

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,

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

Docket No. CA 18-00648

Yates County
Index No. 2016-0165

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 make this Affidavit in support of Respondents-Respondents Greenidge Generation Holdings, Greenidge Generation, LLC, Greenidge Pipeline, LLC, Greenidge Pipeline Properties Corporation, and Lockwood Hills, LLC (collectively, the "Greenidge Respondents") Motion to

Dismiss the appeal brought by Petitioners-Appellants Sierra Club, Committee to Preserve the Finger Lakes, Coalition to Protect New York. I am fully familiar with the history and facts surrounding the matters that are the subject of this Affidavit, as set forth below.

GENERAL BACKGROUND

3. 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. 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”).

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

5. 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 the Greenidge Station, I have also served as Material Handler, Maintenance Technician, Maintenance Coordinator, Outage Manager, Environmental Manager and Operation and Maintenance Manager.

6. 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, my oversight and active participation in the permitting and construction of the Greenidge Project and my participation, through counsel, in the lower court’s proceedings.

PURPOSE OF AFFIDAVIT

7. I make this Affidavit in support of the Greenidge Respondents' Motion to Dismiss the Petitioners-Appellants' appeal.

8. As detailed herein, well before Petitioners-Appellants brought this action or sought to enjoin construction and then during Petitioners-Appellants significant delay in perfecting their appeal, the Greenidge Respondents moved forward with construction and operation of a much needed source of electric power and economic driver in Western New York and, in doing so, relied in good faith 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 to bring natural gas to the plant;
- (c) the October 17, 2016 Notice to Proceed with Construction issued by the NYSPSC, which authorized the Greenidge Respondents to commence construction of the Greenidge Pipeline; and,
- (d) Service Agreement No. 2305 *Standard Large Generator Interconnection Agreement Among the New York Independent System Operator, Inc. and New York State Electric & Gas Corporation and Greenidge Generation LLC Dated as of October 31, 2016*,

which was filed with the Federal Energy Regulatory Commission (“FERC”) by the New York Independent System Operator (“NYISO”) and the New York State Electric & Gas (“NYSEG”), accepted by FERC on January 5, 2017 (the “Interconnection Agreement”) and authorized the interconnection of the Greenidge Station with NYSEG transmission facilities, and the offering of power to the electric grid pursuant to NYISO’s Open Access Transmission Tariff (“OATT”). A copy of the FERC Order is included as **Exhibit A**.

9. In accord with this good faith 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-Appellants, with significant progress having already been completed and significant funds having already been expended.

10. By December 23, 2016, when Petitioners-Appellants filed their Motion for Temporary Injunctive Relief, 60 percent of the Greenidge Project had already been completed, and the Greenidge Respondents had already spent well over \$7,600,000 on the construction of the Greenidge Project since September 8, 2016 when the Greenidge Station Title IV and Title V air permits were issued by NYSDEC.

11. Construction of the Greenidge Project was 100 percent complete on or about March 1, 2017.

12. The total cost of the Greenidge Project construction was approximately \$12,925,512. Attached hereto as **Exhibit B** is a true and accurate chart summarizing the progress and costs spent on the Greenidge Project at key dates in this litigation.

13. Following the completion of construction and associated testing, the Greenidge Station began generating electricity and providing it to the electric grid in May 2017. This continues to date. Attached hereto as **Exhibit C** is a true and accurate chart summarizing the Greenidge Station's operating information from May 2017 through April 2018.

14. In addition to the Greenidge Project construction, since on or about March 1, 2017 when construction of the Greenidge Project was completed, Greenidge Respondents have continued to implement various requirements necessary for operations to resume at the Greenidge Station.

15. The total capital costs that Greenidge Respondents have spent since on or about March 1, 2017 on activities necessary to resume operations is over \$1,500,000.

16. In sum, construction and other activities completed to resume operation have totaled over \$14,400,000.

THE GREENIDGE PROJECT

17. 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.

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

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

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

21. The purpose of the Greenidge Project was 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.

22. The Greenidge Project consisted of the following components:

- (a) In-plant construction that allows 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 that brings 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.
- 23. The cost of the in-plant construction activities authorized by the NYSDEC-issued Title V air permit and necessary materials was \$1,874,492. *See Exhibit B.*
- 24. The cost of the construction activities authorized by the NYSPSC's Certificate Order and the October 17, 2016 NYSPSC Notice to Proceed were \$11,051,020. *See Exhibit B.*
- 25. The total cost to complete the Greenidge Project construction was approximately \$12,925,512. *See Exhibit B.*

**CONSTRUCTION ON THE GREENIDGE PROJECT
COMPLETED PRIOR TO SERVICE OF THE UNDERLYING ACTION
ON NOVEMBER 3, 2016**

- 26. The winter weather conditions in Yates County, New York make excavation and construction of a pipeline during January, February and March extremely difficult.
- 27. In addition, there was a substantial business incentive to complete the construction for the in-plant work, pipeline and related facilities and have operations resume at the Greenidge Station as soon as possible so that a return on the Greenidge Respondents' substantial investment could start to 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.
- 28. Significant efforts were, therefore, made to complete construction of the Greenidge Project and resume operations shortly thereafter.

29. 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.

30. 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 D**.

31. As of November 3, 2016, the date I was served by Petitioners-Appellants with the Verified Petition in the underlying action, all materials had been purchased and over 30 percent of the in-plant construction work had been completed.

32. The cost of all materials purchased and in-plant construction work completed between September 8, 2016 and November 3, 2016 was approximately \$838,153. *See Exhibit B*.

33. This represents almost one-half of the entire anticipated cost of the in-plant construction.

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

35. 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.

36. 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.*

37. This represents more than 20 percent of the entire anticipated cost of the Greenidge Pipeline and related facilities' construction costs.

38. 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 PRIOR TO PETITIONERS-APPELLANTS ONLY ATTEMPT TO SECURE A
PRELIMINARY INJUNCTION ON DECEMBER 23, 2016**

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

40. This included 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.

41. This represented over 60 percent of the anticipated cost of the Greenidge Project.

COMPLETION OF CONSTRUCTION AND SUBSEQUENT OPERATION OF THE GREENIDGE STATION

42. Construction of the Greenidge Project was completed on or about March 1, 2017.

43. During the months of March and April 2017, several activities were completed as part of the Greenidge Station's resumption of operation, including for example, extensive shakedown and testing of the boiler, generator, and other equipment.

44. Greenidge Station began generating electricity and providing it to the electric grid in May 2017.¹ See **Exhibit C**.

45. Since May 2017, Greenidge Station has continued to operate and provide electricity to the electric grid on a regular basis. See **Exhibit C**.

46. Since March 1, 2017 through April 30, 2018, which was right around the time that Petitioners-Appellants finally elected to perfect their appeal, Greenidge Generation spent approximately \$1,500,000 on capital costs that were necessary for the resumption of Greenidge Station operations.

47. These capital costs included the following activities necessary for the resumption of operation of the Greenidge Station:

- (a) full replacement of selective catalytic converter reduction catalyst;
- (b) instruments and control testing and repairs;
- (c) Continuous Emissions Monitoring System upgrades and certification required by the Title V permit and the Clean Air Act;
- (d) engineering associated with additional interconnection upgrades required by the Interconnection Agreement;

¹ Now that operations have resumed, the Greenidge Station cannot cease operations without 365 days prior notice, and thereafter NYISO would have to complete additional studies on the impact to reliability. Section 38 of the OATT of the NYISO.

- (e) testing of the interconnection system and upgrades;
- (f) initial Relative Accuracy Test Audit required by the Title V permit and the Clean Air Act;
- (g) boiler repairs;
- (h) compliance program development and implementation;
- (i) engineering and design work associated with biological monitoring requirements of the State Pollution Discharge Elimination System ("SPDES") permit;
- (j) testing for the operation of the pipeline required by the PSC Order.

48. These capital costs do not include any of Greenidge Station's operating costs such as the \$2,308,817 spent on the wages and benefits for the eighteen employees that operate the Greenidge Station.

49. From September 8, 2016, when NYSDEC issued the final Title IV and Title V air permits to Greenidge Generation, through April 30, 2018, about the time when Petitioners-Appellants perfected their appeal, the total costs expended to complete the Greenidge Project and the other requirements necessary for the resumption of Greenidge Station operations, was over \$14,400,000.

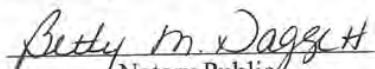
50. None of these costs take into account the significant impact that would result if Greenidge Station operations were halted at this juncture. The undue hardship and human toll on the Greenidge Station's eighteen employees cannot be overstated as it will be them who suffer the most personal and significant harm (*i.e.*, lost job, wages and benefits), despite no fault of their own.

51. Given the foregoing costs expended, completion of construction and over a year of operations, this appeal was acted on by Petitioner-Appellants way too late in the process, so that the impacts to Greenidge Respondents, the electric grid and on the employees if the Facility were to shutdown, are beyond significant at this point such that this appeal is moot and should be dismissed.



Dale Irwin

Subscribed and sworn to before
me this 21 th day of June, 2018.


Notary Public

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

EXHIBIT A

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

New York Independent System Operator, Inc.
Docket No. ER17-352-000

Issued: January 5, 2017

New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144

New York State Electric & Gas Corporation
c/o Rochester Gas and Electric Corporation
89 East Avenue
Rochester, NY 14649

Attention: Sara B. Keegan, Esq.
Senior Attorney, New York Independent System Operator, Inc.

Jeffrey A. Rosenbloom, Esq.
Director, NY Legal Services, New York State Electric & Gas Corporation

Reference: Large Generator Interconnection Agreement

Dear Ms. Keegan and Mr. Rosenbloom:

On November 15, 2016, the New York Independent System Operator, Inc. (NYISO) and New York State Electric & Gas Corporation (NYSEG) jointly filed an executed nonconforming Large Generator Interconnection Agreement (LGIA) among NYISO, NYSEG, and Greenidge Generation LLC (Greenidge).¹ You state that Greenidge is restarting Unit 4 of the Greenidge plant located in Dresden, New York, which has a net output of 106.3 MW and is powered by natural gas and biomass (Greenidge Facility). The LGIA provides for the interconnection of the Greenidge Facility to transmission facilities of NYSEG that are part of the New York State Transmission System. You also state that the LGIA contains nonconforming provisions because the Greenidge Facility is participating in the 2015 Class Year Interconnection

¹ New York Independent System Operator, Inc., NYISO Agreements, [Agreement No. 2305, LGIA \(SA 2305\) NYISO, NYSEG & Greenidge Generation LLC, 0.0.0.](#)

Facilities Study and the LGIA was executed before completion of the current class year study.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - East, under 18 C.F.R. § 375.307, your submittal is accepted for filing, effective October 31, 2016, as requested.

The filing was noticed on November 15, 2016, with comments, interventions and protests due on or before December 6, 2016. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2016)), to the extent that any timely filed motions to intervene and any motion to intervene out-of-time were filed before the issuance date of this order, such interventions are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

This acceptance for filing shall not be construed as constituting approval of the referenced filing or of any rate, charge, classification, or any rule, regulation, or practice affecting such rate or service contained in your filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against NYISO or NYSEG.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Sincerely,

Kurt M. Longo, Director
Division of Electric Power
Regulation – East

EXHIBIT B

**Greenidge Project Construction
Progress and Cost**

	Completed by November 3, 2016		Completed by December 23, 2016		Completed on or About March 1, 2017	
	% Complete	Cost	% Complete	Cost	% Complete	Cost
In-plant construction¹	31%	\$838,153	91%	\$1,600,907	100%	\$1,874,492
Greenidge Pipeline²	20%	\$705,561	80%	\$3,986,826	100%	\$5,517,789
Regulation station²	15%	\$79,304	42%	\$271,052	100%	\$715,294
Metering station²	30%	\$846,222	38%	\$1,113,036	100%	\$3,296,169
Interconnection²	50%	\$551,646	65%	\$716,646	100%	\$1,521,768
<u>TOTAL</u>		\$3,020,886		\$7,688,467		\$12,925,512

¹ In-plant construction work authorized by the NYSDEC Title V air permit issued on September 8, 2016.

² Construction authorized by NYSPSC's September 16, 2016 Certificate Order ("Certificate").

EXHIBIT C

**GREENIDGE GENERATING STATION
OPERATING INFORMATION¹
May 2017-April 2018**

Month Or Total	Net Actual Generation	Service Hours	Days in Service	Availability Factor	Capacity Factor
May 2017	7,746.00	237.53	9.90	83.50	9.99
Jun 2017	21,285.00	402.82	16.78	99.24	28.37
Jul 2017	30,699.00	464.15	19.34	99.52	39.60
Aug 2017	25,162.40	622.27	25.93	90.85	32.43
Sep 2017	29,768.00	362.13	15.09	88.93	39.64
Oct 2017	0.00	0.00	0.00	77.73	0.00
Nov 2017	27,751.26	459.35	19.14	99.22	36.90
Dec 2017	0.00	343.00	14.29	99.90	0.00
Jan 2018	39,654.63	428.83	17.87	99.90	51.10
Feb 2018	11,704.73	215.00	8.96	99.90	16.70
Mar 2018	1,056.63	17.85	0.74	98.28	1.36
Apr 2018	12,735.49	242.45	10.10	99.08	16.96
TOTAL	207,563.14	3,795.38	158.14	94.61	22.72

¹ Information is for Unit 4, the only unit for which operations was resumed pursuant to the Greenidge Project.

EXHIBIT D

http://www.fltimes.com/news/greenidge-power-plant-officially-reopens/article_8c1de7ce-95fe-11e6-acd3-8f39a85ac37e.html

FEATURED

Greenidge power plant officially reopens

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



The Greenidge Generation power plant was officially reopened Tuesday. Built in 1937, it has been dormant since 2011. Hosts of federal, state and local officials were on hand for the ceremony Tuesday.

Spencer Tulis / Finger Lakes Times

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

Built in 1937, it has been dormant since 2011.

A host of federal, state and local officials helped throw a ceremonial switch that illuminated two spotlights, rather than the usual ribbon-cutting.

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.