioners' claims are, therefore, moot.

Changes in circumstances that would prevent a court from rendering a decision to effectively determine an actual controversy, such that relief is not even theoretically available, require that the challenge be dismissed as moot. *See Citineighbors Coal. of Historic Carnegie Hill v. N.Y. City Landmarks Pres. Comm'n*, 2 N.Y.3d 727, 728-30 (2004); *Dreikausen v. Zoning Bd. of Appeals of the City of Long Beach*, 98 N.Y.2d 165, 172 (2002). In the context of a construction project, legal attempts to cease or undo construction are rendered moot when, as here, construction is substantially complete. *Citineighbors*, 2 N.Y.3d at 729; *Weeks Woodlands Assn., Inc. v. Dormitory Auth. of the State of N.Y.*, 95 A.D.3d 747, 747 (1st Dep't 2012), *aff'd*, 20 N.Y.3d 919 ("Under the particular circumstances of this case, we agree with the Appellate Division majority that the challenged project is substantially complete and that the proper course of action was to dismiss the appeals taken to that Court as moot.").

Factors considered in whether substantial construction renders a challenge moot include (1) whether the challenger timely sought a preliminary injunction or otherwise sought to

preserve the status quo or prevent construction from commencing or continuing, (2) whether the work was completed in good faith and under authority of law, and (3) whether work could be readily undone without undue hardship. *Citineighbors Coal.*, 2 N.Y.3d at 729.

In *Citineighbors Coalition*, the Court of Appeals found that because the building's steel and concrete structure had been erected, the brick façade complete, and 90 percent of the window frames installed, at a rough cost of \$25.7 million, construction was substantially complete. The court also found that there was no "unseemly race to completion intended to moot petitioners' lawsuit" because the property owner and developer had obtained necessary approvals, and that there was every business incentive to complete the building as quickly as possible to begin recouping a return on investment and avoid paying interest on construction loans. *Citineighbors Coal.*, 2 N.Y.3d at 729.

In *Weeks Woodlands Association*, the Appellate Division, First Department, considered the construction to be substantially complete, in part, because the excavations and foundations were complete, the steel erection was 70 percent complete, and installation of concrete slabs were 50 percent complete. *Weeks Woodlands Assn.*, 95 A.D.3d at 748-49. The court noted that construction was so far advanced that it could not be undone without undue hardship, and that construction does not need to be "virtually completed," a finding that was upheld by the Court of Appeals. *Weeks Woodlands Assn.*, 95 A.D.3d at 753. The court in that case also noted that the property owner would be penalized for having gone forward in reliance on the issuance of all necessary governmental permits and the petitioners' failure to seek prompt injunctive relief. *Id.*

Similar to the claims brought in *Citineighbors Coalition* and *Weeks Woodlands Association*, Petitioners' claims in this action are moot. Here, because of the winter weather conditions in Yates County, excavation and construction of a pipeline is extremely difficult

during at least the months of January through March. Irwin Aff. ¶ 19. Significant efforts, therefore, were made to complete installation of the Greenidge Pipeline before January 2017. *Id.* ¶ 21. In addition, a business incentive to complete the construction quickly existed so that a return on a very substantial investment could be recouped as soon as possible. *Id.* ¶ 20. This was particularly true for the Greenidge Project because the regulatory approval process took an extended period of time and significant funds were expended by the Greenidge Respondents without any income being generated by the Greenidge Station in the interim. *Id.*

The in-plant construction work, therefore, commenced on October 17, 2016 in reliance on the NYSDEC's Amended Negative Declaration and the September 8, 2016 Title IV and V air permits. *Id.* ¶ 22. Also on October 17, 2016, pipeline construction commenced in reliance on NYSPSC's September 16, 2016 Certificate Order and October 17, 2016 Notice to Proceed. *Id.* ¶ 27.

As of the time that the Greenidge Respondents were initially served by Petitioners in this action on November 3, 2016, construction was substantially complete with over 30 percent of the in-plant construction work finished and approximately 20 percent of the pipeline and related facilities constructed. *Id.* ¶¶ 24, 28; *contrast Camardo v. City of Auburn*, 96 A.D.3d 1437, 1438 (4th Dep't 2012) (declining to find Article 78 claim moot because construction had just commenced or was about to begin, and therefore had not been substantially completed). This includes approximately 50 percent of site clearing activities, including tree removal, and 20 percent of pipeline construction work (i.e., trenching, welding, laying pipe, and backfilling over 4,150 feet of piping). *Id.* ¶ 28.

In terms of cost, from the time the respective agency approvals were issued until November 3, 2016, approximately \$3,020,886 had been expended on construction of the in-plant upgrades, pipeline and related facilities. *Id.* ¶ 31 and Exhibit B. This includes

approximately \$838,153 for the in-plant construction work authorized by the Title IV and V air permits, approximately \$705,561 for pipeline related construction and approximately \$1,477,172 for the metering station, regulation station and interconnection work. *Id.* ¶ 31 and Exhibit B.

Thereafter, due to the continued risks associated with inclement weather, the business incentive to complete the construction, and potentially significant penalties from the construction company for halting and restarting work, and because no attempt was made by Petitioners to secure a temporary restraining order or otherwise preserve the status quo during the pendency of this action until December 23, 2016, the original schedule and pace of work on the Greenidge Pipeline construction has continued with completion scheduled for January 2017. As of the date of this filing, more than 98 percent of the in-plant work, 98 percent of the pipeline installation, 75 percent of the interconnection, 98 percent of the regulation station, and 90 percent of the meter station work has been completed. *Id.* ¶ 36. The total costs expended from September 8, 2016 through January 6, 2017 is approximately \$11,418,624, more than 94 percent of the entire forecasted cost for the entire Greenidge Project. *Id.* ¶¶ 36-37. With construction so far advanced,⁷ it could not be undone without undue hardship to the Greenidge Respondents as well as the landowners for the properties on which the pipeline has been constructed. *Citineighbors Coal.*, 2 N.Y.3d at 729; *Weeks Woodlands Assn.*, 95 A.D.3d at 753.

Furthermore, while the Petitioners served the Verified Petition on November 3, 2016, there is no explanation for why Petitioners did not expeditiously and promptly seek to prevent

⁷ As of December 23, 2016, the date the Greenidge Respondents' were served with Petitioners' preliminary injunction motion, the cost of construction work completed was \$7,688,467, which includes the following: 91 percent of the in-plant construction work completed; 80 percent of pipeline construction completed; 65 percent of the interconnection work completed; 42 percent of the regulation station work completed; and, 38% of the meter station work completed. This represents almost 70 percent of the entire anticipated cost of the Greenidge Project.

or even halt construction of the Greenidge Project, particularly where the necessary approvals were issued on September 8, 2016 and September 16, 2016 – almost two months before service of this action was effectuated. Instead, Petitioners waited until the last day of the four-month statute of limitations to challenge the Amended Negative Declaration. This delay by Petitioners is even more inexplicable when Petitioners knew, or should have known, that construction was to commence quickly after NYSDEC and NYSPSC approvals were issued. Amended Petition ¶ 84 (“GGLLC held a groundbreaking ceremony for the repowering of the Greenidge Station at the facility on October 18, 2016”); *see also* Irwin Aff. Exhibit A; Certificate Order at 5 (Hennessey Aff., Exhibit C) (“It is the Pipeline Companies intent to commence construction soon after the Certificate is granted and all the appropriate permits and permission have been obtained.”).

In short, the advanced stage of construction, including the significant corresponding cost to the Greenidge Respondents, coupled with Petitioners’ failure to promptly act, renders Petitioners’ claims moot.⁸ Indeed, Petitioners have all but conceded this in their Motion for Temporary Injunctive Relief. *See, e.g.*, Affirmation of Rachel Treichler, dated December 23, 2016, ¶ 5 (“Such construction could raise a colorable claim of mootness of the pending proceeding which could render ineffectual any judgment ultimately obtained by Petitioners thereby causing them irreparable harm.”); Memorandum of Law in Support of Petitioners’ Motion for Temporary Injunctive Relief, at 11 (citing *Dreikausen v Zoning Bd. of Appeals of City of Long Beach*, 98 N.Y.2d 165 (2002); *Graf v. Livonia*, 120 A.D.3d 944 (4th Dep’t 2014)).⁹

⁸ While courts have overlooked the issues of mootness where there are novel issues of law or a likelihood that the issues would recur without an adequate record and timely opportunity for review, that is not the case here. *Citineighbors Coal.*, 2 N.Y.3d at 730; *Dreikausen v. Zoning Bd. of Appeals*, 98 N.Y.2d 165, 172-74 (2002). The issues alleged by Petitioners are specific to the Greenidge Project and are not novel.

⁹ Both cases dismissing appeals as moot where request for injunctive relief delayed and not made until construction of projects was substantially complete.

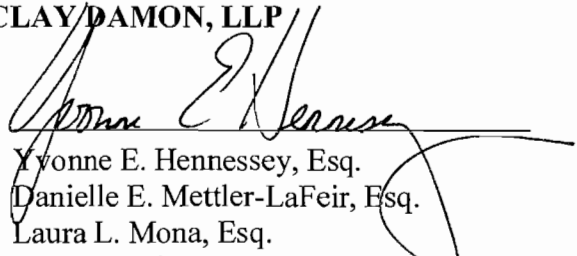
CONCLUSION

For all of the reasons set forth herein, the Greenidge Respondents respectfully submit that the Amended Petition should be dismissed *in toto* with prejudice. If the court denies this motion to dismiss, the Greenidge Respondents request thirty days to answer the Amended Petition.

Dated: January 6, 2017
Albany, New York

BARCLAY DAMON, LLP

By:



Yvonne E. Hennessey, Esq.

Danielle E. Mettler-LaFeir, Esq.

Laura L. Mona, Esq.

*Attorneys for Greenidge Generation, LLC,
Greenidge Pipeline, LLC, Greenidge
Pipeline Properties Corporation and
Lockwood Hills, LLC*

Albany, New York 12207

(518) 429-4200

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,

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, GREENIDGE PIPELINE, LLC,
GREENIDGE PIPELINE PROPERTIES
CORPORATION and LOCKWOOD HILLS, LLC,

Respondents.

**AFFIDAVIT OF DALE IRWIN
IN SUPPORT OF THE
GREENIDGE RESPONDENTS'
MOTION TO DISMISS**

Index No. 2016-0165
Hon. William F. Kocher

BARCLAY DAMON, LLP

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

YATES COUNTY CLERK
2017 JAN - 6 P 1:31

Dale Irwin, being duly sworn, deposes and states as follows under the penalties of perjury:

1. My name is Dale Irwin. I am over 21 years of age, and I am competent in all respects to make this Affidavit.

GENERAL BACKGROUND

2. I am the President and Chief Executive Officer (“CEO”) of Greenidge Generation Holdings, Greenidge Generation, LLC, Greenidge Pipeline, LLC, Greenidge Pipeline Properties Corporation, and Lockwood Hills, LLC (collectively, the “Greenidge Respondents”). I am also the

Facilities Manager of the Greenidge Generating Station, located in the Town of Torrey, Yates County, New York (the “Greenidge Station” or “Facility”).

3. I graduated from Keuka College in 2005 with a Bachelor of Science degree in Organizational Management.

4. I have been employed at the Greenidge Station in various maintenance and management capacities since August 13, 2001. In addition to my current positions, during my tenure at Greenidge, I have also served as Material Handler, Maintenance Technician, Maintenance Coordinator, Outage Manager, Environmental Manager and Operation and Maintenance Manager.

5. My statements in this Affidavit are based upon my personal knowledge obtained through the various positions I have held for the Greenidge Respondents and at Greenidge Station as well as my review of relevant documentation and personal observations.

PURPOSE OF AFFIDAVIT

6. I make this Affidavit in support of the motion to dismiss the Amended Verified Petition filed by the Greenidge Respondents.

7. As detailed herein, the Greenidge Respondents relied on

(a) the construction authorizations contained in the Title V air permit (Permit ID: 8-5736-00004/00017) issued by the New York State Department of Environmental Conservation (“NYSDEC”) on September 8, 2016 approving, among other things, the in-plant construction work to allow the Greenidge Station to operate on 100 percent natural gas;

(b) the *Order Granting Certificate of Environmental Compatibility and Public Need* issued by the New York State Public Service Commission (“NYSPSC”) on September 16, 2016 (Case 15-T-0586) (the “Certificate Order”), which approved the construction of a

4.6 mile pipeline (the “Greenidge Pipeline”), a metering station and a regulation station; and

- (c) the Notice to Proceed with Construction issued by the NYSPSC on October 17, 2016, which authorized the Greenidge Respondents to commence construction of the Greenidge Pipeline.

8. In accord with this reliance, the in-plant construction and construction of the Greenidge Pipeline and related metering and regulation stations and interconnection work (collectively, the “Greenidge Project”) were significantly underway by November 3, 2016, the date I was served with the Verified Petition and Order to Show Cause in this action by Petitioners, with significant progress having already been completed and significant funds having already been expended.

9. By December 23, 2016, when Petitioners filed their Motion for Temporary Injunctive Relief, 60 percent of the Greenidge Project had already been completed, and the Greenidge Respondents had already spent over \$11,000,000 since September 8, 2016 when the Greenidge Station Title IV and Title V air permits were issued by NYSDEC.

THE GREENIDGE PROJECT

10. 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.

11. The Greenidge Station, a pre-existing coal-fired plant, was initially constructed in the 1930s, with Unit 4 installed in 1953.

12. In 2011, the Greenidge Station went into temporary protective layup status.

13. In 2014, Respondent Greenidge Generation, LLC, purchased the Greenidge Station and sought to resume Facility operations.

14. The purpose of the Greenidge Project is 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.

15. The Greenidge Project consists 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.

16. The in-plant construction activities authorized by the NYSDEC-issued Title V air permit and necessary materials are estimated to cost a total of \$1,760,000.¹

17. The construction activities authorized by the NYSPSC's Certificate Order and the October 17, 2016 NYSPSC Notice to Proceed are estimated to cost a total of \$10,422,000.

18. The total cost to complete the Greenidge Project construction is estimated at \$12,182,000.

**CONSTRUCTION ON THE GREENIDGE PROJECT
COMPLETED AS OF NOVEMBER 3, 2016**

19. The winter weather conditions in Yates County, New York make excavation and construction of a pipeline during January, February and March extremely difficult.

20. In addition, there was and continues to be a substantial business incentive to complete the construction for the in-plant work, pipeline and related facilities and have operations resume at the

¹ All estimated construction costs in this Affidavit were calculated using conservative assumptions and exclude the following: soft costs, additional electrical interconnection costs, testing, and expenses incurred before September 8, 2016.

Greenidge Station as soon as possible so that a return on the Greenidge Respondents' substantial investment can be recouped. This is particularly noteworthy here because the approval process took an extended period of time and significant funds were expended by the Greenidge Respondents without any income being generated by the Greenidge Station in the interim.

21. Significant efforts have, therefore, been made to complete installation of the Greenidge Pipeline sometime in January 2017 and resume operations shortly thereafter.

22. On October 17, 2016, Greenidge Generation, LLC began the necessary in-plant construction work, which had been authorized by the NYSDEC-issued Title V air permit.

23. Contemporaneous with this start of construction, on October 18, 2016, the Greenidge Respondents held a groundbreaking ceremony that was widely reported in the local media. A true and accurate copy of a sample media report of the groundbreaking ceremony is attached hereto as **Exhibit A**.

24. As of November 3, 2016, all materials had been purchased and over 30 percent of the in-plant construction work had been completed.

25. The cost of all materials purchased and in-plant construction work completed between September 8, 2016 and November 3, 2016 was approximately \$838,153. Attached hereto as **Exhibit B** is a true and accurate chart summarizing the progress and cost spent on the Greenidge Project at key dates in this litigation.

26. This represents almost one-half of the entire anticipated cost of the in-plant construction, and does not include the costs of additional materials purchased prior to September 8, 2016, but after NYSDEC's issuance of the Amended Negative Declaration challenged in this action by Petitioners.

27. On October 17, 2016, Greenidge Pipeline, LLC and Greenidge Pipeline Properties Corporation began construction on the Greenidge Pipeline.

28. As of November 3, 2016, Greenidge Pipeline, LLC and Greenidge Pipeline Properties Corporation had purchased all the necessary materials and completed the following construction work on the pipeline and related facilities:

- (a) 50 percent of site clearing activities (including tree removal);
- (b) 20 percent of pipeline construction completed (4,150 feet of piping trenched, welded, piping laid into the trench, and soil backfilled over the piping) at a cost of \$705,561;
- (c) 15 percent of the regulation station work completed at a cost of \$79,304;
- (d) 30 percent of the meter station work completed at a cost of \$846,222; and
- (e) 50 percent of the interconnection work completed at a cost of \$551,646.

29. The cost of all materials purchased and construction work for the pipeline and related facilities completed between September 16, 2016 and November 3, 2016 was approximately \$2,182,733. *See Exhibit B.*

30. This represents more than 20 percent of the entire anticipated cost of the Greenidge Pipeline and related facilities' construction costs, and does not include the costs of additional materials purchased prior to September 16, 2016, but after NYSDEC's issuance of the Amended Negative Declaration challenged in this action by Petitioners.

31. The total cost of all materials purchased and construction work completed between September 8, 2016 and November 3, 2016 for the entire Greenidge Project was approximately \$3,020,886. *See Exhibit B.*

**CONSTRUCTION ON THE GREENIDGE PROJECT
COMPLETED AS OF DECEMBER 23, 2016**

32. As of December 23, 2016, the date that I understand Petitioners filed their Motion for Temporary Injunctive Relief, the total cost of all materials purchased and construction work completed since September 8 2016 was approximately \$7,688,467. *See Exhibit B.*

33. This includes the following:

- (a) 91 percent of the in-plant construction work completed at a cost of \$1,600,907;
- (b) 80 percent of pipeline construction completed (trenched, welded, piping laid in the trench and soil backfilled over the piping) at a cost of \$3,986,826;
- (c) 65 percent of the interconnection work completed at a cost of \$716,646;
- (d) 42 percent of the regulation station work completed at a cost of \$271,052; and
- (e) 38 percent of the meter station work completed at a cost of \$1,113,036.

34. This represents over 60 percent of the anticipated cost of the Greenidge Project.

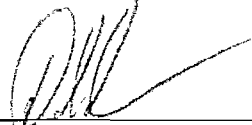
**CONSTRUCTION ON THE GREENIDGE PROJECT
COMPLETE AS OF JANUARY 6, 2017**

35. As of the date of this Affidavit, the cost of all materials ordered and construction work completed on the Greenidge Project since September 8, 2016 is approximately \$11,418,624. *See Exhibit B.*

36. This includes the following:

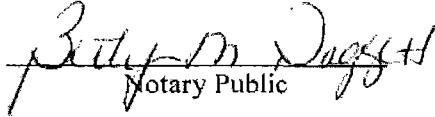
- (a) 98 percent of the in-plant construction work completed at a cost of \$1,724,053;
- (b) 98 percent of pipeline construction completed (trenched, welded, piping laid in the trench and soil backfilled over the piping) at a cost of \$5,209,453;
- (c) 75 percent of the interconnection work completed at a cost of \$839,819;
- (d) 98 percent of the regulation station work completed at a cost of \$699,028; and
- (e) 90 percent of the meter station work completed at a cost of \$2,946,271.

37. This represents 94 percent of the entire anticipated cost of the Greenidge Project.



Dale Irwin

Subscribed and sworn to before
me this 5 th day of January,
2017.


Notary Public

BETTY M. DAGGETT
Notary Public State of New York
Yates County # 01DA6066162
Comm. Expires November 5, 2017

BARCLAY DAMON, LLP

EXHIBIT A

Greenidge power plant officially reopens

By DAVID L. SHAW dshaw@ftimes.com Oct 19, 2016 0



Spencer Tulis / Finger Lakes Times

The Greenidge Generation power plant was formally reopened Tuesday by Gov. Andrew Cuomo at a ceremony in front of the building in Torrey.

TORREY — It isn't producing any electricity yet, but the Greenidge Generation power plant was formally reopened Tuesday.

Built in 1937, it has been dormant since 2011.

A host of officials, including Gov. Cuomo, helped break a new row of switches for the plant's two steam generators, and the usual fanfare followed.

Work on construction of a 4.6-mile long pipeline from the plant, on the west shore of Seneca Lake, to the Empire Gas Pipeline in the town of Milo is expected to begin this week.

Once the pipeline is completed and natural gas is flowing to the plant, it will join with biomass material to power the plant's electrical turbines.

The plant has not produced electricity since it was coal-fired.

"This is a great day after a long wait. We're happy to be here more than two years after this project started," said Dale Irwin, plant manager.

"We believed in this plant, the people and the area," Irwin said. The plant reopens as a natural gas and biomass fueled plant, sponsored by Atlas Holdings and Greenidge Generation LLC.

"It took longer than we expected to get the permits, but we will be operating again. We kept our commitment. We should be in full operation in the first quarter of 2017," Irwin said.

He praised the teamwork of federal, state and local officials in pushing the project. Irwin said the permits call for the toughest emission standards in the industry.

"The plant will do right by the environment. It will generate considerable property tax revenue, stimulate the local economy with purchases of goods and services, create 60 to 100 new jobs and help the country be energy independent," Irwin said.

Congressman Tom Reed, R-23, of Corning said the project is a \$25 million investment that will create jobs and tax revenue for local governments and represents a “job well done.”

State Assemblyman Philip Palmesano, R-132, of Corning, called it a “great day for Yates County,” recalling the “punch to the gut” the community received when the plant closed.

“The team persevered, had faith in the project and were determined not to mothball this plant. It will produce clean energy and be a win-win for everyone,” Palmesano said.

Tim Dennis, chairman of the Yates County Legislature, praised Atlas and Greenidge for being “tenacious” and not giving up on the project, despite a lot of hurdles. He also praised the Yates County Industrial Development Agency for its support of the project.

“When I ran for the legislature, my top priority was getting this plant going again,” said Jim Smith, District 2 legislator.

“It gives me a great sense of satisfaction to see this day. It was a tremendous team effort,” Smith said.

Others praising the reopening were Skip Jensen, president of the Yates County Farm Bureau, and Patrick Flynn, Torrey town supervisor.

About a dozen protesters showed up at the entrance to the plant.

EXHIBIT B

Progress and Cost of Greenidge Project Construction

	Completed by November 3, 2016		Completed by December 23, 2016		Completed by January 6, 2017	
	% Complete	Cost	% Complete	Cost	% Complete	Cost
<u>In-plant</u> construction work authorized by the September 8, 2016 NYSDEC issued Title V air permit	31%	\$838,153	91%	\$1,600,907	98%	1,724,053
<u>Greenidge Pipeline</u> construction authorized by the September 16, 2016 Certificate Order	20%	\$705,561	80%	\$3,986,826	98%	\$5,209,453
<u>Regulation station</u> construction authorized by the September 16, 2016 Certificate Order	15%	\$79,304	42%	\$271,052	98%	\$699,028
<u>Metering station</u> construction authorized by the September 16, 2016 Certificate Order	30%	\$846,222	38%	\$1,113,036	90%	\$2,946,271
<u>Interconnection</u> construction authorized by the September 16, 2016 Certificate Order	50%	\$551,646	65%	\$716,646	75%	\$839,819
<u>Total</u>		\$3,020,886		\$7,688,467		\$11,418,624

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,

Petitioners,

For a Judgment Pursuant to Article 78 of the
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-against-

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

Respondents.

**AFFIRMATION OF YVONNE
E. HENNESSEY IN SUPPORT
OF THE GREENIDGE
RESPONDENTS' MOTION TO
DISMISS**

Index No. 2016-0165
Hon. William F. Kocher

YATES COUNTY CLERK
2017 JAN -6 P 1:32

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, Greenidge Pipeline, LLC, Greenidge Pipeline Properties Corporation and Lockwood Hills, LLC (collectively, the “Greenidge Respondents”).

2. I am fully familiar with the facts and circumstances of this proceeding.

3. I make this Affirmation in support of the Greenidge Respondents’ Motion to Dismiss the Amended Verified Petition, dated December 6, 2016.

4. This Affirmation is based upon my review of the Amended Verified Petition and relevant documents, including the New York State Department of Environmental Conservation’s (“NYSDEC”) and New York State Public Service Commission’s (“NYSPSC”) proceedings and approvals, respectively for the resumption of operations at the Greenidge Generating Station located in Torrey, New York (“Greenidge Station”) on natural gas (with up to 19 percent biomass co-firing) as well as the associated in-plant construction and the construction and operation of a 4.6 mile natural gas pipeline to the Greenidge Station (the “Greenidge Pipeline”) (collectively, the “Greenidge Project”).

NYSDEC’s Review and Approval of the Greenidge Station

5. In furtherance of the Greenidge Project, in 2014, Respondent Greenidge Generation, LLC submitted applications to NYSDEC for Title IV and V air permits.

6. In 2014, Respondent Greenidge Generation, LLC also submitted applications for renewal of the Greenidge Station’s existing State Pollution Discharge Elimination System (“SPDES”) permit and an initial water withdrawal permit for the Greenidge Station.

7. 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.

8. NYSDEC published notice its NOCA and Negative Declaration in the Environmental Notice Bulletin (“ENB”) on August 12, 2015.

9. 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.

10. 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.

11. On September 11, 2015, Sierra Club submitted a comment letter to the NYSDEC only with respect to the draft Title V air permit; it did not submit any SEQRA-related comments.

12. Petitioner Coalition to Protect New York (“CPNY”) did not submit any comments on the draft permits or the Negative Declaration noticed by NYSDEC in the August 12, 2015 ENB notice.

13. 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.

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

15. 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.

16. 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 resumption of operations at the Greenidge Station would not have a significant adverse impact on the environment. A true and accurate copy of the June 28, 2016 Negative Declaration is attached hereto as **Exhibit A**.

17. 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 B**.

18. 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 B.*

19. On August 5, 2016, Petitioner CPFL filed comments with NYSDEC on the Amended Negative Declaration and draft Title V and Title IV air permits.

20. Petitioners Sierra Club and CPNY did not file any comments with NYSDEC.

21. 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.

NYSPSC Review and Approval of the Greenidge Pipeline

22. On October 2, 2015, Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation (collectively, the “Pipeline Entities”) submitted an application to the NYSPSC seeking issuance of a Certificate of Environmental Compatibility and Public Need under Article VII of the Public Service Law (the “Article VII Certificate”) 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”).

23. On October 14, 2015, NYSPSC issued a Notice of Informational Forum and Public Statement Hearing and a Notice of Procedural Conference for, among other things, the Article VII Proceeding.

24. The public statement hearing was held in Dresden, New York, before NYSPSC Administrative Law Judge (“ALJ”) Michelle Phillips on November 4, 2015. Petitioner CPFL participated in this public statement hearing.

25. On November 9, 2015, Petitioner CPFL submitted comments to NYSPSC in opposition to, among other things, the Pipeline Entities’ request for the Article VII Certificate.

26. On November 10, 2015, Petitioner CPFL participated in the procedural conference held by ALJ Phillips at the NYSPSC’s offices in Albany, New York.

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

28. 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.

29. 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. *See NYSPSC, Order Granting Certificate of Environmental Compatibility and Public Need (“Certificate Order”)*, a true and accurate copy of which is attached hereto as **Exhibit C**, at 2 n.4.

30. On September 16, 2016, NYSPSC issued, among other things, the Article VII Certificate for the Greenidge Project. *See Exhibit C*.

31. In the Certificate Order, the NYSPSC found that the Greenidge Pipeline was needed and that the adverse environmental impacts of that facility 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. *See Exhibit C*, at 30.

32. The Certificate Order further provided that construction of the pipeline could not commence until the NYSPSC issued a Notice to Proceed with Construction for the Greenidge Pipeline and related facilities. *See Exhibit C*, at 60.

33. On October 17, 2016, the NYSPSC issued the requisite Notice to Proceed with Construction. A true and accurate copy of the NYSPSC's Notice to Proceed is attached hereto as **Exhibit D**.

34. 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. *See Exhibit C*, at 5 ("It is the Pipeline Companies intent to commence construction soon after the Certificate is granted and all the appropriate permits and permission have been obtained.").

35. None of the Petitioners sought rehearing of the Certificate Order.

36. Petitioners also have not brought any judicial challenge to the Certificate Order before the Appellate Division, as required by section 128 of the Public Service Law, and any such challenge would now be untimely and would fail for lack of standing.

37. Rather, on October 17, 2016, 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 regulation under Part IV of the Public Service Law to Greenidge Generation and the Pipeline Entities.

38. On December 15, 2016, NYSPSC denied CPFL's rehearing request in Cases 15-E-0516 and 15-G-0571, finding that CPFL failed to state an error of law or fact or new circumstances that warranted a different determination than contained in the September 16, 2016 Order.

Petitioners' Challenge to the Greenidge Project

39. By Verified Petition, Petitioners CPFL and CPNY filed the instant challenge on October 28, 2016, exactly four (4) months after NYSDEC issued the Amended Negative Declaration at the heart of Petitioners' claims.

40. This Court signed an Order to Show Cause on October 31, 2016.

41. Petitioners then waited until November 3, 2016 to serve the Greenidge Respondents.

42. On December 6, 2016, Petitioners filed and served an Amended Verified Petition that added Sierra Club as a Petitioner, followed by a Notice of Petition which was served and filed on December 13, 2016.

43. From the date of the NYSDEC's issuance of the Title IV and V air permits, which authorized the necessary in-plant construction work for the Greenidge Station, a full eight weeks elapsed by the time the Greenidge Respondents were originally served in this action on November 3, 2016, and over twelve weeks had elapsed by the time Sierra Club was added as a party on December 6, 2016.

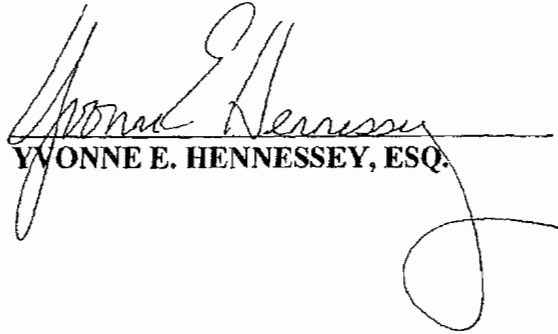
44. From the date of NYSPSC's issuance of the Certificate Order which authorized construction of the Greenidge Pipeline, seven weeks had elapsed by the time the Greenidge Respondents were served in this action.

45. Although Petitioners brought this action by Order to Show Cause, they did not seek a temporary restraining order or otherwise seek to maintain the status quo during the pendency of this action until December 23, 2016 – over 25 weeks after NYSDEC issued the Amended Negative Declaration at issue in the Amended Verified Petition and several months after NYSDEC and NYSPSC's construction approvals were issued.

46. Apart from this action, I am not aware of any other challenge to the Greenidge Project or any other request for injunctive relief, by Petitioners or any other party, seeking to halt construction of either the Greenidge Station or the Greenidge Pipeline.

47. A true and accurate copy of the *Wind Power Ethics Group v. Planning Bd. of Town of Cape Vincent*, No. 2010-2882 (Sup. Ct., Jefferson Co., Jan. 26, 2011) cited in Point II of the accompanying Memorandum of Law is attached here as **Exhibit E**.

Dated: January 5, 2017
Albany, New York


YVONNE E. HENNESSEY, ESQ.

BARCLAY DAMON, LLP

EXHIBIT A

State Environmental Quality Review

SEQR Full Environmental Assessment Form Part 3 - Evaluation of the Magnitude and Importance of Project Impacts (Continuation) For Amended Negative Declaration

Project Numbers: 8-5736-00004/00001, /00016, and /00017

Date: June 28, 2016

Name of Action: Greenidge Station Reactivation and SPDES Renewal/Modification

SEQR Status: Type 1

Preparer's Name: Scott E. Sheeley, Regional Permit Administrator
NYSDEC Division of Environmental Permits
6274 East Avon-Lima Road, Avon NY 14414
(585) 226-5382

Description of Action:

The sponsor, Greenidge Generation, LLC, proposes to resume operations at the Greenidge Generating Station ("Greenidge Station"). Greenidge Station, a previously coal-fired plant, was in operation as early as the 1930's, with Unit 4 installed in 1953. In 2006 significant improvements to emission control equipment were installed on Unit 4 and in 2011 the plant was placed in protective lay-up status and has not operated since March, 2011. The proposal would operate Unit 4 with a maximum generating capacity of 107 MW. The unit would not burn coal, but instead be converted to fire primarily natural gas, with the ability to co-fire up to 19% biomass, both of which were fuels previously authorized in the facility Title V permit. (A new natural gas pipeline would be constructed to service the site, which would be reviewed under the Article VII process governed by the New York State Department of Public Service separate from this SEQR action.) The Department also proposes to renew and modify the facility's existing SPDES permit to incorporate requirements to install cylindrical wedge wire intake screens on the plant's cooling water intakes and install variable speed cooling water pumps on Unit 4 as "Best Technology Available" to address requirements under the federal Clean Water Act to reduce fish mortality (i.e., impingement and entrainment).

Reasons Supporting the Amended SEQR Determination:

1. **Impacts on Surface Water:** The project will ultimately involve a modification of the cooling water intake structure (CWIS) at the facility. The modification will include the installation of "Best Technology Available" (BTA) measures in accordance with Commissioner's Policy CP-52 to reduce fish entrainment and impingement. This will involve construction/attachment of intake screens at the end of the intake below the mean high water line of Seneca Lake. As such, no significant amount of modification or alteration of the bed of Seneca Lake is expected even though there may be short-term, temporary impacts to water quality directly around the work site during construction. As a result, no impacts to surface waters are anticipated as a result of intake modification.

The Department is proposing to renew and modify the SPDES permit to ensure the facility complies with all applicable water quality standards and addresses the "Best Technology Available" (BTA) requirements of the Clean Water Act and DEC Commissioner's Policy on BTA for Cooling Water Intake Structures (CP-52). A review was completed and the Department is proposing modifications to the SPDES permit based on that evaluation. The primary changes are the inclusion of a dilution study to determine appropriate dilution factors in Seneca Lake, and revised conditions requiring implementation of the Department's Best Technology Available

(BTA) determination. The dilution factors obtained by the dilution study will be used to refine the current water quality based effluent limits in the permit. With regard to the modifications related to BTA, the Department has determined that BTA for this facility will include the installation of wedge-wire intake screens on the CWIS with a slot size of $0.5 \leq 1.0$ mm, and the installation of variable speed cooling water circulation pumps. The Department has determined that this BTA determination is consistent with applicable regulations and CP-52. The facility will be required to implement the BTA technologies and achieve an 85% reduction in the entrainment of all fish life stages and a 95% reduction in impingement mortality of all fish life stages. The proposed modified permit for Greenidge Station contains effluent limits and conditions which ensure that the existing beneficial uses of Seneca Lake will be maintained. As a result there are no significant adverse impacts associated with the Department's renewal and modification of the facility SPDES permit.

The Department is also considering an application for an initial permit for the withdrawal of water pursuant to 6 NYCRR Part 601 (Water Withdrawal Permitting). Part 601 requires the Department to issue Initial Permits to authorize the continued operation and withdrawal of already-existing water withdrawal facilities for the maximum capacity reported to NYSDEC as of February 15, 2012. The Department intends on issuing an initial permit to Greenidge Generation LLC for Greenidge Station, an already-existing water withdrawal facility, for the withdrawal of approximately 160 million gallons per day (MGD), the amount reported to the Department. The initial water withdrawal permit will also include a suite of conservation measures as required by Part 601 to minimize impacts from the water withdrawal. However, given that reactivation will be limited to Unit 4, the anticipated amount of actual withdrawal will be less than the permitted amount.

Although the Department has classified the issuance of an initial permit under 6 NYCRR Part 601 as a Type II action under SEQR (6 NYCRR 617.5[c][19]) and, therefore not subject to SEQR, substantively, in this instance – 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.

2. Impacts on Air: The Department is proposing to issue Title V and Title IV permits for the Greenidge Station Facility. Greenidge Station was previously owned by AES Greenidge LLC, and operated under Title IV and Title V Facility Permits from 2001 until operations ceased in 2011. AES Greenidge LLC then relinquished the Title IV and Title V Facility Permits in November 2012.

Greenidge Station is a Major Stationary Source, and is required to obtain a Title V Permit as specified in 6 NYCRR Part 201-6, due to potential emissions of oxides of nitrogen (NO_x) and carbon monoxide (CO) in excess of 100 tons per year (each); and hazardous air pollutants (HAP) in excess of 25 tons per year. With operations of Unit 4 being resumed without coal as a fuel source, the Greenidge Generating Station will emit contaminants from boiler powered electric generation and ash handling operations. The Department has subjected the proposed operation of Greenidge Unit 4 to 6 NYCRR Part 231 Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NNSR) requirements applicable to major source of air emissions.

The Department has determined that NO_x emissions from the Greenidge Station will be above the major source threshold and, therefore, applied the nonattainment New Source Review (NNSR) lowest achievable emission rate (LAER) requirement. PSD best available control technology (BACT) requirements were applied to emissions of CO, particulate matter (PM, PM₁₀, PM_{2.5}), and carbon dioxide (CO₂). To meet LAER, the boiler's NO_x emissions will be controlled by optimizing the

following: low NOx burners/flue gas recirculation/tangential low NOx firing; separated overfire air; closed couple overfire air; selective non-catalytic reduction; and selective catalytic reduction. BACT for particulate emissions will be a fabric filter baghouse with leak detection and the use of low emitting fuel (natural gas). BACT for CO emissions is the use of separated overfire air and closed couple overfire air. BACT for CO2 is the use of low carbon fuels (natural gas and biomass); fuel efficient generation and use of energy to operate the facility; natural gas line leak detection and repair; and the completion of an energy efficiency assessment of the facility. To ensure compliance with BACT, LAER and other emission requirements, continuous emission monitoring systems will be used to measure NOx, CO, sulfur oxides (SOx), ammonia (NH3), and GHGs requirements. In addition, a Continuous Opacity Monitoring System (COMS) will be used to monitor compliance with opacity requirements, and annual stack testing will be required for demonstrating compliance with the emission limits for PM, PM10, and PM2.5. Greenidge Generation LLC has also surrendered 177 tons of NOx emission reduction credits (ERC) to offset the 153.8 tons of potential NOx emissions associated with this action.

During its prior operation on coal with many of these existing controls in place, the operation of Greenidge Station did not result in any significant adverse impacts to air quality. These controls will remain in place and, in addition, as detailed above, the boiler and emission controls will be optimized, which will result in even lower air emissions. Greenidge station will also not use coal as a fuel source. The boiler will be converted to operate primarily on natural gas, with the ability to co-fire up to 19% biomass. No other fuels will be authorized. This will reduce air emissions even further, and the operations will meet all applicable air emission standards.

As a result of the above, the Department has determined that resuming operation of this existing facility, and its conversion to natural gas as its primary fuel will not result in any significant adverse impacts to air quality.

3. Impacts on Plants and Animals: The project will have no significant adverse impacts on plants or animals. See discussion concerning fish impingement and entrainment under "surface waters" above. In addition, the facility is existing and will not involve the removal or destruction of vegetation.
4. Impacts on Historic and Archaeological Resources: The project site is located just east of the Crooked Lake Outlet Historic District (95 NR 00889), which is listed on the National Registers of Historic Places. The project site is also located within an area designated as archaeologically sensitive by the New York State Office of Parks, Recreation, and Historic Preservation. However, the facilities that will be re-activated already exist and no new construction is proposed. To the extent that gas will be provided to the site at some future date by a new gas pipeline, the construction of the gas pipeline will be regulated under Article VII of the Public Service Law by the New York State Public Service Commission and potential impacts to cultural resources, if any, will be addressed at that time. As a result there will be no significant adverse impacts to historic or archaeological resources associated with the plant re-activation.
5. Impact on Energy: The re-activation of Unit 4 at Greenidge Station will use biomass and natural gas to generate electricity. However, the operation of the plant itself will not create a new demand for energy. Rather, it will serve as another facility to help meet the current electricity demands of the region. As a result, the plant will have no significant adverse impacts in increasing the use of energy.

6. **Solid Waste Management:** No impacts related to solid waste management are expected to result from the re-activation of Greenidge 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. If Unit 4 were reactivated with coal, approximately 78,000 tons of fly ash and 158 tons of other waste would be generated per year. However, this will be greatly reduced since coal will no longer be used as a fuel source. As a result, there are no significant adverse impacts related to solid waste management associated with this project.

EXHIBIT B

Yates County

Applicant:

Greenidge Generation LLC
590 Plant Rd
PO Box 187
Dresden, NY 14441 -0187

Facility:

Greenidge Station
590 Plant Rd
Dresden, NY 14441

Application ID:

8-5736-00004/00017

Permit(s) Applied for:

Article 19 Air Title V Facility
Article 19 Title IV (Phase II Acid Rain)

Project is Located:

Torrey, Yates County

Project Description:

Greenidge Generation LLC has submitted a revised application for a Title V Air Permit in accordance with the requirements of Title 6 of the New York compilation of Codes, Rules, and Regulations, Part 201-6 (6 NYCRR Part 201-6). The application is for conversion of the Greenidge Electricity Generating Station, located in the Town of Torrey, Yates County to operate primarily on natural gas with up to 19% biomass co-firing. Greenidge Station is comprised of Unit 4, which includes a Combustion Engineering, tangentially-fired dry bottom boiler (Boiler No. 6) with a maximum heat input rating of 1,117 MMBtu/hr, and a steam generating turbine with a maximum rated output of 107 Megawatts (MW) of electricity. The facility is equipped with a suite of air pollution control (both pre-combustion and post-combustion) systems to control pollutant nitrogen oxides, carbon monoxide, particulate matter (PM, PM₁₀ and PM_{2.5}), and sulfur dioxide emissions from facility operations.

Greenhouse gases will be reduced substantially primarily by the use of cleaner fuels. Under the proposal, Unit 4 will not burn coal or fuel oil any longer.

The Greenidge Generating Station is a Major Stationary Source, and is required to obtain a Title V Permit as specified in 6 NYCRR Part 201-6, due to potential emissions of oxides of nitrogen (NO_x) and carbon monoxide (CO), in excess of 100 tons per year each; and hazardous air pollutants (HAP) in excess of 25 tons per year. The Department has applied 6 NYCRR Part 231 Prevention of Significant Deterioration requirements to emissions of CO, PM, PM_{10} , and $\text{PM}_{2.5}$ and GHGs, and nonattainment New Source Review to emissions of NO_x . Capping provisions have been included for emissions of sulfur dioxide (SO_2) and volatile organic compounds (VOCs) of 39 tons per year and 49 tons per year, respectively. A Continuous Emission Monitoring System (CEMS) will be used to monitor compliance with NO_x , CO, SO_2 , ammonia (NH_3), and GHGs requirements. A Continuous Opacity Monitoring System (COMS) will be used to monitor compliance with opacity requirements, and annual stack testing will be required for demonstrating compliance with the emission limits for PM, PM_{10} , and $\text{PM}_{2.5}$. Greenidge Generation has surrendered 177 tons of NO_x emission reduction credits (ERC) to offset the 153.8 tons of potential NO_x emissions associated with this permit action. The conversion and operation of the Greenidge Generating Station is not subject to New Source Performance Standards.

In this revised application, Greenidge Generation LLC has proposed to re-start Unit 4 electric generating operations without the use of coal or fuel oil. Electric generation is powered by a boiler, with a maximum heat input of 1,117 million BTU per hour. The boiler will burn natural gas, with the ability to co-fire up to 19% biomass, which may include untreated wood and resinated wood. With conversion of all generating operations to use natural gas as the primary fuel with up to 19% biomass co-firing, and operations as proposed, the Greenidge Generating Station will primarily emit contaminants from boiler powered electric generation and ash handling operations.

Boiler NO_x emissions will be controlled by over fire air, low NO_x Burners/flue gas recirculation/tangential low NO_x firing, optimized selective non-catalytic reduction, and optimized selective catalytic reduction. Boiler particulate emissions will be controlled by a fabric filter baghouse. Ash handling operations convey boiler fly ash associated with the use of biomass pneumatically to a fly ash storage silo with a baghouse to control particulate emissions. The ash is then processed for proper disposal. Minor amounts of particulates will

also be emitted from a pollution control system supporting the boiler NO_x emission control system. Emissions of CO are controlled by staged combustion and over fire air.

Greenidge Generation has further proposed Best Available Control Technology ("BACT") and Lowest Achievable Emission Rate ("LAER") emission limits where applicable.

Additionally, the permit establishes start-up and shutdown limits for the boiler as well as BACT and LAER limits and work practices for auxiliary emission sources at the facility for emissions of particulate matter, carbon monoxide, nitrogen oxides, and greenhouse gases, as appropriate.

Information regarding the demonstration of the Best Available Control Technology (BACT) and Lowest Achievable Emission Rate (LAER) is available at the regional office and may be viewed upon request.

In response to the revised application, the Department has prepared Draft Title IV and Title V Facility Permits for the Greenidge Generating Station, including Prevention of Significant Deterioration and nonattainment New Source Review requirements, and has made a tentative determination to issue the Drafts as the Final Permits.

In accordance with 6NYCRR Parts 621.7(b)(9) and 201-6.3(c), the Administrator of the United States Environmental Protection Agency (USEPA) has the authority to bar issuance of any Title V Facility Permit if it is determined not to be in compliance with applicable requirements of the Clean Air Act or 6NYCRR Part 201.

Persons wishing to inspect the subject Title V files, including the revised application with all relevant supporting materials, the draft permit, and all other materials available to the DEC (the "permitting authority") that are relevant to this permitting decision should contact the DEC representative listed below. The Draft Permit and Permit Review Report may be viewed and printed from the Department web site at:

<http://www.dec.ny.gov/chemical/32249.html>

DEC will evaluate the revised application and the comments received on it to determine whether to hold a public hearing. Comments and requests for a public hearing should be in writing and addressed to the Department representative listed below. A copy of the Department's permit hearing procedures is available upon request or on the Department web site at: <http://www.dec.ny.gov/permits/6234.html>.

Availability of Application Documents:

Filed application documents, and Department draft permits where applicable, are available for inspection during normal business hours at the address of the contact person. To ensure timely service at the time of inspection, it is recommended that an appointment be made with the contact person.

State Environmental Quality Review (SEQR) Determination:

Project is a Type I action and will not have a significant effect on the environment. A coordinated review with other agencies was performed and a Negative Declaration is on file.

SEQR Lead Agency: NYS Department of Environmental Conservation

State Historic Preservation Act (SHPA) Determination:

Evaluation using a Structural-Archaeological Assessment Form or other information has concluded that the proposed activity will not impact registered, eligible or inventoried archaeological sites or historic structures.

Coastal Management:

This project is not located in a Coastal Management area and is not subject to the Waterfront Revitalization and Coastal Resources Act.

DEC Commissioner Policy 29, Environmental Justice and Permitting (CP-29)

It has been determined that the proposed action is not subject to CP-29.

Opportunity for Public Comment:

Comments on this project must be submitted in writing to the Contact Person no later than *Jul 29, 2016*.

Contact:

Scott Sheeley

NYSDEC Region 8 Headquarters

6274 E Avon-Lima Rd

Avon, NY 14414

(585)226-2466

DEP.R8@dec.ny.gov

EXHIBIT C

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 15, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 15-T-0586 - Application by Greenidge Pipeline LLC;
Greenidge Pipeline Properties Corporation to
Construct a Fuel Gas Transmission Line,
Containing Approximately 24,318 Feet of 8"
Steel Pipeline, Located in the Towns of Milo
and Torrey, Yates County.

ORDER GRANTING CERTIFICATE
OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

(Issued and Effective September 16, 2016)

BY THE COMMISSION:

INTRODUCTION

In an application filed October 2, 2015 (and supplemented on October 8 and 26, 2015, and May 24, June 14 and July 15, 2016), Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation (collectively Pipeline Companies) seek a Certificate of Environmental Compatibility and Public Need (CECPN) pursuant to §121-a(3) of the Public Service Law (PSL). The CECPN would authorize the construction and operation of a fuel gas transmission line eight inches in diameter and approximately 4.6 miles in length, together with a tap,¹ metering station and regulating station. The transmission line will have

¹ The tap would be on National Fuel Gas Company's Empire Connector in the Town of Milo, Yates County, and the transmission line will provide gas to the Greenidge generating facility in the Town of Torrey, Yates County.

a maximum allowable operating pressure of 1,440 pounds per square inch gauge (PSIG) but will be operated initially at 800 PSIG. In this order, the relief requested is granted, subject to appropriate terms and conditions.²

PUBLIC NOTICE

The Secretary issued a Notice of Informational Forum and Public Statement Hearing and Notice of Procedural Conference on October 14, 2015. Pursuant to these notices, a public statement hearing was held before Administrative Law Judge (ALJ) Michelle Phillips in Dresden, New York on November 4, 2015. ALJ Phillips conducted a procedural conference on November 10, 2015 in Albany, New York. In addition, the Secretary issued a Notice Inviting Further Public Comment on November 25, 2015.³ The comments on the application are discussed below.

Having considered the positions expressed at the public statement hearing and procedural conference, as well as in written submissions, ALJ Phillips ruled (on December 28, 2015) that no party had identified any specific, disputed factual issues that would necessitate evidentiary hearings in order to develop an adequate record. She also declined to rule on the party status requests of the Committee to Preserve the Finger Lakes (CPFL) and Dr. John Dennis, concluding there was no need to determine party status, which is necessary primarily to determine rights to conduct discovery, submit testimony and conduct cross-examination.⁴

² See, Cases 15-E-0516 and 15-G-0571, in which related approvals are sought.

³ The notice stated that comments are welcome at any time during the pendency of this proceeding, but are encouraged as soon as possible to ensure Commission consideration in its decision.

⁴ Neither CPFL nor Dr. Dennis appealed ALJ Phillips' ruling, nor have they renewed their requests for party status.

THE APPLICATION

Description of the Transmission Line

The Pipeline Companies seek to construct and operate a new high pressure natural gas transmission pipeline consisting of 24,318 feet of 8-inch steel pipeline and associated facilities, including a tap, metering station and regulating station (the Pipeline). The Pipeline will connect to National Fuel Gas Company's Empire Connector, a 24-inch diameter pipeline in the Town of Milo and will include associated aboveground facilities for metering at the tap location near Himrod Road. The Facility will be designed and tested for a 1440 psig MAOP but will initially operate at Empire's line pressure of approximately 800 psig. Pipeline pressure will be reduced immediately prior to delivery to the Greenidge Power Plant at a new metering station that will be constructed on the existing Greenidge power plant property. No compression is proposed as part of this project.

The Pipeline Companies propose to lease the property for the tap and metering station, which will consist of an approximately 100-foot by 150-foot fenced area. The equipment located at the tap will include an aboveground sectionalizing valve, check valve, flow control skid, filter, liquids storage tank, and small buildings that will house gas measurement, gas monitoring and SCADA equipment. The Facility will include a pressure regulating station at the Greenidge Power Plant. The pressure regulating station will include a filter, heater with a vent stack approximately 25 feet tall, and a small building housing pressure regulators and associated equipment in addition to necessary valves, piping, etc.

Statement of Need

The Pipeline Companies state that the Pipeline is needed to deliver natural gas to the Greenidge Power Plant, a 106.4 MW generating station owned by Greenidge Generation LLC (Generation), an affiliate of the Pipeline Companies. The Greenidge Power Plant was originally constructed by New York State Electric and Gas Corporation (NYSEG) in 1953 and operated primarily on coal until it was placed into protective lay-up in 2011. As part of its efforts to resume operation of the Greenidge Power Plant, Generation has stated that it will no longer fuel the plant with coal. Accordingly, the Pipeline would be the only source capable of delivering sufficient quantities of natural gas to the Greenidge Power Plant to permit it to operate to its full capacity. Once the Pipeline is in place, Generation states that it intends to operate as a merchant generating facility in the competitive wholesale power markets administered by the New York Independent System Operator.

The draft Title IV and Title V Air Permits recently issued by the Department of Environmental Conservation (DEC) permit the Greenidge Power Plant to operate on natural gas, and biomass, but do not permit the use of coal as a fuel source. Pursuant to 16 NYCRR §85-1.3(a)(3) of the Commission's Rules, the Pipeline Companies state that: "(i) the existence of a market for the gas to be delivered by the Facility is demonstrated by the fact that Greenidge Generation LLC has entered a twenty-year Gas Transportation Agreement with Pipeline Companies; (ii) no retail customers will be served by the Facility; and (iii) no well-drilling is contemplated in

conjunction with the line; and (iv) the benefits offered by the line are described in ... the Economic Effects of the Facility..."⁵

Description of Environmental Resources

The location of the pipeline is described in Appendix A to the Application. It is the Pipeline Companies intent to commence construction soon after the Certificate is granted and all the appropriate permits and permission have been obtained. The Pipeline Companies indicate that the width of the pipeline right-of-way (ROW) in upland areas will be 65 feet (50 feet permanent ROW and 15 feet temporary ROW) except at streams, wetlands, road and railroad crossings, through croplands, and in areas of side slope and these widths are shown on the Grade Plans. The Application also states that the ROW will be 80 feet wide through active agricultural fields that may be used by the pipeline contractor. The widths of extra work space and storage areas are shown on the grade plans. The ROW clearing widths will be 65 feet along portions of the ROW. Additional clearing may be necessary in areas where additional work space is required for construction and the location of these areas are shown on the route drawings and grade plans (Exhibits A and B). The majority of the project corridor consists of open cropland.

The proposed pipeline would cross gently rolling hills, along with a few occasional steeper hills, narrow gorges, and side slopes. It would also cross a variety of land uses including active agricultural fields (14,581 feet), woodland (4,674 feet), upland brushland (2,269 feet), meadows (840 feet), industrial (742 feet), pasture (655 feet), public road ROW (233 feet), private road ROW (109 feet), wetlands (102 feet), railroad ROW (77 feet), and maintained lawn (36 feet). The

⁵ Application, pp. 21-22

Pipeline Companies indicate that this proposed project travels through the Yates County Agricultural District #1.

The Pipeline Companies indicate that the proposed 8-inch pipeline would cross three underground utilities. In addition, ten overhead utilities will be crossed by this project. In addition to these underground and overhead facility crossings, the project will cross beneath four public roads, two private roads and one railroad

The pipeline will be buried to a minimum depth of 36 inches unless solid rock is encountered in the pipeline trench. If solid rock is encountered, the Pipeline Companies state that they will bury the pipe to a minimum depth of 24 inches the depth conditions established under the Commission's regulations.⁶ The pipeline would be buried to a depth of 48 inches in active agricultural fields and to a minimum depth of 60 inches under all perennial streams, intermittent streams, intermittent drains, diversion ditches, floodplains (if applicable), road crossings, railroad crossings or where required by the landowners.

Access to the project will be from existing public and private (with owners' permission) roads and off-ROW access roads. The proposed off-ROW access roads and construction entrances are shown on the Route Drawings and Grade Plans (Exhibits A and B). Driveway (construction entrance) permit applications for State, County, and Town Roads are shown in Exhibit C.

The Pipeline Companies indicate they will adhere to the appropriate measures in the Department of Public Service Staff's Environmental Management and Construction Standards and

⁶ 16 NYCRR §255.327(a).

Practices (EM&CS&P) Exhibit E, approved by the Commission,⁷ as indicated in the checklist in Exhibit D.

Any trees over 6 inches at the small end, along the facility ROW, will be stacked in tree length along the ROW in designated storage areas only to be hauled to approved landowner storage areas as approved prior to construction and all tree tops and brush less than 6 inches in diameter, at the large end, will be chipped and spread off ROW, with landowner permission, at a maximum depth of 6 inches or hauled away to approved landowner storage areas as approved prior to construction. Tops, brush and chips will not be placed in agricultural fields, streams, wetlands or other environmentally sensitive areas within the ROW.

The Pipeline Companies indicate that no officially designated visual resources, including scenic areas, roads, vistas and overlooks will be adversely impacted by the project. They further explain that cultural resource surveys identified one sensitive prehistoric site on the Bruce Henderson Property. The survey revealed this site was small and discrete, so the pipeline was re-routed to avoid it by a buffer of more than 75 feet. The Pipeline Companies conducted a cultural resource survey of the rerouted segment and revealed no signs of artifacts or other prehistoric activity, so the route will not adversely impact cultural resources. Additionally the Pipeline Companies indicate that no cultural resource shovel test were performed on the existing Greenidge Power Plant site because records indicate that this area, that is to be disturbed for the construction of the proposed pipeline and metering station, was

⁷ Case 06-T-1383, Fortuna Energy Inc., Order Granting Certificate of Public Convenience and Necessity and Approving Environmental Management and Construction Standards and Practices (issued December 7, 2006).

located on about 14 feet of coal ash fill material from the 1930s and unanticipated finds of cultural artifacts are unlikely. However, if any potential artifacts are found at this site, work will be suspended and an archeologist will be called in to investigate before further disturbance occurs. A detailed Cultural Resources Survey Report is located in Exhibit G, Appendix I.

There are no dwellings within 150 feet of the proposed pipeline centerline. The nearest dwelling is approximately 330 feet away from the proposed pipeline centerline.

With respect to ecosystem resources, the Application identifies the following potential impacts:

- Highly Erodible Soils - The proposed pipeline will cross a total of 12 soil types outlined in Table 1 (Soil Types Crossed By the Greenidge Pipeline Project) with varying degrees of erodibility. Slopes along the pipeline route range from about 3 to 47 percent. Highly erodible soils are more subject to erosion when disturbed than other soil types. The proposed pipeline was carefully designed to minimize disturbance to the ROW with respect to slopes and ROW widths.
- Wetlands & Streams - A wetland and stream field delineation survey was conducted along the proposed pipeline ROW in July 2015 (Appendix B). The delineation survey identified four wetlands and eight stream crossings. Two of the wetlands identified along the ROW were isolated wetlands and are therefore not regulated under the Federal Clean Water Act (CWA). The other two wetlands, located along swales that drained to unnamed tributaries to Keuka Lake outlets, were therefore connected to Relatively Permanent Waters, and should be considered federally-regulated wetland. The Pipeline Companies explain that none of the wetlands crossed by the proposed Greenidge Pipeline Project corridor were associated with state-regulated freshwater wetlands DR-03, and none were more than 12.4 acres in area, so none are regulated under Environmental Conservation Law (ECL), Article 24.

All of the watercourse crossings identified during the wetland survey are unnamed tributaries to Keuka Lake Outlet and include intermittent and perennial flowing streams and range in size from less than 5 feet to more than 20 feet at bank full elevation.

The Federal Emergency Management Agency (FEMA) Flood Zone Maps (Panels 0005 and 0010, Appendix A) in Exhibit G for this proposed project indicate that a 100-year special flood hazard area associated with the Keuka Lake Outlet. Based on the appearance of the FEMA Flood Zone Maps, the proposed pipeline will cross a small area of the 100-year flood plain near the mouth of the westernmost unnamed tributary to the Keuka Lake Outlet. Since the pipeline will be located below ground surface, it will not displace any flood plain capacity, nor will it result in any measurable increase in flood elevation.

No springs, unique old-growth forests, active sugarbushes, productive timber stands, and trees listed in the registry of Big Trees in New York State are present on the Proposed Pipeline Route. There are no water wells present on the proposed pipeline corridor but there are monitor wells in close proximity to the proposed pipeline corridor that will be protected during pipeline construction and restoration.

With respect to Rare, Threatened and Endangered Species, the Pipeline Companies conducted a federal protocol acoustic survey for Northern Long-eared Bat along the proposed 4.6-mile gas pipeline. A portion of the proposed pipeline will run parallel and immediately adjacent to an existing power line ROW, whereas the balance of its length will pass through active agricultural land and forest. This acoustic survey found that the federally endangered Indiana Bat and federally threatened Northern Long-eared Bat were not likely to be present in the area where tree cutting is proposed for this project. This

study concludes that neither species is likely to be negatively impacted by this project.

By letter dated July 18, 2015, the New York Natural Heritage Program from the DEC responded to the Pipeline Companies' request concerning the presence or absence of rare or endangered species. DEC responded that it has reviewed the database with respect to the above project. DEC explained that it has no record of rare or state animals or plants or significant natural communities, at the project site or in its immediate vicinity.

In the course of investigating the property rights needed for the Greenidge pipeline route, it became clear that there is an easement across certain property owned by a not-for-profit corporation, Friends of The Outlet, Inc. (Friends). Upon examination of historical maps, deeds and other information, the Pipeline Companies confirmed that the conservation easement only pertains to a portion of the Friends property. The Pipeline Companies further confirm that the easement is only applicable to the property owned by Friends and does not intrude onto the lands of other property owners crossed by the pipeline route.

Statement Concerning Safety

On October 25, 2015, the Pipeline Companies informed the Commission that they were considering either entering into an O&M agreement with a local gas distribution company or other operator, or securing appropriate O&M training for the Pipeline Companies' internal personnel in order to operate the pipeline following construction. Subsequently, on July 15, 2016, the Pipeline Companies informed the Commission that they had entered into a contract with Integrity Engineering PLLC (Integrity) to "assist Greenidge's personnel in developing and implementing the procedures required by Part 255 of the Commission's Regulations, 16 NYCRR Part 255 (2016), for the reliable operation and

maintenance of the Greenidge Pipeline.”⁸ The agreement includes 1) the development of the Pipeline’s Operations and Maintenance Manual; 2) the creation of a Construction Manual; 3) development of a Welding Manual (including PQR(s) and WPS(s)); 4) use of an Operator Qualification Program; 5) training and certification of key personnel as required; and 6) development of an Emergency Response plan for Greenidge personnel. Additionally, Integrity will train Greenidge personnel in emergency procedures, and Integrity will make available three to four employees to assist Greenidge in the Operations & Maintenance of the Pipeline initially, including Emergency Response functions.

While the Pipeline Companies do not currently operate gas infrastructure in New York State, their parent and affiliate companies have a history of owning and operating such facilities. This, coupled with the training and services to be provided by Integrity result in a team that has significant amount of pipeline construction and operation experience. As such, they are familiar with the actions necessary to comply with all the requirements of 16 NYCRR Part 255. The addition of this pipeline to the system in the Finger Lakes region will not pose a significant challenge to the Pipeline Companies’ resources or personnel.

Description of Conformance with Applicable State and Local Laws

The Pipeline Companies state that they have reviewed the zoning codes and laws of the Towns of Milo and Torrey with regard to their potential impact on the proposed project. They claim that PSL §130 supplants “ordinances that require an application for, or provide requirements to obtain, a Building Permit, Certificate of Occupancy, Operating Permit, Certificate

⁸ Letter to Secretary on O&M Safety (dated July 15, 2016), p. 1.

of Compliance for Flood Plain Design, site plan approval, preliminary plan approval, or Zoning Permit.”

The Pipeline Companies further request waivers, pursuant to PSL §126(1)(g) of the following provisions:

Local Law and Ordinance Waiver Requests⁹			
Chapter	Description	Statutory Basis	Justification Waiver Request
<u>Town of Milo</u>			
Article II Steep Slope Construction § 66-8 Provisions for sloped land	Future construction on parcels of land within the Town of Milo having slopes in excess of 15% will include measures to mitigate potential environmental impacts resulting from said construction.	Existing Technology	Waivers requested during Project construction with regard to steep slope construction. Construction activities might result in construction in areas containing slopes in excess of 15%. Pipeline Companies will otherwise comply with the minimum safety requirements for the design, installation, and construction as referenced in the EM&CS&P. However it is not possible to ensure that construction activities can be carried out in a manner that will always comply with the parameters set forth within this particular steep slope construction law.
Chapter 112 Steep Slopes	Provision dealing with all lands and structures defined and/or designated, whether classified partially or in whole, as steep slope areas.	Existing Technology	Waivers requested during Project construction with regard to steep slope construction. Construction activities might result in construction in areas containing slopes in excess of 10%. Pipeline Companies will otherwise comply with the minimum safety requirements for the design, installation, and construction as referenced in the EM&CS&P. However it is not possible to ensure that construction activities can be carried out in a manner that will always comply with the parameters set forth within this particular steep slope construction law.
Town of Torrey			

⁹ Table 4, Application p 18.

<p>Vehicles With Diesel Engines Law</p>	<p>No persons shall cause or permit any train, bus or truck with a diesel engine to idle for more than fifteen (15) minutes during any one period of time in the Town of Torrey unless it is loading or unloading cargo or passengers.</p>	<p>Factors of cost and economics</p>	<p>Waiver requested from this vehicle/equipment idling prohibition during Project construction. The nature of excavation work is such that it will require equipment (excavators, sidebooms, dump trucks) to idle for periods of time to allow for welding, excavation, proper shoring of trench walls, staging of excavated materials for loading, etc. Repetitive stopping and starting of heavy equipment engines invite maintenance issues and will cause noticeable increases in noise and exhaust emissions (as compared to idling engines) that will frustrate the purposes of the no-idling prohibition and may unduly slow the pace of the work in a given area. The Pipeline Companies will comply with this provision during the operational period if feasible.</p>
<p>LOCAL LAW NO. 2 OF 2011 (ZONING LAW) § 98.25 Performance Standards C. Noise</p>	<p>No person shall cause, suffer, allow or permit the operation of any source of sound on a particular category of property or any public space or right-of-way in such a manner as to create a sound level that exceeds the following sound limits when measured at the adjoining property line: <ul style="list-style-type: none"> • Between 7:00 a.m. and 9:00 p.m., seventy-two (72) dB • Between 9:00 p.m. and 7:00 a.m., fifty (50) dB </p>	<p>Existing Technology</p>	<p>Waivers requested during Project construction with regard to noise level limits. Construction activities will result in transient and temporary increases in ambient noise levels along the linear Project route. For example, normal operation of heavy construction equipment will generate noise levels that will likely exceed this noise law. Although the Pipeline Companies and its contractors will employ mitigative measures such as employing proper engine exhaust mufflers, it is not possible to ensure that construction activities can be carried out in a manner that will always comply with the parameters set forth within this particular noise law.</p>

<p>LOCAL LAW NO. 2 OF 2011 (ZONING LAW)</p> <p>§ 98.25 Performance Standards</p> <p><i>D. Dust, Dirt, Particulate Matter</i></p>	<p>No use shall emit into the air dust, dirt or other particulate matter in amounts that exceed the maximum standards of the New York State Board of Health or in such quantities to become a nuisance or health hazard.</p>	<p>Existing Technology</p>	<p>Waiver requested during Project construction in regard to dust, dirt, or other disturbances released at the construction site. For example, construction equipment will create some dust and emissions and it is not possible to ensure that construction activities can be carried out in a manner that will always comply with the parameters set forth within this local ordinance especially because the permitted amounts allowed in this provision are subjective.</p>
<p>LOCAL LAW NO. 2 OF 2011 (ZONING LAW)</p> <p>§ 98.25 Performance Standards</p> <p><i>G. Odor, Toxic Gases, Fumes.</i></p>	<p>No use shall emit into the air objectionable or excessive odors, or noxious, toxic or corrosive fumes of any kind in amounts that exceed the maximum standards of the New York State Board of Health or that become a nuisance or health hazard. Normal odors from farm operations are exempt.</p>	<p>Existing Technology</p>	<p>Waiver requested during Project construction in regard to odor, toxic gases, and fumes released at the construction site. For example, construction equipment will create some fumes and emissions and it is not possible to ensure that construction activities can be carried out in a manner that will always comply with the parameters set forth within this local ordinance especially because the permitted amounts allowed in this provision are subjective.</p>
<p>LOCAL LAW NO. 2 OF 2011 (ZONING LAW)</p> <p>§ 98.25 Performance Standards</p> <p><i>Glare and Heat.</i></p>	<p>No use shall emit glare or heat from day-to-day operations that is detectable beyond the lot line.</p>	<p>Existing Technology</p>	<p>Waiver requested during Project construction in regard to glare and heat released at the construction site. For example, construction equipment will create some glare and it is not possible to ensure that construction activities can be carried out in a manner that will always comply with the parameters set forth within this local ordinance.</p>

COMMENTS AND RESPONSES

Comments in the case were received from DEC and Agriculture and Markets (Ag&Mkts), as well as CPFL. In addition, more than 75 public comments were received and several dozen comments were made at a Public Statement Hearing in Dresden, New York on November 4, 2015.

Department of Environmental Conservation

In its comments, DEC raises mitigation issues related to solid waste monitoring, wildlife and invasive species impacts and stormwater pollution prevention.

Regarding solid waste issues, DEC states that while the pipeline route avoids "monitoring wells 8001 and 8002 in the vicinity of the Greenidge Gravel Disposal Area... [the wells] should be flagged and protected against potential damages."¹⁰ Similarly, DEC notes that the Application indicates that the pipeline will be at a minimum depth of 36 inches in the area of the Lockwood Landfill and that concerns about the local water table are therefore alleviated. DEC also requested that in order to address potential erosion, the "O&M manual should include inspection of the pipeline stream crossings for erosion of the backfilled material around the pipeline and repair."¹¹

With respect to wildlife and invasive species impacts, DEC noted that "an affirmation by the U.S. Fish and Wildlife Service is needed, and is anticipated, with respect to the Threatened & Endangered Species report's no-impact conclusion."¹² DEC also indicated that the Pipeline Companies should include in their EM&CS&P, an invasive species monitoring plan with appropriate management/eradication measures to seek to ensure

¹⁰ DEC Comments, p.2

¹¹ Id.

¹² Id.

that the pipeline corridor remains free of "noxious invasive plants (swallowwort, Japanese knotweed, phragmites)..."¹³ DEC Staff has identified the need for a three-year post-construction monitoring period including specific thresholds for management/eradication action. Invasive Species and their monitoring and management, DEC maintains, warrant a separate section or Appendix in the EM&CS&P. The pipeline corridor is free of some of the most noxious invasive plants (swallowwort, Japanese Knotweed and phragmites). DEC Staff contends that the EM&CS&P should therefore ensure this condition remains after the pipeline is constructed, and three years is claimed to be a reasonable timeframe for gaining this objective.

The majority of DEC's comments focus on issues related to stormwater pollution prevention. DEC acknowledged that its Staff has received the Pipeline Companies' Stormwater Pollution Prevention Plan (SWPPP), but noted several areas where the SWPPP lacked sufficient information or detail, which, DEC stated, must be corrected prior to the filing of a Notice of Intention to obtain coverage under the Construction Stormwater General Permit. These areas included:

- Ensuring that contractors and subcontractors who are responsible for implementation of the SWPPP are required to sign a certification statement with the language included in Part III.A.6. prior to the commencement of construction activity.
- Identification of equipment storage and staging areas, and temporary access roads and areas to ensure erosion control, as well as standard erosion control plans, "including, but not limited to, silt fence, temporary and permanent seeding, mulching, trench plugs, water bars, slope breakers, check dams, storm drain inlet protections, sediment traps, stabilized construction entrances, stream crossing techniques, diversions, etc..."

¹³ Id.

- Descriptions of the erosion control measures to be used at numerous specific locations on the pipeline route.
- Request for a 5-Acre Waiver if five or more acres of soil are to be disturbed at any one time.
- Documentation that this project meets the eligibility requirements of Part I.F.8. of the Construction Stormwater General Permit that addresses historic properties and archaeologically sensitive areas.
- Provision of post-construction stormwater management practices for permanent access roads if they are to be installed as part of this project, as this would be an increase in impervious area.
- An amended definition of Qualified Inspector to reflect current Construction Stormwater Permit.

DEC advises that on February 26, 2016,¹⁴ Integrity Engineering (the Pipeline Companies' Consultant) addressed the majority of DEC's inquiries concerning the SWPPP application by letter.

DEC supplemented its comments to the Commission on May 5, 2016. In this supplement, DEC explains that the proposed pipeline route crosses several Class C non-navigable streams which are tributaries to Keuka Lake outlets. DEC Staff indicates that it recently sampled the streams that will be traversed by the project and determined that the streams support warm water fisheries and that no trout were found during the sampling events. As a result of these findings, DEC Staff will not propose timing restrictions for in-stream work. DEC explains that no streams subject to protection under the Protection of Waters Program (ECL Article 15) will be impacted by the project. DEC Staff requests that the Commission provide that other applicable stream protection and water quality regulations be complied with in designing and proposing stream crossings.

¹⁴ The letter from Integrity Engineering to DEC was not submitted to the Commission to become part of the record.

The proposed pipeline does not cross any State Regulated Freshwater Wetlands or Regulated Adjacent Areas subject to protection under the Freshwater Wetlands Act (ECL Article 24). DEC notes that construction activities will impact federally regulated wetlands and requests that the Commission require the Applicants to employ wetland construction techniques such as topsoil segregation, equipment mats to minimize compaction, re-establishment of pre-existing contours, and revegetation of disturbed wetland areas to minimize wetland disturbance and prevent contravention of water quality standards.

DEC notes that steep sided streams/drainage channels will be crossed in the eastern portion of the project and may require permanent stabilization measures, such as in-stream grade control structures and erosion control blankets, to protect the pipeline and prevent erosion and sedimentation. DEC Staff requests that the Commission require that construction plans include sufficient details on effective permanent stabilization measures proposed within these stream channels. DEC explains that the proposed project will disturb more than one acre of land and therefore the Applicants must comply with the State Pollutant Discharge Elimination System (SPEDES) Phase II regulations for Stormwater Discharges from Construction Activities (GP-0-15-002).

Lastly, DEC mentioned that the edge of the Lockwood Ash Disposal Landfill is approximately 50 feet from the proposed pipeline. DEC Staff requests that the Commission require that all monitoring wells within the construction ROW be surveyed prior to construction and that an assessment of their current condition be made and provided to the DEC Region 8 Division of Materials Management. In addition, DEC Staff requests that the Commission require that the monitoring wells be flagged so that

they are easily identified during construction activities and, if the monitoring wells are damaged during construction, that they be repaired or replaced and that notification be made to the DEC Region 8 Division of Materials Management within 48 hours of the occurrence of the damage.

Department of Agriculture & Markets

Ag&Mkts filed comments detailing the impacts of the pipeline on agricultural land. According to these comments, the proposed pipeline ROW would cross approximately 14,581 linear feet of active agricultural land (largely comprised of forage crops) and approximately 655 linear feet of permanent pasture land where topsoil will be stripped and segregated from subsoil during construction activity, but will not be decompacted or "ripped" during restoration. Ag&Mkts requests that the Pipeline Companies have an Agricultural Inspector on site at all times during construction and restoration activities to closely observe soil conditions and make the appropriate decisions to employ alternative construction methods if soil conditions and weather forecasts warrant, as well as to determine burial depth for the pipeline in agricultural areas.

Topsoil stripping in agricultural land will be conducted with three options filed with the Commission under Exhibit I as a supplement to this project on October 26, 2015. A brief description of the options is given below.

OPTION A

In the event soil conditions are frozen to a depth of at least four inches, or conditions otherwise allow, the pipeline will be installed by a conventional trench method. If the trench is constructed using an excavator, the topsoil will be segregated utilizing the "double ditch" excavation method, thereby separating the topsoil and subsoil. Once that portion of the pipeline project is completed and no further equipment traffic will be traversing that portion of the proposed pipeline, the disturbed area will be

conditioned by deep subsoil shattering utilizing a subsoil tool having angled legs. Stone larger than three inches in any dimension will be removed from the field and disposed of in an approved location.

Laydown areas, extra workspace at road crossings, or other work areas where additional excavation or grading is required in defined agricultural areas will be stripped of topsoil and otherwise treated as per

Ag&Mkts "pipeline-Right-of-way Construction Projects-Agricultural Through the Stages of Project Planning, Construction/Restoration, and Follow-Up Monitoring" (REV 2-11- Ref Exhibit N) and the DPS EM&CS&Ps.

In the event that Option A is not feasible due to a lack of frozen topsoil, moisture content, or other circumstances precluding the above technique, then the Applicants shall consult with the Landowner and a representative of Ag&Mkts ("Designated Representative"), and the Applicants, Landowner, and the Designated Representative shall promptly agree to employ one of the following optional methods.

OPTION B

A limited width of the workspace will be stripped and otherwise the pipeline will be installed using the conventional trench method set forth in Option A. The maximum width of the stripped area shall be 25 feet (See Exhibit I).

OPTION C

The pipeline will be constructed utilizing a conventional "strip and rip" method in accordance with the appropriate sections of Ag&Mkts' "Pipeline Right-of-way Construction Projects-Agricultural Through the Stages of Project Planning, Construction/Restoration, and Follow-Up Monitoring" (REV 2-11- Ref Exhibit N) and the DPS EM&CS&Ps.

It is the intent of the Applicants to construct the pipeline during frozen ground conditions (dependent upon completion of certification of this case) whereby the Applicants propose to construct the proposed pipeline using a "double-ditch" or what is commonly referred to as "ditch plus spoil side" excavation method in order to carefully segregate topsoil from subsoil or ditch spoil (Option B). If, however, frozen ground conditions do not prevail when work is being done in

active agricultural lands (including pasture land), the Applicants have two options (Options A and C) to use based on site specific soil conditions. This includes limiting the width of the workspace and area to be stripped and/or otherwise using the conventional full-width "strip and rip" method in accordance with the Ag&Mkts Guidelines for Pipeline Right-of-Way Construction Projects.¹⁵

Ag&Mkts recommend that the topsoil layer on the designated agricultural portions of the proposed pipeline route should be stripped to a depth of ten inches (topsoil thickness to be determined in the field). While it is the Applicants intention to construct the project during the winter months on frozen ground conditions, the Applicants will have the option to utilize heavy timber mats and use the topsoil stripping method consistent with the Ag&Mkts Department Guidelines or wait until ground condition re-freeze. The topsoil stripping method determination will be made by the Agricultural Inspector in consultation with Ag&Mkts and Department Staff.

In addition, Ag&Mkts indicates that the Pipeline crosses a grassed swale approximately 800 feet northwest of the gravel pit located on the Henderson property (approximate station 92 + 50) and Ag&Mkts recommends that bentonite trench breakers be installed in the proposed pipe trench on either side of the grassed waterway. Ag&Mkts officials explain that, based upon review of aerial photography for the project, it appears that subsurface drain tile may be present on active farmland on this project and that any drain tiles damaged or severed during

¹⁵ Pipeline Right-of-Way Construction Projects: Agricultural Mitigation Through The Stages of Project Planning, Construction/ Restoration And Follow-Up Monitoring, New York State Department of Agriculture & Markets, Division of Agricultural Protection & Development Services. Albany, New York. Revised 2-11.

pipeline construction must be repaired in accordance with the sample design drawings contained in the Ag&Mkts Pipeline Construction Guidelines ("Repair of Severed Drain Tiles") and the EM&CS&Ps.

Ag&Mkts provided comments outlining requested restoration procedures for this area, which include: 1) initial decompaction (minimum 18 inches with subsoiler); 2) rock picking greater than four inches in diameter prior to topsoil replacement; 3) final deep shattering as necessary; 4) seed and soil amendments (lime and fertilizer); and 5) two-year monitoring procedures.

Ag&Mkts also stated that following restoration of the pipeline ROW, the Pipeline Companies should be required to provide a monitoring and remediation period of no less than two years, which "should include, but not be limited to, compaction testing where deemed necessary by Department Staff, documentation of the presence and volume of waste rock, seeps, waterboils, trench subsidence, drainage features and crop appearance during the growing season."¹⁶

Comments Expressed at Public Statement Hearing

Several dozen commenters spoke at the Public Statement Hearing. Numerous local residents from Dresden and immediately surrounding areas, including landowners along the pipeline route spoke in favor of both the pipeline and the conversion of the generating station to burn natural gas, stating that the project as a whole would be good for the local economy.

Other commenters expressed their desire for the State to move away from all fossil fuels in favor of renewable energy sources, consistent with the State Energy Plan and were

¹⁶ Ag&Mkts Comments, p. 3.

concerned that the pipeline route would negatively impact environmental resources in the region.

Written Public Comments

The Commission also received more than 75 written comments. These comments generally expressed the same points of view as those at the Public Statement hearing, both for and against the project. In detailed written comments, CPFL stated that there is no need to change the fuel used by the Greenidge Generating Station and that as a result, there is no corresponding need to build the pipeline, which CPFL argues, would transport fracked natural gas into New York, contrary to the State's renewable energy goals. Dr. Robert W. Howarth, Ph.D. (supported by others) contended that concepts of natural gas as a bridge fuel from coal focus solely on CO₂ emissions and ignore emissions of methane.

DISCUSSION

The statutory findings we must make before granting the CECPN in this case are referenced in PSL §121-a(7). That subdivision specifies the required determinations as those regarding facility need, probable environmental impact, hazard to property, conformance to applicable legal requirements, and public interest, convenience and necessity. These matters are addressed in turn, followed by a discussion of appropriate CECPN conditions and the water quality certification sought by the Pipeline Companies.

Need for the Transmission Line

The Pipeline Companies have demonstrated that a need for the pipeline exists. Contemporaneous with this Order in Case 15-E-0516, the Commission is granting Generation a CPCN authorizing the Greenidge Generating Facility to resume operations. Without the pipeline proposed in this case, the

generating facility would be unable to operate. Therefore, a need for the pipeline has been sufficiently shown.

Probable Environmental Impact of the Transmission Line

Impacts anticipated, outlined in detail above, from the proposed pipeline are largely temporary in nature and are associated with construction activities that will require clearing vegetation and disturbing soils. Upon completion of the construction phase of the project, the ground will be restored to pre-construction contours throughout the pipeline ROW and will be stabilized with vegetation. Construction staging areas will be reforested if appropriate. Operation of the pipeline after construction, including maintenance of the ROW, is not anticipated to have any adverse impact on the landscape or on the agricultural activity that currently predominates local land uses.

Safety Issues Associated with the Transmission Line

Before granting a CECPN authorizing the construction and operation of a gas transmission line, we are required to find "that the location of the line will not pose an undue hazard to persons or property along the area traversed by the line." The proposed maximum allowable operating pressure of the pipeline is 1,440 PSIG. Accordingly, the pipeline will be required to be designed, constructed, tested, operated and maintained in accordance with the provisions of 16 NYCRR Part 255 applicable to steel transmission lines including, but not limited to, welding, welding inspection, coating, cathodic protection, patrolling, leak survey, odorization, operator qualifications, integrity management, emergency plans and the placement of line markers. Due to the high operating pressure and location of this pipeline, we will require the Pipeline Companies to become members of Dig Safely New York, the one-call notification system in the area where the line is located and to

comply with our regulations (for operators and excavators) regarding the protection of underground facilities, contained in 16 NYCRR Part 753.

State and Local Substantive Legal Requirements

The record indicates that the Pipeline Companies will comply with substantive legal requirements applicable to the gas transmission line. Indeed, no party disputed such compliance.

The Pipeline Companies request that we refuse to apply the local laws pursuant to PSL §126(1)(g) detailed in the table above. Based on a review of those laws, it is reasonable to grant the waiver of each section cited. The Pipeline Companies have limited their waiver requests to only those sections that they cannot comply with due to existing technology limits. Each of these provisions is addressed in turn below.

Town of Milo - Article II §66-8 - Steep Slope Construction

The Pipeline Companies request that the Commission refuse to apply two provision of the laws of the Town of Milo.

The first section requires that future construction on parcels of land within the Town of Milo having slopes in excess of 15% will include measures to mitigate potential environmental impacts resulting from said construction. Commission refusal to apply is requested because existing technology would not allow for full compliance with this section. The certificate conditions and the EM&CS&P will ensure that minimal adverse environmental impacts occur in any steep slope areas and mitigation as appropriate. Therefore it is reasonable to waive this section.

Town of Milo - Chapter 112 Steep Slopes

This section is similar to the first in that construction in areas with a 10% grade or more must include mitigation measures. Again, compliance with the certificate conditions and the EM&CS&P will ensure that minimal adverse

environmental impacts occur in any steep slope areas and mitigation as appropriate. Therefore it is reasonable to waive this section.

Town of Torrey - Vehicles with Diesel Engines Law

This section requires that "[n]o persons shall cause or permit any train, bus or truck with a diesel engine to idle for more than fifteen (15) minutes during any one period of time in the Town of Torrey unless it is loading or unloading cargo or passengers."¹⁷ The Pipeline Companies explain that due to the nature of construction work and the equipment associated with such construction, it is not possible to comply with this section. Specifically, they state that "repetitive stopping and starting of heavy equipment engines invite maintenance issues and will cause noticeable increases in noise and exhaust emissions (as compared to idling engines) that will frustrate the purposes of the no-idling prohibition and may unduly slow the pace of the work in a given area." The Commission agrees with the Pipeline Companies that this section is unduly restrictive to enforce this section during construction work.

Town of Torrey - Zoning Law §98.25(C) - Performance Standards - Noise

This section that sounds limits in Torrey must be observed. These limits, when measured at the adjoining property line are:

- o Between 7:00 a.m. and 9:00 p.m., seventy-two (72) dB
- o Between 9:00 p.m. and 7:00 a.m., fifty (50) dB

The Pipeline Companies request that the Commission refuse to apply this section during construction because such activity will result in "transient and temporary increases in ambient

¹⁷ Local Law No. 1 of 2005 of the Town of Torrey, A Law To Regulate Vehicles with Diesel Engines §4(1)

noise levels along the linear Project route." The Pipeline Companies also explain that general construction activity is likely to exceed these limits, and that they will, to the extent possible take "mitigative measures such as employing proper engine exhaust mufflers..." Because even the best mitigation measures may not allow for complete compliance and the request is limited to the construction period, it is reasonable and therefore granted.

Town of Torrey - Zoning Law §98.25(D) - Performance Standards - Dust and Dirt

This section requires that no use emit into dust, dirt or other particulate matter in amounts that exceed the maximum standards of the New York State Board of Health or that become a nuisance or health hazard. The Pipeline Companies request that the Commission refuse to apply this provision during construction because "construction equipment will create some dust and emissions and it is not possible to ensure that construction activities can be carried out in a manner that will always comply with the parameters set forth within this local ordinance..." As with the previous section, because even the best mitigation measures may not allow for complete compliance, especially as the standard at issue is subjective and the request is limited to the construction period, it is reasonable and therefore granted.

Town of Torrey - Zoning Law §98.25(G) - Performance Standards - Odor and Gases

Similar to the previous section with regard to dust, this section restricts the emission of "objectionable or excessive odors, or noxious, toxic or corrosive fumes of any kind in amounts that exceed the maximum standards of the New York State Board of Health or that become a nuisance or health hazard." The Pipeline Companies request that the Commission

refuse to apply this provision during construction because "construction equipment will create some fumes and emissions and it is not possible to ensure that construction activities can be carried out in a manner that will always comply with the parameters set forth within this local ordinance..." As with the previous section, because even the best mitigation measures may not allow for complete compliance, especially as the standard at issue is subjective and the request is limited to the construction period, it is reasonable and therefore granted.

*Town of Torrey - Zoning Law §98.25 - Performance Standards
- Glare and Heat*

The final section the Pipeline Companies request waiver of requires that "use shall emit glare or heat from day-to-day operations that is detectable beyond the lot line." The Pipeline Companies argue that "construction equipment will create some glare and it is not possible to ensure that construction activities can be carried out in a manner that will always comply with the parameters set forth within this local ordinance." While the Pipeline Companies have made a sufficient case with respect to each of the previous sections, based on the record, the Commission does not have a basis to, and therefore will not waive this section. The section appears not to be applicable as it contemplates a continuing use such as a building that does not change location or position from day-to-day. In this case, however construction equipment may cause glare for a short, but entirely unpredictable period.

Local Procedural Requirements

Further, the Commission notes that PSL §130 supplants any procedural requirements for construction or operation, including ordinances that require an application for, or provide requirements to obtain, a Building Permit or Certificate of Occupancy (if applicable), Operating Permit, Certificate of

Compliance for Flood Plain Design, site plan approval, preliminary plan approval, or Zoning Permit.

Appropriate CECPN Conditions

Having decided to make the required statutory findings, we must now consider what CPCN conditions are appropriate. The Pipeline Companies proposed numerous conditions regarding safety and environmental matters which we find generally appropriate. They have agreed to apply the measures and techniques for environmental management, construction, and restoration that are indicated in the Application, the EM&CS&P, Ag&Mkts' guidance and the SWPPP.

In addition, the Commission has reviewed the conditions proposed by DEC and Ag&Mkts. First, with respect to the condition proposed by Ag&Mkts, the Commission finds them to be necessary and reasonable to ensure the protection of agricultural land uses and are therefore incorporated into the certificate conditions below.

Further, the Commission generally finds DEC's proposed conditions to be acceptable as well. We note, however that there are sufficient installation, restoration, and stabilization techniques in the DPS EM&CS&P and the DEC SWPPP to stabilize the stream channels and we do not believe any further conditions in this regard are necessary. The Pipeline Companies have agreed, through their proposed certificate conditions, to implement a three-year invasive species monitoring and remediation program following the construction of the pipeline. While the Commission has generally not imposed monitoring on projects proposed under PSL Sec. 121-a(3), we will require it here because it was proposed by the Pipeline Companies in their application. This condition is unique to the facts presented here and is not indicative of the conditions the Commission will impose on future projects proposed under this statute.

Finally, while numerous public comments suggest that the plan to refuel Greenidge Unit #4 is contrary to the State Energy Plan and renewable energy goals, nothing in the State Energy Plan prohibits the use of natural gas as a fuel in generating facilities like that owned by Generation. Moreover, enabling Unit #4 to switch to natural gas as its primary fuel will foster a cleaner environment and provide community benefits while not adversely affecting the goals of REV and the clean energy standard.

Public Interest, Convenience and Necessity

The record before the Commission in the instant case is sufficient for a decision pursuant to PSL §121-a(7) that the Facility should be granted a CPCN. The Facility is needed to allow the Greenidge Generating Station to use natural gas as its primary fuel, replacing coal fired generation. With respect to the environmental impacts associated with the Facility, they are largely temporary in nature due to construction and will be minimized by the requirements of the Applicant's adopted EM&CS&P and other certificate conditions detailed herein. Staff of the Department of Public Service, as well as DEC will be engaged with the Pipeline Companies during construction to ensure compliance. The location of the pipeline will not pose an undue hazard to persons or property along the area traversed by the pipeline and the Pipeline Companies will comply with the Commission's gas safety regulations. Only those local laws that are unreasonably restrictive in view of the factor(s) specified in PSL §126(1)(g) are waived. In sum, the Facility will serve the public interest, convenience and necessity.

Water Quality Certification

The Pipeline Companies requested that the Commission issue a water quality certification, pursuant to §401 of the CWA, for activities associated with construction of their

proposed pipeline. The CWA requires a federal permit to discharge dredged or fill material into "navigable waters" (33 U.S.C. §§ 1311(a) and 1342(a)) and requires an applicant for a federal permit to provide a certification from the State that the discharge will comply with State water quality standards. CWA §410 defines "navigable waters" as waters of the United States, including the territorial seas (33 U.S.C. §1362(7)). The Army Corps of Engineers, which issues the permits, defines these waters to include tributaries (33 CFR §328.3(a)(5)) and other types of water sources.

Given the ministerial nature of decisions to grant water quality certifications and the normal 60-day period for granting the certifications established in federal rules (33 C.F.R. §325.2(b)(1)(ii)), we delegated responsibility for granting water quality certifications in connection with Article VII Certificates to the Chief of the Environmental Certification & Compliance Section in the Office of Electric Gas and Water. We anticipate that the Chief will issue a water quality certification after the Certificate has been granted.

The Applicants propose to use an open cut dry stream crossing method for all of the crossings of the streams and drainages utilizing the "dam and pump around" method, but the Applicants are not precluded from making an HDD or conventional bore crossing if it becomes necessary. We will require a meeting to be held among Staff, the Applicants, and the pipeline contractor ten days before pipeline construction commences across any stream or drain to determine the most appropriate crossing methods and techniques to be applied, as well as restoration methods to be used in connection with the water courses (see ordering Clause 1(1) below).

CONCLUSION

In accordance with PSL §121-a(7) the Commission finds and determines that (a) the facility is needed; (b) the nature of the probable environmental impacts, as discussed above, are largely temporary in nature due to construction and will be minimized by the requirements of the Pipeline Companies' adopted EM&CS&P; (c) the location of the pipeline will not pose an undue hazard to persons or property along the area traversed by the pipeline; (d) the location of the facility as proposed, conforms to applicable state and local laws and regulations as discussed above; and (e) the facility will serve the public interest, convenience and necessity, as discussed above.

The Commission orders:

1. Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation (Applicants) are granted a Certificate of Environmental Compatibility and Public Need, pursuant to Public Service Law §121-a(7), authorizing construction of a natural gas transmission line as described in their Application (as supplemented) and in this order, subject to the following conditions:

- (a) The Applicants shall apply the measures and techniques for environmental management, construction, and restoration of this project indicated in their Application and reflected herein; in addition the Applicants shall follow construction and restoration techniques outlined in the Environmental Management and Construction Standards and Practices (EM&CS&P), the Storm Water Pollution Prevention Plan (SWPPP) and any Certificate conditions concerning vulnerable

ecosystem resources present on the project and/or referred to in this order;

- (b) The Applicants shall report to Department of Public Service Staff (DPS Staff) any proposed changes to the approved project, including but not limited to proposed changes to the approved measures and techniques to be applied to the environmental management and construction of this project; DPS Staff shall refer to the Chief of the Environmental Certification and Compliance Section (EC&C) of the Office of Electric, Gas and Water (OEGW), for approval, those proposed changes that will not cause substantial change in environmental impact or a change in the location of any portion of the certified site or right-of-way (ROW) of the project. DPS Staff will refer all other proposed changes to the Commission for approval and will afford the parties a 15 day period in which to file comments unless an emergency situation exists; Applicants shall not execute any proposed change until they receive written notification from the Chief of EC&C;
- (c) All aspects of the certified project are subject to inspection by authorized representatives of DPS Staff;
- (d) Applicants shall confine vegetation and tree removal to the minimum extent necessary for construction, operation and maintenance of the authorized Project. During clearing operations, all brush and trees shall be felled into the ROW to minimize damage to trees and structures on adjacent land. No open burning is permitted on

this project; in addition, the Applicants shall stack logs (in tree length) along the ROW edge or in approved stacking areas; coordinate with each landowner and stack logs and chip slash materials and pile in environmentally appropriate accessible locations at the edge of the ROW for later use or haul off ROW to approved disposal sites; not store merchantable timber or chips in wetlands, floodplains, floodways, visually sensitive areas, active agricultural fields, or within 25 feet of streams; chip non-merchantable woody debris resulting from clearing the ROW for the Project, unless removed from the ROW; and comply with the substantive requirements of 6 NYCRR Part 192, Forest Insect and Disease Control, and Environmental Conservation Law §9-1303 and any quarantine orders issued thereunder.

- (e) The Applicants shall notify the Secretary to the Commission (Secretary) of the proposed construction commencement date at least ten days prior to the start of construction;
- (f) At least ten days prior to the start of construction, Applicants shall designate a full-time environmental and construction monitor with stop-work authority over all aspects of this project; and a full-time construction supervisor; the monitor(s) and the supervisor shall be on site during all phases of construction and restoration. The full-time supervisor and the full-time environmental and construction monitor(s) shall be equipped with sufficient

documentation, transportation, and communication equipment to effectively monitor contractor compliance with the provisions of this order, applicable sections of the Public Service Law, the EM&CS&P, the Environmental Conservation Law and the SWPPP;

- (g) Applicants shall hire a full time Agricultural Specialist with sufficient agricultural construction and restoration experience to monitor construction and restoration of this pipeline project in active agricultural fields; the Agricultural Specialist shall be on the ROW full time when construction and restoration activity is occurring in active agricultural fields or other agricultural tasks are being implemented. If an environmental monitor has appropriate agricultural qualifications this monitor may satisfy the responsibilities of the Agricultural Specialist.
- (h) At least ten days prior to the commencement of construction, the Applicants shall submit the name and qualifications of the environmental monitor(s) and agricultural specialist to DPS Staff for review and comment;
- (i) The Applicants shall provide construction contractors with complete copies of this order and any subsequently issued orders modifying this order, the EM&CS&P, the approved SWPPP, updated construction drawings and any site-specific plans; Applicants shall notify all construction contractors that the Commission may seek to recover penalties for violations of the

Certificate, not only from Applicants, but also from their construction contractors, and that construction contractors may also be liable for other fines, penalties and environmental damage caused;

- (j) At least ten days prior to the start of construction, the Applicants shall hold a pre-construction meeting. An agenda, location, and attendee list shall be agreed upon between DPS Staff and the Applicants. Applicants shall supply draft minutes from this meeting to all attendees; the attendees may offer corrections or comments and the Applicants shall issue the finalized meeting minutes to all attendees; if, for any reason, the pipeline contractor cannot finish the construction of this project and a new pipeline contractor is needed, then another pre-construction meeting with the same format as outlined above in this Ordering Clause shall be held;
- (k) If blasting is necessary, at least ten days before any blasting operations begin on this project, a meeting shall be held with DPS Staff from EC&C and the Safety Section in OEGW, Applicants, and the Applicant's contractor to discuss the blasting procedures to be used, along with other pertinent information; the Department of Environmental Conservation (DEC) shall be a part of this meeting if blasting will occur in the immediate vicinity of, or in the stream channel(s); if any blasting is necessary in the immediate vicinity of, or in stream channels, the

blasting shall be performed when the stream channels are dry or at low flow; if any blasting is necessary, at least five days before any blasting commences, the Applicants shall notify by letter, all residents residing within 1,500 feet of the pipeline centerline in the blasting area of when blasting will commence, what residents might expect to hear, and a telephone number and name of a contact person available to answer questions. A copy of the letter shall also be filed with the Secretary;

- (l) At least ten days prior to pipeline installation across any stream or drainage on this project, Applicants shall meet with DPS Field Staff and Applicant's contractor to determine the type of crossing method, erosion control measures and materials used to install the stream crossing; field meeting notes shall be taken by Applicants of the issues discussed at this meeting and a copy of these notes shall be distributed to the attendees;
- (m) At least five days prior to the commencement of construction, Applicants shall provide the Secretary with any outstanding landowner easement agreements or other documents evidencing the right to access the properties; in addition, for any property that will be acquired pursuant to the Eminent Domain Procedure Law (if necessary), the Applicants shall file with the Secretary proof that they have filed a Notice of Acquisition pursuant to New York Eminent Domain

Procedure Law §402 at least five days before the commencement of construction on such property.

- (n) Prior to the commencement of construction, Applicants shall provide the Secretary with a copy of their Storm water Discharge Notice of Intention filed with the New York State Department of Environmental Conservation Bureau of Water Permits as well as a signed off copy of the SWPPP;
- (o) Prior to the commencement of construction, Applicants shall provide notice to the Secretary that all necessary local, state, and federal permits required in connection with this project have been obtained and shall provide a copy of all permits and a copy of all other construction-related plans and documents discussed in the body of this order; in addition, the Applicants shall comply with the terms and conditions of such permits;
- (p) Prior to the commencement of construction, Applicants shall obtain the consents and/or work permits from the NYS Department of Transportation (NYSDOT) for crossing roadways under its jurisdiction, including the lanes of State Route 14 and shall file copies of these consents with the Secretary; in addition, prior to crossing of any railroad ROW, Applicants shall obtain all necessary crossing permits and consents from the current railroad owner and file such permits and consents with the Secretary;

- (q) Prior to the commencement of construction, the Applicants shall consult with each local department or agency having jurisdiction over public non-state roads that will be crossed or paralleled by the pipeline or used for direct access to the ROW; at least ten days before Applicants begin construction within the ROW limits of such roads or take direct access from them, they shall notify each such department or agency of the approximate date work will begin, the crossing locations and/or uses, depth of facility crossings, details and specifications for repaving (if any), and related considerations;
- (r) Prior to the commencement of construction, the Applicants shall provide a map to the commission showing the approximate location of the Lockwood Landfill and the Greenidge Gravel Disposal Area;
- (s) All monitoring wells within the construction ROW and the immediate vicinity shall be surveyed prior to construction and an assessment of their current condition shall be made and provided to DEC's Region 8 Division of Materials Management. Monitoring wells shall be flagged so that they are easily identifiable during construction activities. If any monitoring well is damaged during construction, it shall be repaired or replaced in kind and notification shall be made to DEC's Region 8 Division of Materials Management within 48 hours of the occurrence of the damage occurring.

- (t) Applicants shall comply with the terms and conditions of the U.S. Army Corps of Engineers Nationwide 12 Permit;
- (u) Prior to the commencement of construction, Applicants shall supply a copy of their Winter Stabilization Plan to the Secretary;
- (v) At least 30 days before construction commences, Applicants shall file a letter of intent and report of specifications identical with Form A on Appendix 7-D of Title 16 NYCRR Appendix 7-D (Appendix 7-D) to OEGW's Safety Section Staff in Albany and Syracuse;
- (w) At least 30 days before construction commences, Applicants shall make available to DPS Staff a copy of construction standards that conform with 16 NYCRR §255.303; these standards shall encompass all phases of construction, including but not limited to: welding procedures, welding procedure qualifications, welder qualification, non-destructive testing procedures, backfilling, and coating;
- (x) The Applicants shall become members of the one-call notification system in the area where this project is located and shall comply with the requirements for excavators and operators for the protection of underground facilities set forth in 16 NYCRR Part 753; in addition Applicants shall notify Dig Safely New York (and update its system maps as necessary) of the addition of the Project prior to the Project's in-service date so that it is included in the one call notification system.

- (y) The maximum pressure of the pipeline shall not exceed 1,440 pounds per square inch gauge (psig); Applicants shall design, construct, test, operate and maintain the pipeline in accordance with provisions of 16 NYCRR Part 255 applicable to steel gas transmission lines including but not limited to welding, welding inspection, coating, cathodic protection, patrolling, leak survey, odorization, operator qualifications, integrity management, emergency plans, control room management plans, public awareness and the placement of line markers;
- (z) Applicants shall comply with their Operation and Maintenance Plan and Emergency Procedures, as required by 16 NYCRR §§255.603(b) and 255.615 for operation and maintenance of the pipeline. In addition, Applicants shall submit their program for operator qualification, as required by 16 NYCRR §255.604, to include tasks and qualifications of personnel related to operations and maintenance of the natural gas pipeline to OEGW's Safety Section for review 30 days prior to commencement of operations of the pipeline.
- (aa) At least five days prior to commencement of any welding activities, Applicants shall notify OEGW's Safety Section of the date, time, and place of any welding procedure qualification or welder qualification tests to be conducted; the Applicants shall designate a full-time welding inspector(s). The welding inspector(s) shall be present anytime there is active welding to ensure that the welding is being performed in accordance

- with the qualified procedure under 16 NYCRR §255.255;
- (bb) Applicants shall non-destructively test 100 percent of the welds for the pipeline;
 - (cc) Applicants shall make available to OEGW's Safety Section the mill certification corresponding to the steel pipeline being used;
 - (dd) Prior to the commencement of construction, should circumstances warrant, Applicants may seek to change the pipe diameters below eight inches by following the change process as outlined in Ordering Clause 1(b) above;
 - (ee) If single layered FBE pipe is not available, the Applicants may use coated steel pipe that meets or exceeds the coating requirements specified in Pipeline Safety Regulations 16 NYCRR §255.461; in addition, Applicants shall amend Appendix 7-D reflecting the coating change and shall send it to OEGW's Safety Section in both Albany and Syracuse;
 - (ff) At least ten days before hydrostatic testing commences, Applicants shall provide to DEC and DPS Staff the information concerning the hydrostatic testing of the pipelines either by letter or e-mail (DPS e-mail information - Safety@dps.ny.gov). This information shall include a profile that shows the elevation changes and the proposed test pressures at the low and high points along the pipeline. The operator shall notify the Director of OEGW;
 - (gg) As required by 16 NYCRR §255.505, at least five business days prior to starting the pre-

activation strength test; The Applicants shall notify the OEGW's Safety Section in Albany and Syracuse either by phone or via e mail at dps.sm.Safety@dps.ny.gov.

- (hh) At least seven days before hydrostatic testing commences, Applicants shall notify in writing all residents residing within 1,500 feet of the pipeline centerline where hydrostatic testing equipment is located explaining when testing will commence and what they might expect to hear, as well as a Company name and contact telephone number; a copy of the letter shall be provided to the Secretary;
- (ii) Applicants shall comply with the Integrity Management Requirements as found in 16 NYCRR Part 255.
- (jj) At least 60 days before the pipeline is placed in service, Applicants shall submit their Operation and Maintenance Plan and Emergency Procedures, as required by 16 NYCRR §§255.603(b) and 255.615 for operation and maintenance of the pipeline.
- (kk) At least ten days prior to construction in active agricultural fields, representatives from the Department of Agriculture and Markets (Ag&Mkts), DPS Staff, Applicants, and the Applicant's contractor shall conduct a field review of the project to discuss compliance with the recommendations of Ag&Mkts described above regarding construction, restoration and mitigation to be used in active agricultural fields; agricultural mitigation, restoration and

- clean-up may include, but shall not be limited to the following: double ditching, limited-width topsoil stripping, full-width topsoil stripping, removal of rock four inches or larger, importing of topsoil, surface or subsurface shattering, deep tillage, repair of broken tile or tiling systems, and installation of new intercept tiles;
- (ll) If natural stratification of soil horizons or natural soil drainage patterns are altered by construction occurring on lands within or adjoined to agricultural areas, Applicants shall rectify the effects with measures such as subsurface intercept drain lines; selection of the type of intercept drain lines to be installed to prevent surface seeps and the seasonally prolonged saturation of the backfilled trench zone and adjacent areas must be performed by a qualified Agricultural Specialist. All drain lines shall be installed according to the Natural Resource Conservation Service standards and specifications for subsurface drains and shall include the use of Schedule 40 or better outlet pipe and corrugated polyethylene drain that meet or exceed the American Association of State Highway and Transportation Officials M252 standards. Drawings of such drain locations shall be provided to DPS and Ag&Mkts Field Staff during monitoring and follow-up remediation;
- (mm) The Applicants shall temporarily stabilize all disturbed agricultural areas according to measures included in the Ag&Mkts' *Seeding*,

*Fertilizing and Lime Recommendations for Gas
Pipeline Rights-of-Way Restoration in Farmland;*

- (nn) All construction and restoration in active agricultural fields shall be done when soil moisture conditions are suitable for construction equipment, as determined by DPS Field Staff in consultation with the Staff of Ag&Mkts and the Applicants; where wet soil conditions are present, decompaction of the subsoil shall be required using a deep ripper or heavy duty chisel plow and shall be completed when soil conditions have dried sufficiently as determined by the agricultural specialist, in consultation with Ag&Mkts and DPS Field Staff;
- (oo) In defined agricultural areas, including pasture lands, the pipeline construction methodology will be completed as follows: In the event soil conditions are frozen to a depth of at least four inches, or conditions otherwise allow, the pipe will be installed by a conventional trench method. A "double ditch" excavation method will be used, thereby separating the top soil and subsoil. Upon restoration the disturbed area will be conditioned by deep subsoil shattering utilizing a subsoiler tool having angled legs. Stone larger than four inches in any dimension will be removed from the field and disposed of in an approved location. Laydown areas, extra workspace at road crossings and railroad crossings, or other work areas where additional excavation or grading is required in defined agricultural areas will be stripped of topsoil

and other wise treated as per the Ag&Mkts "Pipeline Right-Of-Way Construction Projects - Agricultural Mitigation Through the Stages of Project Planning, Construction/Restoration and Follow-Up Monitoring" Rev ("AG&Mkts Guidelines"). 2-11. In the event the "double ditch" method is not feasible due to lack of frozen soils, moisture content, soil rutting in excess of more than four inches, or other circumstances precluding the technique, Certificate Holders will have the option to utilize heavy timber swamp mats, utilize a limited-width or full-width ROW topsoil stripping method consistent with the AG&Mkts Guidelines, or wait for soil conditions to improve whereby rutting in excess of four inches will cease to occur, as determined in conjunction with Ag&Mkts and the Agricultural Specialist.

- (pp) In areas where shallow bedrock depths are observed, the top of the pipeline shall be buried below the top of the bedrock. At no time shall the depth of cover be less than 24 inches below the soil surface. It will be the responsibility of the Agricultural Specialist to determine the required pipeline burial depths based upon subsurface conditions encountered during pipeline construction. In agricultural areas, ripped or shattered rock may be used as backfill, but the rock shall not be backfilled closer than 24 inches from the exposed working construction surface of the ROW.

- (qq) Drain tiles damaged or severed during pipeline construction shall be repaired in accordance with the sample design drawings contained in the Ag&Mkts Pipeline Construction Guidelines ("Repair of Severed Drain Tile") and the EM&CS&Ps.
- (rr) Bentonite trench breakers shall be installed on either side of the grassed waterway at approximate station 92+50.
- (ss) The Applicants shall work with farm operators during the planning phases of construction to develop a plan to delay the pasturing of the ROW following construction until pasture areas are adequately re-vegetated. The Applicants shall be responsible for maintaining the temporary fencing in pasture-designated parcels on, and along the ROW, until the Agricultural Specialist determines that the vegetation on the ROW is established and able to accommodate grazing; at such time, the Applicants shall remove the temporary fencing.
- (tt) During the restoration phase of the Project when soil moisture conditions permit, the subsoil shall be decompacted to a minimum depth of 18 inches below ground surface using a subsoiler, and rocks greater than 4 inches in diameter that have been uplifted to the surface as a result of the deep shattering shall be "picked" from the ROW prior to topsoil replacement. Final deep shattering shall be performed with a subsoiler through the "restored" soil profile in order to alleviate

any additional compaction caused by heavy equipment during final topsoil replacement spreading and landfilling activities. Soil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Soil compaction results obtained within the affected area shall be compared with those obtained from the adjacent unaffected portion of the farm field or soil unit. Where representative soil density of the affected area exceeds the representative density of the unaffected areas, additional shattering of the soil profile shall be performed using the appropriate decompaction equipment.

- (uu) Application of seed and soil amendments (fertilizer and lime) shall follow the Ag&Mkts Guidelines.
- (vv) The Applicants shall provide a monitoring and remediation period of no less than two years immediately following final restoration to give adequate time for pipeline construction-related impacts to manifest. Agricultural monitoring should include, but not be limited to, compaction testing where deemed necessary by DPS Staff and documentation of the presence and volume of waste rock, seeps, waterboils, trench subsidence, drainage features and crop appearance during the growing season;
- (ww) Applicants shall use straw bales to construct erosion control devices on the project;
- (xx) Applicants shall use native upland and native wetland vegetation for both temporary

stabilization and permanent restoration of the ROW;

- (yy) At least ten days prior to the commencement of clearing operations, Applicants shall provide to the Secretary engineering drawings showing the bore locations, if applicable, and the vegetative stream buffer zones on either side of the streams proposed to be directionally bored or drilled as well as the location of the entrance and exit points of the bore;
- (zz) Stream and wetland crossings, if bored, shall be subject to the following: exit and entry points shall be distanced from the stream bank or wetland edges so as to minimize disturbance (at least 25 feet), to the extent practicable; prior to boring, all sediment stabilization measures shall be in place to prevent unnecessary erosion and associated turbidity and sedimentation; no increase in downstream turbidity or sedimentation is permitted; any water accumulated in the isolated work area shall be managed in a manner that prevents a visible contrast in the stream below the work area; prior to boring, all sediment stabilization measures shall be in place to prevent unnecessary erosion and associated turbidity and sedimentation; equipment and provisions of the Frac-Out Contingency Plan shall be readily accessible, for locations where streams are crossed using horizontal directional drilling technology;
- (aaa) The drilling fluid used for Horizontal Directional (HDD) boring activities shall be a

mixture of freshwater, bentonite and additives. Any additives used to enhance the drilling fluid or additive enhanced bentonite shall be environmentally safe and be approved by the Applicants; all drilling mud or additives must be approved by the National Sanitation Foundation and a material safety data sheet (MSDS) shall be submitted to DPS and DEC Staff 15 days prior to the commencement of HDD activities (if applicable) for the project for any such drilling fluids or additives. MSDS sheets shall remain available on site during all HDD boring activities and, if new or different fluids or additives are proposed to be used, the Applicants shall follow the change procedure set forth in condition 1(b) above;

- (bbb) During periods of work activity, flow immediately downstream of the worksite shall equal flow immediately upstream of the worksite;
- (ccc) For all crossings, the pre-disturbance flow regime shall be maintained;
- (ddd) In the event that a directional bore is used, the following shall occur:
 - Applicants shall locate any boring pits, as far from the top of stream banks or wetland edges as possible;
 - Prior to boring, all sediment stabilization measures shall be in place to prevent unnecessary erosion and associated turbidity and sedimentation during boring and pre- and post-boring equipment installation.

- No visible increase in downstream turbidity or sedimentation is permitted during boring.
 - Any water accumulated in the isolated work area shall be managed in a manner that prevents a substantial visual contrast in the stream below the work area.
 - Equipment and provisions described in the Contingency Plan for HDD Pipeline Installations (Exhibit S) included, shall be readily accessible for locations where streams are crossed using horizontal directional drilling technology.
 - Any streams or wetlands which may be bored will approved by DPS Staff, through the minor change process outlined in certificate condition 1(b), and in consultation with DEC.
- (eee) If the Applicants use the open cut crossing dam and pump around method, as described in the EM&CS&Ps, to prevent sedimentation and interruption of stream flow during construction, there shall be no increase in turbidity downstream of the construction activity that will cause a substantial visual contrast to natural conditions, though some turbidity is expected during crossing equipment set up and removal and with the first flush of water in the stream bed; this temporary increase in turbidity shall not be allowed to cause a substantial visual contrast to natural conditions;
- (fff) No concrete shall be used to restore stream beds or stream banks on this project;

- (ggg) If any additional stacking or extra work room areas are needed, Applicants shall follow the change process as outlined in Ordering Clause 1(b) above and provide evidence of consent of the property owner to occupy that area;
- (hhh) The Applicants shall confine clearing and subsequent mechanical treatment of vegetation to the minimum extent necessary for construction, operation and maintenance of the certified facility. During clearing operations, all brush and trees shall be felled into the ROW to minimize damage to trees and structures on adjacent land.
- (iii) Applicants shall exercise all necessary and reasonable precautions to minimize sedimentation and soil erosion in work areas and on the ROW and shall take prompt and effective action to control sedimentation and erosion, in the event it does occur;
- (jjj) In areas of the ROW subject to soil erosion (including stream approaches), Applicants shall install temporary erosion control devices as soon as practicable, but in no event later than the end of the work day;
- (kkk) Where final restoration of the ROW cannot be completed due to weather conditions or other reasons, the ROW shall be temporarily stabilized according to the measures included in Ag&Mkts' "Seeding, Fertilizing, and Line Recommendation for Gas Pipeline ROW Restoration in Farmland," the EM&CS&Ps, the SWPPP, and the Winter

- Stabilization Plan until final restoration can be completed;
- (lll) Applicants shall seed and mulch the ROW, weather permitting, no more than five days after final grading; fertilizer and lime shall be applied as applicable;
 - (mmm) The Applicants shall order the new building(s) for the Tap and Metering station at Himrod Road for the Empire Connector that will have the outside finish (sides and roofs) with an earth tone colors not a "bright white";
 - (nnn) Applicants shall use bentonite or sand bag trench breakers in pipeline trench to minimize erosion washout in and around the trench. No foam trench breakers will be used on this project.
 - (ooo) Should archeological materials, human remains or evidence of human burials be encountered during construction, Applicants shall submit a Unanticipated Discoveries Plan prior to commencement of construction and shall stabilize the area, with this Plan, and cease all construction activities in the immediate vicinity of the find, and protect the site from further damage. Within 24 hours of such discovery, Applicants shall also notify and consult with DPS Staff and the Office of Parks, Recreation and Historic Preservation ("OPRHP") Field Services Bureau to determine the best course of action;
 - (ppp) Before pipeline construction may commence, both edges of the ROW and the certified extra workspace shall be staked and flagged; in

addition, unless a new landowner's permission is required, any wetland boundaries in, or within 25 feet of, the ROW shall be established by a Qualified Wetland Delineator. Also, all streams and drainages shall be staked and flagged in the field prior to the commencement of construction. Stream buffers shall only be staked and flagged as needed based on direction from the environmental monitor;

(qqq) Nothing herein shall be deemed to limit the right of DEC to enter and inspect the Project to assess compliance with any DEC-issued permit or applicable substantive statute or regulation under DEC's jurisdiction. DEC field representatives will notify the DPS Staff and the Applicants appropriate representative prior to site visits and notify these representatives of any activities that violate or may violate either the terms of the Certificate or the Environmental Conservation Law. DPS Staff and DEC field representatives will cooperate in assessing site conditions and determining whether stop work authority should be exercised, or whether directing the Applicants to take action to minimize further impacts to streams and wetlands, as appropriate.

(rrr) The Applicants shall comply with any conditions of the United States Department of Fish and Wildlife Service ("USFWS") concerning federally listed or proposed endangered or threatened species along the natural gas pipeline route. The Applicants shall provide to

Secretary any Project-specific correspondence and/or mitigation plans for the endangered or threatened species obtained from the USFWS. Also the Applicants shall promptly notify DPS Staff, and the DEC Region 8 Natural Resources Supervisor if any threatened or endangered animal species or animal species of special concern or rare, threatened or endangered plants listed in New York (collectively, "RTE" species) is encountered on the Project ROW, access roads and construction-related areas so as to determine the appropriate measures to be taken to protect such species. If necessary to protect a species or its habitat from immediate harm, Applicants shall stabilize the area and cease construction, tree cutting or ground disturbing activities in the area. The Applicants shall refer to 6 NYCRR Part 182 and Part 193 & <http://www.dec.ny.gov/animals/7494.html> for current lists of RTE species.

(sss) Applicants shall take all practicable steps to minimize the introduction and spread of invasive species within the ROW, with the exception of active agricultural ROW. The Applicants shall comply in all respects with the substantive requirements of 6 NYCRR Parts 192 and 575 and shall include a three-year post construction monitoring and remediation period plan to be submitted for Staff acceptance, in order to limit the impact of invasive species on nonagricultural portions of the ROW, provided however that such monitoring and remediation requirements shall not

apply to any portion of the ROW that is located in active agricultural fields. In order to prevent the potential introduction of invasive species from other areas or regions to the Project area: vehicles, equipment, and materials (including mats) shall be inspected for, and cleaned of, any visible soils, vegetation, insects, and debris before bringing them to the Project area. Equipment and material shall be cleaned prior to leaving the Project ROW. The cleaning method shall include, as applicable, brushing, scraping, and/or the use of compressed air to remove visible soils and vegetation. Any matter cleaned from equipment and material shall remain within the infested area on the pipeline ROW.

- (ttt) For areas free of invasive species, ensure that any transported fill materials come from sources visibly free of invasive-species.
- (uuu) Stabilize and re-vegetate disturbed sites using seed and other plant materials (e.g. straw not hay) that have been checked and certified as noxious-weed-free and that have a labeled weed content that does not exceed the weed content maximums for such seeds under Agriculture and Markets Law §138(A)(4).
- (vvv) The Applicants shall contact DPS Field Staff after completing construction of the Tap and Metering station site at Himrod Road and a visual assessment shall be made to determine if the preliminary planting plans are necessary at the Tap and Metering station site (Himrod Road). If

planting plans are necessary at the Himrod Road Tap and Metering Site, the Applicants will submit a compliance filing that will show the plantings it proposes to make at this station.

(www) With regard to the construction of any project-related building (if necessary), the Applicants shall with the State Building Code as Follows:

- (1) Before the construction of any Project-related building, the Applicants shall first obtain review and written certification by the Towns of Torrey and/or Milo or a public entity, or qualified professional recognized by the New York State Department of State as having the requisite training or qualifications that the construction plans are in compliance with the New York State Uniform Fire Prevention and Building Code;
- (2) Within 10 days of receiving any written certification as described in "(bbbb-1)" above, Applicants shall file a copy of such certification with the Secretary and shall serve a copy on the Chief of Environmental Compliance and Certification (EC&C) Section in the Office of Electric, Gas And Water (OEGW);
- (3) During construction of any Project-related building(s), Applicants shall obtain periodic inspections of the construction work by a public entity , referenced in bbbb-1 above, recognized by the Department of State as having the requisite training

or qualifications to inspect such work for compliance with the New York State Uniform Fire Prevention and Building Code;

(4) Prior to the use or occupancy of any Project related buildings, Applicants shall first obtain written certification by a public entity or a qualified professional recognized by the Department of State as having the requisite training or qualifications that the construction was completed in compliance with the New York State Uniform Fire Prevention and Building Code; and

(5) Within 10 days of receiving any written certification as described in "(bbbb-4)" above, Applicants shall file a copy of such certification with the Secretary and shall serve a copy on the Chief of Environmental Compliance and Certification (EC&C) Section in the Office of Electric, Gas And Water (OEGW);

(xxx) Water Handling

(1) All wastewater shall be handled, stored, tested, transported and disposed of in accordance with all applicable federal, State and local laws and regulations.

(2) At least 5 days prior to the operation of the Project, the Applicants shall provide the Secretary with written procedures which shall include, but are not limited to, the collecting, storing, testing for contaminants and corrosivity, and proper

disposal of any excess water obtained from the operation of the Project. The Applicants shall keep a copy of the water test reports on file for inspection by DPS Staff.

- (3) Hydrostatic test water will be obtained from the Village of Dresden via a hydrant located on the Applicants property or by other municipal source. When the hydrostatic test is complete, the hydrostatic test water will be transported to and disposed of at an approved waste water treatment facility. If the source of the testing water or its point of discharge changes, prior to using the new source or discharge point the Applicants shall notify DPS Staff and DEC.
- (yyy) The Applicants shall file as-built drawings with the Secretary if the pipeline deviates from the centerline of the proposed right-of-way; any proposed change in the location of the proposed right-of-way shall be reported as set forth in Ordering Clause 1(b) above;
- (zzz) Within ten days after the right-of-way is completely restored, Applicants shall so notify the Secretary in writing;
- (aaaa) Within ten days after the pipeline is in service, Applicants shall so notify the Secretary in writing;
- (bbbb) Within one year after the in-service date of the project, the pipeline right-of-way shall be fully restored pursuant to the EM&CS&P;

(cccc) Applicants shall promptly notify DPS Staff and the Secretary in writing should they decide not to complete construction of all or any portion of this project and they shall serve a copy of such notice upon all statutory parties; and,

(dddd) If construction of the project hereby certified is not commenced within 12 months, this Certificate may be vacated without further notice. Prior to the expiration of this 12 month period, Applicants may request that the Commission extend the Certificate.

2. In the Secretary's sole discretion the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include justification for the extension, and must be filed at least one day prior to the affected deadline.

3. Applicants shall not commence construction until they have received a "Notice to Proceed with Construction" sent by the Chief of the EC&C Section in OEGW.

4. This Proceeding is closed pending compliance with the terms of this order.

By the Commission

(SIGNED)

KATHLEEN H. BURGESS
Secretary

APPENDIX A

DETAILED DESCRIPTION OF TRANSMISSION FACILITY

Commencing at the 24-inch National Fuel Gas's Empire Connector Pipeline the proposed 8-inch diameter pipeline will follow an easterly route 51 feet and will connect the proposed Metering & Regulator station and will continue in an easterly direction 104 feet. At this point, the proposed pipeline will travel southeast 113 feet; then easterly 1,144 feet and cross Stream #1. At this juncture, the proposed pipeline will travel southeast 586 feet and cross Stream #1 and Stream# 2; then northeast 2305 feet and will cross Stream #3 and then east 179 feet. The proposed pipeline will then travel southeast 262 feet; then easterly 1,119 feet and will cross County Route 9 (Ridge Road); and then northeast 2,031 feet and will cross Stream #4 and one unnamed private road. At this point, the proposed pipeline will travel east 736 feet, then northeast 2,465 feet and cross one farm surface drainage ditch and one private road; then north 409 feet; and then northeast 603 feet. At this juncture, the proposed pipeline will travel southeast 579 feet and will cross Stream# 5; then northeast 633 feet and will cross Stream #6; then northeast 1740 feet and will cross one existing farm lane and Stream #7; and then north 619 feet and will cross Wetlands A and B. The proposed pipeline will then travel northeast 1,541 feet and cross one intermittent drain; then north 869 feet and will cross one intermittent drain; then northeast 1,470 feet and will cross one intermittent farm surface drainage ditch, then north 318 feet; then northeast 1,328 feet and will cross Stream #8; then southeast 539 feet; and then northeast 248 feet and will cross one public road (State Rt. 14). At this point, the proposed pipeline will travel east 713 feet and will cross one railroad line (Norfolk Southern Railroad) and one public road (Lampman Hill Road); then northeast 1,054 feet and will cross 1 public road (King Hill

Road); and then southeast 598 feet and will connect to the proposed Greenidge Regulator Station. The section of pipeline described above will traverse a distance of approximately 24,318 feet (approximately 4.6 miles).

EXHIBIT D



Department of
Public Service

Public Service Commission
Audrey Zibelman
Chair

Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman
Commissioners

Kimberly A. Harriman
General Counsel
Kathleen H. Burgess
Secretary

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

October 17, 2016

George M. Pond, Esq.
Barclay Damon LLP
80 State Street
Albany, New York 12207

RE: CASE 15-T-0586 - Application by Greenidge Pipeline LLC; Greenidge Pipeline Properties Corporation to Construct a Fuel Gas Transmission Line, Containing Approximately 24,318 Feet of 8" Steel Pipeline, Located in the Towns of Milo and Torrey, Yates County.

Dear Mr. Pond:

Notice to Proceed with Construction

Staff of the Department of Public Service has reviewed the information provided in satisfaction with the EM&CP order issued in the above referenced case.

You are hereby authorized to begin activities required for the construction of the 4.6 miles of eight inch natural gas as described in the Commission's September 16, 2016, Order.

If you have any questions, please contact Corey Strub of our Environmental Compliance Staff, at (518) 486-7847 or by email at Corey.Strub@dps.ny.gov.

Sincerely,

James D. Austin
Chief, Environmental Certification & Compliance
Office of Electric, Gas and Water

cc: Case File, DPS

EXHIBIT E

At a Term of Supreme Court held in
and for the County of Jefferson,
in the City of Watertown, New York
on the 13th day of January, 2011.

H PRESENT: HONORABLE HUGH A. GILBERT
Supreme Court Justice

STATE OF NEW YORK

SUPREME COURT COUNTY OF JEFFERSON

WIND POWER ETHICS GROUP,

Petitioner-Plaintiff,

- vs -

PLANNING BOARD OF THE TOWN OF CAPE
VINCENT, and RICHARD EDSALL, TOM RIENBECK,
GEORGE MINGLE, ANDREW BINSLEY and
KAREN BOURCY, in their capacities as planning
board members,

Respondents-Defendants,

-and-

ST. LAWRENCE WINDPOWER, LLC,

Respondent-Defendant.

MEMORANDUM
DECISION AND ORDER

Index No. 2010-2882

RJI No. 22-10-0990

Article 78 of the New York Civil Practice Law and Rules provides an
expeditious and essentially uniform procedure for judicial review of challenges to
action or inaction by agencies and officers of State and local government. The
challenges asserted by the Wind Power Ethics Group stem from a State law

involving environmental review.

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Article 8 of the New York Environmental Conservation Law is entitled "Environmental Quality Review". Commonly known as the State Environmental Quality Review Act or SEQRA, it and its implementing regulations establish a procedure framework designed to incorporate the consideration of environmental factors into the existing planning, review and decision-making process of State, regional and local government agencies at the earliest possible time so as to minimize to the greatest degree possible the adverse environmental consequences of any project that is approved. **Aldrich vs. Pattison**, 107 AD2d 258, 263 (1985). SEQRA and its implementing regulations require agencies to act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects. ECL 8-0109 (1); **E.F.S. Ventures Corp. vs. Foster**, 128 AD2d 28, 34 (1987). The record must establish that Respondents complied, both procedurally and substantively, with the provisions of the State Environmental Quality Review Act (ECL Article 8). **McCaffrey vs. Board of Estimate**, 130 AD2d 465 (1987).

Challenges involving a failure to follow SEQRA are maintainable in an Article 78 proceeding. **Matter of Save the Pine Bush vs. Planning Bd. of City of**

Albany, 70 NY2d 193, 203 (1987). It is not the role of the Court to weigh the desirability of any action or choose among alternatives, however, but to assure that the agency itself has satisfied SEQRA procedurally and substantively. *Akpan vs. Koch*, 152 AD2d 113, 118 (1989).

Entitling itself as a Petitioner-Plaintiff this Wind Power Ethics Group files an October 26, 2010 Petition and Complaint in which (1) a first cause of action asserts a failure to take a "hard look" at potential environmental impact; (2) a second cause of action of a failure to undertake "coordinated review" pursuant to SEQRA; (3) a third cause of action of failure to consider public comments pursuant to SEQRA; (4) a fourth cause of action of failure to consider cumulative impacts; (5) a fifth cause of action of conflict of interest violations; and (6) a sixth cause of action of violations of the Town of Cape Vincent Code of Ethics.

In its judicial review of an agency's substantive determination on environmental matters, without determining the merits of the project, the Court is obliged to determine whether the agency has complied with the applicable law, identified the relevant areas of environmental concern, taken a "hard look" at them and made a reasoned elaboration of the basis for its determinations. *Matter of Jackson vs. New York State Urban Dev. Corp.*, 110 AD2d 304, 308-309 (1985), affirmed 67 NY2d 400 (1986).

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Therefore, one of the pre-requisites is that the local agency take a "hard look" at the relevant areas of environmental concern. ***E.F.S. Ventures Corp. vs. Foster***, 128 AD2d 28, 38 (1987); reversed on other grounds 71 NY2d 359, 367 (1988); ***Matter of Briarwood Community Assoc. vs. City of New York***, 147 AD2d 639, 639-640 (1989). The "hard look" standard does not authorize a Court to conduct a detailed de novo analysis of every environmental impact of, or alternative to, a proposed project which was included in, or omitted from, an environmental impact statement. ***Matter of Schiff vs. Board of Estimate of City of N.Y.***, 122 AD2d 57, 59 (1986). The issue is whether a "hard look" was taken. ***Matter of Main Seneca Corp. vs. Erie County Indus. Dev. Agency***, 125 AD2d 930, 931 (1986). The issue is whether the administrative agency made a thorough investigation of the problems involved and reasonably exercised its discretion. ***Matter of New Scotland Ave. Neighborhood Assn. vs. Planning Bd. of City of Albany***, 142 AD2d 257, 263 (1988). Before an agency has made a finding of nonsignificance pursuant to SEQRA, has it identified the relevant areas of environmental concern, taken a "hard look" at them, and made a reasoned elaboration for the basis of its declaration? ***Matter of Fernandez vs. Planning Bd. Of Vil. of Pomona***, 122 AD2d 139, 140-141 (1986).

The determination of the Planning Board of the Town of Cape Vincent being challenged is a September 15, 2010 Resolution adopting and accepting the

statement of SEQRA findings by a vote of 3-0 with two abstentions. This Court concurs with Respondents that the abstentions negate any potential of conflict or ethics that may have been asserted in the Fifth and Sixth causes of action of the Petition and Complaint. A review of the one hundred fourteen (114) page statement of SEQRA findings attached to the Resolution and incorporated therein by reference, the contents of the four bankers' boxes of records and proceedings submitted to the Court and the persuasive legal and factual arguments by counsel for Respondents establishes to this Court that the requisite environmental SEQRA review was undertaken and completed.

Furthermore, Respondents here raised a significant and fatal issue concerning Petitioner's standing to pursue the SEQRA claims. Wind Power Ethics Group is the only Petitioner in this proceeding. No individual members were named or joined. In order to establish that it has the requisite organizational standing, Wind Power Ethics Group was required to establish "that at least one of its members would have standing to sue, that it is representative of the organizational purposes it asserts and that the case would not require the participation of individual members." *New York Association of Nurse Anesthetists vs. Novello*, 2 NY3d 207, 211 (2004). Whether Wind Power Ethics Group is an unincorporated association or a limited liability company as it now claims, we must concur with Respondents that it failed to prove that it had standing to pursue the claims made herein.

Petitioner's allegations concerning standing are found in paragraphs 8, 9, 25 and 26 of the Petition. We concur with Respondents that while these conclusory allegations may be sufficient to state a claim of standing, Petitioner has failed to establish standing. **Matter of Nolsen Corp. vs. Ontario County Board of Supervisors**, 295 AD2d 924 (2002); **Matter of Piela vs. Van Voris**, 229 AD2d 94 (1997).

Unlike the Petitioner in **Matter of Wind Power Ethics Group, et ano vs. Town of Cape Vincent TBA**, (Index No. 07-0789) previously decided by this Court, the Petition herein was not accompanied by sworn affidavits of any individual members. We concur with Respondents that the adjudication of this proceeding required the participation of individual members who Petitioner failed to join. **Matter of Citizens Organized to Protect the Environment vs. Planning Board of the Town fo Irondequoit**, 50 AD3d 1460 (2008). The submission of Affidavits of John Byrne, Clifford Schneider, Albert Bowers III and Michael Bell in Reply does not cure the defect in the Petition or confer standing. **Jackson Cutler vs. Long**, 2 AD3d 590 (2003); **Hoyte vs. Epstein**, 12 AD3d 487 (2004).

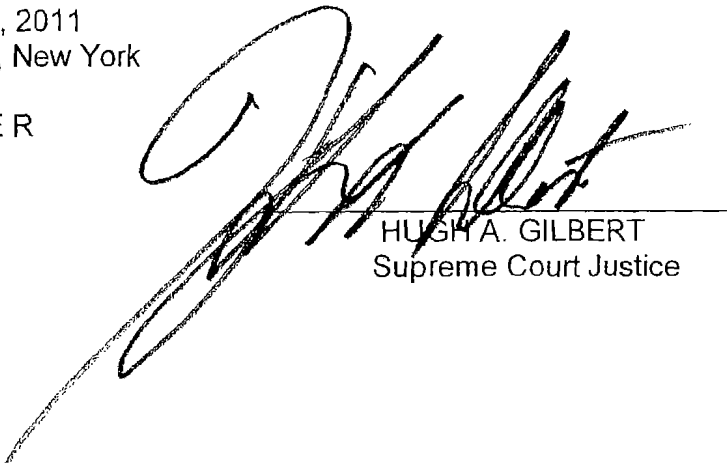
It is not our role to substitute our Judgment for that of the Planning Board. **Akpan vs. Koch**, 75 NY2d 561 (1990). Having found that the Planning Board fully complied with the procedural and substantive requirements of SEQRA, it is

THEREFORE, it is

ORDERED, ADJUDGED AND DECREED that the Petition is
respectfully denied and dismissed.

Dated: January 26, 2011
at Watertown, New York

ENTER



HUGH A. GILBERT
Supreme Court Justice

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