

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

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,

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-Respondents.

**REPLY AFFIDAVIT
OF DALE IRWIN**

Docket No. CA 18-00648

Yates County
Index No. 2016-0165

FILED
2018 JUL 13 PM 3:40
APPELLATE DEPT. 4
NEW YORK

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

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.

2. I am the President and Chief Executive Officer (“CEO”) of Greenidge Generation Holdings, Greenidge Generation, LLC (“Greenidge Generation”), 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.

5. My statements in this Affidavit are based upon my personal knowledge, documents that I have reviewed, and my oversight and active participation in the implementation of the Best Technology Available (“BTA”) requirements contained in Greenidge Station’s State Pollution Discharge Elimination System (“SPDES”) permit.

6. I make this Affidavit in opposition to the Sierra Club, Committee To Preserve The Finger Lakes, and Coalition To Protect New York’s (collectively, the “Petitioners-Appellants”) Motion for Temporary Injunctive Relief.

7. It is my understanding that Petitioners-Appellants have requested that Greenidge Generation be enjoined from the installation of the variable speed drives (“VSD”) and the cylindrical wedgewire screens (“CWWS”) required by the Greenidge Station SPDES permit, pending this Court’s decision.

8. I was surprised to learn that Petitioners-Appellants had sought to delay Greenidge Generation’s compliance with its SPDES permit.

9. Petitioners-Appellants have also sued us in a separate lawsuit that is still pending before Judge Kocher in Yates County Supreme Court. That action seeks to annul our SPDES permit as well as our related water withdrawal permit.

10. I attended oral argument in this other action, which was held on May 22, 2018, where I specifically recall Petitioners-Appellants' attorney telling Judge Kocher on more than one occasion that this appeal was unrelated to the SPDES permit.

SPDES PERMIT REQUIREMENTS

11. The Greenidge Station SPDES permit was issued by the New York State Department of Environmental Conservation ("NYSDEC") on September 11, 2017, and became effective October 1, 2017.

12. The SPDES permit includes a determination that the BTA for the Greenidge Station is the use of VSDs and CWWS.

13. The SPDES permit includes the specific BTA requirements associated with the installation of VSDs as follows:

- Within 6 months of the effective date of the permit, the Greenidge Generation must provide a full description (including drawings) and schedule for installing and operating VSDs on the cooling water pumps at the Greenidge Station (p. 13).
- Within 2 years of the effective date of the permit, Greenidge Generation must complete installation of the VSDs on the cooling water pumps at Greenidge Station (p. 13).

14. The SPDES permit also includes the BTA requirements associated with the installation of the CWWS, which include the following requirements:

- Within 6 months of the effective date of the permit, Greenidge Generation must submit an approvable CWWS Pilot Study Plan (p. 13).
- Within 3 months of approval of the final CWWS Pilot Study Report, Greenidge Generation must submit an approvable Technology Installation and Operation Plan (p. 14).
- Complete installation of the CWWS within 5 years of the effective date of the permit (p. 14).

15. While it is not required by the SPDES permit, since it resumed operations in the Spring of 2017, Greenidge Generation has actively sought to decrease its use of cooling water by turning off some or all of the cooling water pumps when possible, which, like the VSDs, results in a reduction in cooling water flow.

BTA REQUIREMENTS COMPLETED

16. Greenidge Generation has been actively engaged in the process of completing the BTA requirements contained in the Biological Monitoring section of the Greenidge Station SPDES permit.

17. In order to comply with its SPDES permit, Greenidge Generation hired consultants, biologists and engineers (together referred to as the “Greenidge Consultants”) to analyze the specifics of the Greenidge Station cooling water intake, and to draft the VSD Report and CWWS Pilot Study Plan required by the Greenidge SPDES permit.

18. The Greenidge Consultants have already completed their analyses, engineering and planning, and drafted the required VSD Report and CWWS Pilot Study Plan.

19. Greenidge Generation also submitted the required VSD Report to NYSDEC.

20. In addition, Greenidge Generation has submitted the required CWWS Pilot Study Plan to NYSDEC, which NYSDEC has subsequently approved.

21. In order to submit these deliverables to NYSDEC, Greenidge Generation has incurred significant expense compensating the Greenidge Consultants for analyzing, engineering, and drafting the VSD Report and the CWWS Pilot Study Plan.

22. Greenidge Generation also utilized significant employee time and incurred legal fees with respect to issues associated with the VSD Report, the CWWS Pilot Study Plan and implementation of the BTA requirements.

**HARM TO GREENIDGE RESPONDENTS IF
THE REQUESTED RELIEF IS GRANTED BY THIS COURT**

23. Greenidge Generation will be significantly harmed if the Petitioners-Appellants' Motion for Temporary Injunctive Relief is granted by this Court.

24. If this Court were to grant the Petitioners-Appellants' request for a temporary injunction, Greenidge Generation would be forced to either comply with the Court's order and violate its SPDES permit, or, comply with its SPDES permit and violate this Court's order. Either of these options would result in significant harm to Greenidge Generation.

25. As provided in Section 71-1929 of the Environmental Conservation Law ("ECL") and 6 N.Y.C.R.R. § 750-2.4, the civil penalty for violating a SPDES permit requirement is up to \$37,500 per day, per violation.

26. Persons who knowingly violate SPDES permit conditions may also be subject to potential criminal liability under ECL § 71-1933 and 6 N.Y.C.R.R. § 750-2.4.

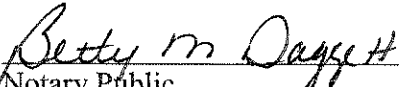
27. In addition, Greenidge Generation considers itself a good corporate citizen. We are committed to implementing the BTA established by the NYSDEC, which we are confident meets all regulatory requirements, in order to better protect the environment. Petitioners-Appellants' request that we delay implementation of the Facility's BTA will only unnecessarily postpone installation of measures that protect the environment.

28. Given the foregoing significant harms that would occur if the Petitioners-Appellants Motion for a Temporary Injunction is granted, and the costs and resources already spent by Greenidge Generation on the Greenidge Consultants and completion of the CWWS Pilot Study Plan and VSD Report, the balancing of the equities on Petitioners-Appellants' Motion for Temporary Injunctive Relief favors the Greenidge Respondents.



Dale Irwin

Subscribed and sworn to before me
this 13 day of July, 2018.


Notary Public

BETTY M. DAGGETT
Notary Public State of New York
Yates County # 01DA6066162
Comm. Expires November 5, 2021