

COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF YATES

DOCUMENT #: 20170232
BK: VOL: PAGE:
Nov 08, 2017 11:25A
RECEIPT #: 154255
Lois E. Hall
Yates County Clerk

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; COALITION TO PROTECT NEW YORK by and in the name of KATHRYN BARTHOLOMEW, its Treasurer; and SENECA LAKE GUARDIAN, A WATERKEEPER AFFILIATE by and in the name of YVONNE TAYLOR, its Vice President,

ORAL ARGUMENT
REQUESTED

Petitioners,

NOTICE OF PETITION

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

Index No. 2017-0232

—against—


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

Respondents.

PLEASE TAKE NOTICE that upon the accompanying verified petition of Sierra Club, Committee to Preserve the Finger Lakes, Coalition to Preserve New York and Seneca Lake Guardian, a Waterkeeper Affiliate, dated November 8, 2017, Petitioners will move this court, at 2:00 PM on the 6th day of December 2017, or as soon thereafter as counsel may be heard, at the Yates County Courthouse at 415 Liberty Street, Penn Yan, New York for an order and judgment pursuant to Article 78 of the Civil Practice Law and Rules for the relief demanded in the petition.

DATED: Hammondsport, New York
November 8, 2017

Respectfully submitted,


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To:

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590 Plant Road
Dresden, New York 14441

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Petitioners,

VERIFIED PETITION

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

Index No. 2017-0232

-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.

Petitioners Sierra Club, Committee to Preserve the Finger Lakes, Coalition to Preserve New York and Seneca Lake Guardian, a Waterkeeper Affiliate (collectively "Petitioners"), for their verified petition for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules, by their undersigned attorneys, allege as follows.

I. PRELIMINARY STATEMENT

1. This proceeding challenges the actions of Respondent New York State Department of Environmental Conservation (DEC") in issuing two permits to Respondent Greenidge Generation LLC ("GGLLC") on September 11, 2017: a water withdrawal permit (the "GGLLC Withdrawal Permit"), and a modified state pollution discharge elimination system permit (the "GGLLC SPDES Permit").

2. The permits authorize water withdrawals and water discharges by GGLLC's Greenidge Generating Station ("Greenidge Station") located on the western shore of Seneca Lake.

3. DEC's issuance of the GGLLC Withdrawal Permit is legally deficient because DEC violated the requirements of the Water Supply Law, Environmental Conservation Law (ECL), Article 15, Title 15 when it failed to treat GGLLC's water withdrawal permit application as an application for a new withdrawal and failed to adequately assess the impacts of the permit or set appropriate conditions in the permit, and because DEC failed to comply with the State Environmental Quality Review Act, ECL Article 8 ("SEQRA") when it determined that issuance of the GGLLC Withdrawal Permit was a Type II action, not subject to review under SEQRA.

4. DEC issuance of the GGLLC SPDES Permit is legally deficient because DEC violated the requirements of the Water Pollution Control Law, ECL Article 17 when it failed to treat GGLLC's SPDES permit application as an application for a new discharge and failed to set appropriate terms and conditions in the permit, and because DEC failed to comply with SEQRA when it determined that issuance of the Greenidge SPDES Permit would not have a significant effect on the environment. Because DEC's negative declaration was based on new permit conditions for protections against fish impingement and entrainment that are not currently in place, it constituted a conditioned negative declaration. Conditioned negative declarations are impermissible for Type I actions. In addition, DEC's environmental assessment was based on incorrect assumptions concerning current and future operations at Greenidge Station, failed to compare the environmental impacts of the restarted operations to the current baseline of no operations, failed to identify all relevant areas of environmental concern, failed take a hard look at the impacts identified, failed to give a reasoned elaboration why the identified impacts would not adversely affect the environment, improperly segmented review of the impacts of waste disposal at the

adjoining coal ash landfill from the review of the impacts of restarting the generating station, and failed to consider the cumulative impacts of other withdrawals and discharges to the receiving water bodies.

5. Petitioners seek a judgment and order pursuant to Sections 7803 and 7806 of the Civil Practice Law and Rules (“CPLR”) vacating and annulling the GGLLC Withdrawal Permit and the GGLLC SPDES Permit on the basis that they were issued in violation of lawful procedures, were affected by errors of law, were arbitrary and capricious, and their issuance constituted an abuse of discretion.

II. PARTIES

6. Petitioner Sierra Club is a national grassroots conservation organization. It is organized as a nonprofit corporation under the laws of the State of California. Sierra Club was founded in 1892. Its purposes include practicing and promoting the responsible use of earth’s ecosystems and resources, and protecting and restoring the quality of the natural and human environment. The protection of air and water resources is a key aspect of Sierra Club’s work. Sierra Club has approximately three million members and supporters nationwide. More than 50,000 Club members live in New York. Many of Sierra Club’s members live on or near Seneca Lake and use and enjoy the lake and other resources that are adversely affected by the operations of the Greenidge Station. The interests of the Club and its members are injured by operations damaging the water quality of Seneca Lake which Club members use for drinking, bathing, swimming, fishing and boating, by operations damaging fish and other aquatic organisms in Seneca Lake, by operations increasing the temperature of Seneca Lake and the likelihood of toxic algae blooms, and by operations emitting carbon and toxic emissions into the atmosphere. Sierra Club and its members participated in the DEC proceedings related to GGLLC’s permit

applications. The Club and its members suffer informational injury as a result of the lack of a full environmental impact statement covering the project at issue in this matter.

7. Petitioner Committee to Preserve the Finger Lakes (“CPFL”) is a voluntary association formed in 2010 to preserve the natural beauty and the purity of the water in the Finger Lakes region of New York State. Peter Gamba is the President of CPFL. Membership of CPFL is centered in Yates County, New York and includes members living in the Village of Dresden, the Town of Torrey and the Town of Milo. Many of CPFL’s members live on or near Seneca Lake and use and enjoy the lake and other resources that are adversely affected by the operations of the Greenidge Station. The interests of the CPFL and its members are injured by operations damaging the water quality of Seneca Lake which they use for drinking, bathing and boating, damaging fish and other aquatic organisms in Seneca Lake, increasing the likelihood of toxic algae blooms in Seneca Lake, and emitting carbon and toxic emissions into the atmosphere. CPFL and its members participated actively in the review given to the Greenidge restart project by Respondent DEC, the New York State Public Service Commission (“PSC”), and the Yates County Legislature. CPFL filed comment letters with DEC on the proposed SPDES permit and Withdrawal Permit and the Type II determination and the initial and amended negative declaration on September 11, 2015 and August 5, 2016. CPFL and its members suffer informational injury as a result of the lack of a full environmental impact statement covering the project at issue in this matter.

8. Petitioner Coalition to Protect New York (“CPNY”) is a coalition of local environmental organizations in the Finger Lakes – Southern Tier area, and as such, is an unincorporated association. Kathryn Bartholomew is the Treasurer of CPFL. CPFL is a member organization of CPNY. The member organizations of CPNY work together to promote

the health and vibrancy of our land and resources, and to oppose the harms that are caused by gas drilling, gas drilling wastes and fossil fuel infrastructure. The interests of CPNY's and its members are injured by operations of the Greenidge Station damaging the water quality of Seneca Lake which they use for drinking, bathing and boating, damaging fish and other aquatic organisms in Seneca Lake, increasing the likelihood of toxic algae blooms in Seneca Lake, and emitting carbon and toxic emissions into the atmosphere. CPNY's and its members suffer informational injury as a result of the lack of a full environmental impact statement covering the project at issue in this matter. CPNY's member organization, CPFL filed comment letters with DEC on the proposed SPDES permit and Withdrawal Permit and the Type II determination and the initial and amended negative declaration on September 11, 2015 and August 5, 2016.

9. Petitioner Seneca Lake Guardian, a Waterkeeper Affiliate ("Guardian") is an affiliate of the Waterkeeper Alliance. SLG was founded in January 2016 by Gas Free Seneca co-founders, Dr. Joseph Campbell and Yvonne Taylor. Yvonne Taylor is Vice President of Guardian. Guardian's mission is to protect Seneca Lake from the many threats that endanger Seneca Lake's waters. The interests of Guardian are injured by the operations of the generating station and the adjoining coal ash landfill damaging the water quality of Seneca Lake which lake residents and tourists use for drinking, bathing and boating, damaging fish and other aquatic organisms in Seneca Lake, increasing the likelihood of toxic algae blooms in Seneca Lake, and emitting carbon into the atmosphere. Guardian suffers informational injury as a result of the lack of a full environmental impact statement covering the project at issue in this matter.

10. Respondent New York State Department of Environmental Conservation is the administrative agency of the State of New York performing the actions at issue in this case. DEC is the governmental body responsible for environmental protection in the state of New York and

for the protection of New York's natural resources. DEC administers New York's water pollution discharge and water withdrawal permitting programs. Basil Seggos is the Commissioner of DEC.

11. Greenidge Generation LLC ("GGLLC") is a limited liability company formed under the laws of Delaware with offices and facilities at 590 Plant Road, Dresden, New York 14441. GGLLC is a wholly-owned subsidiary of Greenidge Generation Holdings LLC.

12. Lockwood Hills LLC ("LHLLC") is a limited liability corporation authorized to do business in New York with offices and facilities at a New York limited liability company, whose address is 590 Plant Road, Dresden, New York 14441. LHLLC is under common ownership with GGLLC.

III. FACTUAL BACKGROUND

13. Greenidge Station is located on the western shore of Seneca Lake near the Village of Dresden in the Town of Torrey, Yates County, New York. The plant is located at the mouth of Keuka Outlet.

14. Seneca Lake is the largest of the eleven Finger Lakes in central New York State. It lies within Seneca, Yates, and Schuyler counties. The Village of Watkins Glen is located at the southern end of the lake and the City of Geneva is located at the north end near where the lake drains to the Seneca River /Cayuga-Seneca Canal. The lake is in the Seneca-Oneida-Oswego River system that drains to Lake Ontario and is part of the Great Lakes watershed.

15. Keuka Outlet is the largest tributary to Seneca Lake. The watershed area of the outlet represents 35% of the total watershed of the lake. Keuka Outlet is the sole outlet of Keuka Lake. Keuka Lake, to the west of Seneca Lake, drains into Seneca Lake through the outlet. The outlet flows east from the Village of Penn Yan at north end of the east branch of Keuka Lake to the

Village of Dresden on the western shore of Seneca Lake. The elevation along the seven mile length of the outlet drops 270 feet from Keuka Lake to Seneca Lake.

16. Over the millennia, sediment flowing down the Keuka Outlet has built a large shelf out into Seneca Lake. Although Seneca Lake is a deep lake, the bottom of the lake at the mouth of the outlet is shallow. The depth profile of the lake in the vicinity of the outlet shows that the shallow shelf extends 1,600 feet from the shore, and the bottom of the lake drops off from 5 feet to 20 feet over that distance. Beyond 1,600 feet, the bottom drops off more sharply, dropping from 20 feet to 180 feet between 1,600 feet to 2,400 feet from shore.

17. Seneca Lake is heavily used for recreational boating, fishing and swimming, and is a source of drinking water and water for other uses for lakeside residents, tourists, farmers, businesses and various municipalities around the lake. Seneca Lake is the central focus of the tourism and winemaking industries in the Seneca Lake watershed.

18. Greenidge Station began operation as a coal-fired electric generating station in the 1930's. The plant was built to use once-through condenser cooling taking water withdrawn from Seneca Lake to cool the turbines and then discharge the heated water into Keuka Outlet through a discharge canal that empties into Keuka Outlet 700-feet upstream from Seneca Lake.

19. Starting in 1979, the Lockwood Ash Disposal Site ("LADS") was constructed across NYS Route 14 from Greenidge Station.

20. In 1999, Greenidge Station and LADS were acquired by AES AEE2, LLC ("AEE2"), a subsidiary of AES Eastern Energy, L.P. ("AES Eastern") from New York State Electric & Gas Company ("NYSEG"). At that time, Greenidge Station consisted of two electric generating units: the 54 megawatt Unit 3 and the 107 megawatt Unit 4. Both units were served by

pulverized coal-fired boilers. Coal was delivered to the plant by train or truck. Fly ash and other coal combustion byproducts (“CCBPs”) generated by the plant were hauled to LADS.

21. After acquisition by AEE2, CCBPs from four other coal burning power plants owned by AES Eastern—Hickling Station, Westover Station, Cayuga Station, and Jennison Station—were also deposited at LADS, as were coal bottom ash from Garlock, Inc. and coal fly ash from Eastman Kodak. The approved design capacity for the LADS facility was 750 tons per day.

22. In 2004, the United States Environmental Protection Agency (“EPA”) promulgated a Phase II rule under section 316(b) of the Clean Water Act (“CWA”), 33 USC 1326(b), setting national standards for minimizing adverse environmental impact from fish impingement and entrainment at large existing power plants. Legal proceedings relating to EPA’s implementation of the Phase II rule continue to the present day.

23. On March 29, 2005, AES Eastern and various subsidiaries, the State of New York, DEC, and NYSEG entered into a Clean Air Act consent decree (the “2005 Consent Decree”) in the United States District Court, Western District of New York (the “WDNY Court”). Under the consent decree it was agreed that by December 31, 2009, Greenidge Unit 4 would install NO_x, SO₂, and particulate control technology, repower, or cease operations; and Greenidge Unit 3 would install emission control technology equivalent to Best Available Control Technology be repowered, or cease operations. During each of the years 2007, 2008 and 2009, Greenidge Unit 3 was subject to an annual operating limit of 1400 hours.

24. On December 8, 2008, the Great Lakes–St. Lawrence River Basin Water Resources Compact (the “GLB Compact”), ECL, Article 21, Title 10, became state and federal law. The GLB Compact is an interstate compact among the states of Illinois, Indiana, Michigan, Minnesota,

New York, Ohio, Pennsylvania and Wisconsin. The compact details how the member states manage the use of water resources in the Great Lakes Basin.

25. When the New York State legislature enacted the GLB Compact on March 4, 2008, the legislature directed the Great Lakes Basin Advisory Council (GLBAC), a statutory body created by the legislature in 1988, to develop recommendations to guide New York's implementation of the requirements of the compact. In June 2009, GLBAC released its final report on New York's implementation of the compact. A key recommendation was that New York pass legislation to regulate water withdrawals statewide.

26. On January 22, 2009, AES Eastern and AEE2 notified the New York State Public Service Commission ("PSC") that they were retiring AES Greenidge Unit 3 effective December 31, 2009, pursuant to the 2005 Consent Decree. Taking into consideration the cost of the necessary air emission controls, and the potential for expensive modifications to the cooling water intakes to satisfy 6 NYCRR 704.5 and Clean Water Act 316(b), AES Eastern decided to retire Unit 3 from service.

27. On January 29, 2010, DEC renewed SPDES permit #NY-0001325 held by AES Eastern for discharges into Keuka Outlet and Seneca Lake by Greenidge Station, effective February 1, 2010. The permit required various reports for compliance with 6 NYCRR 704.5, including an Impingement Mortality and Entrainment Characterization Study, a Design and Construction Technology Review, a Proposed Suite of Technologies and Operational Measures, a Technology Installation and Operation Plan, and a Verification Monitoring Plan.

28. On April 29, 2010, AES Greenidge LLC filed its Impingement and Entrainment Characterization Study (the "IEC Study"). The study stated that cooling water was supplied to Unit 4 by three circulating pumps of which only two are typically operated outside of the summer

months. The maximum cooling water intake capacity of Unit 4 is 91.2 kgpm. (A flow of 91.2 kgpm is equal to a flow of 131,301,900 gallons per day.) The study states that Unit 4 relies on suction to convey water from an intake pipe extending 650 feet into Seneca Lake on to the circulating water pumps. According to the study, this configuration does not allow for any type of componentry, including traveling screens, that would interrupt the suction upstream of the circulating water pumps. A result of this configuration all fish, including eggs, larvae, juveniles, and adults that enter the Unit 4 cooling water intake are entrained, i.e., destroyed as they pass through the facility.

29. The IEC Study states that impingement monitoring was not conducted at Unit 4 due to the nature of its condenser cooling water system.

30. On March 16, 2010, DEC issued a department-initiated modification to AES Eastern for its SPDES permit for discharges into Keuka Outlet from LADS.

31. On June 29, 2010 DEC issued a final modification to AES Eastern's SPDES permit for discharges from LADS.

32. On September 18, 2010, AEE2 notified the PSC, the New York Independent System Operator ("NYISO"), and NYSEG that AEE2 intended to place Greenidge Unit 4 into protective lay-up status on March 19, 2011 because the unit was operating at a net loss and was not economic.

33. As an integral component of the lay-up of Greenidge Station, LADS was also prepared for protective layup. In May 2011, AEE2 submitted a lay-up plan for LADS to DEC.

34. On August 15, 2011, Governor Andrew Cuomo signed into law new water withdrawal permitting legislation unanimously passed by the State Senate and Assembly. The new law, Chapters 400-402, Laws of 2011, expanded the water withdrawal permitting requirements

contained in ECL Article 15, Title 15 to include non-public water users withdrawing 100,000 gallons or more per day of the state's waters. The 2011 law was the first law in New York to require that non-public water users obtain permits. Public water supply systems in New York have been required to obtain permits since 1905. The new permitting requirements became applicable when DEC promulgated new regulations implementing the legislation.

35. The governor's press release stated that the purpose of the law was to enable New York to comply with its commitments under the Great Lakes Basin Compact.

36. The legislation applied key elements of the GLB Compact's decision-making standards to water withdrawal permits issued throughout the state; including the GLB Compact requirements that water withdrawals must "incorporate environmentally sound and economically feasible water conservation measures" and "result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources and the applicable Source Watershed." ECL 21-1001, Section 4.11.2.

37. On December 30, 2011, AES Eastern and AEE2 filed for chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

38. On September 18, 2012, AEE2 filed notice with the Bankruptcy Court that the Greenidge Station would be permanently retired and transferred to a salvage company to dismantle and salvage the facility.

39. Also on September 18, 2012, AEE2 filed notice with the PSC that it intended to permanently retire Greenidge Unit 4 on September 21, 2012, and transfer Greenidge Station to a salvage company to dismantle and salvage the facility. The notice stated that Greenidge Unit 4 had been in lay-up status since March 19, 2011 and had not operated since well before that date.

40. On September 19, 2012, AEE2 filed a motion with the Bankruptcy Court seeking authorization to sell four non-operating coal-fired power plants owned by AEE2, including Greenidge Station, to GMMM Holdings I, LLC (“GMMM Holdings”) for \$2,250,000. The motion stated that the purchaser intends to permanently retire the non-operating facilities, salvage or scrap the equipment, and demolish the buildings so the sites eventually can be redeveloped, and that the purchaser has extensive experience with power plant demolitions, asbestos abatement, and other necessary skills.

41. On October 11, 2012, the Bankruptcy Court approved AEE2’s sale of Greenidge Station and the Lockwood Hills coal ash landfill to GMMM Holdings.

42. On November 21, 2012, DEC promulgated new regulations implementing the water withdrawal permitting law. The regulations became effective April 1, 2013.

43. On November 30, 2012, GMMM Lockwood LLC was formed by GMMM Holdings.

44. On December 18, 2012, the WDNY Court signed a stipulation and order to terminate the CAA consent decree.

45. On January 15, 2013, DEC authorized transfer of the SPDES permit for Greenidge Station from AES Eastern to GMMM Greenidge, LLC, a subsidiary of GMMM Holdings. The transfer was effective as of December 27, 2012.

46. On March 7, 2013, AEE2 deeded certain property in the Town of Torrey to GMMM Greenidge LLC and certain adjoining property to GMMM Lockwood LLC.

47. On May 28, 2013, GMMM Greenidge, LLC submitted an application to DEC for a water withdrawal permit for Greenidge Station.

48. On February 28, 2014, GMMM Holdings sold GMMM Greenidge, LLC and GMMM Lockwood LLC to an affiliate of Atlas Holdings, LLC.

49. On March 3, 2014, GMMM Greenidge, LLC, now under the ownership of Atlas Holdings, LLC, was renamed Greenidge Generation, LLC (“GGLLC”) and GMMM Lockwood, LLC, also under the ownership of Atlas Holdings, LLC, was renamed Lockwood Hills LLC (“LHLLC”).

50. On May 16, 2014, GGLLC submitted a Title IV/Title V air permit application to DEC for operation of the Greenidge Station.

51. On August 1, 2014, GGLLC submitted an application to DEC to renew the SPDES previously held by AEE2 for Greenidge Station.

52. On February 18, 2015, DEC entered into Consent Order No. R8-20140710-47 with LHLLC with respect to the SPDES permit held for LADS. The consent order states that DEC has determined that groundwater at the site contains substances in excess of the duly promulgated water quality standards for total dissolved solids, boron, manganese, magnesium, iron, sodium and sulfate and other substances in contravention of duly promulgated water quality standards in violation of ECL 17-0501 and 6 NYCRR 360-1.14(b)(2).

53. On May 26, 2015, LHLLC submitted its SPDES permit renewal application certification for LADS. The application states that none of the items on the self evaluation list apply to the facility at this time, but also states that it may be necessary to modify the permit in the future based on Consent Order R8-20140710-47.

54. On August 12, 2015, DEC published three separate notices in its Environmental Notice Bulletin (“ENB”) giving notice that GGLLC had applied for Title IV and Title V air permits, for a water withdrawal permit and for renewal of a SPDES permit.

55. The notice for the water withdrawal permit application stated that DEC had determined that the facility was eligible as an existing user for an initial permit under ECL 15-1501.9 and had determined that the issuance of initial permits under ECL 15-1501.9 as implemented by 6 NYCRR 601.7, are Type II actions and not subject to SEQR.

56. The notice for the SPDES permit application stated that DEC had received an application for renewal of the SPDES permit for the Greenidge Station, that DEC was proposing a department-initiated modification to the SPDES permit, and that DEC as lead agency had determined under SEQRA that the project was a Type I action and would not have a significant effect on the environment.

57. On September 9, 2015, GGLLC filed a petition with the PSC seeking a certificate of public convenience and necessity to return Greenidge Unit #4 to service as a merchant generating facility operating in the wholesale power markets.

58. On September 11, 2015, CPFL and a group of local environmental organizations filed comments with DEC opposing issuance of the proposed water withdrawal permit, SPDES permit and air permits for the Greenidge Station (the "CPFL 2015 Comments"). The CPFL's comments stated that CPFL and the other signers to the comment letter opposed issuance of the proposed draft permits because DEC had failed to make determinations and impose the permit conditions that would be required if the applications were properly treated as applications for new permits, that DEC's environmental assessment was based on incorrect assumptions concerning current and future operations at Greenidge Station, that DEC's failed to identify all relevant areas of environmental concern, failed take a hard look at the impacts identified, failed to give a reasoned elaboration why the identified impacts would not adversely affect the environment, improperly segmented review of the impacts of waste disposal at the adjoining coal ash landfill

from the review of the impacts of restarting the generating station, and failed to consider cumulative impacts.

59. On September 23, 2015, two affiliates of GGLLC, Greenidge Pipeline LLC (“GPLLC”) and Greenidge Pipeline Properties Corporation (“GPPC”) filed a petition with the PSC seeking a certificate of public convenience and necessity to operate a natural gas pipeline from the Empire pipeline to Greenidge Station in the Towns of Torrey and Milo in Yates County, New York.

60. On October 2, 2015, GPLLC and GPPC filed an application for a certificate of environmental compatibility and public need for construction of the pipeline. The proposed route of the 4.6 mile pipeline ran along the top edge of the ravine on the south side of Keuka Outlet and ran across a portion of LADS.

61. On October 19, 2015, EPA’s final rule on the disposal of coal combustion residuals from electric utilities under subtitle D of the Resource Conservation and Recovery Act, 42 USC 6901 *et seq.* (1976), went into effect. The rule regulates how coal combustion residuals generated by electric utilities and independent power producers are managed and disposed of in surface impoundments and landfills.

62. On November 4, 2015, PSC conducted a hearing at the Dresden Fire House in Dresden, New York on the PSC petitions filed by GGLLC and its affiliates. The hearing was attended by a number of Petitioners’ members.

63. On November 9, 2015, CPFL filed comments with the PSC on the petitions filed by GGLLC, GPLLC and GPPC.

64. On November 10, 2015, representatives of CPFL attended a procedural conference held by the PSC in Albany, New York on the petitions filed by GGLLC, GPLLC and GPPC.

65. CPFL filed supplemental comments with the PSC on November 23, 2015.

66. On November 30, 2015, DEC wrote to GGLLC's attorneys objecting to the Engineering Report for Leachate/Stormwater Segregation at the Lockwood Ash Disposal Site which was submitted as a condition of Consent Order RS-20140710-47. DEC's letter noted that LHLLC proposed to follow the design and operation procedures that were primitive, little-changed from past practices and not the best treatment techniques available for physical chemical treatment of CCR wastewater.

67. On December 7, 2015, EPA's Region 2 Office sent a letter to DEC disapproving DEC's draft air permits for the Greenidge Station. The EPA letter stated that EPA objected to the issuance of the proposed Title V operating permit for the Greenidge Station on the basis that the facility has not operated for nearly five years and was permanently shut down, as demonstrated by the prior owners' representations to two federal courts and their relinquishment of their Clean Air Act Title V and Title IV permits. The EPA letter stated that DEC failed to incorporate into the proposed Title V permit the applicable requirements under the Clean Air Act's Prevention of Significant Deterioration ("PSD") program and implementing regulations, and failed to assure compliance with applicable PSD requirements.

68. On December 28, 2015, PSC issued a ruling denying CPFL's request for an evidentiary hearing on the PSC petitions of GGLLC, GPLLC and GPPC.

69. On February 11, 2016, CPFL filed comments with DEC objecting to the administrative renewal of the SPDES permit for LADS on the ground that there were outstanding permit violations and that the SPDES law did not allow the renewal of permits with outstanding violations.

70. On June 29, 2016, DEC gave notice in the ENB that revised proposed air permits had been prepared and that DEC had issued an amended negative declaration covering the revised air permits and the SPDES permit (the “Amended Negative Declaration”). The air permits had been completely rewritten to meet EPA’s objections.

71. A notice of the revised proposed air permits and the Amended Negative Declaration was published by DEC in the Penn Yan *Chronicle Express* on July 6, 2016.

72. On August 5, 2016, CPFL and other local environmental groups filed comments on the revised proposed air permits and the Amended Negative Declaration (the “CPFL 2016 Comments”). The comments opposed the issuance of any permits to GGLLC until DEC conducted an adequate environmental review of the impacts of issuing the permits pursuant to SEQRA. The comments objected to the Amended Negative Declaration on the ground that DEC’s determination that restarting the Greenidge Station would have no significant adverse impacts on the environment was without foundation because DEC’s environmental assessment was based on incorrect assumptions concerning current and future operations at Greenidge Station, and because DEC failed to identify all relevant areas of environmental concern, failed take a hard look at the impacts identified, failed to give a reasoned elaboration why the identified impacts would not adversely affect the environment, improperly segmented review of the impacts of waste disposal at the adjoining coal ash landfill from the review of the impacts of restarting the generating station, and failed to consider cumulative impacts.

73. On September 8, 2016, DEC issued the revised air permits.

74. On September 16, 2016, noting the issuance of the air permits, the PSC issued an order granting certificates of convenience and necessity to GGLLC, GPLLC and GPPC for the generating station and the pipeline.

75. On October 17, 2016, the PSC issued a Notice to Proceed with Construction authorizing GPLLC and GPPC to begin activities required for the construction of the 4.6 miles of the natural gas pipeline along the top edge of the ravine on the south side of Keuka Outlet to Greenidge Station.

76. Also on October 17, 2016, CPFL and CPNY filed a petition for rehearing of the September 16, 2016 PSC order.

77. GGLLC held a groundbreaking ceremony for the repowering of the Greenidge Station at the facility on October 18, 2016.

78. Petitioners CPFL and CPNY filed an Article 78 proceeding challenging GGLLC's air permits and DEC's review of the environmental impacts of issuing the air permits under SEQRA on October 28, 2016 (the "2016 Petition"). Sierra Club was added as the lead petitioner on December 6, 2016.

79. The 2016 Petition stated that the petitioners would evaluate GGLLC's SPDES permit and water withdrawal permit when they were issued, and would seek to amend the petition to challenge these permits if any of their terms or conditions or the environmental review process pursuant to which they were issued violated state or federal law.

80. Construction on the new natural gas pipeline to the Greenidge Station began in November 2016.

81. On December 15, 2016, the PSC denied the request for rehearing filed by CPFL and CPNY.

82. On April 2, 2017, local residents received their first indication that Greenidge Station was beginning operations when they heard loud screeching noises coming from the plant.

83. On April 21, 2017, Judge William Kocher of the Yates County Supreme Court issued an order granting Respondents' motions to dismiss the 2016 Petition.

84. On June 26, 2017, DEC issued notice of entry of the judgment.

85. On July 19, 2017, Sierra Club, CPFL and CPNY filed a notice of appeal to the Appellate Division Fourth Department. Sierra Club, CPFL and CPNY are currently perfecting their appeal.

86. Loud noises from the plant continued through April, May, June, July, August and September.

87. DEC issued GGLLC's water withdrawal and SPDES permits on September 11, 2017. GGLLC's Withdrawal Permit authorizes the withdrawal of up to 139,248,000 gallons per day from Seneca Lake for operation of the plant's once through cooling system and other plant operations.

88. GGLLC's Withdrawal Permit is the largest water withdrawal permit issued by DEC in the Seneca Lake watershed and one of the largest water withdrawal permits issued in the Great Lakes watershed.

89. GGLLC's SPDES Permit authorizes the discharge of up to 134,000,000 gallons per day of condenser cooling water from the plant's once-through cooling system with a maximum temperature of 108° F in summer and 86° F in winter and into the Keuka Outlet. The permit requires the installation of cylindrical wedge-wire screens and variable speed drives to reduce impingement mortality and entrainment equivalent to that achievable with closed-cycle cooling and requires GGLLC to submit a Cylindrical Wedge-wire Screen (CWWS) Pilot Study Plan, Installation and Operation Plan, and a Verification Monitoring Plan. The SPDES Permit also requires a dilution study to determine appropriate dilution factors for Seneca Lake.

90. In addition to the discharge of up to 134,000,000 gallons per day of condenser cooling water into Keuka Outlet, the SPDES Permit also authorizes discharges into Seneca Lake and groundwater of bottom ash pond overflow (including stormwater, treated coal pile runoff, treated maintenance cleaning wastewater, oil separator, and boiler chemical cleaning final rinse); oil separator (process oil, fuel oil storage area); boiler water final rinse, coal pile runoff, fly ash hopper decant, demineralizer regenerate wastewater, maintenance cleaning wastewater, stormwater and other discharges. These additional discharges are not subject to any flow restrictions, but are subject to other standards that vary by the type of discharge.

91. GGLLC's SPDES Permit is the largest SPDES permit issued by DEC in the Seneca Lake watershed and one of the largest SPDES permits issued in the Great Lakes watershed.

IV. FIRST CAUSE OF ACTION
VIOLATION OF THE WATER WITHDRAWAL PERMITTING LAW IN ISSUING THE
GGLLC WITHDRAWAL PERMIT

92. Petitioners repeat and reallege the allegations in paragraphs 1 through 91 as though fully set forth herein.

93. DEC's issuance of the GGLLC Withdrawal Permit is legally deficient because DEC violated the requirements of the Water Supply Law, ECL Article 15, Title 15 when it failed to treat GGLLC's Withdrawal Permit application as an application for a new withdrawal, when it failed to assess the impacts of the permit as required by required by ECL 15-1503(2) and when it failed to set appropriate conditions in the permit as required by ECL 15-1503(4).

94. Even if DEC properly determined that GGLLC was an existing water user entitled to an initial permit under ECL 15-1501(9), that section requires that initial permits issued to existing users be subject to the same standards that apply to permits issued to new users.

95. For these reasons, DEC's issuance of the GGLLC Withdrawal Permit was made in violation of lawful procedures, affected by errors of law, arbitrary and capricious, and an abuse of discretion.

V. SECOND CAUSE OF ACTION
VIOLATION OF SEQRA IN ISSUING THE GGLLC WITHDRAWAL PERMIT

96. Petitioners repeat and reallege the allegations in paragraphs 1 through 95 as though fully set forth herein.

97. DEC failed to comply with SEQRA when it determined that issuance of the GGLLC Withdrawal Permit constituted a Type II action exempt from SEQRA review.

98. DEC's determination that its issuance of the GGLLC Withdrawal Permit was a non-discretionary act ignores the mandates of ECL 15-1503(2), ECL 15-1503(4) and ECL 15-1501(9) which require that DEC exercise discretion in setting appropriate terms and conditions in all water withdrawal permits, whether issued to new users or to existing users.

99. Because DEC is required to exercise discretion in issuing water withdrawal permits, DEC's failure to conduct a review of the environmental impacts of issuing the GGLLC Withdrawal Permit violated the requirements of SEQRA.

100. For these reasons, DEC's issuance of a Type II determination for the GGLLC Withdrawal Permit was made in violation of lawful procedures, affected by errors of law, arbitrary and capricious, and an abuse of discretion.

VI. THIRD CAUSE OF ACTION
VIOLATION OF THE WATER POLLUTION CONTROL LAW IN ISSUING THE
GGLLC SPDES PERMIT

101. Petitioners repeat and reallege the allegations in paragraphs 1 through 100 as though fully set forth herein.

102. DEC issuance of the GGLLC SPDES Permit is legally deficient because DEC violated the requirements of the Water Pollution Control Law, ECL Article 17 when it failed to treat GGLLC's SPDES permit application as an application for a new permit and when it failed to impose appropriate terms and conditions to address fish impingement and entrainment.

103. No provision of the ECL authorizes the transfer of SPDES permits.

104. Even if the transfer is treated as a renewal, reissuance, recertification or modification of an existing SPDES permit, ECL 70-0115.2(c) provides that, "In the case of a request for the renewal, reissuance, recertification or modification of an existing state pollutant discharge elimination system permit issued in lieu of a national pollutant discharge elimination system permit the request shall be treated as an application for a new permit."

105. Pursuant to ECL 70-0115.2(c), GGLLC's SPDES Permit application should have been treated as an application for a new permit and appropriate terms and condition imposed.

106. Whether GGLLC's application for a SPDES permit is treated as an application for a new permit or as an application to renew an existing permit, compliance with CWA 316(b) and 6 NYCRR 704.5 requires closed cycle cooling.

107. For these reasons, DEC's issuance of the GGLLC SPDES Permit was made in violation of lawful procedures, affected by errors of law, arbitrary and capricious, and an abuse of discretion.

VII. FOURTH CAUSE OF ACTION
VIOLATION OF SEORA IN ISSUING THE GGLLC SPDES PERMIT

108. Petitioners repeat and reallege the allegations in paragraphs 1 through 107 as though fully set forth herein.

109. DEC failed to comply with SEQRA when it determined that issuance of the GGLLC SPDES Permit would result in no significant adverse impacts on the environment, and issued a negative declaration.

110. DEC's SEQRA determination for the GGLLC SPDES Permit was fundamentally flawed because it was based on new permit conditions for protections against fish impingement and entrainment that are not currently in place. The negative declaration therefore constituted a conditioned negative declaration. Conditioned negative declarations are not permissible for Type I actions.

111. In addition, DEC's environmental assessment was based on incorrect assumptions concerning current and future operations at Greenidge Station, failed to compare the environmental impacts of the restarted operations to the current baseline of no operations, failed to identify all relevant areas of environmental concern, failed take a hard look at the impacts identified, failed to give a reasoned elaboration why the identified impacts would not adversely affect the environment, improperly segmented review of the impacts of waste disposal at the adjoining coal ash landfill from the review of the impacts of restarting the generating station, and failed to consider the cumulative impacts of other withdrawals and discharges to the receiving water bodies.

112. For these reasons, DEC's determination of no significant environmental impact for issuance of GGLLC SPDES Permit was made in violation of lawful procedures, affected by errors of law, arbitrary and capricious, and an abuse of discretion.

VIII. RELIEF REQUESTED

WHEREFORE, Petitioners respectfully request that this Court enter judgment against Respondents pursuant to CPLR 7803 and 7806 as follows:

A. Annuling the GGLLC Withdrawal Permit and GGLLC SPDES Permit issued on September 11, 2017 on the basis that they were issued in violation of lawful procedures, were affected by errors of law, arbitrary and capricious, and an abuse of discretion;

B. Annuling Respondent DEC's Type II SEQRA determination for the GGLLC Withdrawal Permit on the basis that it was made in violation of lawful procedure, affected by errors of law, arbitrary and capricious, and an abuse of discretion; and

C. Annuling Respondent DEC's SEQRA findings and negative determination for the GGLLC SPDES Permit on the basis that they were made in violation of lawful procedure, affected by errors of law, arbitrary and capricious, and an abuse of discretion;

E. Granting Petitioners the costs and disbursements of this action; and

F. Granting such other and further relief as the Court deems just and proper.

DATED: Hammondsport, New York
November 8, 2017

Respectfully submitted,



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VERIFICATION

I, Rachel Treichler, an attorney admitted to the practice of law before the courts of the State of New York, and not a party to the above-captioned proceeding, affirm the following to be true under the penalties of perjury pursuant to CPLR 2106, that I am an attorney for the Petitioners in this proceeding and that the foregoing petition is true to my own knowledge, and upon my review of pertinent documents.

I am signing this verification pursuant to Rule 3020(d)(3) of the CPLR.

Dated: November 8, 2017
Hammondsport, New York



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