

George M. Pond
Partner

November 18, 2019

Hon. Michelle L. Phillips
Acting Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Petition of Greenidge Generation LLC for a Declaratory Ruling Regarding
Jurisdiction and Continued Application of Lightened Regulation
Case 19-E-0718

Dear Secretary Phillips:

Enclosed please find an amended version of the Petition of Greenidge Generation LLC for a Declaratory Ruling Regarding Jurisdiction and Continued Application of Lightened Regulation for filing with the Commission pursuant to Rule 8.2 of the Commission's Procedural Rules, 16 N.Y.C.R.R. § 8.2.

Our review of the original version of this Petition revealed that three words that do not belong in this Petition appear on page 5 thereof. Those words are struck through on this amended version of that Petition. No other changes have been made to this Petition.

In conformance with Rule 8.2(b), copies of this petition have been served on counsel for the New York State Electric and Gas Corporation and on counsel for the New York Independent System Operator, Inc.

Very truly yours,

/s/

George M. Pond
Attorney for Greenidge Generation LLC

cc: Justin Akins, Esq.
Sara Keegan, Esq.

GMP:

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Petition of Greenidge Generation LLC for Declaratory Ruling Regarding Jurisdiction and Continued Application of Lightened Regulation.)))))	Case 19-E-
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**PETITION OF GREENIDGE GENERATION LLC
FOR DECLARATORY RULING REGARDING JURISDICTION AND
CONTINUED APPLICATION OF LIGHTENED REGULATION**

Greenidge Generation LLC (“Greenidge”) submits this Petition for a Declaratory Ruling Regarding Jurisdiction and Continued Application of Lightened Regulation pursuant to Rule 8.1 of the Commission’s Procedural Rules, 16 N.Y.C.R.R. § 8.1 (2019).

**INTRODUCTION AND
SUMMARY OF POSITION**

In its Order Granting Certificates of Public Convenience and Necessity and Providing for Lightened Regulation in Case 15-E-0516 (the “Greenidge Order”), the Commission granted Greenidge a certificate of public convenience and necessity (“CPCN”) under section 68 of the Public Service Law (“PSL”) for the operation of its 106 MW generating facility in the Town of Torrey, Yates County, New York (the “Facility”).¹ The Commission granted lightened regulation to Greenidge based on its representation that it would operate the Facility “on a merchant basis and provide electricity in interstate commerce at the wholesale level by participating in markets administered by NYISO.”

¹ Case 15-E-0516, *Petition of Greenidge Generation LLC for an Original Certificate of Public Convenience and Necessity and Lightened Regulation*, Order Granting Certificates Of Public Convenience And Necessity And Providing For Lightened And Incidental Regulation, slip op. at 23 (Issued and Effective September 16, 2016).

Greenidge has now decided to use a portion of the electricity produced by the Facility in data center operations to be conducted at the site of the Facility, while continuing to sell the remainder of the output of the Facility on a merchant basis in markets administered by NYISO. In this Petition, Greenidge seeks a declaratory ruling concerning its proposal to lease the equipment used for data processing from and sell data processing services to its affiliate, Greenidge Coin LLC (“Coin”) and to engage in data processing operations in its own name using power from the Facility. All of the electrical equipment to be used in providing such service will be located entirely on the Facility site, and no streets, ways or other public places will be crossed by any such equipment. In a future petition, Greenidge will address the extent to which any further approvals from the Commission may be required for it either to lease energized space at the site of the Facility to third parties who would install and operate their own data processing equipment in that leased space or to sell power from the Facility to third parties leasing space from Greenidge at the project site.

In order to ensure that these data processing operations do not take power from the New York State Electric and Gas Corporation (“NYSEG”) when the Greenidge Facility is out of service, Greenidge intends to install breakers and relays acceptable to NYSEG and the New York Independent System Operator, Inc. (“NYISO”) that will disconnect all data processing operations whenever the output of the Greenidge Facility falls below the total electric power demands of those operations. NYSEG is currently reviewing Greenidge’s proposal. Greenidge will not place these new facilities in service until they have been approved by both NYSEG and NYISO.

In this Petition, Greenidge respectfully requests that the Commission issue a declaratory ruling confirming that Greenidge’s own use of electricity produced by the Greenidge Facility in on-site data processing facilities leased from Coin is not subject to regulation by the Commission under the Public Service Law; or (2) alternatively, that Greenidge may engage in such on-site data processing operations

under its existing CPCN and subject to lightened and incidental regulation; and (3) that the portion of the output of the Greenidge Facility that will continue to be sold into the wholesale markets operated by NYISO will remain subject to lightened regulation.

ANALYSIS

I. THE COMMISSION SHOULD FIND AND DECLARE THAT GREENIDGE’S USE OF ELECTRICITY PRODUCED BY THE FACILITY IN OWN ON-SITE DATA PROCESSING OPERATIONS IS NOT SUBJECT TO REGULATION UNDER THE PUBLIC SERVICE LAW

As the Commission recognized in its Order Adopting Regulatory Policy Framework and Implementation Plan in Case 14-M-0101 (the “Framework Order”), “not every action taken by every electric corporation is subject to its jurisdiction.”² PSL § 66.13 also makes this fact clear, as it provides that any electric corporation may engage in another line of business not subject to regulation by the Commission without subjecting that line of business to regulation by the Commission, so long as such operations are sufficiently separate from its electric utility operations:

In case any electric corporation . . . is engaged in carrying on any business other than owning, operating or managing . . . an electric plant, which other business is not otherwise subject to the jurisdiction of the commission, and is so conducted that its operations are to be substantially kept separate and apart from the owning, operating, managing or controlling of such . . . electric plant, said corporation in respect of such other business shall not be subject to any of the provisions of this chapter and shall not be required to procure the assent or authorization of the commission to any action in such other business or to make any report in respect thereof.

The Commission followed this requirement in, for example, authorizing the Eastman Kodak Company to act as an electric corporation in the Kodak Park without subjecting any of its other operations to regulation under the PSL.³ Similarly, the Commission granted a CPCN under PSL § 68 authorizing the Oneida

² Framework Order, slip op. at 104.

³ Case 04-M-0388, *Petition of Eastman Kodak Company to Provide Utility Service in Kodak Park, Located in the City Of Rochester and Town of Greece, Monroe County*, Order Granting Certificates Of Public Convenience And Necessity And Providing For Lightened And Incidental Regulation (Issued and Effective August 2, 2004).

County Development Agency and Griffiss Local Development Corporation authorize to act as an electric corporation without regulating their other economic development activities under the PSL.⁴

In the Framework Order, the Commission ruled that on-site use of electricity produced by distributed energy resources (“DERs”) was similarly exempt from regulation by the Commission, even when those DERs also furnish electricity to customers in transactions that are subject to the Commission’s jurisdiction:

[T]hough DER providers are electric corporations to the extent they “furnish” electricity, the Commission will not regulate all transactions involving DER providers. The Commission has long recognized that not every action taken by every electric corporation is subject to its jurisdiction. As described more fully below, the Commission will determine what transactions by DER providers will be subject to Commission oversight based on their engagement with DSP markets. That engagement will determine if plant is used to “furnish” electricity and so is subject to jurisdiction or is not used to “furnish” electricity and so is not subject to jurisdiction.⁵

The Commission went on in the Framework Order to find two distinct criteria for the “furnishing” of electricity, either one of which would subject DERs to regulation by the Commission:

In the case of DER providers, there will be two distinct criteria, once DSP market tools have been developed, used to establish when a service is the “furnishing” of electricity subject to jurisdiction. First is the acquisition of customer data by any means established under the Commission’s authority. Second is the sale of DER services into DSP markets; these could result from customer solicitations outside of the platform. The first criterion is information-related, the second is transaction-related. We will employ both: provision of DER products and services that meets either one or both of these criteria will be subject to our rules.⁶

⁴ Case 99-E-0990, *Oneida County Industrial Development Agency and Griffiss Local Development Corporation-Petition for Certificates of Public Convenience and Necessity to Own, Operate and Maintain Existing Electric Plant and to Sell Electricity at Retail and for a Declaratory Ruling That They Will be Subject Only to Incidental Regulation*, Declaratory Ruling On Electric Corporation Regulation (Issued and Effective September 28, 1999).

⁵ Framework Order., slip op. at 104.

⁶ Framework Order, slip op. at 105

Because Greenidge’s on-site use of electricity produced by the Facility in its own data processing operations does not involve either the use of third-party customer data acquired pursuant to Commission authority or an sales of electric service to third parties, the Commission should follow the precedent set in the Framework Order and find: (1) that its jurisdiction under the PSL is limited its regulation of Greenidge to those transactions that involve the furnishing of electricity to others; and (2) that the use of electricity produced in the Greenidge Facility in Greenidge’s own on-site data processing operations does not fall within the scope of that jurisdiction.

II. ALTERNATIVELY, THE COMMISSION SHOULD FIND AND DECLARE THAT NO CHANGES TO GREENIDGE’S CPCN ARE REQUIRED FOR GREENIDGE TO USE ELECTRICITY PRODUCED IN THE FACILITY IN ITS OWN ON-SITE DATA PROCESSING OPERATIONS AND THAT GREENIDGE WILL BE SUBJECT TO LIGHTENED REGULATION WITH RESPECT TO SUCH OPERATIONS

In the event that the Commission finds that the precedent set in the Framework Order does not apply to the facts in this case and that the on-site use of electricity produced in the Greenidge Facility by Greenidge ~~and its tenants~~ is subject to its jurisdiction under the PSL, Greenidge respectfully requests that the Commission find and declare that such uses are authorized under its existing CPCN and that they will be subject to lightened regulation.

A. No Amendment To Greenidge’s CPCN Should Be Required For Greenidge’s Own On-Site Use Of Electricity Produced By The Facility

In the event that the Commission concludes that Greenidge is subject to regulation under the PSL with respect to the use of electricity produced and consumed in its own on-site facilities as described above, Greenidge respectfully requests that the Commission find that no amendment to its CPCN is required for it to make such sales. As the court noted in *Rockville Centre v. Long Island Lighting Co.*,⁷

⁷ 56 Misc. 2d 403 (Supreme Court Nassau County 1968).

the Commission has long recognized that utilities holding a CPCN issued by the Commission do not require any further approvals from the Commission for actions within the scope of their certificates:

The commission itself has stated that its uniform and consistent practice under the applicable statute (Public Service Law, §§ 2, 68) has been to require approval only at the time of initial construction of gas facilities in a franchise area. "All later additions and extensions to such a plant within the franchise area come within the initial authorization and no further application under Section 68 is necessary"⁸

Because Greenidge already has a CPCN authorizing it to operate its electric plant on its premises, and because Greenidge's new business plans do not involve any actions that would be subject to Commission jurisdiction if undertaken by any non-utility, the Commission should find and declare that Greenidge is free to engage in such on-site data processing activities without the need for any further approvals from the Commission under PSL § 68, so long as those activities are conducted "solely on or through private property . . . for its own use or for the use of its tenants."

B. If Commission Asserts Jurisdiction Over Greenidge's On-Site Use Of Electricity Produced By The Facility, The Commission Should Hold That Lightened Regulation Applies To Those Operations

In the event that the Commission concludes that Greenidge's on-site use of electricity produced by the Facility is subject to Commission jurisdiction under the PSL, Greenidge respectfully requests that the Commission find that the lightened regulatory regime that the Commission has applied to Greenidge's competitive wholesale merchant generating facilities also applies to such operations. The Commission has granted similar relief in several other cases to gas corporations that did not qualify for incidental regulation.⁹

⁸ 56 Misc. 2d at 405

⁹ See, e.g., Case 06-G-0944, *Joint Petition of Fortuna Energy Inc. and FUSI GP Inc. for Exemption From Compliance With Certain Provisions of the Public Service Law Pursuant to Public Service Law Section 66 (13)*, Order Providing For Lightened Regulation (Issued and Effective November 13, 2006); Case 10-G-0364, *Norse Pipeline, LLC - Petition for an Order Providing for Lightened Regulation as a Gas Corporation under the Public Service Law*, Order Providing For Lightened Ratemaking Regulation Of A Gas Corporation (Issued and Effective February 23, 2011).

In the Wallkill Order and in subsequent decisions involving Carr Street Generating Station, L.P.¹⁰ and AES Eastern Enterprises, L.P.,¹¹ the Commission relaxed the regulatory requirements it had traditionally imposed on vertically integrated utilities in light of the practical realities confronting lightly regulated utilities operating in the competitive. In particular, the Commission ruled that lightly regulated utilities are subject the Commission's jurisdiction under PSL §§ 11, 19, 24, 25 and 26, and are also subject to the requirements of PSL §§ 66(6), 68, 69, 69-a and 70. The Commission stated it would presume that PSL § 70 would not apply to transfers of ownership interests of such entities as long as there is no potential for the exercise of market power arising out of an upstream power transfer.

The Commission also held that most of the provisions of Article 6 would not apply to lightly regulated utilities, except in the case of merchant generators whose capacity is marketed by affiliated power marketers, in which case they would be required to comply with PSL § 110(2). Lightly regulated utilities that are organized as limited partnerships would not be subject to PSL § 110(1). The Commission also required lightly regulated utilities to comply with PSL § 119-b regarding the protection of underground facilities from damage by excavators. The Commission determined that the remaining provisions of Article 6 either do not pertain to lightly regulated utilities or would unnecessarily hinder competitive lightly regulated utilities by interfering with their flexibility to structure the financing and ownership of their facilities.

Extending this lightened regulation is in the public interest, as Greenidge proposes to operate in unregulated and highly competitive markets for data processing services. Accordingly, Greenidge will

¹⁰ Case 98-E-1760, *Carr Street Generating Station, L.P. – Petition for an Original Certificate of Public Convenience and Necessity and for a Declaratory Ruling on Regulatory Regime*, Order Providing for Lightened Regulation (Issued and Effective April 23, 1999).

¹¹ Case 99-E-0148, *AES Eastern Energy, L.P. and AES Creative Resources, L.P. – Petition for a Declaratory Ruling That Light-Handed Regulation Be Applied Concerning the Petitioner's Purchase of Certain Electric Generating Assets from New York State Electric & Gas Corporation*, Order Providing for Lightened Regulation (Issued and Effective April 23, 1999).

have no captive retail customers requiring the protection of cost-based rates. Greenidge also lacks vertical market power in any relevant geographic and product market in New York State.

III. THE COMMISSION SHOULD FIND AND DECLARE THAT GREENIDGE WILL REMAIN ENTITLED TO LIGHTENED REGULATION WITH RESPECT TO ITS WHOLESALE SALES OF ELECTRIC ENERGY, CAPACITY AND ANCILLARY SERVICES ONCE IT BEGINS USING PART OF THE ELECTRICITY PRODUCED BY THE FACILITY FOR ON-SITE DATA CENTER OPERATIONS

Greenidge’s decision to undertake data center operations at the site of the Facility using electricity produced by that Facility does represent a change from the business plans that Greenidge presented to the Commission in its Verified Petition for a Certificate of Public Convenience and Necessity and Lightened Regulation in Case 15-E-0516. In that case, Greenidge stated that it planned to sell all of the electric energy, capacity and ancillary services produced by the Facility into competitive wholesale markets operated by the New York Independent System Operator, which it has done.

Greenidge’s proposed change to its business plans should not, however, alter the Commission’s conclusion in its that Greenidge’s wholesale sales of electric energy, capacity and ancillary services are entitled to lightened regulation under the Public Service Law. As the Commission noted in exempting Greenidge from the requirements of PSL § 107 prohibiting the use of utility revenues for non-utility purposes, the competitive nature of wholesale electric power markets eliminate any need for Commission regulation of any other unrelated lines of business in which Greenidge may elect to become involved:

These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. In comparison, so long as the wholesale generation market is effectively competitive, or market mitigation measures yield prices aligned with competitive outcomes, wholesale generators cannot raise prices even if their costs rise due to poor management.¹²

¹² Greenidge Order, slip op. at 26.

Moreover, as previously noted, the products and services produced by on-site data center operations at the Greenidge Facility will be sold into competitive markets characterized by large numbers of buyers and sellers. The Commission has allowed many utilities subjected to lightened regulation with respect to wholesale sales to also engage in other activities that do not create horizontal or vertical market power. For example, the Commission has allowed a number of cogeneration facilities to sell electricity at wholesale while also supplying steam and/or hot water to end use customers.¹³ In other cases, the Commission has allowed major manufacturers and independent operators of distribution systems in industrial parks to provide electric service under lightened regulation while also providing a number of other products and services.¹⁴ Accordingly, the Commission should find and declare that Greenidge may use a portion of the electricity produced in its Facility in its own on-site data processing operations without jeopardizing its right to lightened regulation with respect to the portion of the output of the Facility that will still be sold in wholesale markets administered by NYISO.

¹³ Case 02-M-0094, *WPS Power Development, Inc., CH Resources, Inc. and Central Hudson Energy Services, Inc., Petition for an Order Providing for Lightened Regulatory Treatment and, if Necessary, a Certificate of Public Convenience and Necessity*, Order Approving Transfers, Providing For Lightened And Incidental Regulation, And Granting A Certificate Of Public Convenience And Necessity (Issued and Effective April 26, 2002)(granting lightened regulation as an electric utility to company that also supplied steam service); Case 16-E-0033, *Petition of AG-Energy, L.P. for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation*, Order Granting Certificate Of Public Convenience And Necessity And Confirming Lightened Regulation (Issued and Effective July 20, 2016)(same).

¹⁴ Case 04-M-0388, *Petition of Eastman Kodak Company to Provide Utility Service in Kodak Park, Located in the City Of Rochester and Town of Greece, Monroe County*, Order Granting Certificates Of Public Convenience And Necessity And Providing For Lightened And Incidental Regulation (Issued and Effective August 2, 2004)(granting lightened regulation to Eastman Kodak Company for certain sales of electric power); Case 99-E-0990, *Oneida County Industrial Development Agency and Griffiss Local Development Corporation-Petition for Certificates of Public Convenience and Necessity to Own, Operate and Maintain Existing Electric Plant and to Sell Electricity at Retail and for a Declaratory Ruling That They Will be Subject Only to Incidental Regulation*, Declaratory Ruling On Electric Corporation Regulation (Issued and Effective September 28, 1999)(granting lightened regulation as a supplier of electric power to operator of a local development authority that also operated an industrial park).

CONCLUSION

WHEREFORE, for the above stated-reasons, Greenidge Generation LLC respectfully requests that the Commission issue an order ruling and declaring:

1. That Greenidge's use of electricity produced by the Facility in its own on-site data processing operations is not subject to regulation under the Public Service Law; or
2. Alternatively, that Greenidge does not require any further approvals under section 68 of the Public Service Law to use electricity produced by the Facility in its own on-site data processing operations and that Greenidge's use of such electricity for such on-site data processing operations will be subjected to only lightened regulation under the Public Service Law; and
3. That Greenidge's wholesale sales of electric energy, capacity and ancillary services into the competitive markets administered by the New York Independent System Operator, Inc. will remain subject to lightened regulation once it begins using part of the electricity produced by the Facility in on-site data processing operations.

Respectfully submitted,

/s/

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