

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

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In the Matter of the Application of

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

*Petitioners-Appellants,*

Docket No. CA 18-00648

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

Yates County  
Index No. 2016-0165

–against–

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

*Respondents-Respondents.*

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**AFFIRMATION IN SUPPORT OF PETITIONERS' MOTION  
FOR TEMPORARY INJUNCTIVE RELIEF**

I, Rachel Treichler, affirm the following to be true under the penalties of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules (“CPLR”):

1. I am an attorney licensed to practice law in the State of New York, and am one of the attorneys representing the Petitioners-Appellants in this proceeding.

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

3. I respectfully submit this affirmation in support of Petitioners-Appellants' Motion for Temporary Injunctive Relief.

4. The motion requests an order enjoining Respondents Greenidge Generation, LLC from taking any further steps to construct and install equipment to prevent fish impingement and

entrainment at Greenidge Generating Station pending the resolution of this proceeding or further order of the Court, and, if the Court agrees with Petitioners' reading of the plain text of the SEQRA law and regulations, to continue thereafter until Respondent New York State Department of Environmental Conservation has completed the environmental review required by SEQRA.

5. Petitioners submit this motion because the installation of certain equipment to reduce fish impingement and entrainment at Greenidge Generating Station that does not comply with state and federal law requirements for such equipment is mandated by conditions in the modified State Pollution Discharge and Elimination System ("SPDES") permit number NY-0001325 issued to GGLLC by Respondent New York State Department of Environmental Conservation ("DEC"), with an effective date of October 1, 2017. These conditions require the installation of variable speed drives on the cooling water pumps by October 1, 2019, the preparation of a Cylindrical Wedge-Wire Screen (CWWS) Pilot Study Plan by April 1, 2018, the preparation of a Technology Installation and Operation Plan (TIOP) within three months of the date DEC approves the CWWS and complete installation of cylindrical wedge-wire screens at Greenidge Station by October 1, 2022. Ex. A, pp.13-14.

6. I attach as Exhibit A a true and correct copy of GGLLC's modified SPDES permit as provided in the administrative record filed in *Sierra Club v. Department of Environmental Conservation*, Yates County Index No. 2017-0232. A copy of this document may also be downloaded from the Dropbox website maintained by DEC to make SPDES permits available to the public. See State Pollutant Discharge Elimination System (SPDES) Permit Program, <http://www.dec.ny.gov/permits/6054.html> linking to the SPDES Permit for Greenidge Station at

[https://www.dropbox.com/sh/hz3spt98h4d88ue/AAApjO\\_usOfow1gfu6i3qJyxa/Region%208/In dSPDES/NY0001325?dl=0](https://www.dropbox.com/sh/hz3spt98h4d88ue/AAApjO_usOfow1gfu6i3qJyxa/Region%208/In dSPDES/NY0001325?dl=0) .

7. I request that the court take judicial notice of this official document prepared by Respondent DEC and made available by them to the public. GGLLC's SPDES permit has also been provided by DEC as part of the administrative record in a related court proceeding, *Sierra Club v. Department of Environmental Conservation*, Yates County Index No. 2017-0232.

8. I also request that the court take judicial notice of the Biological Fact Sheet - Cooling Water Intake Structure for Greenidge Generating Station, prepared by William C. Nieder of DEC's Bureau of Habitat on March 17, 2017. A true and correct copy of this Biological Fact Sheet as provided in the administrative record filed in *Sierra Club v. Department of Environmental Conservation*, Yates County Index No. 2017-0232, is attached as Exhibit B.

9. The Biological Fact Sheet states that Greenidge Station's "cooling water intake structure lacks any fish protection technology, therefore the facility does not meet either the requirements of 6 N.Y.C.R.R. § 704.5 nor the requirements of the CWA § 316(b) Phase II Rule (40 CFR Parts 122 and 125)." Ex. B, p. 2.

10. Because installation of the equipment mandated by GGLLC's modified SPDES permit to reduce fish impingement and entrainment at Greenidge Generating Station is very expensive, and because other courts have found that the installation of such expensive equipment to be grounds for dismissal, Petitioners will be irreparably harmed if Respondent GGLLC is allowed to move forward with the installation of modifications to the plant's cooling water intake system before an adequate environmental review of the plant's operations is conducted. See *Riverkeeper, Inc. v. Johnson*, 52 A.D.3d 1072 (3rd Dept. 2008) (dismissing those aspects of a petition relating to the cooling system for the Danskammer Generating Station on the ground of

mootness in reliance on the fact that that Dynegy, the owner of Danskammer, had completed the modifications required by DEC of its existing cooling system by the installation of variable speed pumps at a cost of over \$1 million); and *Matter of Sierra Club v. Martens*, 2016 NY Slip Op 51391 (New York Cty 2016), *aff'd in part* 156 A.D.3d 454 (1st Dep't 2017) (dismissing a challenge to the water withdrawal permit issued to Consolidated Edison for its East River Generating Station on the ground that the petitioners did not challenge or question Con Edison's actions at any point during the plant's earlier SPDES permit proceedings which required Con Ed to install Ristroph-style, dual-flow traveling waters screens and other technology to reduce impingement and entrainment at the East River Generating Station at a cost of more than \$44 million").

WHEREFORE, Petitioners respectfully request that this Court grant Petitioners' motion for temporary injunctive relief.

DATED: Hammondsport, New York  
July 6, 2018

Respectfully submitted,



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